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Trusts

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rated under the name of The Moncrief Furnace Co. of Cleveland, Inc. The court, recognizing the prior exclusive use of the trade name by the plaintiff and the possibility of confusion caused by the concurrent use of that name by the defendant, affirmed the order of the trial court permanently enjoining the defendant from doing business in Cuyahoga County as long as it kept the name "Moncrief" as part of its corporate title.

The court rejected the defendant's contention that since the plaintiff was a manufacturer and the defendant a retailer no actual competition existed, reasoning that both parties sold the same product and, therefore, the sale of non-"Moncrief" furnaces by the defendant indirectly deprived the plaintiff of part of his market.

The opinion of the court was especially valuable on a point not necessary for the decision of the case, namely the propriety of granting equitable relief for unfair competition where no actual market competition between similar products in fact exists but where, because of prior appropriation, the petitioner needs protection from confusion with the defendant and from consequent loss of money or goodwill.²

MAURICE S. CULP

TRUSTS

Administration

In *Holmes v. Hrobon*¹ a testamentary trustee brought a declaratory judgment action and propounded fourteen questions which required a construction of the will, a determination of certain issues which arose in the carrying out of the trust, an accounting between the trustee and life tenant and a determination as to the corpus and income as between the life tenant and the remaindermen. Far too many issues were involved for the writer to do more than point out those which, in his opinion, are the most significant. Of especial interest is the court's discussion of the methods to be used by a trustee for allocating, as between the life tenant and the remaindermen, payments made for various types of improvements on trust property. In regard to the acceptance by the life tenant of benefits from unauthorized purchases of the trustee, the court held the life tenant estopped to question

¹ 91 Ohio App. 451, 108 N.E.2d 839 (1952).

² *Id.* at 843-845.

¹ 103 N.E.2d 845 (Ohio App. 1951), *aff'd in part, rev'd in part*, 158 Ohio St. 508, 110 N.E.2d 574 (1953). The supreme court affirmed as to the points discussed in this survey.

such transactions but not estopped to raise the question of the proper allocation of the cost of the purchases, whether to income or corpus, or the method used by the trustee in making charges and giving credit therefor. The court also held that a life tenant bequeathed income is entitled to such income from the death of the testator, and although that income is obtained from assets subsequently used in the payment of legacies, debts and expenses of administration of the estate it goes to the life beneficiary after payment by the executor to the trustee and is not added to the corpus of the trust.

Appointment of Successor Trustee

In *In re Hall's Estate*² the court held that the intention of the testator as it affects the power of the court to appoint a successor trustee is controlling and that where the testator directed that the named trustee reduce all property to cash and use only so much of the proceeds thereof as was necessary for the care and comfort of the testator's stepdaughter, and the trustee's decision was to be final, the testator did not contemplate that the trust would fail if the named trustee pre-deceased the beneficiary.

The court's power to appoint a successor trustee is given by Ohio General Code Section 10506-55, which is simply a codification of the long-established doctrine that equity will not permit a trust to fail for want of a trustee. The decision is in line with the modern weight of authority.

Purchase Money Resulting Trusts

In line with the universal rule that the proportion of the purchase price contributed by an alleged cestui must be certain before a purchase money resulting trust can result in his favor, it was held in *Westrick v. Unterbrink*,³ a partition action brought by one of four grantees, that where the grantees' respective interests were not specified in the deeds and where the consideration for the deeds was not only the indebtedness owing to the grantees by the grantor, but, in addition, the joint obligation, expressed in the deeds, of the four grantees to support, nurse and care for the grantor during the grantor's life, such latter consideration prevented a resulting trust from arising in favor of the grantees in proportion to the parts of the purchase price contributed by each because the value of the obligation, and the proportion it bore to the total purchase price, was entirely speculative and not determinable at the time the deeds were made. The court found that the grantees held undivided one-fourth interests in the realty and that the defendants were entitled, by way of contribution, to an equitable lien upon the undivided one-fourth interest of the plaintiff since they performed

² 102 N.E.2d 259 (Ohio App. 1951).

³ 90 Ohio App. 283, 105 N.E.2d 885 (1950).