

business trust, as other trustees, can exempt themselves from personal liability on contracts by an express stipulation in the contract. *Carpenter v. Sly Co.*, 109 Cal. App. 539, 293 Pac. 162 (1930); *Schumann-Heink v. Folsom*, 328 Ill. 321, 159 N.E. 250 (1927); *Rand v. Farquhar*, 226 Mass. 91, 115 N.E. 286 (1917). Where there is no express stipulation against personal liability in the contract but the contracting parties have actual knowledge of the trustees' exemption from liability in the trust declaration, it has been said that here, too, the trustee is personally liable. See *Alleghany Tank Car Co. v. Culbertson*, 288 Fed. 406 (D.C.N.D. Tex. 1923); *Goldwater v. Oltman*, 210 Cal. 408, 292 Pac. 624 (1930); *Austin v. Parker*, 317 Ill. 348, 148 N.E. 19 (1925); *Walker v. Hatfield*, 17 S.W. (2d) 357 (Kan. City Ct. of Appeals, 1929); *Carr v. Leahy*, 217 Mass. 438, 105 N.E. 445 (1914); *Mitchell v. Whillock*, 121 N.C. 166, 28 S.E. 292 (1897); *Hildebrand, Liability of the Trustees, Property, and Shareholders of a Massachusetts Trust*, 2 Tex. L. Rev. 139 (1924). There may be doubt, however, whether that is the rule even in the case of pure trusts. See *Glenn v. Allison*, 58 Md. 527 (1888); Restatement of Trusts (Tent. Draft No. 4, 1933), § 255, comment (b); and even though that is the rule in a pure trust, the assimilation of the business trust, in some respects, to the corporation may warrant the application of another rule. Cf. Magruder, *The Position of Shareholders in Business Trusts*, 23 Col. L. Rev. 423 (1923).

Some courts have held that knowledge of such a provision is to be considered with other circumstances in determining whether it was the intent of the parties that the trustees were not to be personally liable. *Boyle v. Rider*, 136 Md. 286, 110 Atl. 524 (1920); *William Lindke Land Co. v. Kalman*, 190 Minn. 601, 252 N.W. 650 (1934); 18 Minn. L. Rev. 860 (1934); see *Larson v. Sylvester*, 282 Mass. 352, 185 N.E. 44 (1933). A parol stipulation has been recognized as sufficient to prevent personal liability of the trustees where the business trust device is considered as a partnership. *Shelton v. Montoya Oil & Gas Co.*, 292 S.W. 165 (Tex. Civ. App. 1927); *Farmers' State Bank & Trust Co. v. Gorman Home Refinery*, 3 S.W. (2d) 65 (Tex. Civ. App. 1928). Furthermore it has been held that reference in the contract to the trust instrument, which has a provision excluding personal liability of the trustees, relieves the trustee of personal liability whether or not the creditor knew of the provision. *Bank of Topeka v. Eaton*, 100 Fed. 8 (C.C.D. Mass. 1900), affd. 107 Fed. 1003 (C.C.A. 1st 1901), cert. denied, 183 U.S. 697 (1901). Knowledge by the creditor of an attempted limitation of liability has been held to limit liability that would otherwise prevail in other situations. Such knowledge has been held effective in the case of shareholders in a business trust which does not shield them from liability; *McCarthy v. Parker*, 243 Mass. 465, 138 N.E. 8 (1923); *Roberts v. Aberdeen-Southern Pines Syndicate*, 198 N.C. 381, 151 S.E. 865 (1930); Warren, *Corporate Advantages without Incorporation* (1929), 355; *contra: Thompson v. Schmitt*, 115 Tex. 53, 274 S.W. 554 (1925); and in the case of shareholders in a defectively organized corporation; *Ballantine, Corporations* (1927), §§ 28, 29; but not in the case of members of a defective limited partnership; *Andrews v. School*, 10 Pa. St. 47 (1848); *R. S. Oglesby Co. v. Lindsey*, 112 Va. 767, 72 S.E. 672 (1911); see 1 Univ. Chi. L. Rev. 815 (1934).

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Constitutional Law—Price Discrimination—New York Milk Control Bill—[U.S.]—Plaintiffs brought a bill to enjoin the enforcement of the section of the New York Agriculture and Markets Law which permits milk dealers not having a “well-advertised trade name” to sell to stores at one cent less than “trade name” dealers of

which the plaintiff was one. N.Y. Cahill's Consol. Laws (supp. 1933), c. 1, § 317. Plaintiff contended that such discrimination violated the equal protection clause of the 14th Amendment. The District Court dismissed the bill on the grounds that it did not state a cause for complaint. 7 Fed. Supp. 352 (1933). *Held*, the bill is sufficient to require a trial on the merits. Reversed and remanded. *Borden's Farm Products Co. v. Baldwin*, 55 Sup. Ct. 187 (1934).

As the validity of the New York Milk Control Law in general was established in *Nebbia v. New York*, 291 U.S. 502 (1934); see Robert Hale, Some Reflections on *Nebbia v. N.Y.*, 34 Col. L. Rev. 401 (1934); only the specific "price differential" clause was attacked in the principal case.

A statute does not violate the "equal protection" clause because it distinguishes between classes or is not all-inclusive. *Quong Wing v. Kirkendall*, 223 U.S. 59 (1912); *Ward & Gow v. Krinsky*, 259 U.S. 503 (1922); *Radice v. N.Y.*, 264 U.S. 292 (1924); *Liberty Warehouse Co. v. Burley Tobacco Growers' Assn.*, 276 U.S. 71 (1928); *Silver v. Silver*, 280 U.S. 117 (1929); *State Board of Tax Comm. v. Jackson*, 283 U.S. 527 (1931); *Nebbia v. N.Y.*, 291 U.S. 502 (1934). But it is held unconstitutional when the court finds that the discrimination is "arbitrary and unreasonable." *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540 (1902); *Truax v. Raich*, 239 U.S. 33 (1915); *Buchanan v. Warley*, 245 U.S. 60 (1917); *Ky. Finance Corp. v. Paramount Auto Exchange Corp.*, 262 U.S. 544 (1923); *Quaker City Cab Co. v. Pa.*, 277 U.S. 389 (1928); *Liggett v. Baldridge*, 278 U.S. 105 (1928); *Frost v. Corp. Comm. of Okla.*, 278 U.S. 515 (1929); *Smith v. Cahoon*, 283 U.S. 553 (1931). Admittedly the line of distinction in the above cases varies with the changing social viewpoint of the Supreme Court; cf. *Liberty Warehouse Co. v. Burley Tobacco Growers' Assn.*, 276 U.S. 71 (1928) with *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540 (1902); but the more recent attitude seems to subordinate a consideration of the wisdom of a statute or whether the business affected is endowed with a "public interest," to a paramount requirement that there be some reasonable basis for the belief of the legislature that its product will be of general benefit to the public. See 32 Mich. L. Rev. 832 (1934).

The "price differential" clause involved in the instant case was passed at the instigation of the small milk dealers who claimed that without it they could not meet the competition of the "advertised trade name" dealers. As a matter of policy, this seems a questionable justification for the discrimination when the court's refusal to protect marginal operators, who cannot survive competition while complying with statutory regulations, is considered. Cf. *Packard v. Banton*, 264 U.S. 140 (1924); *Hegeman Farms Corp. v. Baldwin*, 55 Sup. Ct. 7 (1934). The appellees, however, contended that the price differential prevented a monopoly by the "trade-name dealers" and, in so doing, came within a category that has frequently justified governmental discrimination. *Munn v. Illinois*, 94 U.S. 113 (1876) (a monopoly resulting from geographical location); *German Alliance Ins. Co. v. Lewis*, 233 U.S. 389 (1914) (contractual monopoly); *The Pipe Line Cases*, 234 U.S. 548 (1914) (interstate carrier monopoly); *State Board of Tax Comm. v. Jackson*, 283 U.S. 527 (1931) (slight monopoly argument justifying chain store taxation). In view of the competition that may still remain among the "trade-name dealers" and between them and those smaller dealers that were able to survive, the monopoly argument may prove rather doubtful. Cf. *Wolff Packing Co. v. Kans.*, 262 U.S. 522 (1923).

If it is established on rehearing that a price differential of approximately one cent

existed before the enactment of the statute, the legislature may have had a "logical basis" for continuing the differential during the emergency in order to maintain the same facilities for distribution, to the end that both milk producers and consumers would be benefited. *Cf. Block v. Hirsh*, 256 U.S. 135 (1921) (rigid housing regulation during an emergency sustained).

An undesirable feature of the price differential, not mentioned by the court, is that it was definitely fixed at a certain amount by the statute. *N.Y. Cahill's Consol. Laws* (supp. 1933), c. 1, § 317. If the purpose of the statute is to maintain the balance of bargaining power, it seems that an administrative board would be in a better position to adapt the differential to changing conditions. See *People of N.Y. ex rel. Liberman v. Van de Carr*, 199 U.S. 552 (1905).

The conservatism of the opinion in the principal case may indicate that the liberal *Nebbia* decision will not be applied as extensively as has been suggested. See 82 U. of Pa. L. Rev. 619 (1934).

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Constitutional Law—Religious Freedom—Compulsory Military Training—[U.S.].—Plaintiffs, students at the University of California, a state university, had been suspended on their refusal, because of conscientious religious objections to war, to take a compulsory course in military science in the Reserve Officers Training Corps offered by the university as a land grant college under the Morrill Act, 7 U.S.C.A. §§ 301-308 (1927). In a suit by plaintiffs for reinstatement, *held*, that though the due process clause of the 14th amendment may protect religious liberty, it confers no right to attend a land grant college free from the compulsory military training requirement. *Hamilton v. Regents of the University of California*, 55 Sup. Ct. 197 (1934).

The same result was reached in *Pearson v. Coale*, 165 Md. 224, 167 Atl. 54 (1933), *cert. denied* 290 U.S. 597 (1933).

Despite the fact that it has been held that states have almost unlimited power to determine the conditions of attendance in state schools; *North v. Board of Trustees of the University of Illinois*, 137 Ill. 296, 27 N.E. 54 (1891) (trustees can make chapel attendance compulsory); *Waugh v. Board of Trustees of the University of Miss.*, 237 U.S. 589 (1915) (requirement that students not belong to fraternities held constitutional); it can be argued that an "arbitrary and unreasonable" regulation violates the protection given the liberty to acquire an education by the due process clause. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 518 (1925).

Although the 14th amendment has been quite consistently held not to apply the restrictions on the federal government contained in the first ten Amendments to the states; *Slaughterhouse Cases*, 83 U.S. 36 (1872); *Twining v. N.J.*, 211 U.S. 78 (1908); in the principal case the court assumed "that the religious liberty protected against invasion by the nation in the 1st Amendment is protected by the 14th Amendment against invasion by the States." *Cf. Gilow v. N.Y.*, 268 U.S. 652 (1925); *Near v. Minnesota*, 283 U.S. 697 (1931). See Dodd, *Cases on Constitutional Law* (1932), 1366, 1367; 2 Cooley, *Constitutional Limitations* (8th ed. 1927), 983.

Religious liberty, however, has been held to be limited when the exercise of the religious belief would contravene a well-established governmental policy. *Reynolds v. U.S.*, 98 U.S. 145 (1878) (religious liberty does not excuse polygamy); *People v. Pierson*, 176 N.Y. 201, 68 N.E. 243 (1903) (failure to call a physician); *Sweeney v. Webb*, 33 Tex. Civ. App. 324, 76 S.W. 766 (1903) (use of sacramental wine).