

# BURNSIDE'S NIECE LOSES LIBEL SUIT

**No Law to Bar Use of General's  
Picture in Advertising,  
Says Court.**

## NOT A QUESTION OF ETHICS

**Civil War Commander Would Not  
Have Objected to Portrait, Law-  
yer for Defense Contended.**

Supreme Court Justice Erlanger decided yesterday that under the present civil law relating to libel the use by Colgate & Co. of the picture and name of General Ambrose E. Burnside, Civil War commander, in advertising the sale of shaving cream, cannot be restrained in the suit brought by the General's only surviving relative, his niece, Miss Ella C. Patterson of Milwaukee. Miss Patterson sued for an injunction and \$150,000 damages because of the use of her distinguished relative's picture and name.

In his decision Justice Erlanger said: "Until the Legislature shall declare that the publication of the picture of a dead person without the consent of the heirs or next of kin is illegal, no action can be maintained, either on the theory of libel or violation of the right of privacy."

Justice Erlanger referred to Section 1,340 of the penal code which provides that "a malicious publication by writing, printing, pictures, effigy, sign or otherwise than by mere speech, which exposes any living person or the memory of a person deceased to hatred, contempt, ridicule or obloquy, or which causes or tends to cause any person to be shunned or avoided, or which has a tendency to injure any person, corporation, or association of persons in his or their business, or occupation, is a libel." Justice Erlanger continued:

"Assuming that the publication in question is punishable as libelous under the act, it does not follow that a civil action for libel is maintainable thereunder or at common law. With the ethics of the publication in question the Court does not concern itself. The article is humorous, but as to its taste it is questionable."

Alan Fox, attorney for Colgate & Co., in addition to his previous argument when the case was heard, submitted a brief citing the naming of a cigarette for Lord Chesterfield and a cigar for Robert Burns. He said that "English royalty brought no action because the name of Queen Victoria's consort was bestowed on a frock coat." He said it was no disrespect to Washington to name a brand of coffee for him, or to Lincoln to give his name to an automobile. Mr. Fox added:

"We think that General Burnside himself, if he was as great as we think he was, would only have smiled at the use of his name in connection with shaving cream. No apology even is necessary for the use of General Burnside's portrait. It is a handsome portrait, showing the distinguished General with a hand thrust between two buttons of his uniform in the Napoleonic manner. Nothing was done to bring out his whiskers with undue prominence or detract in any manner from his dignity."

### Student Dies in Subway Station.

John Shanley, 18 years old, of 387 Sumpter Street, Brooklyn, died of heart disease while seated on a bench in the Myrtle Avenue station of the B. M. T. last night. He had an open Latin grammar on his lap and an algebra beside him.

Shanley, who was a clerk employed by the Manhattan Life Insurance Company, 66 Broadway, Manhattan, was taking a course at evening high school preparing to enter St. John's Academy to study for the priesthood.