

1963

Evidence

Joe H. Munster

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regulations, defendant had to install and maintain the grave markers. In reversing a decree for the plaintiff, the court of appeals concluded that the only way an alleged abuse of the defendant's charter privilege to sell markers could be challenged was by a proceeding in quo warranto. Further, with respect to the allegedly unreasonable regulations, the court stated that the only persons who had standing to complain were the lot owners or those who had a contractual relation with the corporation, and the plaintiff was not such a person. The court also found that there was no combination such as proscribed by the Ohio Valentine Act.¹⁶

ALVAN BRODY

EVIDENCE

"TWO-ISSUE RULE"

While no Ohio Supreme Court rulings appear directly in point, in *Zink v. Contris*¹ the Court of Appeals for Hancock County joined the courts of appeals of the sixth and seventh appellate districts in holding the "two-issue" rule applicable to the refusal to give special instructions requested to be given before argument. The "two-issue" rule is based on "the necessity of affirmatively showing prejudice in order to justify a reversal."² Thus, where two issues are involved, on either of which, under a general verdict, the prevailing party would have won, and there is no indication on which of the two issues the triers of fact based their verdict, it is logical to apply the rule to *any* error affecting only one issue.

BURDEN OF PROOF

In *Cupps v. City of Toledo*³ the city preferred charges against a member of the police force and had him dismissed. This action was affirmed by the Municipal Civil Service Commission. The discharged employee then appealed to the court of common pleas for a trial de novo on the charges. The trial court found that plaintiff, the discharged employee, "had not sustained his burden of proof" and dismissed the appeal. The court of appeals reversed on the ground that the lower court erred in placing the burden of proof on the plaintiff employee.

The supreme court had previously ruled that section 143.27, Ohio Revised Code, provided the right of appeal on questions of law and fact, from an order of dismissal by a municipal civil service commission.⁴ Here it held that the "appeal" to the court of common pleas from such an

16. OHIO REV. CODE §§ 1331.04-.14 (1953).