

SURROGATE'S COURT : COUNTY OF NEW YORK.
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In the Matter of the Appraisal under the
Estate Tax Law of the Estate of

JESSICA M. HILL,

AFFIDAVIT OF EXECUTOR
IN SUPPORT OF SCHED-
ULES.

Deceased.

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STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:-

SAMUEL MANN, being duly sworn, deposes and says, that he is the Executor of the Last Will and Testament of JESSICA M. HILL, the above-named decedent, and that as such Executor he is familiar with all matters relating to the estate of said decedent.

Reference is hereby made to the omission from the gross estate of said decedent of any value of the name "PATTY SMITH HILL", which was the subject matter of an action instituted during the lifetime of the above-named decedent in the New York County Supreme Court against CREATIVE PLAYTHINGS, INC. as defendant for an injunction. The circumstances leading up to the commencement of said action are as follows:

About forty years ago decedent's sister, PATTY SMITH HILL, who was then teaching at Teachers College, Columbia University, New York, developed a type of play block for use in kindergartens and primary grade schools. The blocks were never patented, and to best of deponent's knowledge no patent was ever applied for. From 1916 until about 1937 the blocks were manufactured and sold by a Philadelphia manufacturer under the name of "PATTY HILL" floor blocks, and when that concern failed a successor manufacturer continued their manufacture and sale from 1940 until 1947, on a royalty basis, under the name of the "PATTY SMITH HILL" improved floor blocks. They have not been manufactured since then.

In June, 1950, and during the lifetime of this decedent, (her sister having predeceased her in May, 1946), a New York corporation, CREATIVE PLAYTHINGS, INC., was discovered using the name "PATTY HILL" or "PATTY SMITH HILL" in conjunction with the manufacture and sale of floor blocks substantially similar to those developed by decedent's sister. The manufacturer having refused to enter into a contract for the use of said name or to discontinue the use thereof in conjunction with sale of the blocks, an action was instituted for a permanent injunction and an accounting. The case proceeded to trial, and during the course thereof the defendant consented to the entry of a decree enjoining it from using said name perpetually. No accounting was had because of the expense involved and the doubt as to the amount recoverable. The defendant however was not enjoined from continuing to manufacture the blocks because they had not been patented, and an unpatented article may be copied in all details without penalty or restraint provided it is not palmed off as the product of another.

At the time of decedent's death on July 25th, 1951, there were no outstanding contracts with any person, firm or corporation for the manufacture and sale of the floor blocks in conjunction with the names "PATTY HILL" or "PATTY SMITH HILL." Deponent is presently negotiating or attempting to negotiate a contract for such manufacture and use of name, but such negotiations are not yet concluded and may not result in a contract because of the unwillingness of the prospective manufacturer to agree to deponent's terms. It is impossible to state what royalties would be received if a contract were concluded because (1) of the competition created by other manufacturers of similar blocks, (2) of the unavailability of funds to kindergartens and schools for the purchase of such items, and (3) the loss of interest by teachers in this type of pedagogical device. There is in other words no particular demand for the blocks.

Following her sister's death in May, 1946, the decedent herein received no royalties from the manufacturer after 1947 down to the date of her death, a period of approximately four years. It is because of deponent's inability to segregate the name from the manufactured article, without which it has no value, that no return of the value of the name was made.

Sworn to before me this
13th day of May, 1953.

Rosemarie Spera

Samuel Mann

SAMUEL MANN.

ROSEMARIE SPERA
Notary Public, State of New York
No. 24-3781875
Qualified in Kings County
Cert. filed with N.Y. County Clerk and
N.Y. and Kings City Register
Commission Expires March 30, 1958