

LEGAL NOTES.

NEWCOMB v. BOSTON PROTECTIVE DEPARTMENT (1890), 151 Mass. 215. —The decision in this case is that a corporation whose object is the protection of property from injury at fires, is liable on the footing of a master for the acts of its servants. The arguments of counsel are not even mentioned. The Court rests the case on the motives of the founders, and the fact that the expenses were levied (leviable by law apparently) on insurance companies. The subject having been discussed at length in a paper on *Fire Ins. Patrol v. Boyd* (29 AMERICAN LAW REGISTER 209), nothing will be added but to call attention to what is believed to be the cardinal error, and this to elicit discussion or reflection. That the purpose of the society was charitable within the meaning of the law of charitable uses no one will deny. It is impliedly admitted in the distinction taken, which rests on the source from which the funds arise.

If, then, the real distinction rests on the selfish motive, the Court has lost sight of the one thing that determines the character of this kind of an organization. That is, the field of its operations is public, the object is private gain. Where private gain is the object of the society its business is a trade, whatever the objects on which it is employed. When private gain is not the object of the society, it is perfectly immaterial that the motive for founding and supporting are really indirect private benefits. A fire department is probably a perfect illustration of the subject. The existence of such a thing is inconceivable but for the supposed benefit to private property. All voluntary associations for the prevention of crimes affecting property, as distinguished from morals, are of the same character. So are libraries where pecuniary profit is not the purpose. The doctrine of *respondet superior* is purely artificial, modern, eminently political. An illustration of this found in the same volume: *Curran v. City of Boston* (1890), 151 Mass. 505, where the City was held not liable for the negligence of one employed by it to perform work, because the servant was a convict.

The real question, it is submitted, is this: Ought the State to burden the praiseworthy efforts of men who unite in schemes for the public good, with those artificial burdens that are imposed, wisely or unwisely, when the object is not a public benefit but a private gain: the burden being this, to remove the liability from the shoulders of one who has misconducted himself to the person who pays him to do the work, even where what is done is not the thing he was employed to do. Is it wise thus to extend the rule of vicarious sacrifice? And are we not in peril of putting unreasonable obstacles in the path of volunteers who are in fact performing a function of the State?

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Hutchins' Exr. v. George (1888), 44 N. J. Eq. 124; s. c. with annotation, 28 AMERICAN LAW REGISTER 170, was reversed on appeal, and the devise to Henry George held to be a valid charitable use: *George et al. v. Braddock, Exr.* (1889), 45 N. J. Eq. 757.

LEGAL HOLIDAYS.—To the State Statutes printed in full at the end of the leading article in the March, 1890, number of this magazine, the following laws, among others, should be added :

CONNECTICUT. (See 29 AMERICAN LAW REGISTER, 159.)

“AN ACT establishing a Legal Holiday.” Approved, March 20, 1889; Laws, page 8.

“*Be it enacted by the Senate and House of Representatives in General Assembly convened:* The first Monday of September in each year shall be a legal holiday in this State, to be known and designated as labor day.”

GEORGIA. (See 29 AMERICAN LAW REGISTER, 163.)

“AN ACT to amend Sections 2783 and 2783 (a) of the Code, so as to include among the public holidays the 19th day of January, known as Lee's birthday, and for other purposes connected therewith.” Approved, September 28, 1889; Laws, pp. 72-3.

“SECTION 1. *Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by the authority of the same,* That on and after the passage of this Act, the nineteenth day of January in each year shall be a public holiday.”

“SEC. 2. *Be it further enacted,* That section 2783 of the Code be, and it is hereby amended, so that it shall read, ‘The following days, viz: The first of January, commonly called New Years Day; the nineteenth day of January, known as Lee's birthday; the twenty-second day of February, known as Washington's birthday; the twenty-sixth day of April, known as Decoration Day; the fourth day of July, called Independence Day; the twenty-fifth day of December, known as Christmas Day; and any day appointed or recommended by the Governor of the State, or the President of the United States, or any municipal authority, as a day of thanksgiving, or fasting and prayer, or other religious observances, shall for all purposes whatsoever, as regards the presenting for payment or acceptance, and of the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes made after February 23, 1875, be treated and considered as the first day of the week, commonly called Sunday, and as public holidays; and all such bills, checks and notes, otherwise presentable for acceptance or payment on said days, shall be deemed to be presentable for acceptance or payment on the secular or business day next preceding such holidays.’”

“SEC. 3. *Be it further enacted,* That section 2783 (a) of the Code be, and it is hereby amended, so that it shall read, ‘Whenever the first day of January, the nineteenth day of January, the twenty-second day of February, the twenty-sixth day of April, the fourth day of July, or the twenty-fifth day of December shall fall upon Sunday, the Monday next following shall be deemed a public holiday, and papers due on such Sunday shall be payable on the Saturday next preceding, and papers which would otherwise be payable on said Monday shall be payable on the Tuesday next thereafter. Whenever either of the days shall fall on Saturday, the papers due on the Sunday following shall be payable on the above named Monday next succeeding. Whenever either of said days shall fall

on Monday, the papers which would otherwise be payable on that day shall be payable on the Tuesday next succeeding.' ”

“ SEC. 4. *Be it further enacted*, That all laws and parts of laws in conflict herewith be, and the same are hereby repealed.”

IOWA. (See 29 AMERICAN LAW REGISTER, 165.)

“ AN ACT to amend Section 2094 of the Code of 1873, establishing ‘ Labor Day ’ as a legal holiday.” Approved April 5, 1890; Laws, page 71.

“ SECTION 1. That Section 2094 of the Code of Iowa is hereby amended by inserting therein, after the words ‘ fourth day of July,’ the following: ‘ The first Monday in September, to be known as ‘ Labor Day.’ ”

LOUISIANA. (See 29 AMERICAN LAW REGISTER, 166.)

“ AN ACT to amend and re-enact section 1114 of Ray’s Revised Statutes.” Approved, February 23, 1880; Laws, page 16.

“ *Be it enacted by the General Assembly of the State of Louisiana*, That section 1114 of Ray’s Revised Statutes be amended and re-enacted to read as follows: The following shall be considered as days of public rest in this State, and no others, namely: The first of January, the eighth of January, the twenty-second of February, Mardi-Gras, the fourth of March in New Orleans, the fourth of July, the twenty-fifth day of December, Sundays and Good Friday, and all promissory notes, bills of exchange, and commercial paper which by law or commercial usage are required to be protested for non-payment, shall be due and payable the day following the third or last day of grace, if the third or last day of grace be a Sunday or legal holiday; and should the day succeeding the last or third day of grace also be a Sunday or legal holiday, then such promissory note, bills of exchange, or commercial paper shall be payable on the following day, not a Sunday or legal holiday; and in computing the delay allowed for giving notice of non-acceptance or non-payment of a bill of exchange or promissory note or other commercial paper, the days of public rest or legal holidays shall not be counted, nor if the day or two days next succeeding the protest for non-acceptance or non-payment shall be days of public rest or legal holidays, then the day next following shall be computed as the first day after the protest.”

“ SEC. 2. That all laws or parts of laws in conflict with this act shall be and are hereby repealed.”

UTAH.

Part Third of the Compiled Laws (ed. 1888. vol. 1, page 752) provides:—

“ §2122. (S. 1) The following named days are hereby designated and declared to be legal holidays in said Territory, to wit: The first day of January; the twenty-second day of February; the thirtieth day of May, commonly called Decoration Day; the fourth day of July; the twenty-fourth day of July, commonly called Pioneers’ Day; the twenty-fifth day of December, commonly called Christmas; and all days which may be set apart by the President of the United States or the Governor of Utah Territory, by proclamation, as days of fast and thanksgiving; *Provided*, That when any of said days shall fall on Sunday, the following Monday shall be the holiday.”