St. John's Law Review

Volume 2, December 1927, Number 1 Article 19

# Taxation--Fraternal Educational Association Providing Home for Students Belonging to Fraternity Not Entitled to Tax Exemption as a Beneficent and Charitable Organization (People ex rel Carr, County Collector v. Alpha Pi of Phi Kappa Sigma Educational Ass'n. of University of Chicago, 158 N.E. 213 (Ill. 1927))

St. John's Law Review

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

Recommended Citation

St. John's Law Review (1927) "Taxation--Fraternal Educational Association Providing Home for Students Belonging to Fraternity Not Entitled to Tax Exemption as a Beneficent and Charitable Organization (People ex rel Carr, County Collector v. Alpha Pi of Phi Kappa Sigma Educational Ass'n. of University of Chicago, 158 N.E. 213 (Ill. 1927))," *St. John's Law Review*: Vol. 2 : No. 1 , Article 19.
Available at: https://scholarship.law.stjohns.edu/lawreview/vol2/iss1/19

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

trial may be had with fairness to the different parties."[5] The Appellate Division in its decision restricts the operation of this section so that it cannot apply to all cases in the municipal court. The question is now before the Court of Appeals for final determination[6] but it is doubtful whether a result different from that of the Appellate Division will be found. The practice frowned upon is barred upon sufficient though technical grounds and cannot be permitted under the present procedure. Remedial legislation giving the court jurisdiction in cases of this nature appears to be the only solution.

TAXATION—FRATERNAL EDUCATIONAL ASSOCIATION PROVIDING HOME FOR STUDENTS BELONGING TO FRATERNITY NOT ENTITLED TO TAX EXEMPTION AS A BENEFICENT AND CHARITABLE ORGANIZATION.—The plaintiff sought to tax the real property of the defendant, which claimed exemption under paragraph 7 of section 2 of the Revenue Act of Illinois (Cahill's Rev. Stat. 1925, p. 1998) providing that "all property of institutions of public charity, all property of beneficent and charitable organization, * * * when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit" shall be exempt from taxation. The defendant was a fraternal educational association conducted, not for pecuniary profit, but for the purpose, as stated in its charter, of providing a home for student members of the fraternity, at a moderate cost to those able to pay and gratuitously to those unable to pay. The highest rate charged was shown at the trial to be lower than the cost of similar accommodations elsewhere in the locality. Its officers served without compensation and no dividends or profit accrued to any member of the fraternity. The property consisted of a house in the city of Chicago occupied by members of the fraternity attending the University of Chicago, and was acquired by donations from alumni members and a mortgage on the premises. It was maintained partly by members attending school and partly by donations from alumni. The trial court rendered judgment for the plaintiff, holding that defendant was not an institution of public charity, nor a beneficent and charitable organization, so as to be exempt from taxation under the Revenue Act. This decision was affirmed on appeal. People *ex* rel. Carr, County Collector *v.* Alpha Pi of Phi Kappa Sigma Educational Ass'n. of University of Chicago, 158 N. E. 213 (Illinois, 1927).

The question at issue in this case was whether or not the defendant was an institution of public charity, or a beneficent and charitable organization, as contemplated by the Revenue Act. It is requisite to a public charity that it be for the benefit of the public or some portion thereof, but it is not necessary that a charity should be open to every one in the community.[1] Since it is the duty of the public to care for the indigent and the poor, any institution which

[5] Akely *v.* Kinnicutt, 238 N. Y. 466, 144 N. E. 682 (1924).

[6] Motion for leave to appeal to Court of Appeals granted, 221 App. Div. 761.

[1] 11 C. J. 338.

serves no selfish interest but discharges in whole or in part any such duty is a public charity.[2] It was not urged by the defendant that a college fraternity is a public charity, but it contended that it was a beneficent and charitable organization and ought, on that ground, to be exempt from taxation. The authorities of the various jurisdictions are agreed that in determining whether property is to be exempt from taxation, the statutes providing for exemptions are to be strictly construed;[3] and that the burden of proof is on the party seeking to bring himself within the statute.[4] The facts in each individual case, as to the use to which the property is put, govern. Stone, J., in his opinion in the instant case, lays down as the broad reason for exempting certain property from public taxation the fact that the use of such property for charitable purposes tends to lessen the burden of government and so affects the public welfare; that the charitable and beneficial organizations contemplated in the Revenue Act are those which fulfill that purpose; and that the defendant does not fulfill that purpose and so does not bring itself within the purview and intent of the act. There are decisions in other jurisdictions holding that property belonging to such organizations as the defendant is tax exempt but in those cases there was no attempt to bring the organizations within the respective statutes as beneficent or charitable institutions. In one case the statute exempted Greek letter fraternities associated with educational institutions of higher learning,[5] and in another case the statute exempted literary clubs or associations connected with colleges or universities.[6] There is one decision, however, which cannot be reconciled with the case under review.[7] The facts relative to the purpose and conduct of the fraternal organizations in each case are practically identical. Both statutes make the basis of exemption the benevolent and charitable purpose of the institutions. The Supreme Court of Oklahoma held that the fraternity in that case was an organization whose property was used solely for the promotion of educational, moral, charitable and public welfare, and was therefore exempt from taxation. It is submitted that the Oklahoma decision puts the fairer construction upon the facts. An institution which assists its membership in establishing themselves in life, brings them under the influence of education, and extends credit to those otherwise unable to complete their education surely affects public welfare. In New York the levying of taxes for the support of public colleges and institutions of higher learning has been upheld.[8] The maintenance of such institutions has, it would

[2] Grand Lodge *v.* Board of Review, 228 Ill. 480, 117 N. E. 1016 (1917).

[3] People *v.* Deutsche Gemeinde, 249 Ill. 132, 94 N. E. 162 (1911); People, *ex rel.* Trustees of Masonic Hall and Asylum Fund *v.* Farrell, *et al.*, 223 N. Y. Supp. 660 (Sup. Ct., 1927).

[4] Knox College *v.* Board of Review of Knox County, 308 Ill. 160, 139 N. E. 56 (1923).

[5] State *v.* Allen, 127 N. E. 145 (Indiana, 1920).

[6] Kappa Kappa Gamma House Ass'n *v.* Peary, 92 Kan. 1020, 142 Pac. 294 (1914).

[7] Beta Theta Pi Corporation *v.* Board of Com'rs of Cleveland County, 234 Pac. 354 (Oklahoma, 1925).

[8] Matter of College of City of New York *v.* Hylan, 205 A. D. 372, 199 N. Y. Supp. 804, aff'd. 236 N. Y. 594 (1923).

appear, become a burden of government. In view of the inability, financial and otherwise, of public institutions of higher education to accommodate the increasing number of students seeking their benefits, it does not seem unreasonable to say that an organization of the type under discussion, which makes it possible for those of limited means to secure an education, to some extent lessens the burden of government. By such acts it denotes itself a beneficent and charitable organization and should bring itself within the statutes exempting property from taxation.

TORTS—NEGLIGENT LANGUAGE—BREACH OF DUTY TO GIVE CORRECT INFORMATION.—Plaintiff expected an importation on a certain vessel and arranged with the defendant to store the goods on one of its piers. Before the railroad took delivery of the goods from the steamship, one of plaintiff's officers called defendant on the telephone and informed it that he was desirous of obtaining insurance on the goods while in its care and asked where the goods were stored. The defendant, taking time to obtain the required information, replied that they were docked at Pier "F". In fact defendant had not yet received the goods. Neither plaintiff nor defendant knew this. Plaintiff procured insurance for the goods naming Pier "F" as the warehouse. Later the goods were received by the defendant and placed on Pier "D" which subsequently, with the goods thereon, was destroyed by fire. Plaintiff could not collect the insurance. It seeks to recover the loss from the defendant *Held,* that plaintiff established a cause of action for negligence. A negligent statement as well as a negligent act may be made the basis for a recovery of damages in such cases where there is a duty, if one speaks at all, to give the correct information. International Products Company *v.* Erie Railroad Company, 244 N. Y. 331, 155 N. E. 231 (1927).

In England it is well settled that there is no liability for negligence in word as distinguished from act.[1] Earlier English cases contained dicta to the effect that such a cause of action was maintainable,[2] but it was decided by the House of Lords in 1889[3] that no action could be based upon a mere statement although untrue and although acted upon to the damage of the person to whom the statement was made, unless the speaker knew the statement to be false.[4] And the same principle has been applied in equity.[5] The American Courts and writers have been more liberal[6] and have permitted in some instances the maintenance of such an action. The Court, in the

[1] Pollock on Torts, 12th ed., p. 565; Fish *v.* Kelly, 17 C. B., N. S. 194 (1864).

[2] Burrowes *v.* Lock, 10 Ves. 471 (1805); Slim *v.* Croucher, 1 De G., F & J. 518 (1866).

[3] Peek *v.* Derry, L. R., 14 A. C. 335 (1889).

[4] Dickson *v.* Reuters Telegraph Co., L. R., 3 C. P. Div. 1 (1877).

[5] Low *v.* Bouverie, L. R., 3 Ch. 82 (1891).

[6] Dickle *v.* Abstract Co., 89 Tenn. 431 (1890); Edwards *v.* Lamb, 69 N. H. 599 (1899); Herriolt *v.* Plimpton, 166 Mass. 585 (1896); Landie *v.* Telegraph Co., 126 N. C. 431 (1900); Bailey *v.* Tel. Co., 227 Pa. St. 522 (1910).