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Trusts

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spective state statutes.¹² An earlier attack on state fair trade legislation based on a denial of due process and equal protection of the law under the Federal Constitution had been unsuccessful before the Supreme Court of the United States.¹³

The year 1955 also saw the first reported decision in which enforcement of the Ohio Fair Trade Act was challenged on constitutional grounds.¹⁴ The defendant admittedly, knowingly and wilfully sold "prestone" below the "fair trade" price. Defendant was a nonsigner but had notice of the existence of the producer's contracts with retailers fixing a schedule of minimum prices for this commodity. The court found that the plaintiff had diligently enforced its agreements with resellers in Ohio. It rejected as immaterial evidence that the defendants could sell the commodity below the "fair trade" price at a profit, and also that some retailers gave trading stamps on automotive products including prestone. The court granted a permanent injunction against defendants' selling below the plaintiff's stipulated minimum prices, declaring that the Ohio Fair Trade Act is constitutional in the light of the majority decisions from other jurisdictions.

MAURICE S. CULP

TRUSTS

Allocation of Stock Dividends As Between Capital and Income

The trust agreement in *Hopkins v. Cleveland Trust Co.*¹ provided that the trustee and cotrustee were to determine whether money or property coming into the trust was to be treated as principal or income. The trustee and cotrustee could not agree whether stock dividends on stock held in trust were to be allocated to principal or income. *Held*, until such time as the trustee and cotrustee are able to agree on a different allocation, stock dividends should be allocated to the principal of the trust and not to income.

¹² 1 CCH Trade Reg. Rep. ¶ 4456-4474 (1955); Note, *Fair Trade Acts — Non-signer provisions — Constitutionality*, 39 MINN. L. REV. 804 (1955).

¹³ *Old Dearborn Distributing Co. v. Seagram-Distillers Corp.*, 299 U.S. 183 (1936), upholding the validity of the then recently enacted Illinois Fair Trade Act: ILL. STATE BAR STAT., 1935, ch. 140 § 8 ff.

¹⁴ *Union Carbide and Carbon Corp. v. Bargain Fair, Inc.*, 130 N.E.2d 255 (Ohio Com. Pl. 1955).