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BILLS AND NOTES—NEGOTIABILITY OF BONDS ISSUED BY MASSACHUSETTS TRUST—In a replevin action to recover stolen bonds, *held* that the exclusion of the personal liability of the issuing trustees rendered the instruments non-negotiable. *Lorimer v. McGreevy*, (Mo. APP. 1935) 84 S. W. (2d) 667.

The rationale of this decision is the familiar common-law rule that since a trust is not a legal entity the trustee himself is the principal:[1] the exclusion of personal liability precludes the pledging of the promisor's general credit and, therefore, negotiability.[2] It has been repeatedly held, however, that the passage of the Negotiable Instruments Law[3] has changed the situation.[4] The applica-

[1] Taylor v. Davis, Admx., 110 U. S. 330 at 334, 4 S. Ct. 147 (1883); 1 WILLISTON, CONTRACTS, § 312 (1931); 1 BOGERT, TRUSTS 296 (1921).

[2] But see BRANNAN, THE NEGOTIABLE INSTRUMENTS LAW 137 (1932), to the effect that payment out of a "particular fund" (§ 3 N. I. L.) may not be synonymous with the common law requirement that the general credit of the maker be behind the instrument. This, the substantially-general-credit test, as accepted by Hiscock, J., in Hibbs v. Brown, 190 N. Y. 167, 82 N. E. 1108 (1907), is open to two serious objections. It makes negotiability depend on facts outside the instrument. It requires the court in each case to pass upon the relative financial importance of the excluded resources.

[3] Section 20 provides: "Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability."

Section 191 provides: "'Persons' includes a body of persons, whether incorporated or not."

[4] Nelson Co. v. Morton, 106 Cal. App. 144, 288 P. 845 (1930); Wilson v. M. E. Zion Church, 138 Tenn. 398, 198 S. W. 244 (1917); Megowan v. Peterson, 173 N. Y. 1, 65 N. E. 738 (1902); Kerby v. Reugamer, 107 App. Div. 491, 95 N. Y. S. 408 (1905); First Nat. Bank of Pennsboro v. Delancey, 109 W. Va. 136, 153 S. E. 908 (1930); American Trust Co. v. Canevin, (C. C. A. 3rd, 1911) 184 F. 657; Alexander v. Wright, 135 Okla. 96, 274 P. 480 (1929); Riordan v. Thornsbury, 178 Ky. 324, 198 S. W. 920 (1917); Hamilton v. Young, 116 Kan. 128, 225 P. 1045 (1924); Adams v. Swig, 234 Mass. 584, 125 N. E. 857 (1920); Baker v. James, 280 Mass. 43, 181 N. E. 861 (1932); Gutelius v. Stanbon, (D. C. Mass. 1930) 39 F. (2d) 621; Hawthorn v. Austin Organ Co., (C. C. A. 4th, 1934) 71 F. (2d) 45; TRUSTS RESTATEMENT, § 263 (e) (1935). But see also: Vorachek v. Anderson, 54 N. D. 891, 211 N. W. 984 (1927); Magallen v. Gomes, 281 Mass. 383, 183 N. E. 833 (1933).

[5] That the framers intended section 20 to apply to the trustee situations is contended in 2 MICH. L. REV. 260 at 273 (1903). See too BRANNAN, THE NEGOTIABLE INSTRUMENTS LAW 272 (1932); 34 MICH L. REV. 121 (1935); 7 UNIV. CIN. L. REV. 288 (1933).

tion[5] of section 20 can mean only that a trust is vested with a legal personality.[6] The alternative interpretation, that this section merely provides another mode of procuring personal immunity for the trustee, is untenable, for it renders the instrument non-negotiable and, therefore, outside the scope of the Negotiable Instrument Law. Further, one cannot be the representative of himself. It has been said that to find this change in these ambiguous provisions is to predicate much upon little.[7] This interpretation is, however, consistent with the treatment accorded unincorporated business associations in regard to other problems.[8] They have been treated as entities for purposes of taxation,[9] bankruptcy,[10] regulation,[11] the privileges and immunities clause of the federal Constitution,[12] and suit in the association name.[13] Already, similar instruments issued by a joint stock company have been held negotiable.[14] That the line should so be drawn as to preclude the negotiability of circulating instruments issued by a business trust, it is submitted, is unreasonable on grounds of both policy and principle.

J. L. K.

[6] WARREN, CORPORATE ADVANTAGES WITHOUT INCORPORATION 863-864 (1929).

[7] WARREN, CORPORATE ADVANTAGES WITHOUT INCORPORATION 482-484 (1929).

[8] 45 YALE L. J. 176 (1935); 49 HARV. L. REV. 478 (1935).

[9] Hecht v. Malley, 265 U. S. 144, 44 S. Ct. 462 (1924).

[10] Gallagher v. Hannigan, (C. C. A. 1st, 1925) 5 F. (2d) 171.

[11] Reilly v. Clyne, 27 Ariz. 432, 234 P. 35 (1925).

[12] Hemphill v. Orloff, 277 U. S. 537, 48 S. Ct. 577 (1928).

[13] Mass. Gen. Laws, c. 182, § 6 (1932).

[14] Hibbs v. Brown, 190 N. Y. 167, 82 N. E. 1108 (1907); WARREN, CORPORATE ADVANTAGES WITHOUT INCORPORATION 477-500 (1929).

[15] Dodd, "Dogma and Practice in the Law of Associations," 42 HARV. L. REV. 977 (1929).