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Trade Regulation

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Release Through Fraud

In *Shallenberger v. Motorists Mutual Ins. Co.*,[19] plaintiff claimed to have been injured through the negligence of one Hartman. She also claimed that she had been fraudulently induced by Hartman's insurance company to give a release for her damages. Accordingly, her prayer was for damages for the loss of her claim. The court held that she had misconceived her remedy. She should have sought recission of the release in equity so that she might then sue Hartman for her original cause of action. At first sight the decision smacks of the days of the forms of action, particularly since a number of courts seemed to have reached a contra result, but the court has avoided the trial of a complicated case involving the determination of issues of fraud as well as personal injuries. The dates of the injuries and the supreme court decision indicate that there was still time for the plaintiff to pursue her remaining remedies.

Cracks in Sidewalks

The supreme court still finds it necessary to exercise a firm hand in the "cracks in the sidewalks" cases.[20] Once more, the current reactions of a trial judge, a jury, and three appellate judges to the condition of certain "city sidewalks" runs counter to the living law of the higher court. Those who are interested in vital statistics will find the pertinent measurements of the relevant crack in *O'Brien v. City of Toledo*.[21]

WALTER PROBERT

TRADE REGULATION

Use of Similar Names

Two Ohio court of appeals decisions dealt with the prohibition of the use of similar names by competitors engaged in similar business activities.

Friedman Transfer and Construction Co., Inc. v. Arrel Friedman[1] involved an action by a corporation to enjoin its competitor from operating a similar type of business under the name of Arrel Friedman Transfer and Storage. The plaintiff had operated its business under its corporate name within the city of Youngstown for approximately 32 years. The

19. 167 Ohio St. 494, 150 N.E.2d 295 (1958).

20. For reference to the recent history of this problem, see 1955 Survey, 7 WEST. RES. L. REV. 340 (1956).

21. 167 Ohio St. 35, 146 N.E.2d 122 (1958).

defendant using the name of "Arrel Friedman Transfer and Storage" had operated a business in the same area for several years, but without the use of the name "Friedman" until shortly before the filing of this action. There was evidence of confusion arising from the similarity of names and also that the name "Friedman" had become identified with plaintiff's business of storage, transfer, hauling, cartage, and construction. The court of appeals determined that the personal surname had acquired a "secondary meaning," that the use of defendant's name might have created deception and confusion, and affirmed the decision of the lower court, enjoining the defendant from the use of his name in conjunction with the words "transfer," "hauling," "cartage," or "construction." This holding is in accord with much American and English authority for enjoining the use by a rival of a personal surname which has already become so identified with a particular business as to become synonymous with it.[2]

The other decision[3] dealt with an action to enjoin a rival corporation's use of its authorized fanciful, non-descriptive corporate name in conjunction with aluminum products in a situation wherein the plaintiff's corporate name had acquired a secondary meaning when used in conjunction with the word "aluminum." Empire State Aluminum Corporation, incorporated in New York in 1951 and engaged in processing and distributing aluminum products throughout the United States under the designation of "Empire Aluminum," sought to enjoin the Empire Aluminum Co., an Ohio corporation since 1956 from advertising its name and products nationally and locally to the confusion of the buying public. There was evidence that plaintiff had established the name "Empire," a part of its corporate name, in combination with the word "aluminum" in the industry in such a manner as to associate the two words whenever used as referring to the plaintiff's firm. The court of appeals affirmed the decision of the court of common pleas by granting a permanent injunction restraining the defendant from directly or indirectly using or referring to the name "Empire Aluminum" alone, or in combination with other words, in connection with the advertising or operation of the business of manufacturing, fabricating, processing, purchasing, selling, or distributing aluminum or products incorporating aluminum therein. The court of appeals relied heavily upon earlier Ohio authority which protected prior users of a trade name or description name from the confusion

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1. 146 N.E.2d 886 (Ohio Ct. App. 1956). See also CONSTITUTIONAL LAW section, *supra.*

2. See 1 NIMS, UNFAIR COMPETITION AND TRADE-MARKS, § 72 at 261 (4th ed. 1947).

3. Empire State Aluminum Corp. v. Empire Aluminum Co., 152 N.E.2d 7 (Ohio Ct. App. 1957).