C. R. 326. The Massachusetts Court, however, goes further and holds (2) that the city would not be liable, and (3) consequently the trustees could not be. The former of these conclusions is to be found in very many of the American decisions and it is based upon the principle which is laid down in Halliday v. St. Leonard (1861), 11 C. B. N. S. 192; 30 L. J. C. P. 361; 4 L. T. 406; 8 Jur. N. S. 79; 9. W. R. 694. It may be thus stated (substantially in the words of the head note in 11 C. B. N. S.): "Persons intrusted with the performance of a public duty, discharging it gratuitously and being personally guilty of no negligence or default, are not responsible for an injury sustained by an individual through the negligence of servants employed by or under them." This was supposed to be the law of England, but it received its quietus in Mersey Docks Trustees v. Gibbs (1866), L. R. 1 E. & I. 119; 11 H. L. C. 723. See also Freeman v. Canterbury Corporation (1871), L. R. 6 A. C. 217; Hillyer v. St. Bartholomew's Hospital, 1909, 2 K. B. 830 *ut supra*.

In Massachusetts this assumed principle was applied to a city in Hill v. Boston (1877), 122 Mass. 344, the *locus classicus* in which the earlier cases are reviewed.

Findley v. Salem (1883), 137 Mass. 171, decides that the exemption extends to acts in the discretion of the city and is not confined to acts done in performance of a duty, statutory or otherwise.

Then an offshoot from this doctrine, logically distinct but analogous, is the theory that where any individual or corporation carries on any undertaking for the benefit of the public with funds mainly derived from public and (or) private charity held in trust for the purposes of the undertaking he or it cannot be held liable for the negligence of servants selected with due care. This is laid down in McDonald v. Massachusetts General Hospital (1876), 120 Mass. 432.

I do not further investigate the decisions in Massachusetts as the law there is not the same as ours.

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Cunningham v. The Sheltering Arms (1909), 119 N. Y. Supp. 1033, shows that it is the law of New York that "a charitable institution from which no financial benefit accrues to the directors or organizers is not liable to a recipient of its charity (for damages) resulting from the negligence of one employed in furtherance of its objects provided due care is exercised in selecting the employee." But even here the absence of a special contract is of importance; the Court refers to Ward v. St. Vincent's Hospital, 50 N. Y. Supp. 466; 39 App. Div. 624; 65 App. Div. 64; 78 App. Div. 317. That was a case of a patient making "an express contract whereby the defendants agreed to furnish her a skilled, competent and trained nurse" (57 N. Y. Supp. 784). She was furnished "a mere pupil in the defendants' training school not a trained nurse in the sense of being a graduate, having studied only nine months." The nurse while the plaintiff was unconscious applied an unprotected rubber bag containing very hot water to the patient's leg and caused serious injury, and an action was brought against the hospital. The trial Judge held that the action was in tort (as it would undoubtedly have been had it been brought against the nurse) and that there was no breach of duty on the part of the hospital; he accordingly dismissed the action and his decision was affirmed by the Supreme Court (50 N. Y. Supp. 466). On appeal the Appellate Division held that the action against the hospital was in contract, i. e. the contract to supply a skilled, competent and trained nurse and that, while one act of negligence would not necessarily