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Trusts--Effect of Appendage of Word "Trustee" in Relieving Party from Personal Responsibility

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TRUSTS—EFFECT OF APPENDAGE OF WORD “TRUSTEE” IN RELIEVING PARTY FROM PERSONAL RESPONSIBILITY.—Plaintiffs Hatfield and Hughes, contracted to sell to defendant, Charlton, “trustee” all outstanding stock in a corporation; deferred payments, for which this suit was brought, to be evidenced by notes of the company and as these notes were taken up, the proceeds were to be applied to those debts of the company for which plaintiffs had personally obligated themselves. Note that express obligation of defendant was not referred to. Plaintiffs sought to charge defendant personally with these notes; while he contended that the whole transaction was a plan to reorganize and re-finance the company, and that he was acting as trustee for the plaintiffs in executing this purpose. *Held*, where, in a contract one of the parties thereto is described as trustee, with duties and obligations thereby imposed of a trust nature, the term “trustee” so employed will not be regarded simply as *descriptio personae*, but as having been used advisedly, and as creating in the trustee the trust relationship implied, and as binding him as trustee only, and of which all persons dealing with him must take notice. *Hughes et al. v. Charlton et al.*, 141 S. E. 1 (W. Va. 1927).

The doctrine of *descriptio personae*, as defined by BLACK’S LAW DICTIONARY, is “the use of a word or phrase merely for the purpose of identifying or pointing out the person intended, and not as an intimation that the language in connection with which it occurs is to apply to him only in the official or technical character in which it is used.”

The meaning of the phrase “binds him as trustee only” is uncertain. The general rule is that one who contracts as trustee, without further facts, is liable personally on the contract. This is the decision of *Taylor v. Davis*, 110 U. S. 330: “As a trustee holds the estate, although only with the power and for the purpose of managing it, he is personally bound by the contracts he makes as trustee, even where designating himself as such. The mere use of the word trustee or any other name of office or employment will not discharge him. If a trustee contracting for the benefit of the estate wants to protect himself from personal liability, he must stipulate that he is not to be personally responsible but that the other party is to look solely to the trust estate.”

This case is cited with approval and followed in *American Trust Company v. Canevin*, 184 Fed. 657, 661: "One who contracts, adding to his name the word trustee, will nevertheless be personally liable, unless the party with whom he contracts understands that he intends to bind only the trust estate, and not himself." The rule is stated in the dissenting opinion thus: "The mere appendage 'trustee' to Charlton's name is not of itself sufficient to indicate that the obligation incurred was that of a third person." The West Va. cases cited, however, are questions of the form in which judgments should be taken against a fiduciary, and are not directly in point. The same decision was reached in *Bayh v. Hanna*, 69 Ind. App. 395, 122 N. W. 7, and in *Dunlevie v. Spanenberg*, 121 N. Y. S. 299. Cases are collected in 28 HARV. L. REV. 725, and in BOGERT TRUSTS, n., p. 297, and p. 300. Other authorities upon this subject are innumerable.

The case may well be justified upon the facts of the case, under the general rule. There was sufficient notice to the other party, aside from the act of the defendant in signing as trustee, by the stipulation in the contract. No mention was made that he was to be personally liable, but, which seems expressly to rebut such proposition, it was agreed that the deferred payments, for which plaintiffs seek to charge the defendant, were to be evidenced by the notes of the company. Upon what constitutes sufficient stipulation against liability, see *Shoe & Leather National Bank v. Dix*, 123 Mass. 148, where a party signed as "trustee, but not individually," and *Thayer v. Wendall*, 1 Gall. (Fed.) 37, where a party signed as "trustee, but not otherwise." In both cases, parties so signing were relieved from personal obligation. See also 28 HARV. L. REV. 725. Thus, if the phrase "binds him as trustee only," is construed to mean "binds him as a contracting trustee is ordinarily bound," then the court has but stated the general rule, though certainly in an ambiguous way. But, reading this phrase with the other statement "Use of word 'trustee' would not be regarded merely as *descriptio personae*," and with certain utterances in the opinion, the court seems to have laid down a rule much broader than this—that one who signs as trustee, even without disclosing upon the face of the instrument the name of the party for whom he is acting, and without stipulating

against express liability, is nevertheless relieved from personal liability on the contract. Therefore, the court apparently has repudiated the doctrine of *descriptio personae*, in favor of a rule which has seldom, if ever, been recognized by the courts. No authority has been cited by the court to sustain this proposition, and only one case has been found which even remotely seems to support this principle. That is the case of *Printup v. Trammel*, 25 Ga. 240, where a party signed a promissory note as "Daniel Printup, trustee for Mrs. Abbey Farrar," in which the court held: "A trustee is not liable out of his own estate, on a note given by him as 'trustee' and so expressed when the consideration of the note enured exclusively to the cestui que trust." The Georgia court argues briefly against the personal liability of a trustee so contracting. However, the duty is upon the trustee to prove that the consideration inured to the benefit of the trust estate, which was the difficulty of the defendant in the principal case. The only case cited by the majority opinion in the principal case, *Taylor v. Davis*, *supra*, is directly in support of the general rule.

What will be the effect of this decision? It is possible, though highly improbable, that a later court may follow this case in its apparent repudiation of the doctrine of *descriptio personae*. With the increasing tendency of the courts to give a remedy directly against the trust estate, or rather, to extend the number of exceptions to the general rule, will naturally come the relaxation of the rule of personal liability of trustee. See the article of Justice Brandeis in 15 AM. L. REV. 449. But, should the same question arise in this jurisdiction within the next few years, the probability is that the Court will then construe the statement in the syllabus of this case to mean that it is but a statement of the general rule. This, the writer believes, may well be done, as shown above. We can only wait until the Court is given an opportunity to decide upon this question again.

—CLAIR SMITH.

FATHER'S CONSENT TO UNLAWFUL EMPLOYMENT OF INFANT SON IN DANGEROUS OCCUPATION AS BAR TO RECOVERY IN AC-