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Constitutionality Of Hospital Charitable Immunity Doctrine

CASE COMMENTS

CONSTITUTIONALITY OF HOSPITAL CHARITABLE IMMUNITY DOCTRINE

The modern trend has been decisively in favor of the abolition or limitation of the charitable immunity doctrine as it applies to hospital tort liability.[1] Various reasons have been given for this reform.[2] A new and interesting question has been raised as to the constitutionality of this once firmly entrenched doctrine.

In the recent case of *Neely v. St. Francis Hosp. & School of Nursing, Inc.*,[3] the constitutionality of a Kansas statute which conferred immunity from process on charitable hospital corporations was questioned. The plaintiff had collected from the defendant charitable hospital's insurance carrier up to the limits of insurance policy coverage on an earlier judgment in a tort action commenced in 1958 against the hospital.[4] The plaintiff then proceeded in garnishment against the hospital's bank and L. S. Lauer to recover the balance of the tort judgment. In their answer, the hospital and garnishees invoked the provision of a 1959 Kansas statute giving immunity to hospital prop-

[1]Howard v. Sisters of Charity, 193 F. Supp. 191 (D. Mont. 1961); Ray v. Tucson Medical Center, 72 Ariz, 22, 230 P.2d 220 (1951); Malloy v. Fong, 37 Cal. App. 2d 356, 232 P.2d 241 (Sup. Ct. 1951); Durney v. St. Francis Hosp., Inc., 46 Del. 350, 83 A.2d 753 (Super. Ct. 1951); Moore v. Moyle, 405 Ill. 555, 92 N.E.2d 81 (1950); Haynes v. Presbyterian Hosp. Ass'n, 241 Iowa 1269, 45 N.W.2d 151 (1950); Noel v. Menninger Foundation, 175 Kan. 751, 267 P.2d 934 (1954); Mullikin v. Jewish Hosp. Ass'n, 348 S.W.2d 930 (Ky. 1961); Parker v. Port Huron Hosp., 361 Mich. 1, 105 N.W.2d 1 (1960); Terracciona v. Magee, 53 N.J. Super. 557, 148 A.2d 68 (Super. Ct. 1959); Bing v. Thunig, 2 N.Y.2d 565, 143 N.E.2d 3, 163 N.Y.S.2d 3 (1957); Avellone v. St. John's Hosp., 165 Ohio St. 467, 135 N.E.2d 410 (1956); Hungerford v. Portland Sanitarium & Benevolent Ass'n, 235 Ore. 412, 384 P.2d 1009 (1963); Foster v. Roman Catholic Diocese, 116 Vt. 124, 70 A.2d 230 (1950); Kojis v. Doctor's Hosp., 12 Wis. 2d 367, 107 N.W.2d 131 (1961).

[2]These reasons perhaps can best be summarized by saying that there has been a breakdown in the theories upon which immunity has been granted. There have been at least five theories: (1) the trust fund theory; (2) the theory that the rule of respondeat superior does not apply to charities; (3) the theory that the beneficiary of a charity impliedly waives the liability of his benefactor for negligence or assumes the risk of negligence; (4) the theory of governmental immunity and (5) the public policy theory. For a discussion of these theories and their breakdown see Annot., 25 A.L.R.2d 29, at 57-73 (1952); Prosser, Torts 1019-1023 (3d ed. 1964).

[3]192 Kan. 716, 391 P.2d 155 (1964).

[4]In Neely v. St. Francis Hosp. & School of Nursing, Inc., 188 Kan. 546, 363 P.2d 438 (1961), the Supreme Court of Kansas affirmed a verdict and judgment for the plaintiff in the amount of $79,161.34. The hospital's insurance carrier paid the plaintiff $58,166.77.

erty.[5] The trial court ruled against the appellant's motion for an order requiring the garnishees to pay into court the amount shown to be due and for judgment on the pleadings.[6]

On appeal, the Supreme Court of Kansas attributed the adoption of the statute to the reversal of the established charitable immunity doctrine in Kansas in the 1954 case of *Noel v. Menninger Foundation.*[7] The court reviewed the language of that opinion with reference to the constitutional guarantees protecting remedies for injury to person, reputation, or property. In the *Noel* case, the court expressed surprise that the question of the constitutionality of the charitable immunity doctrine had never been raised.[8] While the statute was not

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[5]The statute, Kan. Gen. Stat. Ann. 17-1725 (Supp. 1961) reads: "Property, either real or personal, together with the income therefrom or the proceeds from its disposition, belonging to a corporation organized not for profit and which operates or supports one or more hospitals, operated on a nonprofit basis, shall be deemed to be held administered, or disposed of, in accordance with the articles of incorporation and bylaws of such corporation, for the use and benefit of the present and future beneficiaries of the service of such institution; and such property, income or proceeds shall not be subject to attachment, garnishment, execution, or other forced disposition or process except for obligations owing to the state, or its subdivision or agencies, or for obligations contractually assumed by such corporation for the purpose of rendering its services, and performing its function, for such beneficiaries."

[6]It was stipulated and agreed that the appellee hospital was a non-profit corporation properly organized under Kansas law.

[7]175 Kan. 751, 267 P.2d 934 (1954). The immunity statute questioned in the principal case became effective March 31, 1959.

[8]"It is somewhat surprising to note that in none of the decisions establishing the immunity doctrine in this state was the question ever presented or consideration given to the provisions of our constitution. Section 18 of our bill of rights reads: 'All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay.' It is clear from plaintiff's petition that he has suffered injuries in person, and under our state constitution he shall have remedy by due course of law. Rowell v. City of Wichita, 162 Kan. 294, 300, 176 P.2d 590. Neither our constitution nor our statute says anything about releasing charitable, educational or religious organizations from liability for negligence which results in personal injuries to another. Section 18 of our bill of rights is to the contrary. Thus it would appear that the public policy of this state, as enumerated by its constitution, is to put justice 'by due course of law' above or before charity. The constitution, article 11, § 1, and our statute, G.S. 1949, 79-201, do make provisions for releasing such institutions from taxation. Had it been the intent of the framers of our constitution to grant immunity to charitable organizations for their torts, provisions would have been made for such. The constitutional provision guaranteeing to every person a remedy by due course of law for injury done him in person or property means that for such wrongs that are recognized by the law of the land the court shall be open and afford a remedy, or that laws shall be enacted giving a certain remedy for all injuries or wrongs. 'Remedy by due course of law,' so used, means the reparation for injury ordered by a tribunal having jurisdiction in due course of procedure after a fair hearing. It is the primary duty of the courts to safeguard the declaration of right

a straightforward declaration of public policy conferring immunity on charitable hospitals, the court considered the statute an attempt to circumvent the constitutional guarantee indicated in the *Noel* case and contained in the Bill of Rights of the Constitution of Kansas,[9] and held the statute unconstitutional.[10] The retroactive effect of the statute was not discussed. That is, the court did not pass on the issue of whether the legislature had the power to make the statute applicable to torts committed after the *Noel* decision and before the statute was adopted.

The immunity of charitable hospitals from tort liability has been developed primarily by the courts.[11] Consequently, the present law with regard to charitable immunity is governed primarily by case law.[12] In Kansas and five other states, however, legislation governs or directly

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and remedy guaranteed by the constitutional provision insuring a remedy for all injuries. 11 Am. Jur. 1124, 1125, Constitutional Law, § 326." Noel v. Menninger Foundation, 175 Kan. 762-63, 267 P.2d 942-43 (1954).

[9]"All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay." Kan. Const., Bill of Rights § 18.

[10]Garnishment was held to be a "special proceeding" under Kansas law, and therefore, a remedy guaranteed by the constitution. As authority for this, the court cited Kan. Gen. Stat. Ann. §§ 60-103, 104, and 105 (1949). The court also cited Andrews v. Andrews, 171 Kan. 616, 237 P.2d 418 (1951), which said that garnishment was "a special and extraordinary remedy." The appellee contended that a distinction should be made between remedy and recovery. It was their position that the appellant had a remedy as evidenced by her recovery against the insurance carrier, and that there was no state or federal constitutional guarantee of a full recovery to the prevailing party. To support their position, the appellees cited various Kansas statutes in which garnishment was available as a remedy, but where legislative exemptions had been created barring recovery against certain property, Kan. Gen. Stat. Ann. §§ 60-3494, 3495, 3504, 3505, and 3508 (1949). In addition, they cited bankruptcy laws as an example where a remedy by due course of laws is guaranteed but where a full recovery may be precluded.

In rejecting the appellees' arguments, the court stated that bankruptcy was a federal matter which superseded state laws. The Kansas statutes cited fall into two categories: (1) Those pertaining to, or supplementing, the homestead exemption guaranteed by the state constitution, Kan. Gen. Stat. Ann. §§ 60-3504, 3505, and 3508 (1949); and (2) Those exempting, within certain limits, the personal earning of judgment debtors who comply with the statute, Kan. Gen. Stat. Ann. §§ 60-3494 and 3495 (1949). The court distinguished these statutes from the one in the principal case in that in these statutes non-exempt property was subject to forced process, hence a full recovery was not precluded. In conclusion, the court stood on the constitutional construction laid down in the Menninger case quoting the following language: "' It is the primary duty of the courts to safeguard the declaration of right and remedy guaranteed by the constitutional provision insuring a remedy for all injuries.' " 391 P.2d at 160 (1964).

[11]For a discussion of the historical development see Annot., 25 A.L.R.2d 29, at 38-40 (1952).

[12]Id. at 40 n.1.

affects the immunity of charitable hospitals.[13] Rhode Island by statute[14] grants immunity to the charitable hospital in actions brought by the patient. New Jersey by statute[15] limits the amount for which a charitable hospital is liable to a patient. Maryland by statute[16] permits suit only when liability insurance has been purchased. Arkansas[17] and Louisiana[18] have statutes which allow suits directly against the insurers of charitable institutions. The Kansas statute[19] embodies principles similar to those expressed in the case law of Arkansas,[20] Colorado,[21] Georgia,[22] Illinois,[23] and Tennessee[24] which limit the funds of charitable hospitals that can be reached by execution on a judgment. The effect of the decisions in these jurisdictions has been to impose liability to the extent of the hospital's insurance coverage.[25]

There are two views as to whether the courts or the legislature should alter or amend the charitable immunity doctrine. The prevailing view is that since the courts introduced the rule, they should change it if the legislature does not.[26] The minority view is that the

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[13]Arkansas, Louisiana, Maryland, New Jersey and Rhode Island.

[14]R.I. Gen. Laws Ann. § 7-1-22 (1956).

[15]N.J. Rev. Stat. § 2A:53A-7, 8, 9, and 10 (Supp. 1963).

[16]Md. Ann. Code art. 48A § 480 (1957). The statute provides that the policy must contain a provision estopping the insurer from asserting the defense of charitable immunity.

[17]Ark. Stat. Ann. § 66-3240 (Supp. 1963). The suit may be brought against the insurer even though the tortfeasor is immune.

[18]La. Rev. Stat. § 22:655 (1950). The insurer may not raise the defense of charitable immunity. Stamos v. Standard Acc. Ins. Co., 119 F. Supp. 245 (W.D. La. 1954).

[19]Kan. Gen. Stat. Ann. § 17-1725 (Supp. 1961).

[20]Fordyce & McKee v. Woman's Christian Nat. Library Ass'n, 79 Ark. 550, 96 S.W. 155 (1906).

[21]St. Lukes Hosp. Ass'n v. Lonk, 125 Colo. 25, 240 P.2d 917 (1952).

[22]Morton v. Savannah Hosp., 148 Ga. 438, 96 S.E. 887 (1918); Executive Comm. of the Baptist Convention v. Ferguson, 95 Ga. App. 393, 98 S.E.2d 50 (1957).

[23]Moore v. Moyle, 405 Ill. 555, 92 N.E.2d 81 (1950).

[24]McLeod v. St. Thomas Hosp., 170 Tenn. 423, 95 S.W.2d 917 (1936).

[25]Cox v. De Jarnette, 104 Ga. App. 664, 123 S.E.2d 16 (1961); Moore v. Moyle, 405 Ill. 555, 92 N.E.2d 81 (1950); Vanderbilt Univ. v. Henderson, 23 Tenn. App. 135, 127 S.W.2d 284 (1938).

In Arkansas a statute limits the recovery to the amount provided for in the insurance policy. Ark. Stat. Ann. § 66-3240 (Supp. 1963).

[26]Ray v. Tucson Medical Center, 72 Ariz. 22, 230 P.2d 220 (1951); Haynes v. Presbyterian Hosp. Ass'n, 241 Iowa 1269, 45 N.W.2d 151 (1950); Noel v. Menninger Foundation, 175 Kan. 751, 267 P.2d 934 (1954); Parker v. Port Huron Hosp., 361 Mich. 1, 105 N.W.2d 1 (1960); Mississippi Baptist Hosp. v. Holmes, 214 Miss. 906, 55 So. 2d 142 (1951); Collopy v. Newark Eye & Ear Infirmary, 27 N.J. 29, 141 A.2d 276 (1958); Bing v. Thunig, 2 N.Y.2d 656, 143 N.E.2d 3, 163 N.Y.S.2d 3 (1957); Hungerford v. Portland Sanitarium & Benevolent Ass'n, 235 Ore. 412, 384 P.2d 1009 (1963); Kojis v. Doctors Hosp. 12 Wis. 2d 367, 107 N.W.2d 131 (1961).

See also 38 Colum. L. Rev. 1485 (1938) which points out that the courts usurped the legislative function of declaring public policy when they granted immunity,

courts are bound by precedent, and since charitable immunity is a policy matter, it must be the subject of legislative action.[27] Legislative inaction has been thought to indicate approval.[28] A persuasive argument for the second view has been based on the retroactive effect of a court overruling prior decisions.[29] Such action may be considered prejudicial to the charitable hospitals which had a right to rely on their immunity.[30] Legislation which operates prospectively negates this problem.[31]

The question whether the charitable immunity doctrine violates a constitutional guarantee of a remedy "by due course of law" has arisen in two categories of cases. Firstly, in the absence of legislation, some courts have had to determine whether the constitutional provision prohibited the adoption of the doctrine or required the overruling of prior decisions adopting the doctrine. Secondly, some courts have had to rule on the constitutionality of legislation adopting the doctrine.

In Florida and Pennsylvania, the constitutional issue was raised in the absence of legislation. The Supreme Court of Florida, in *Nicholson v. Good Samaritan Hosp.*,[32] a case of first impression on the issue of charitable immunity in Florida, established a policy of no immunity. In considering whether immunity should be granted as a matter of public policy, the court said: "[T]he public policy of a state or nation should be determined by its Constitution, laws, and judicial decisions. . . ."[33] The court noted that the state constitution exempted charitable corporations from taxation, but that there was not any constitutional, statutory, or decisional authority for exempting charitable corporations from tort liability. There was a consti-

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and concludes that, "It would be strange for these same courts to sit back and wait for the legislatures to reverse the value of judgments the courts have made." Id. at 1489.

[27]Foley v. Wesson Memorial Hosp., 246 Mass. 363, 141 N.E. 113 (1923); Muller v. Nebraska Methodist Hosp., 160 Neb. 279, 70 N.W.2d 86 (1955); Williams v. Randolph Hosp., 237 N.C. 387, 75 S.E.2d 303 (1953); Michael v. Hahnemann Medical College & Hosp., 404 Pa. 424, 172 A.2d 769 (1961).

[28]E.g., Gregory v. Salem Gen. Hosp., 175 Ore. 464, 153 P.2d 837 (1944).

[29]E.g., Michael v. Hahnemann Medical College & Hosp., 404 Pa. 424, 172 A.2d 769 (1961).

[30]Ibid.

[31]Ibid. See, however, the technique of prospective overruling as used in the Great No. Ry. v. Sunburst Oil & Ref. Co., 287 U.S. 358 (1932), and employed by the Michigan court in abrogating charitable immunity. Parker v. Port Huron Hosp., 361 Mich 1, 105 N.W.2d 1 (1960).

[32]145 Fla. 360, 199 So. 344 (1940).

[33]Id. at 347.

tutional provision guaranteeing a person remedy by the course of law.[34] The court stated:

"Thus it would appear that the public policy of this state, as enunciated by its Constitution, is to put justice 'by due course of law' above or before charity."[35]

The court further concluded that the doctrine of respondeat superior was "so much a part of 'due course of law' "[36] that absent some exemption created by the state legislature, the courts should abide by the provision in the state constitution.

Pennsylvania, on the other hand, in reaffirming its court-established doctrine of immunity for charitable hospitals in *Michael v. Hahnemann Medical College & Hosp.*,[37] took an entirely different view from the *Nicholson* case of the doctrine of respondeat superior and the constitutional guarantee of "a remedy by due course of law."[38] The court said:

> "The Constitution does not mention, let alone grant, a remedy against persons *who do not* commit an injury, but are liable, if at all, under the judicially created doctrine of respondeat superior. The doctrine of respondeat superior is not covered, included or even mentioned in this or in any other section of the Constitution."[39]

The court concluded that since it was admitted the injured party had a remedy against the person who inflicted the injury, the plaintiff's contention of the unconstitutionality of the prior decisions in that state[40] was based on the fact that the party might not be financially able to pay, and therefore, the constitution should be extended to include some party able to pay. The court rejected this contention.[41]

In all three states which have granted statutory immunity, issues

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[34]"All courts in this State shall be open, so that every person for an injury done him in his lands, goods, person or reputation shall have remedy, by due course of law, and right and justice shall be administered without sale, denial or delay." Fla. Const., Declaration of Rights, § 4.

[35]Supra note 32, at 348. This language is identical to that used in Noel v. Menninger Foundation, supra note 8, and used in the principal case at page 158.

[36]Nicholson v. Good Samaritan Hosp., supra note 32, at 348.

[37]404 Pa. 424, 172 A.2d at 769 (1961).

[38]"All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law...." Pa. Const. Art. I, § 11.

[39]172 A.2d at 778.

[40]Pennsylvania had by judicial decision granted charitable immunity for over seventy years. Ibid.

[41]The court expressly declined to say whether this should or should not be changed in the constitution. Ibid.

have been raised with regard to the constitutionality of the statute. On April 28, 1958, the New Jersey Supreme Court in three decisions overturned the doctrine of charitable immunity as established by prior judicial decisions in that state.[42] In one of the opinions, *Collopy v. Newark Eye & Ear Infirmary*,[43] the court rejected the argument that it could not constitutionally overturn the immunity doctrine.[44] The court stated that the legislature could at any time constitutionally establish the state's policy of immunity.[45] On July 22, 1958, the New Jersey legislature reinstated with limitation the charitable immunity doctrine.[46] Subsequently, in *Terracciona v. Magee*,[47] the New Jersey court held that the statute operated prospectively, did not destroy a vested property right, and was, therefore, not violative of the due process clause of the fourteenth amendment of the federal constitution.[48]

In Rhode Island, the Supreme Court originally held that a charitable hospital could be held liable for failure of its servants or agents to exercise due care in carrying out the hospital's assumed responsibility to provide medical care for its patients.[49] Subsequently, in 1896,

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[42]Dalton v. St. Luke's Catholic Church, 27 N.J. 22, 141 A.2d 273 (1958); Collopy v. Newark Eye and Ear Infirmary, 27 N.J. 29, 141 A.2d 276 (1958); and Benton v. Y.M.C.A., 27 N.J. 67, 141 A.2d 297 (1958).

[43]27 N.J. 29, 141 A.2d 276 (1958).

[44]The court considered that, while it was adopted as part of the common law of England, the state constitution had not been construed as meaning that common law holdings could not be changed in view of changing conditions.

In a lengthy dissent, Justice Heher took the position that under the state constitution such a policy matter required legislative change.

[45]In the language of the court: "There is no doubt that within constitutional limits the Legislature may at any time, if it so choose, explicitly fix the State's policy as to the immunity of charitable institutions from tort responsibilities. But the Legislature has not done so; it has broadly empowered nonprofit corporations to sue 'and be sued'...; and it has never in any form voiced approval of the immunity of charitable institutions though it has expressly legislated for immunities in other fields." Id. at 283.

[46]N.J. Rev. Stat. § 2A:53A-7, 8, 9, and 10 (Supp. 1963).

[47]53 N.J. Super. 557, 148 A.2d 68 (Super. Ct. 1959).

[48]The plaintiff had been injured on March 5, 1954, and brought an action for personal injury on March 1, 1956. The affirmative defense of charitable immunity was first asserted on January 2, 1957. The doctrine of charitable immunity was overruled on April 28, 1958, and legislatively reinstated with limitation on July 22, 1958. A pretrial order dated November 12, 1958, contained the asserted defense of charitable immunity. The Terracciano case was an appeal from the plaintiff's motion to amend the order by deleting this defense. The Supreme Court of New Jersey held that in view of the retrospective effect of overruling the immunity doctrine, the plaintiff had a valid vested right of action free of the defense of charitable immunity. (This is precisely the problem pointed out by the Supreme Court of Pennsylvania in Michael v. Hahnemann Medical College & Hosp., supra note 37.)

[49]Glavin v. Rhode Island Hosp., 12 R.I. 411 (1879).

the General Assembly enacted a statute which granted immunity to charitable hospitals in actions by patients.[50] In the recent case of *Fornier v. Miriam Hosp.*,[51] the defendant invoked the provisions of this statute. The plaintiff, in demurring on the ground that the statute was unconstitutional in that it violated both the state[52] and federal[53] constitutions, raised three constitutional issues.

Firstly, the plaintiff argued that the Supreme Court of Rhode Island had recognized the common-law rule applicable to charitable immunity in *Glavin v. Rhode Island Hosp.*,[54] and therefore, the statute was a legislative deprivation of a common law vested right protected by the state constitution.[55] The court refused to construe the constitutional guarantee of "remedy, by having recourse to the laws" as meaning that the legislature could not make distinctions in derogation of a common-law rule.[56]

Secondly, the plaintiff argued that the immunity statute violated the federal constitution in that it resulted in a denial of due process and constituted discrimination in violation of the equal privilege and protection clause.[57] In rejecting this argument, the court adopted the language of an earlier opinion: "Although, in a free government, every man is entitled to an adequate legal remedy for every injury done to him, yet the form and extent of it is necessarily subject to the legislative power...."[58] In addition, the court felt that the immunity

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[50]The statute which is now R.I. Gen. Laws Ann. § 7-1-22 (1956) reads as follows: "No hospital incorporated by the general assembly of this state sustained in whole or in part by charitable contributions or endowments, or the Notre Dame Hospital, incorporated under chapter 1925 of the public laws, 1920, so long as it continues to be sustained in whole or in part by charitable contributions or endowments, shall be liable for the neglect, carelessness, want of skill or for the malicious act, of any of its officers, agents or employees in the management of, or for the care or treatment of, any of the patients or inmates of such hospital; but nothing herein contained shall be so construed as to impair any remedy under existing laws which any person may have against any officer, agent or employee of any such hospital for any wrongful act or omission in the course of his official conduct or employment."

[51]175 A.2d 298 (R.I. 1961).

[52]The state constitution provides: "Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely and without purchase, completely and without denial; promptly and without delay; conformably to the laws." R.I. Const. art. I, § 5.

[53]U.S. Const. art. XIV, § 1.

[54]12 R.I. 411 (1879).

[55]R.I. Const. art. I, § 5; supra note 52.

[56]The court cited Pickett v. Matthews, 238 Ala. 542, 192 So. 261 (1939). It appears clear from the language in that case that legal duties are determined as of the time the alleged breach occurs.

[57]U.S. Const. art. XIV, § 1.

[58]Fournier v. Miriam Hosp., 175 A.2d 298, 301 (R.I. 1961).

statute was neither capricious nor arbitrary since it did not "discriminate between persons, groups, or corporations falling within the same classification."[59]

Thirdly, the plaintiff argued that the statute granting immunity was unconstitutional since it abrogated the rule of respondeat superior. The Rhode Island court adopted the view of the Pennsylvania court on this issue[60] and stated: "The plaintiff here has not been deprived of any right which was hers at the time the statute in question was adopted. Her right arose later and the legislature has left her with a remedy against the person or persons who were actually negligent if such negligence existed in fact."[61]

The principal case appears unique in holding that a legislative declaration of a policy of charitable immunity is unconstitutional.[62] The statute as invoked in the principal case operated retroactively to limit recovery.[63] It is submitted that the court could have decided the case on the retroactive form of the statute rather than ruling on the constitutionality of the legislatively endorsed doctrine of charitable immunity for hospitals in Kansas.

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[59]Ibid.

[60]Michael v. Hahnemann Medical College & Hosp., supra note 37.

The court pointed out that chronologically the development in Rhode Island was the reverse of that in Pennsylvania. In Pennsylvania, the immunity was established by judicial decision. The Supreme Court of Pennsylvania took the position that legislative inaction meant legislative approval of the policy as established by the court.

While recognizing that the wording of the Pennsylvania constitution was different (supra note 38), the Rhode Island court stated that "the spirit and intent are identical."

[61]175 A.2d at 302.

[62]In looking at a collateral issue of the manner in which immunity was granted, apparently in those jurisdictions which have by decision exempted funds of charitable hospitals from execution on a judgment, no constitutional objection has been sustained.

[63]The plaintiff brought the tort action on March 27, 1958, and judgment was entered by the trial court on March 11, 1960. The judgment was affirmed by the Supreme Court of Kansas on July 8, 1961. The statute granting immunity from process was enacted in 1959.

The issue of legislative deprivation of rights was raised in Terracciona v. Magee, 53 N.J. Super. 557, 148 A.2d 68 (Super. Ct. 1959) and in Fournier v. Mariam Hosp., 175 A.2d 298 (R.I. 1961) discussed earlier in this article. See text and footnotes 47, 48 and 54-56.