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Property in Ideas--Original and Concrete--Contract, Express or Implied (Schonwald v. Burkart Manufacturing Co., 202 S.W.2d 7 (Mo. 1947))

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broadcast of a defamatory remark would seem to be as potentially harmful as a mere publication contained in a writing, or as not less in capacity for damage than the classifications of slander for which no special damage need be proved. Logic and policy, as enunciated by Mr. Justice Fuld, point to the conclusion that defamation by radio should be actionable *per se*, eliminating the difficult problem which confronts courts where the defamation is the result of a broadcast.²⁹

A. J. S.

PROPERTY IN IDEAS—ORIGINAL AND CONCRETE—CONTRACT, EXPRESS OR IMPLIED.—This is an action for damages based upon a breach of a contract by which plaintiff agreed to disclose his process for manufacturing laminated canvas soles, and to instruct defendant in the use of said process. Defendant agreed to pay plaintiff 10% of the selling price realized from the sales of such soles. Thereafter the process was adopted and used by defendant in manufacturing that type of sole, but the defendant nevertheless has neglected and refused to remunerate plaintiff at the stipulated rate, prompting him to institute this action. The defense interposed, *inter alia*, is that plaintiff is not entitled to recover because the process was not new or novel; and that no one can have a proprietary interest in ideas well known to others. *Held*, judgment for plaintiff affirmed. The recovery is justified on the theory that plaintiff did have a property right in the formula which he disclosed to defendant as the subject matter of their agreement. *Schonwald v. Burkart Manufacturing Co.*, — Mo. —, 202 S. W. 2d 7 (1947).

The court reasoned that, just as ownership of wild animals depends entirely upon keeping them in captivity, so too does ownership of ideas ordinarily depend on non-disclosure. And as the ownership of a beast terminates with its escape,¹ in like manner ownership of an idea ends by disclosure. However, when ideas are embodied in a concrete plan for accomplishing a desired result, the one who conceived the plan has a right to contract with reference to its disclosure, even though he did not originate it in the sense that no one else ever had similar ideas. This case does not turn on an unauthorized use of an asserted property right in a disclosed idea, but rather on a promise to pay for its authorized use.

As a general proposition, in the absence of an express agreement, the originator or proprietor of an abstract idea which cannot be sold, appropriated or used without disclosure, cannot hold liable one who

²⁹ SEELMAN, THE LAW OF LIBEL AND SLANDER IN THE STATE OF NEW YORK 3 (1933).

¹ Fleet v. Hegeman, 14 Wend. 42, 43 (N. Y. 1835).

utilizes the idea for his own benefit.² In particular, recovery cannot be had if the idea is neither original or new, nor where it has not been reduced to concrete form before being divulged to another.³

The decision in the instant case exemplifies the trend of thought away from the traditional concept that there could be no proprietary interest in an idea as such. Typical of that traditional view was an early New York case,⁴ in which the plaintiff had imparted to defendant's president his idea for a new method of soliciting life insurance, which he claimed was subsequently adopted. The dismissal of his complaint was affirmed on appeal. The court stated that it was difficult to conceive how a claim to a mere idea or scheme, unconnected with physical devices to carry it out, could be made the subject matter of property. ". . . as long as the originator of the idea . . . keeps it to himself, it is his exclusive property, but it ceases to be his own when it passes from him."⁵

Apparently, that is the view which still prevails in most jurisdictions,⁶ where the courts have uniformly refused to protect ideas in the abstract, owing to the difficulties of enforcing such rights. On the other hand, plaintiff's recovery in the instant case indicates that the difficulties certainly are not insurmountable. As a matter of fact, the judiciary of New York has been granting relief in similar cases; at least when the plaintiff can show that his idea was not only original and novel, but also was reduced to concrete form and submitted to the defendant under circumstances indicating that compensation was expected if the idea were used. When these prerequisites exist, recovery may be obtained upon the theory of a contract implied in fact or in law. Thus, in a recent case,⁷ the plaintiff recovered the fair and reasonable value of advice, suggestions and ideas which were furnished defendant in connection with the manufacture and marketing of compressed candy tablets. Substantial damages were thereby recovered, notwithstanding plaintiff's failure to allege an express contract between the parties for compensation to plaintiff in the event such advice, suggestions and ideas were used. And in

² *Haskins v. Ryan*, 71 N. J. Eq. 575, 64 Atl. 436 (1906).

³ *Stone v. Liggett & Myers Tobacco Co.*, 260 App. Div. 450, 23 N. Y. S. 2d 210 (1st Dep't 1940); *Alberts v. Remington Rand, Inc.*, 175 Misc. 486, 23 N. Y. S. 2d 892 (Sup. Ct. 1940).

⁴ *Bristol v. Equitable Life Assurance Soc.*, 52 Hun 161, 5 N. Y. Supp. 131 (N. Y. 1889), *aff'd mem.*, 132 N. Y. 264, 30 N. E. 506 (1892).

⁵ *Bristol v. Equitable Life Assurance Soc.*, 52 Hun 161, 165, 5 N. Y. Supp. 131, 132 (N. Y. 1889), *aff'd mem.*, 132 N. Y. 264, 30 N. E. 506 (1892); *see also Grombach Productions, Inc. v. Waring*, 293 N. Y. 609, 59 N. E. 2d 425 (1944); *Williamson v. New York Central R. R.*, 258 App. Div. 226, 16 N. Y. S. 2d 217 (1939); *but cf. Matarese v. Moore-McCormack Lines*, 158 F. 2d 631 (C. C. A. 2d 1946).

⁶ *Lueddecke v. Chevrolet Motor Co.*, 70 F. 2d 345 (C. C. A. 1934); *Thomas v. R. J. Reynolds Tobacco Co.*, 350 Pa. 262, 38 A. 2d 61 (1944); *Stein v. Morris*, 120 Va. 390, 91 S. E. 177 (1917).

⁷ *American Mint Corp. v. Ex-Lax, Inc.*, 263 App. Div. 89, 31 N. Y. S. 2d 708 (1st Dep't 1941).

Cole v. Phillips Lord, Inc.,⁸ the appellate court reversed a dismissal of the complaint in which plaintiff sought to recover damages occasioned by defendant's exploitation of ideas which the plaintiff had evolved into a formula for a radio program. Plaintiff alleged that he had intrusted the formula to defendant for sale, but the latter had misappropriated it under the name, "Mr. District Attorney." These allegations were held sufficient to constitute a prima facie contract, under which the formula had been imparted to defendant. Such a contract would afford protection to plaintiff, even as to his mere ideas. And likewise in *Healey v. R. H. Macy & Co.*,⁹ the plaintiff was allowed to recover the reasonable value of slogans and ideas with which he had furnished defendant for use in its Christmas advertising campaign.

These decisions represent a long stride forward, in that they provide a remedy to "idea men" who were obliged to go without redress while others exploited with impunity their lucrative ideas. Through decisions of this kind, the courts are manifesting a flexibility of judicial thought designed to meet the ever-changing needs of society.

J. F. K.

SEARCH AND SEIZURE—CONVICTION BASED ON EVIDENCE OBTAINED IN SEARCH INCIDENT TO ARREST ON UNRELATED CHARGE.—Subsequent to petitioner's arrest on a charge of violation of the Mail Fraud Statute¹ and the National Stolen Property Act² five federal officers embarked on an extensive search of the apartment wherein petitioner was arrested. After five hours searching for evidence connected with the crime charged, one of the officers found in a bureau drawer under some clothes an envelope marked: "George Harris, personal papers." In this envelope were found notice of classification cards and registration certificates the possession of which was in violation of the Selective Service Act³ and the Federal Criminal Code.⁴ Petitioner was convicted of violating both regulations. The circuit court affirmed the conviction and certiorari was granted. *Held*, conviction affirmed. *Harris v. United States*, — U. S. —, 91 L. ed. 1013 (1947).

Petitioner bases his appeal on two grounds: First, the search which produced the classification cards and registration certificates

⁸ 262 App. Div. 116, 28 N. Y. S. 2d 404 (1st Dep't 1941).

⁹ 251 App. Div. 440, 297 N. Y. Supp. 165 (1937), *aff'd mem.*, 277 N. Y. 681, 14 N. E. 2d 388 (1937); *cf.* *How J. Ryan & Associates v. Century Brewing Ass'n*, 185 Wash. 600, 55 P. 2d 1053 (1936).

¹ 35 STAT. 1130 (1909), 18 U. S. C. § 338 (1940).

² 53 STAT. 1178 (1939), 18 U. S. C. §§ 413-419 (1940).

³ 54 STAT. 885, 894, 895 (1940), 50 U. S. C. § 311 (1940).

⁴ 35 STAT. 1098 (1909), 18 U. S. C. § 101 (1940).