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Equity--Property Right in an Idea (Belt v. Hamilton National Bank, 108 F. Supp. 689 (D.D.C. 1952))

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strument of justice, the instant decision's extension of the theory of derivative actions, so as to include this *direct* type of action, is both reprehensible and inequitable.

EQUITY—PROPERTY RIGHT IN AN IDEA.—Plaintiff's idea for a radio program using talented school children was disclosed to defendant with the expectation of compensation should the idea be used. A program adopting plaintiff's idea was broadcast for over a year and sponsored by defendant. Plaintiff seeks to recover damages for the use of his idea. The court decided in plaintiff's favor, and *held* that a protectible property right exists in an idea which is original, novel, and reduced to concrete form, where it has been disclosed under circumstances indicating that compensation is expected for its use. *Belt v. Hamilton National Bank,* 108 F. Supp. 689 (D. D. C. 1952).

The flexible nature of the common law, and its ability to adjust itself to the changing needs of society,[1] is evidenced by the gradual weakening of its original reluctance to recognize a property right in intangible property.[2] The judicial viewpoint has undergone a metamorphosis since the days of the *Impeachment of Lord Chief Justice Scroggs*[3] for enjoining an admittedly libellous publication because it injured an *intangible* right. The once unheard of right of privacy is now recognized by statute.[4] Other intangible property rights not covered by statute are also protected. Trade names and business reputations are protected on the theory of unfair competition and dilution.[5] It has been held that a person has a property right in personal letters,[6] and in the protection of his good name.[7] Trade

[1] *See* Liggett & Meyer Tobacco Co. v. Meyer, 101 Ind. App. 420, 194 N. E. 206, 210 (1935).

[2] See Roberson v. Rochester Folding Box Co., 171 N. Y. 538, 64 N. E. 442 (1902) (refusal to enjoin the printing of plaintiff's picture); Hodecker v. Strickler, 39 N. Y. Supp. 515 (Sup. Ct. 1896) (refusal to enjoin unauthorized use of plaintiff's name); Brandreth v. Lance, 8 Paige 24 (N. Y. 1839) (libellous publication did not injure tangible property right); Prudential Assur. Co. v. Knott, L. R. 10 Ch. App. 142 (1875) (refusal to enjoin a libellous publication).

[3] 8 How. St. Tr. 197 (1680).

[4] N. Y. CIV. RIGHTS LAW §§ 50, 51.

[5] See Stork Restaurant, Inc. v. Sahati, 166 F. 2d 348 (9th Cir. 1946); Tiffany & Co. v. Tiffany Productions, Inc., 147 Misc. 679, 264 N. Y. Supp. 459 (Sup. Ct.), *aff'd,* 237 App. Div. 801, 260 N. Y. Supp. 821 (1st Dep't 1932), *aff'd mem.,* 262 N. Y. 482, 188 N. E. 30 (1933).

[6] Baker v. Libbie, 210 Mass. 599, 97 N. E. 109 (1912) (plaintiff may restrain the publication of personal letters); Gee v. Pritchard, 2 Swans. 402, 36 Eng. Rep. 670 (1818).

[7] Niver v. Niver, 200 Misc. 993, 111 N. Y. S. 2d 889 (Sup. Ct. 1951), 27 ST. JOHN'S L. REV. 144 (1952).

secrets are likewise recognized and accorded protection.[8]

Although there exists a common-law copyright for literary property prior to its publication,[9] it is nevertheless true that there is no property right in a mere abstract idea.[10] Those ideas which are protected are described as "protectible interests," [11] and must meet certain prerequisites. The idea must be reduced to tangible form,[12] for it is the manner in which it is expressed rather than the idea itself which is protected. It must be original, new, and novel.[13] However, old ideas, transformed and expressed in a new manner, combination or sequence through the creative genius and labor of the author,[14] or incidents copied from the public domain,[15] may successfully meet the test of novelty. The question of the originality of an idea is one for the jury,[16] and the test of infringement is the impression received by the average reasonable man upon reading the two works.[17] Lastly, the unpublished idea must be protected by a contract express or implied; [18] or, in the absence of contract, there must exist a confiden-

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[8] See Becher v. Contoure Laboratories, Inc., 279 U. S. 388 (1929); Feasel v. Noxall Polish Mfg. Co., 268 Fed. 887 (E. D. Pa. 1920); *see* Aktiebolaget Bofors v. United States, 93 F. Supp. 131, 133 (D. D. C. 1950) (action in tort), *aff'd*, 194 F. 2d 145 (D. C. Cir. 1951).

[9] *See* Stanley v. Columbia Broadcasting System, Inc., 35 Cal. 2d 653, 221 P. 2d 73, 77 (1950); see 35 STAT. 1076 (1909), 17 U. S. C. § 2 (1946) (Copyright Act does not deny author of unpublished work the right to obtain damages for its use); Warner, *Protection of the Content of Radio and Television Programs by Common Law Copyright*, 3 VAND. L. REV. 209 (1950); Comment, 24 So. CALIF. L. REV. 65 (1950); Note, 104 A. L. R. 1357 (1936).

[10] O'Brien v. RKO Radio Pictures, Inc., 68 F. Supp. 13 (S. D. N. Y. 1946) (alternative holding); *see* Bowen v. Yankee Network, Inc., 46 F. Supp. 62, 63 (D. Mass. 1942); How J. Ryan & Associates, Inc. v. Century Brewing Ass'n, 185 Wash. 600, 55 P. 2d 1053, 1054 (1936); see Note, 23 A. L. R. 2d 244, 249 (1952).

[11] *See* Golding v. R.K.O. Pictures, Inc., 208 P. 2d 1, 3 (1949), *aff'd*, 35 Cal. 2d 690, 221 P. 2d 95 (1950).

[12] O'Brien v. RKO Radio Pictures, Inc., *supra* note 10; Liggett & Meyer Tobacco Co. v. Meyer, 101 Ind. App. 420, 194 N. E. 206 (1935); Stone v. Liggett & Myers Tobacco Co., 260 App. Div. 450, 23 N. Y. S. 2d 210 (1st Dep't 1940).

[13] Lueddecke v. Chevrolet Motor Co., 70 F. 2d 345 (8th Cir. 1934); Masline v. N. Y., N. H. & H. R. R., 95 Conn. 702, 112 Atl. 639 (1921); Larkin v. Pennsylvania R. R., 125 Misc. 238, 210 N. Y. Supp. 374 (Sup. Ct. 1925), *aff'd*, 216 App. Div. 832, 215 N. Y. Supp. 875 (1st Dep't 1926), *aff'd mem.*, 245 N. Y. 578, 157 N. E. 864 (1927).

[14] *See* Stanley v. Columbia Broadcasting System, Inc., 35 Cal. 2d 653, 221 P. 2d 73, 79 (1950); Golding v. R.K.O. Pictures, Inc., *supra* note 11, 208 P. 2d at 3; see Note, 23 A. L. R. 2d 244, 249 (1952).

[15] See Stanley v. Columbia Broadcasting System, Inc., *supra* note 14, 221 P. 2d at 83 (concurring opinion); Note, 38 CALIF. L. REV. 332, 338 (1950).

[16] *See* Stanley v. Columbia Broadcasting System, Inc., *supra* note 14, 221 P. 2d at 80.

[17] *Id.*, 221 P. 2d at 78.

[18] Bowen v. Yankee Network, Inc., 46 F. Supp. 62 (D. Mass. 1942); Haskins v. Ryan, 75 N. J. Eq. 330, 78 Atl. 566 (1908); Bristol v. Equitable Life Assur. Soc'y, 132 N. Y. 264, 30 N. E. 506 (1892).

tial relationship.[19] Judicial protection has been denied on the ground that a voluntary disclosure of the idea causes it to become common property.[20] This does not mean that there may not be a limited disclosure [21] so as to apprise the purchaser of what is being offered to him. "If it were held otherwise the mere offer to sell would destroy the thing offered." [22]

The present case is decided in a manner which the court thinks more in accord with modern legal developments and substantial justice. A novel idea, tangible in form and disclosed under express or implied contract, is a legally protected property right.

It is submitted on the one hand, that a truly ingenious idea, so difficult to create, warrants a higher claim to be treated as property than mere physical possessions. Failure to protect these ideas would result in a removal of the profit motive, which is their impetus, and consequently the free flow of progressive ideas to the general public would be retarded. On the other hand, the apparent willingness of the courts to protect these ideas and their tremendous commercial value, especially in the field of radio, television and motion pictures, has brought an avalanche of claimants asserting that they are originators of ideas which have been unscrupulously appropriated. Thus the likelihood of nuisance suits is evident. Any attempt to resolve this apparent conflict must undertake to reconcile the need for adequate legal protection to men of ability with the necessity for discouraging arbitrary and vexatious suits based on unfounded claims to originality.

INSURANCE—PURCHASER'S RIGHTS TO PROCEEDS OF VENDOR'S POLICY.—Plaintiff-purchaser brought an action for specific performance of a contract for sale of real property and to recover a portion

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[19] *See* Shubert v. Columbia Pictures Corp., 189 Misc. 734, 741, 72 N. Y. S. 2d 851, 857 (Sup. Ct. 1947), *aff'd mem.*, 274 App. Div. 751, 80 N. Y. S. 2d 724 (1st Dep't 1948); see Note, 23 A. L. R. 2d 244, 254 (1952).

[20] *See* Moore v. Ford Motor Co., 43 F. 2d 685, 686 (2d Cir. 1930); Bowen v. Yankee Network, Inc., *supra* note 18, at 63; Bristol v. Equitable Life Assur. Soc'y, *supra* note 18, at 267, 30 N. E. at 507 (1892).

[21] *See* Stanley v. Columbia Broadcasting System, Inc., 35 Cal. 2d 653, 221 P. 2d 73, 80 (1950) (recording audition for a radio program does not make the idea public property); How J. Ryan & Associates, Inc. v. Century Brewing Ass'n, 185 Wash. 600, 55 P. 2d 1053, 1054 (1936). For further examples of limited disclosures, see Warner, *Protection of the Content of Radio and Television Programs by Common Law Copyright*, 3 VAND. L. REV. 209, 229 (1950).

[22] How J. Ryan & Associates, Inc. v. Century Brewing Ass'n, *supra* note 21, 55 P. 2d at 1054.