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Sales--Warranties Under the Uniform Commercial Code

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being protection from a void injunction issued without jurisdiction, and the State's interest being preventing any of its courts from acting without jurisdiction. Thus the State may properly institute and maintain a prohibition proceeding to protect the rights of an unincorporated association such as *P. State ex rel. Glass Bottle Blowers Ass'n of the United States & Canada v. Silver*, 155 S.E.2d 564 (W. Va. 1967).

In West Virginia the only unincorporated associations presently subject to suit under a common name are a cooperative agricultural marketing or credit association, W. VA. CODE ch. 19, art. 4, § 4 (Michie 1966), and a common carrier, W. VA. CODE ch. 56, art. 3, § 15 (Michie 1966). All other unincorporated associations fall within the common law rule, that since they have no legal entity distinct from that of their members they may not sue or be sued in the organization's own name.

Sales—Warranties Under the Uniform Commercial Code

D, for the purpose of making coke, bought coal from one of two piles exhibited near the mouth of *P*'s newly opened mine. *P* had shown *D* a sample with a low percentage of ash, suited for coke-making, taken from another part of the mine. At *D*'s request *P* had the coal cleaned and shipped. After the delivery *D* told *P* to stop loading coal until an analysis could be made to determine ash content, but after looking at the same coal pile, allowed three more truckloads to be delivered. An analysis of the coal later showed that the ash content was too high for coke making, and *D* refused to pay for the coal. In an action to recover the value, the jury returned a verdict for *P*, and judgment was entered thereon. *Held*, affirmed. There was no express or implied warranty of merchantability, an issue properly determined by the jury. *D*'s inspection of the coal before delivery excluded any warranties under W. VA. CODE ch. 46, art. 2, § 316 (Michie 1966). *Sylvia Coal Co. v. Mercury Coal and Coke Co.*, 156 S.E.2d 1 (W. Va. 1967).

As the court points out in its opinion, this is one of the first cases in West Virginia involving provisions of the Uniform Commercial Code as embodied in W. VA. CODE ch. 46 (Michie 1966). In this same area of warranties under the Uniform Commercial Code, see *Shreve v. Casto Trailer Sales, Inc.*, 150 W. Va. 669, 149 S.E.2d 238 (1966).

The decision in the principal case rested on two fact determinations made by the jury: that even though *P* exhibited the sample, he *did not represent* it as coming from the coal piles near the mine, and that *D* *relied on his own examination* of the coal rather than on any statements or representations made by *P* who had no experience in the sale of coal for any purpose. With these facts determined, the Uniform Commercial Code, W. VA. CODE ch. 46, art. 2, § 316 (Michie 1966), clearly excludes any possibility of express or implied warranties.

Tort Liability—Turnpike Commission

P's decedents were killed in an accident involving two vehicles on a state turnpike. Conflicting evidence was introduced at the trial concerning the icy condition of the highway at the time of the accident. On appeal, the issue arose as to the turnpike's liability for failure to keep the highway free of ice and snow. *Held*, W. VA. CODE ch. 17, art. 10, § 17 (Michie 1966), and W. VA. CODE ch. 17, art. 10, § 18 (Michie 1966) changed the common law and created a basis of liability which did not exist at common law. Section 18 reads in part, "Any person injured by reason of a turnpike, road or bridge . . . being out of repair may recover all damages . . ." from those responsible for its maintenance. While the liability of municipal corporations and turnpike commissions under the statutes is absolute, that does not refer to the cause of action. The cause of action itself must be established within the terms of the statutes. The general rule as to municipal corporations and turnpikes is that normal amounts of ice and snow do not constitute a defect and do not render the road out of repair. Although ice and snow may render a street out of repair, there must be an accumulation amounting to an obstruction before it can be within the purview of the statute creating a cause of action. *Christo v. Dotson*, 155 S.E.2d 571 (W. Va. 1967).

This case supports the well-established principle that reasonable care does not require a municipality or other public authority to free its streets and sidewalks from ice and snow which have naturally accumulated. Generally, liability is rarely imposed and then ordinarily upon the theory that the ice and snow has created dangerous formations or obstacles and notice of their existence