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COMMENTS

UNITED MINE WORKERS OF AMERICA WELFARE AND RETIREMENT FUNDS

GODFREY P. SCHMIDT†

On May 29, 1947, the Secretary of the Interior acting as Coal Mines Administrator, under authority of Executive Order No. 9728,¹ (dated May 21, 1946) entered into a labor agreement with the United Mine Workers of America. By means of this agreement a Welfare and Retirement Fund was established by the following language (which also creates a medical and hospital fund not discussed in this comment):

- “(a) *A Welfare and Retirement Fund*—A welfare and retirement fund is hereby created. . . . This fund shall be managed by three trustees. . . . The fund shall be used for making payments to miners, and their dependents and survivors, with respect to (1) wage loss not otherwise compensated at all or adequately under the provisions of Federal or State law and resulting from sickness (temporary disability), permanent disability, death, or retirement, and (2) other related welfare purposes, as determined by the trustees. Subject to the stated purposes of the fund, the trustees shall have full authority with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provision of benefits and all related matters. . . .
- “(b) *A Medical and Hospital Fund*—There shall be created a medical and hospital fund, to be administered by trustees appointed by the President of the United Mine Workers. . . . The trustees shall administer this fund so as to provide, or to arrange for the availability of, medical, hospital and related services for the miners and their dependents. The money in this fund shall be used for the indicated purposes at the discretion of the trustees of the fund. . . .
- “(c) *Coordination of the Welfare and Retirement Fund and the Medical and Hospital Fund*—The Coal Mines Administrator and the United Mine Workers agree to use their good offices to assure that the trustees of the two funds . . . will cooperate in and coordinate the development of policies and working agreements necessary for the effective operation of each fund toward achieving the result that each fund will, to the maximum degree practicable, operate to complement the other.”

Subsequently, when the coal mines were returned to ownership operation, coal operators and associations, under date of July 8, 1947, entered into the 1947 National Bituminous Coal Wage Agreement, by which there was created a fund entitled “United Mine Workers of America Welfare and Retirement Fund—1947.” The relevant language of this later agreement creating a

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1. 11 FED. REG. 5593 (1946).

second Welfare and Retirement Fund for the benefit of the bituminous coal miners appears in the footnote.²

The purpose of this comment is to consider the question whether the Taft-Hartley Law,³ enacted June 23, 1947, and generally effective August 22, 1947, is by its provisions applicable to the two trust funds just described; namely, the Krug-Lewis Agreement of 1946 and the National Bituminous Coal Wage Agreement of 1947.

I. *Establishment of Funds*

The starting point for any discussion of the applicability of the new Labor Law to the two Trust Funds in question must be Section 302 of the Labor Management Relations Act of 1947.⁴ So far as it is relevant Section 302 reads as follows:

- “(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.
- “(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or agree to receive or accept, from the employer of such employees any money or other thing of value.
- “(c) The provisions of this section shall not be applicable . . . (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families and dependents jointly with the employees of other employers making similar payments, and their families and dependents): *Provided*, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such

2. “. . . purposes shall be to make payments from principal or income or both of (1) benefits to employees . . . for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or life insurance, disability and sickness insurance or accident insurance; (2) benefits with respect to wage loss not otherwise compensated for at all or adequately by tax supported agencies created by federal or State law; (3) benefits on account of sickness, temporary disability, permanent disability, death or retirement; (4) benefits for any and all other purposes which may be specified provided for or permitted in Section 302 (c) of the ‘Labor Management Relations Act, 1947’ . . . and (5) benefits for all other related welfare purposes . . . within the scope of the provisions of the aforesaid ‘Labor Management Relations Act, 1947.’ . . .”

3. Popular name for the LABOR MANAGEMENT RELATIONS ACT, 1947.

4. Pub. L. No. 101, 80th Cong., 1st Sess. (June 23, 1947).

payments are to be made is specified in a written agreement with the employer, and employees and employer are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein can not be used for any purpose other than paying such pensions or annuities.

- “(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than \$10,000 or to imprisonment for not more than one year, or both.
- “(f) This section shall not apply to any contract in force on the date of enactment of this Act, until the expiration of such contract, or until July 1, 1948, whichever first occurs.”

II. *Literal Interpretation*

It will be observed that the language quoted above sets forth in Subdivisions (a) and (b) two general rules which forbid every type of payment to employee representatives. Then, Subdivision (c) makes the general rule established by Subdivisions (a) and (b) inapplicable to five special exempt cases. The fifth exemption from the general rule refers to money or other thing of value paid to a trust fund established by a representative of employees.

Considered in itself, Subdivision (a) lays down the unrestricted rule that it is unlawful for an employer to pay money or other thing of value “to any *representative* of any of his employees who are employed in an industry affecting commerce.”

Only on the assumption that the three trustees under each of the two trusts (the one established by the Krug-Lewis Agreement and the one established by the 1947 agreement) are “representatives of . . . employees,” can the law be considered to place a restriction of any kind upon payment of contributions *to the trustees* or *to the trust funds*.

What is the meaning of the word “representative” under the new Act? The “definition” given in Section 2, Subdivision 4, or the Act itself reads:

“The term ‘representatives’ includes any individual or labor organization.”

In the debate Senator Taft said that the word "representative" meant a union.⁵ In labor law and labor relations, the words "representative of . . . employees" normally means a labor organization or (rarely) a person who performs the function of a labor organization—that is to say, a person who represents workers in negotiations or dealings with an employer for the purposes of collective bargaining and related concerted activities. Literally considered, neither trust fund (and neither Board of Trustees) can be deemed to be a "representative of . . . employees" without doing violence to the ordinary meaning of the word "representative" in labor law or labor relations.

The second rule (Subdivision (b) of Section 302) makes it unlawful for any "representative of any employees" to receive or accept from the employer of such employees any money or other thing of value. Since payments always involve a relationship between payor and payee, an intention completely and generally to prohibit payments by *employers* to *employee representatives* would include acts of both the employer in *paying* and of the labor union in *receiving*. Again in this connection the term "any representative of any employees" can hardly be applied to the trustees or to the trusts themselves. In no sense do the trustees individually or as members of two boards perform the function of representatives of employees. If they "represent" anything, they represent *legal title* and *discretion to control* the charitable trust in conformity with its purposes for the benefit of the classes of beneficiaries established by the declaration of trust. Nor can the trusts themselves be called "representatives" in any interpretation which makes sense in law or labor relations.

If the two broad prohibitions contained in Subdivisions (a) and (b) of Section 302 do not apply (in accordance with the literal construction just made) to either of the two trust funds, there is no reason to consider as applicable the exceptional cases of allowed payments to employee representatives collected in Subdivision (c) of Section 302. An exception applies, logically, only to the general rule from which it exonerates. Subdivision (c) (5) merely establishes a special rule for determining the conditions under which the general provisions of Section 302, Subdivisions (a) and (b), are not applicable.

If a rule reads; "No motor vehicles shall use the Salem turnpike except trucks and trailers weighing under ten tons"; we are not thereby forbidden to use twenty ton trucks on Boston Road. Subdivisions (a) and (b) constitute the general rule; Subdivision (c) constitutes the conditional exception. If the situation is not embraced by the general rule, there is no point in considering the exception. Only where the act is covered by the general rules set up in Subdivisions (a) and (b) can Subdivision (c) operate to give an exemption on condition. An act or series of acts which does not fall within the category created by the two general rules *needs* no relief in the form of the provisional exceptions set up by Subdivision (c) (5).

5. 93 Cong. Rec. 4876.

III. *The Legislative Intent as Revealed by Material Extrinsic to the Statute Itself*

A. The conference report⁶ makes the following comment on the restrictions placed upon payments to employee representatives by the Taft-Hartley Law:

“Section 302 of the Senate Amendment contained a provision making it unlawful for any employer to pay any money or thing of value to any representative of his employees employed in an industry affecting commerce, or for any such representative to accept from the employer any money or other thing of value, with certain specified exceptions. The two most important exceptions are (1) those relating to payments to a representative of money deducted from the wages of employees . . . and (2) money paid to *a trust fund established by the representative* for the sole and exclusive benefit of the employees of such employer and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents). *Such a trust fund* had to meet certain requirements. Among these requirements were that the fund be held for the purpose of paying for medical and hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, or life insurance, disability and sickness insurance, or accident insurance. Furthermore, the detailed basis on which the payments were to be made had to be specified in a written agreement with the employer and employees, and the employer and employees had to be equally represented in the administration of the funds. Provision was made for the breaking of deadlocks on the administration of the fund, and the agreement covering the fund had to contain provisions for annual audit, and a statement of the results of the audit were to be made available for inspection by interested parties. . . .

“The conference agreement adopts the provisions of the Senate Amendment with minor clarifying changes.”⁷

The foregoing quotation makes it clear that the type of trust fund established by the National Bituminous Coal-Wage Agreement of 1947 or by the Krug-Lewis Agreement of 1946, was not meant to be regulated. The conference report speaks of “. . . money paid in *a trust fund established by the representative* for the sole and exclusive benefit of the employees of such employer. . . .” Neither of the two United Mine Workers trust funds was established by the “representative” of the workers. It cannot be said in law or in fact that the United Mine Workers of America established either of the two trust funds. The Union negotiated collective bargaining agreements in such a manner as to cause the *operators to establish* these trust funds. (In the 1947 Agreement it was the operators alone; in the 1946 Agreement it was the Government as operator.) The settlers of the trust are the operators, not the representatives of the employees.

6. H. R. REP. No. 510, 80th Cong., 1st Sess. 66 (1947).

7. (Emphasis added).

B. The Senate Labor Committee report under the title "Limitation on Abuse of Welfare Funds"⁸ has this to say on the subject:

"An amendment reinserting in the bill a provision regarding so-called welfare funds similar to the section in the Case bill approved by the Senate at the last session. It does not prohibit welfare funds but merely requires that, if agreed upon, such funds be jointly administered—be, in fact, trust funds for the employees, with definite benefits specified, to which employees are clearly entitled, and to obtain which they have a clear legal remedy. The amendment proceeds on the theory that *union leaders should not be permitted*, without reference to the employees, *to divert funds paid by the company*, in consideration of the services of employees, *to the union treasury or the union officers* except under the process of strict accountability. . . .

"The necessity for the amendment was made clear by the demand made last year on the part of the United Mine Workers that a tax of ten cents a ton on coal be *paid to the Mine Workers Union for indiscriminate use* for so-called welfare purposes. It seemed essential to the Senate at that time, and today, that if any such huge sums were to be paid, representing as they do the value of the services of the union members, which could otherwise be paid to the union members in wages, the use of such funds be strictly safeguarded.

"There is a serious question whether welfare funds of this character should be permitted at all unless the employees are willing to join such funds voluntarily and have their earnings diverted thereto. However, a number of such funds have been established and we have no desire to interfere with their operation. One of the subjects for study by the joint committee proposed by S. 1126 is this matter of welfare funds and their relation to social security. In some ways they should be integrated with social security, and the national assistance should not be broken up into a series of industry agreements. Pending that study, however, we believe it is imperative that where such funds are in existence or are agreed upon by collective bargaining, *they should not be subject to racketeering or arbitrary dispensation by union officers*. Without such restraints, employees would have no more rights in the funds supposedly established for their benefit than their *union leaders choose to allow them*. They may well become a mere tool to increase the power of the union leaders over their men, and even be open to racketeering practices."⁹

Obviously this language was not aimed at the type of trust established either by the Krug-Lewis Agreement or by the 1947 Coal Agreement. The Senate Labor Committee reference to the Mine Workers Union contemplates the case of royalties "paid to the Mine Workers Union for indiscriminate use for so-called welfare funds." The monies with which we are concerned in the Krug-Lewis Agreement Trust Fund and in the 1947 Bituminous Coal Wage Agreement Trust Fund are not paid to the United Mine Workers. They are paid directly to trustees. None of the abuses contemplated by the Senate Labor Committee such as racketeering or arbitrary dispensation by Union leaders

8. SEN. REP. NO. 105, 80th Cong., 1st Sess. 52 (1947).

9. (Emphasis added).

is possible here in view of the tripartite Board of Trustees. Two charitable trusts have been created subject to Boards of Trustees who are beyond such dictatorial control of the Union, as the Senate Labor Committee feared. Therefore, the "legislative intent" as developed by the Senate Labor Committee report did not cover the type of charitable trust with which we are confronted.

C. The Congressional debate on restrictions on payments to employee representatives is equally enlightening. For example, in the Senate on May 7, 1947,¹⁰ Senator Ball spoke as follows:

"Mr. President, the sole purpose of the amendment is not to prohibit welfare funds, but to make sure that they are legitimate trust funds, used actually for the specified benefits to employees of the employers who contribute to them, and that *they shall not degenerate into bribes*. More and more, unions, local, international, and regional, are demanding the establishment of such welfare funds in negotiations with employers. I have heard of many cases in which unions have even relinquished wage demands in order to secure a welfare fund, with a percentage of the payroll paid into the welfare fund established, and employers have frequently agreed to that procedure. In some instances I know of the payments are used to buy accident and health insurance from insurance companies which appear to have been established fairly recently, the directors of such insurance companies being well known leaders of unions, and I have been told that the commissions on the premiums paid for such insurance are very lucrative, and go to the business agents of the unions. I myself think that *unless we make sure that such funds, when they are established, are really trust funds and are actually used for the benefit to employees specified in the agreement*, there is very grave danger that the funds will be used for the *personal gain of union leaders or for political or other purposes not contemplated when they are established, and that they will in fact become rackets.*"¹¹

Senator Byrd on the same day spoke as follows:

"As stated by the Senator from Minnesota in his explanation, the amendment permits a welfare fund under collective bargaining, but it provides that the money derived shall be placed in a trust fund, in which the employer and the employees shall have equal representation, and shall be used for the benefit of the employees.

"Mr. President, I express the hope that the amendment will be adopted. It has a specific purpose, which is *to prohibit the labor unions from requiring welfare funds to be paid into the treasuries of the labor unions*. It provides that the funds are permitted and allowed under collective bargaining, but that *the money shall go to a trust fund which shall be mutually administered by the employer and the employees.*"¹²

Senator Claude Pepper's objections to the welfare fund regulation¹³ seemed to be based upon a complete misconception of what the Bill actually provided. Therefore his remarks are not relevant to an inquiry into legislative intent.

10 93 Cong. Rec. 4805.

11. (Emphasis added).

12. 93 Cong. Rec. 4805. (Emphasis added).

13. 93 Cong. Rec. 4806.

On May 8, 1947, Senator Taft spoke as follows:

"Mr. President, the amendment was explained yesterday by the Senator from Minnesota [Mr. Ball] and the Senator from Virginia [Mr. Byrd]. It is substantially the same as the amendment which was adopted by the Senate last year as part of the so-called Case bill, which amendment was offered by the Senator from Virginia. The occasion of the amendment was the demand made by the United Mine Workers of America that a tax of 10 cents a ton be levied on all coal mined, and that the tax so levied be paid into a general welfare fund *to be administered by the union for practically any purpose the Union considered to come within the term 'welfare.'* Of course, the result of such a proceeding, if there is no restriction, is to build up a tremendous fund *in the hands of the officers of the labor union* to be distributed for welfare, *which they may use indiscriminately.* There is no specific provision with respect to it. They may distribute it to members of the union whom they like or they consider proper charity cases, and they may refuse to distribute it to other members whom they do not like.

"The demand originally made by Mr. Lewis was so broad that practically the fund became a war chest, if you please, for the union. The money for welfare funds is deducted from the wages of the employees. It is money earned by the employees, and certainly there should be some restriction on the right of those who bargain collectively for the employees of any company, as to how far they can take the money earned by the employees *and use it for union purposes without restriction.* Obviously the man who is bargaining should have no right to *obtain any personal advantage.*

"The amendment provides first that—

'It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees.'

That is, it may be said, in a case of extortion or a case where the union representative is shaking down the employer. Certain exceptions are made. . . . "Provision No. (5) . . . of the amendment deals with the question of welfare fund. It provides that the payments must be made, in the first place . . . 'to a trust fund established by such representative'—that is by the union—'for the sole and exclusive benefit of the employees of such employer, and their families and dependents, or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents.'

"In other words, this must be a trust fund. It cannot be *the property of the union* without a definite statement that it is in trust for the employees who, after all, have earned the money.

"In the second place, 'such payments are held in trust for the purpose of paying, either from principal or income, or both, for the benefit of employees, their families and dependents, for medical or hospital care, pension or retirement or death of employees, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, or life insurance, disability and sickness insurance, or accident insurance.'

"I think that covers all the welfare purposes which are contained in any of the existing welfare funds now established in a certain number of industries.

"Then there is the provision under (B) that—

"The detailed basis on which such payments are to be made is specified in a written agreement with the employer."

"So that the purpose of the provision is that the welfare fund shall be a perfectly definite fund, that its purposes shall be stated so that each employee can know what he is entitled to, can go to court and enforce his rights in the fund, and that it shall not be, therefore, in the sole discretion of the union or union leaders and *usable for any purposes which they may think is to the advantage of the union* or the employee.

"Mr. President, it seems obvious that if these funds grow rapidly, as they are growing—which is perfectly proper—they should be regulated by the Federal Government. They should be in definite terms. *They should not be subject to the arbitrary discretion of the union leaders*, the very ones who are making the agreements and who are making demands for the particular funds, whether the employees want them or not.

"We are saying to the employee, 'You have earned \$100 this month, but all you get is \$95. You must put \$5.00 into the fund.' That is at the behest of the union leaders. The employee has nothing to say about it. Certainly he is entitled to have us say that the fund shall be definite, that his rights shall be determined by law, that he shall be able to demand them. . . .

"The purpose is to prevent the abuse of welfare funds. We have provided for a general study of welfare funds of this nature. There are a number of them in existence. I have before me a list of such funds. The amendment would not substantially affect any of these funds, except that with respect to some of them the appointment of an employer representative might be required, in order that there might be joint administration *instead of single administration. Otherwise, most of the existing funds already comply with this provision.* The tendency at present is illustrated by the demand of the United Mine Workers and other demands. . . . *The tendency is to demand a welfare fund as much in the power of the union as possible.* Certainly unless we impose some restrictions we shall find that the welfare funds *will become merely a war chest for the particular union*, and that the employees for whose benefit it is supposed to be established, for certain definite welfare purposes, will have no legal rights and will not receive the kind of benefits to which they are entitled after such deductions from their wages. . . .

"This amendment is, in effect, a provision to prevent the abuse of the right to establish such funds by collective bargaining, pending further study of the whole problem. Otherwise I think we shall find that the welfare fund will become a racket. *In many unions it is easy for it to become a racket.* It becomes, in effect, a tax. In Mr. Petrillo's union there is a tax on records. In the United Mine Workers union there is a tax on coal. Unless there are some restrictions, if such an agreement is forced upon an employer, in effect we make the officials of the union who collect the tax government agents for collecting and distributing the tax. Under the proposed agreement originally demanded by Mr. Lewis *he could distribute the fund for the benefit of schools or he could operate anything he wished to operate in the nature of local government.* The whole thing would become a great weapon of power, as it was in the case of Mr. Petrillo, to dominate the union, to please the members whom he wanted to please, and to punish mem-

bers whom he did not wish to please, or who refused to go along with the policy of the union."¹⁴

Many further excerpts could be made. Enough has been quoted however to indicate that the intelligent (as distinguished from the hysterical) comments of the Senator can be pieced into a legislative intent which completely exempts payments *to trustees* of a charitable trust as established by the Krug-Lewis Agreement or by the 1947 agreement with the operators.

On May 8th in the Senate¹⁵ the following relevant colloquy took place:

"MR. FERGUSON. I simply wanted to inquire whether all these funds were not trust funds, and if so, does not the court of chancery of the State have full jurisdiction to do practically what the amendment proposes to do?

"MR. BALL. No; *they are not trust funds. They are not set up* in the agreements as trust funds. . . .

"MR. TAFT. The answer is that the amendment requires that there be specified in the agreement the exact terms under which benefits are to be received. The complete terms with respect to benefits must be set out in the agreement. If it is a trust fund for welfare purposes, with no specific terms or regulations, a court of chancery cannot write a welfare fund system into it. The court has no power to do that. No single employee can bring suit under such a general fund provision and prove that he personally has any right whatever in the fund.

"MR. FERGUSON. I had in mind that at least he could require an accounting under the terms of the fund.

"MR. TAFT. Yes; he could require an accounting, but the accounting may show that the money has been spent to establish a school in some district, or provide an advantage to a certain number of individuals to whom the union wanted to give the money, and not to others. He would have no individual rights unless there were provision in the law for the inclusion of specific terms."

Even if the congressional debates from time to time indicate a clear intention upon the part of individual speakers to control or to outlaw the trust funds under the United Mine Workers contracts, I think that the congressional debates which were best considered and most thoughtful substantiate the view which I take that the Taft-Hartley law does not apply to either of the two trust funds in question.

In the language of Mr. Justice Felix Frankfurter, the great judicial task in reading statutes is ". . . the determination of the extent to which extraneous documentation and external circumstances may be allowed to infiltrate the text on the theory that they were part of it, written in ink discernible to the judicial eye."¹⁶

The ordinary rule is that the courts will not look beyond the text of the statute to conference reports, to congressional reports or to congressional debates unless the meaning of that text is not clear. Where the statute is formu-

14. 93 Cong. Rec. 4876. (Emphasis added).

15. 93 Cong. Rec. 4883. (Emphasis added).

16. *Carter v. Carter Coal Co.*, 298 U. S. 238, 327 (1936).

lated in unambiguous language, that language is itself the best index of legislative intent.

Personally, I believe that the Section 302 of the Taft-Hartley law is so clear and unambiguous in its expression as to make reference to extraneous documentation unnecessary. Nevertheless that part of the extraneous documentation and external circumstances which has the highest quality (the evils to be remedied, the conference reports, the senate reports, the explanations given by Senators Taft, Byrd and Ball) confirm the construction which I have made.

That another view ever became popular; or that I myself had the initial impression that Section 302 of the Taft-Hartley law was meant to place restrictions upon the United Mine Workers of America Welfare and Retirement Funds, I can only attribute to certain false emphases given by the labor law services and the newspapers which copied them.

ENLARGEMENT OF TORT LIABILITY OF CHARITABLE HOSPITALS IN NEW YORK

Legal scholars are almost unanimous in the opinion that charities should be no more exempt from liability for the negligence of their employees than are private business corporations and individuals.¹ No such unanimity is to be found among the courts.² An exceedingly small minority of jurisdictions have imposed full liability.³ On the other hand, only the advocates of the "trust

1. COOLEY, TORTS 126 (Student's ed. 1930); HARPER, TORTS § 294 (1933); PROSSER, TORTS § 108 (1941); Appleman, *The Tort Liability of Charitable Institutions*, 22 A. B. A. J. 48 (1936); Feezer, *Tort Liability of Charities*, 76 U. OF PA. L. REV. 191 (1928); Zellman, *Damage Liability of Charitable Institutions*, 19 MICH. L. REV. 395 (1920). *But see* McCaskill, *Respondeat Superior as Applied in New York to Quasi-Public and Eleemosynary Corporations*, 6 CORN. L. Q. 56 (1920).

2. See the opinion of Rutledge, A. J., in *Georgetown College v. Hughes*, 130 F. 2d 810 (App. D. C. 1942), of which it has been said that it "... constitutes a document which should be of invaluable aid to any state legislature contemplating a change in this particular sphere of the law." *Obiter Dicta*, 12 FORD. L. REV. 89, 91 (1943).

3. *Mulliner v. German Evangelical Synod*, 144 Minn. 393, 175 N. W. 699 (1920) (pneumonia patient leaped to his death as a result of nurse's failure to exercise necessary supervision); *Welch v. Freshie Mem. Hosp.*, 90 N. H. 337, 9 A. 2d 761 (1939) (X-ray technician rendered negative report on condition of patient's ankle. Subsequent examination at another hospital revealed broken bones which had failed to knit properly. *Held*, hospital was liable if X-ray technician's negligence was proximate cause of plaintiff's injury); *cf.* *Tucker v. Mobile Infirmary Ass'n*, 191 Ala. 572, 68 So. 4 (1915) (court, in holding the charity liable to a paying patient, expressly reserved its opinion as to non-paying patients); *Sessions v. Thomas D. Dee Memorial Hosp. Ass'n*, 94 Utah 460, 78 P. 2d 645 (1938) (although the question was decided on the pleadings, the court stated that a hospital whose general purposes were charitable could be held liable for the death of a paying patient). *Glavin v. Rhode Island Hosp.*, 12 R. I. 411 (1879), advocated the adoption of a doctrine closely akin to that now in effect in New York (see note 24 *infra*), but passage of R. I. Gen. Laws 1938, c. 116, § 95, restored immunity to the charitable institutions.