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Charities--Charitable Hospital--Liability for Torts to Patients

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STUDENT NOTES AND RECENT CASES

CHARITIES—CHARITABLE HOSPITAL—LIABILITY FOR TORTS TO PATIENTS.—Plaintiff sued for damages for injury to her person, alleged to have been caused by the negligent and unskillful treatment used by one of defendant's nurses while plaintiff was a paying patient in defendant's hospital. Defendant filed a special plea, not admitting its negligence, but alleging that it is a non-stock charitable institution, incorporated under C. 55, W. Va. Code, and that it operates at a loss and has no funds or property out of which a judgment could be paid, except those which it administers as a charitable trust in the care of sick and injured persons. Defendant's special plea was rejected and the question of its sufficiency was certified to the appellate court. *Held,* insufficient, as a charitable hospital is liable to a patient for failure to use reasonable care in the selection and retention of nurses, physicians and attendants. *Roberts* v. *Ohio Valley General Hospital,* 127 S. E. 318 (W. Va. 1925).

This is apparently the first time this exact question has been before the West Virginia court. In other jurisdictions however, such cases have arisen frequently and with varied results and, sometimes, fearful reasoning. The theory that a charitable hospital is liable for acts and neglects of its servants, in regard to patients, first found expression in this country in Rhode Island in 1879, when it was held in *Glavin* v. *Rhode Island Hospital,* 12 R. I. 411, 34 Am. Rep. 675, that a charitable institution was on much the same footing in this respect, that is, to a paying patient, as a business corporation. A special act of the Rhode Island Legislature, General Laws R. I., 1896, p. 538 overruled this however, and not until 1915 in the case of *Tucker* v. *Mobile Infirmary Association,* 191 Ala. 572, 68 So. 4, L. R. A. 1915 D; 1167, was it reasserted.

Another line of decisions, respectable in number and authority, exempt, absolutely, charitable institutions from liability in such cases. Varying reasons are given for this exemption, such as

these, that a charitable institution is an agency of the government, *Gallon* v. *House of Good Shepherd,* 158 Mich. 361, 122 N. W. 631; that all the funds of such an institution are held as a trust fund for charity and should not be diverted, *Parks* v. *Northwestern University,* 218 Ill. 381, 75 N. E. 991, 2 L. R. A. (N. S.) 556; that a beneficiary exempts by implied contract the benefactor from liability in such cases on the doctrine of *Volenti non fit injuria, Virginia Iron, etc. Co.* v. *Odle,* 128 Va. 280, 105 S. E. 107, *Hospital of St. Vincent* v. *Thompson,* 116 Va. 101, 81 S. E. 13, although in the latter case, the plaintiff was in fact a third person, not a beneficiary. These decisions serve to show how far, and upon what reasons, the courts of various jurisdictions have gone in this matter, to exempt charitable institutions from liability on the ground of a supposed public policy.

The rule laid down in the principal case is, at the present time, while new in West Virginia, in line with the great weight of authority and is undoubtedly correct, as far as it goes. 11 C. J. 377, and cases cited. The fact that one is a paying patient in a charitable hospital, does not alter or change in any way, the rule.

Just why it is necessary, however, to limit the liability to cases where negligence is shown in the selection and retention of doctors and nurses, and deny relief to patients injured through other acts of negligence of the employees of such institutions, is not apparent to the writer. Although the West Virginia court wisely refrained from an expression on this, such a distinction in now made in perhaps the majority of other jurisdictions which have passed on the point. 11 C. J. 377 and cases cited.

As the court says in the principal case, "Public policy demands that charitable institutions be fostered and preserved." The question then, is, to what extent. Is it of such paramount importance that it should override the rule that one having undertaken a duty toward another must use ordinary care in its execution? Is it a sound public policy to allow a person or a corporation to be generous before being just? The writer thinks not, and it is submitted that the rule of the old Glavin case, *supra,* is preferable to the others, provided the judgment is confined to the actual damages. As a matter of determining a sound public policy, it is also submitted that the duty of ordinary care should be placed on good Samaritans, as well as on others.

—C. M. L., Jr.