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The Fourteenth Amendment and the Bill of Rights-An Historical Interpretation

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NOTES

IS CHARITABLE IMMUNITY ON THE WAY OUT?

For many years the courts of our country have adhered to the doctrine that charities are immune from tort liability. With the increase in the number and size of charities, the "big business" scale of their activities, the complexity of modern life, advanced business methods and the protection afforded by liability insurance, the problem of their tort liability has taken on completely new aspects from the time when the immunity was first afforded them.

Today every citizen regardless of financial position is exposed at one time or another to the risks of injury by some charitable activity. It need only be remembered that many of the motor vehicles on the streets and highways today are owned and operated by charities, to substantiate the truth of this statement. There are voices from many quarters calling for a reappraisal of this entire time-honored, but seemingly unjust, doctrine. During the past few years several states have abandoned this doctrine. Some, by overruling long standing precedents, others by legislation.

Questions involving the applicability of statutes, whether the defendant is in fact a charity, whether the injury inflicted was in the course of a charitable activity, whether the actor was the servant of the charity and whether the servant was within the scope of his employment are omitted from this discussion. In the typical case the following facts are usually present: (1) the institution is a charity; (2) no statutes impose liability or immunity upon the charity; (3) the charity or its servant was negligent; (4) it acted in the performance of a charitable activity; and (5) the plaintiff was injured through no fault of his own.

HISTORICAL BACKGROUND

The doctrine declaring charities to be immune from tort liability was first pronounced in this country in *McDonald v. Massachusetts General Hospital.*[1] The decision in that case relied upon an English case decided in 1861. The second case to uphold this doctrine in

1. ". . . it has been held that they are not liable if proper care has been used by them in selecting those who were actually to perform the work. Holliday v. St. Leonard's, 11 C.B. (N.S.) 192. The liability of the defendant corporation can extend no further than this; . . . ." McDonald v. Massachusetts General Hospital, 120 Mass. 432, 21 Am. Rep. 529, 532 (1876).

America arose in Maryland in 1885. This case, *Perry v. House of Refuge*,[2] held that the funds of the defendant institution could not be used to compensate an inmate for an assault committed upon him by one of its officers in the infliction of punishment. This decision also got its sole justification from an English case decided in 1846, since there were no prior decisions in Maryland to follow. It is interesting to note that this doctrine had been repudiated in England prior to its adoption in this country. Blackburn, J., speaking for the English court in *Foreman v. Canterbury Corporation*,[3] said:

> There was one case cited in the course of the argument *(Holliday v. St. Leonard, Shoreditch)*, but, upon looking at the reasons of that decision, we consider it to be overruled by the decision of the House of Lords in the case of *Mersey Docks v. Gibbs* . . . it was decided that a public body like the local board of health are answerable for the negligence of their servants, just as if they were acting as servants of a private person, . . . and they would have to pay the damages out of the funds in their hands as a local board of health.

The American courts are divided over this doctrine of non-liability and under what circumstances it is to apply. In *Gable v. Salvation Army*,[4] a 1940 case, the Oklahoma court said:

> Even the most cursory research makes it apparent that there is no ground upon which this doctrine of non-liability has been rested by one court that has not been assailed and criticized at length by some other court, notwithstanding the fact that they both arrive at the same conclusion in their decisions.

LEGAL THEORIES IN SUPPORT OF IMMUNITY

The advocates of the doctrine of immunity of charities from liability for damages in tort base their reasoning upon one or more of the following theories:[5] (1) the trust fund theory; (2) the

2. "In the case of Feoffees of Heriot's Hospital v. Ross, 12 Clark and Fin. 507, in the House of Lords, it was decided that 'if charity trustees are guilty of a breach of trust, the person thereby injured has no right to be indemnified by damages out of the trust fund'.
"In the absence of any decisions in Maryland, we are constrained to adopt the exposition of principles by these eminent English judges, and are thus led to the determination, that damages cannot be recovered from a fund held in trust for charitable purposes." Yellott, J. in Perry v. House of Refuge, 63 Md. 20, 52 Am. Rep. 495, 500 (1885).
3. L. R. 6 Q. B. 214, 217 (Eng. 1871). See also Gold v. Essex County Council, 2 K.B. 293 (1942), 2 All Eng. 237 (C.A.) (1942).
4. 186 Okla. 687, 100 P. 2d 244, 246 (1940).
5. See Annotation in 25 A.L.R. 2d 29.

theory that charities are exempted from the doctrine of *respondeat superior;* (3) the theory that privately conducted charities are agencies of the government and therefore entitled to the government's immunity from suit; (4) the theory that a beneficiary of a charity is deemed to have waived any claims against negligence of the charity and to have assumed the risk of such negligence; and (5) the public policy theory.

1. *Trust fund theory.* The principal reason advanced for this theory is that the funds of a charity are held in trust for the beneficiaries and the diversion of these funds to pay tort claims would defeat the useful purpose of the charitable institution.[6] It is the contention of others that since the funds are set aside for a specific purpose, they cannot be used for another.[7]

A "qualified" liability is enforced in many instances and the charity is only liable if a person is injured as the result of torts of employees who were at the time discharging duties of the corporation.[8] The reason given for not having absolute immunity is that the rule as to trust funds has been extended too far and tends to foster negligence while liability tends to induce care and caution in the selection of employees and the standard of care exercised.[9]

Those rejecting the trust fund theory altogether give different reasons in support of their beliefs. Some maintain that it has no real basis in the law of trusts since only technical immunity is afforded trust funds;[10] others insist that charities are no longer in the position where they are unable to absorb losses for payments of damages since modern charities are no longer composed of small, struggling institutions,[11] and that in those jurisdictions which have no immunity, there is no evidence of any decline in the number of these institutions or the crippling of services offered by them as a result of their being liable for damages.[12] Finally, it has been recognized that liability insurance could readily absorb the risk involved.

6. Vermillion v. Woman's College of Due West, 104 S.C. 197, 88 S.E. 649 (1916); Parks v. Northwestern University, 218 Ill. 381, 75 N.E. 991, 2 L.R.A. (N.S.) 556, 4 Ann. Cas. 103 (1905).
7. Anderson v. Armstrong, 180 Tenn. 56, 171 S.W. 2d 401 (1943); St. Mary's Academy v. Solomon, 77 Colo. 463, 238 P. 22, 42 A.L.R. 964 (1925).
8. Weston's Administratrix v. Hospital of St. Vincent of Paul, 131 Va. 587, 107 S.E. 785, 23 A.L.R. 907 (1921).
9. Welch v. Frisbie Memorial Hospital, 90 N.H. 337, 9 A. 2d 761 (1939).
10. Gable v. Salvation Army, 186 Okla. 687, 100 P. 2d 244 (1940).
11. Haynes v. Presbyterian Hospital Association, 241 Iowa 1269, 45 N.W. 2d 151 (1950).
12. Foster v. Roman Catholic Diocese, 116 Vt. 124, 70 A. 2d 230, 25 A.L.R. 2d 1 (1950).

2. *Respondeat Superior doctrine not applicable.* The cases that follow the theory that a charity is exempted from the doctrine of *respondeat superior* base their belief on the grounds of public policy.[13] It is said that a charity does not derive any profits from the services of its employees whereas other enterprises are carried on for the benefits of a master and he should be liable for the torts of his servant because he is benefited financially by having servants.[14]

Some courts allow paying patients and strangers to the charity to recover for injuries inflicted by the charity and yet recovery is denied if the person is a non-paying patient. Among the cases expressing the view that this theory of exempting charities from the doctrine of *respondeat superior* does not hold up because of inconsistencies, is *Ray v. Tucson Medical Center.*[15] The Arizona court points out that the reason given for the view that *respondeat superior* does not apply is that the charity is a non-profit institution. The court goes on to say that if this be true, then it can make no difference whether the patient pays or does not pay or whether the claimant is a stranger to the charity, since the character of the institution as a non-profit organization is not changed by this distinction. It pointed out in this connection that some of the courts favoring the theory say that the doctrine of *respondeat superior* does apply to strangers and paying patients but does not apply to non-paying patients. The court concludes: "It reduces itself to an absurdity to say that . . . the doctrine does not apply to nonpaying patients."

3. *Governmental immunity theory.* This theory is predicated on the idea that charitable institutions are exempt from liability for negligent injuries to patients on the ground that they are mere instrumentalities brought into being to aid in the performance of governmental or public duties, are exempt from taxation, and are supported by state appropriations in some instances.[16]

On the other hand, one court, in *Cohen v. General Hospital Society,*[17] held that even though the hospital was receiving aid from the state in the form of tax exemptions and appropriations, it was not immune from liability since it was not performing a governmental duty.

13. Vermillion v. Woman's College of Due West, 104 S.C. 197, 88 S.E. 649 (1916).
14. Backman v. Y.W.C.A., 179 Wis. 178, 191 N.W. 751, 30 A.L.R. 448 (1922).
15. 72 Ariz. 22, 230 P. 2d 220 (1951).
16. Schumacher v. Evangelical Deaconess Society, 218 Wis. 169, 260 N.W. 476 (1935); University of Louisville v. Hammock, 127 Ky. 564, 106 S.W. 219, 14 L.R.A. (n.s.) 784, 128 Am. St. Rep. 355 (1907).
17. 113 Conn. 188, 154 A. 435 (1931).

4. *Implied waiver or assumption of risk theory.* This theory (applicable only where the injured party is a beneficiary of the charity) is based on the assumption that a person who accepts the benefits of a charity assents to the exemption of his benefactor from liability and assumes the risk of negligence.[18]

The opposition to this theory of implied waiver maintains that it is impossible to say that the recipient of the benefits has knowingly agreed to waive any claim for negligence. The court, in *Foster v. Roman Catholic Diocese,*[19] rejected the waiver theory, saying:

> The waiver theory is only fiction. It can have no foundation of fact in many cases. It cannot be said that a patient taken to a hospital in an unconscious condition knowingly waived the right to recover for negligence that might occur while the patient was still unconscious. Neither can it be said that a small child in attending a church service knowingly waived the right to recover for negligence. The theory is based upon nothing but the assumption of an implied contract against future negligence.

5. *Public policy theory.* Public policy is apparently the theory used by most of the courts in support of the doctrine that a charitable institution is immune from tort liability as a result of its negligence. It is said that all the other theories are merely different names for the same idea since they are all encompassed by the "public policy" doctrine.[20] It is also said to be public policy to encourage charitable institutions. In the belief that it is better for the community at large that the injured individual bear the loss than to hold the charity in damages, immunity is granted.[21]

It is interesting to note that "public policy" requires the immunity rule in some jurisdictions and the liability rule for charities in others.[22] The public policy of South Carolina requires charitable institutions to be exempted from liability in damages for negligence resulting in personal injuries or death,[23] but permits liability for damages resulting from the creation of a nuisance.[24] In other states it is

18. "One who accepts the benefit either of a public or a private charity enters into a relation which exempts his benefactor from liability for the negligence of his servants in administering the charity." Powers v. Homopathic Hospital, 190 Fed. 294, 307, (1st Cir.), *cert. denied,* 183 U.S. 695 (1901).
19. See note 12 *supra.*
20. See note 11 *supra.*
21. Hearns v. Waterbury Hospital, 66 Conn. 98, 33 Atl. 595 (1895).
22. See note 15 *supra.*
23. Lindler v. Columbia Hospital, 98 S.C. 25, 81 S.E. 512 (1914); Vermillion v. Woman's College of Due West, 104 S.C. 197, 88 S.E. 649 (1916).
24. Peden v. Furman University, 155 S.C. 1, 151 S.E. 907 (1930).

denied that the public desires that the charities be immune from tort liability for their negligence, or that of their employees, when injury occurs as a result of such negligence. In *Welch v. Frisbie*,[25] the New Hampshire court agrees that the judiciary undoubtedly has the power to declare what the public policy is, but that it should only do so when there is a united state of mind prevailing or legislative announcement of it. The case holds that since it is hard to say just when the public interest will be better served, and due to the absence of legislation to the contrary, the ordinary rules of agency should apply, including the principle of *respondeat superior*. The decision seems to be based on the fact that there is no evidence of any state of the public mind favoring immunity of charities from tort liability.

DISTINCTION BETWEEN STRANGERS AND BENEFICIARIES

Determining the difference between a stranger and a beneficiary has given the courts much difficulty in those jurisdictions where this difference is material to the liability of the charity, e.g., a servant of the charity, a visitor of a patient, a patron of museums or other places of entertainment, or a private nurse hired by a patient.

Before proceeding with the distinction the cases draw between a stranger and a beneficiary, it is necessary to note that the status of the victim is immaterial where the charity enjoys no immunity whatsoever,[26] or where it enjoys "complete" immunity.[27]

Charities are immune from tort liability to beneficiaries in many instances, but when the negligently injured person is a "stranger," the same courts hold the charity liable.[28] A stranger is defined as one who receives no benefit from the charity nor is employed by it. On the other hand, a beneficiary is spoken of as one who is receiving some type of benefit from the charity at the time of the injury. This raises an interesting question. Is a paying patient a recipient of the charity and therefore to be classed as a beneficiary? In *Williams v. Union County Hospital Association*,[29] the North Caro-

25. See note 9 *supra*.
26. See note 15 *supra*.
27. Irrespective of the status of the injured person as a beneficiary of the charity or a stranger, and irrespective of the nature of the negligence as the negligence of the defendant corporation or one of its servants, the defendant, if shown to be a charity, was held immune from liability for the death of a paying patron of a musical entertainment in its new auditorium, upon whom the balcony fell while the entertainment was in progress. Vermillion v. Woman's College of Due West, 104 S.C. 197, 88 S.E. 649 (1916).
28. Walker v. Memorial Hospital, 187 Va. 5, 45 S.E. 2d 898 (1948).
29. 234 N.C. 536, 67 S.E. 2d 662 (1951).

lina court at least commented that a paying patient is not a recipient of the charity.

EFFECT OF LIABILITY INSURANCE

Why do charitable institutions secure liability insurance in jurisdictions where they are immune from tort liability? This may be answered by the fact that these institutions want to take no chances. But then, it *may* be due to their prudent recognition that the substantive law is always subject to change or modification as public policy also changes. Still another reason is given by the court of Wisconsin in *Schau v. Morgan*,[30] decided in 1942:

> We will take notice that public liability insurance policies cover the cost of defense. When a charitable institution is made a defendant it must defend the action whether or not it can be held liable. No doubt, charitable institutions deem it good business judgment to protect themselves against the costs of the defense of such actions, as well as from loss through liability imposed by law.

It seems to be implied, by the court, that even in those jurisdictions granting immunity for the negligent acts of servants, the institution may be liable for the negligent selection of such personnel in the first place.

Thus it seems that the immunity of a charity from tort liability is not lost by the fact that the charity carries liability insurance. In support of this rule, the Connecticut court, in *Cristini v. Griffin*,[31] said that the result of a contrary rule would be that a plaintiff negligently injured in an insured hospital would get a judgment while a plaintiff injured in an uninsured hospital would not, and that such a distinction has no logical basis.

Contrariwise, in 1950 the Illinois court held that where insurance exists and thereby provides a fund from which damages for tort liability may be collected without impairing the trust fund, the defense of immunity is not available.[32] Another argument in favor of fixing liability upon charitable institutions protected by liability insurance is based on the assertion that the public policy considerations that demanded the immunity in the first place have changed.[33] Could

30. 241 Wis. 334, 6 N.W. 2d 212, 216 (1942).
31. 134 Conn. 282, 57 A. 2d 262 (1948).
32. Moore v. Moyle, 405 Ill. 555, 92 N.E. 2d 81 (1950).
33. The court takes judicial notice of the extensive use of the many types of hospitalization insurance by the public, as well as liability insurance by the institutions, and comes to the conclusion that "times have changed and are now changing in the business, social, economic and legal worlds." Haynes v. Presbyterian Hospital Association, 241 Iowa 1269, 45 N.W. 2d 151, 154 (1950).

the practicability of insurance coverage have been determinant of the change in public policy?

SOUTH CAROLINA LAW

This controversial doctrine first found its way into South Carolina law in 1913. In *Lindler v. Columbia Hospital,*[34] in which the plaintiff, a paying patient who was allegedly burned through the negligence of one of the nurses employed by the defendant, received a verdict in the lower court. After argument before the Supreme Court, and affirmance of the judgment below by a bare majority, the Supreme Court, sitting *en banc,* reversed the judgment below. It is interesting to note that six of the fifteen justices and judges dissented, and that the majority was composed of Chief Justice Gary and another Justice of the Supreme Court and seven Circuit Judges, while the dissent was composed of three of the Justices of the Supreme Court and three Circuit Judges. The majority, after deciding that the defendant was a charitable institution, held that it would be against public policy to hold a charitable institution responsible for the negligence of its servants, because to do otherwise would dissipate the trust funds.

The dissent of Mr. Justice Fraser asserts the belief that:

> We think the Courts ought to hold the fund, first to repair the evil done by itself, because the purpose of the trust is to do good and not evil . . . . The purpose of the trust is to relieve suffering, and not to increase it, when, in the administration of the trust, suffering is increased, the purpose fails. The courts that declare immunity are destroying and not maintaining the trust.[35]

Two years after the decision in the *Lindler* case, *supra,* another case arose in which a charitable institution was sued for damages for injuries sustained when the balcony of the defendant's new auditorium collapsed during a musical program. In this case, *Vermillion v. Woman's College of Due West,*[36] the plaintiff attempted to distinguish his case from the *Lindler* case, *supra,* in that: (1) the injured person in the instant case was a stranger to the charity instead of a beneficiary and had paid for admittance to the program; (2) the injury was a result of the negligence of the corporation itself, or its officers, in failing to provide a safe place for an invited guest

34. 98 S.C. 25, 81 S.E. 512 (1914).
35. *Id.* at 40.
36. 104 S.C. 197, 88 S.E. 649 (1916).

whereas in the preceding case the negligence was that of a servant of the charity. In rejecting these distinctions the court said:

> These differences in the facts of the two cases make no difference in the applicable law, because the exemption of public charities from liability in actions for damages for tort rests not upon the relation of the injured person to the charity, but upon grounds of public policy, which forbid the crippling or destruction of charities which are established for the benefit of the whole public to compensate one or more individual members of the public for injuries inflicted by the negligence of the corporation itself, or of its superior officers or agents, or of its servants or employees.[37]

The court also answered the statement that there was no remedy against the actual wrongdoer when the servant is insolvent, by saying that "the law does not undertake to provide a solvent defendant for every wrong done."[38] This case would seem to put South Carolina among those states which give complete immunity.

However, in the next case in which a charity was sued for damages, *Peden v. Furman University*,[39] the alleged liability was not for injuries to the person but rather to the property of the plaintiff. The plaintiff sought to enjoin a baseball association from using a field leased to them by the defendant for the playing of baseball and sued the defendant for damages allegedly caused by the creation of a nuisance. The lower court directed a verdict for the defendant on the ground that it is an eleemosynary institution, and as such, cannot be held liable in such an action; and stated as the reason therefor, that it fell within the doctrine laid down by the *Vermillion* case, *supra*. This was reversed by the Supreme Court. It was held that the two cases are not analogous, in that the plaintiff in the present case was not basing his claim upon the principle of *respondeat superior* or the negligence of the defendant or its servants, but alleged that the defendant had created a nuisance and damaged the plaintiff as a result. The court, speaking through Mr. Acting Justice Wyche, said:

> In our opinion, an eleemosynary institution cannot use its property in such a way as to prevent others from enjoying the use of theirs, and, if it uses the property in such a manner as to become a nuisance it makes itself liable for damages.[40]

37. *Id.* at 200.
38. *Id.* at 201.
39. 155 S.C. 1, 151 S.E. 907 (1930).
40. *Id.* at 16.

In *Caughman v. Columbia Y.M.C.A.*,[41] the issue was whether a charitable organization or institution was liable for compensation as an employer under the Workmen's Compensation Act. In holding the defendant liable, the court reviewed the *Lindler* and *Vermillion* cases, *supra,* and came to the conclusion that it was bound by stare decisis and therefore the Workmen's Compensation Act did not apply to a charitable institution since it enjoys full immunity from liability in South Carolina.

In the most recent South Carolina case concerning the applicability of this doctrine of immunity, *Byrd v. Blue Ridge Rural Electrical Cooperative, Inc.*,[42] the case turned on the charitable status of the defendant. The Fourth Circuit Court of Appeals reversed a decision by the United States District Court which had held that the defendant Cooperative served a laudable public purpose and that it was therefore exempt from liability.[43] In reversing this decision the circuit court said that a rural electric cooperative is not designed to accomplish the purposes of a charitable institution and does not belong in the same category since it is essentially a business project designed to promote the convenience and material welfare of its members rather than the common good.

Summing up the law of South Carolina, it would seem that charities are exempted from liability in damages for negligence resulting in personal injuries or death[44] but are liable for property damages resulting from a nuisance.[45]

CONCLUSION

While this division as to tort immunity for charities is prevailing within the courts, the opinion among scholars and law review writers outside the courts almost uniformly supports the doctrine of liability as against that of immunity.[46] Some courts recognized this authority as a guide to follow when deciding whether earlier cases should be overruled, or when ruling on the question as one of first impres-

41. 212 S.C. 337, 47 S.E. 2d 788 (1948).
42. 215 Fed. 2d 542 (4th Cir. 1954).
43. 118 F. Supp. 868 (W.D. S.C. 1954).
44. See note 22 *supra.*
45. See note 24 *supra.*
46. PROSSER, TORTS 1079-85 (1941); HARPER, TORTS § 294 (1933). See the following articles that advocate abandoning the immunity rule: 20 U. OF CIN. L. REV. 412 (1951); 24 ROCKY MT. L. REV. 71 (1951); 37 VA. L. REV. 1159 (1951); 5 VAND. L. REV. 259 (1952); 32 N. C. L. REV. 129 (1953).

sion.[47] The court, in *Ray v. Tucson Medical Center*,[48] says:

> The writers of these articles occupy a position with respect to the advancement of the judicial body of the law similar to that of the corps of engineers to an advancing army. Unfettered by precedent and *stare decisis* these gentlemen are always in the vanguard of the progressive march of the body of the law, constructing bridges, as it were, and clearing the way for advanced positions which may be safely contained when surrounded by new and changing social, political and economic conditions. They are quick to recognize the development of a social policy and are instrumental in crystallizing it into a fixed concept which the legislature and the courts denominate "public policy."

The reasons given by these scholars for abandoning the doctrine of immunity may be summed up as follows: (1) that neither those who organize charitable institutions nor the courts have authority to put charities beyond the law which is applicable to all; (2) this English doctrine which was adopted in this country has long since been repudiated in England; (3) many courts are only following precedent under the rule of stare decisis; (4) charities may carry liability insurance in order to prevent depletion of any trust fund by payment of damages; (5) "public policy" has changed if it ever did favor immunity; and (6) charities should not be permitted to inflict injury upon some, without the right of redress, in order to bestow charity on others, but the burden of an innocent victim should be shifted to the community at large.

Some courts which advocate the abolition of this doctrine or recognize the need of its abolition, contend that so fundamental a change should come only by legislation.[49] Others have recognized it to be the responsibility of the judiciary and have overruled existing precedents.[50]

Perhaps the following quotation from a lecture given at the University of Nebraska in the spring of 1953 by Harvard's Professor

47. "Therefore, when opinion among scholars who are not judges is uniform or nearly so and that among judges is in high confusion, the former gives direction to the law of the future, while the latter points presently in all directions. In such circumstances scholarly opinion has more than merely persuasive effect. It is the safest guide for jurisdictions where the question has never been determined." President & Directors of Georgetown College v. Hughes, 76 App. D.C. 123, 130 Fed. 2d 810, 812 (1942).

48. See note 15 *supra*.

49. Gregory v. Salem General Hospital, 175 Or. 464, 153 P. 2d 837 (1944).

50. Noel v. Menninger Foundation, 175 Kan. 751, 267 P. 2d 934 (1954); Pierce v. Yakima Valley Memorial Hospital Association, 43 Wash. 2d 162, 260 P. 2d 765 (1953).

Warren A. Seavey, who will retire in 1955 after fifty years of teaching law, is appropriate:

> In other words, while *prima facie* there should be adherence to the rules laid down in prior cases, *stare decisis* should be recognized as primarily a principle existing to make easier the work of the judges and to minimize litigation. *Whenever both justice and expediency are found united in requiring that a cause of action be either created or destroyed under given circumstances, the fact that an earlier decision would lead to the opposite result should not be a bar;* it should have only the effect of causing the court to examine its premises more carefully. It is true that changes in rules are likely to lead to more litigation since they produce a diminution of predictability, but *the primary function of the law is of course justice;* the likelihood of litigation alone should not be sufficient to prevent justice from being given. If the law of Torts is to perform its function it must change with the needs and ideas of the community. That the more discerning courts have acted with reasonable freedom has, I think, been demonstrated by the non-statutory growth of the area in which relief has been given and by the refinements which have been created both to extend and to limit tort liability.[51] (Emphasis added).

From the decisions in South Carolina the inconsistent fact stands out that a person may be protected from a nuisance created by a charity but he cannot be protected in life and limb. Furthermore, a charity's contract which binds it to pay sums which may be above the market price — although imprudently made through the negligence of its agent — is enforceable, but when the same agent negligently injures another the latter's claim for damages is not enforceable.

It would seem that the result is indefensible in a court of justice; the only question is — whether it will be corrected by the courts or by the legislature.

FLOYD D. SPENCE.

51. SEAVEY, COGITATIONS ON TORTS 68 (1954).