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Unfair Competition—Reconditioning Used Goods—Permissible Limits of Resale of Patented or Trademarked Articles

sales contracts. The courts have been unwilling to accord similar protection to persons taking mortgages on automobiles to secure loans to dealers.[5] The reason for this refusal is that mortgagees are not considered to be in the same position as purchasers.[6] A purchaser of chattels from a dealer cannot be expected to verify the title of the dealer; such a requirement would be a serious hindrance to trade.[7] On the other hand, mortgagees ordinarily are bankers or companies with superior facilities for the investigation of automobile titles.[8] It would seem that the objections voiced against extension of the principle of protection to mortgagees would apply with equal force to assignees of conditional sales contracts.[9] The principle itself, being an exception to the more general common law rule that mere possession delivered to another will not be sufficient grounds for an estoppel, should be strictly construed.[10] It is submitted that the assignee of a simple conditional sales contract should get no greater right than his assignor had.[11] In the instant case however there was an additional consideration. The assignment involved a negotiable instrument. The policy favoring circulability of negotiable instruments therefore may justify the extension of the estoppel principle in this case. W. J. H.

UNFAIR COMPETITION—RECONDITIONING USED GOODS—PERMISSIBLE LIMITS OF RESALE OF PATENTED OR TRADEMARKED ARTICLES—[Federal].—Defendant cleaned, readjusted, and sold used spark plugs as "reconditioned" under their original name and trade-mark. The manufacturer of the original spark plugs asked that this action of the defendant be enjoined. *Held*, preliminary injunction granted. While defendant had a right to repair and sell, he could not market the product as "reconditioned" and as that of plaintiff.[1]

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5. People's Loan & Investment Co. v. Universal Credit Co. (C. C. A. 8, 1935) 75 F. (2d) 545; Singletary v. General Motors Acceptance Corp. (C. C. A. 5, 1934) 73 F. (2d) 543; National Guaranty & Finance Co. v. Pfaff Motor Co. (1931) 124 Ohio St. 34, 176 N. E. 678.

6. Rasmussen v. Lee & Co., Inc. (1937) 104 Mont. 278, 66 P. (2d) 119; National Guaranty & Finance Co. v. Pfaff Motor Co. (1931) 124 Ohio St. 34, 176 N. E. 678. Contra, Bauer v. Commercial Credit Co. (1931) 163 Wash. 210, 300 Pac. 1049.

7. Boice v. Finance & Guaranty Corp. (1920) 127 Va. 563, 102 S. E. 591, 10 A. L. R. 654; Comment (1929) 42 Harv. L. Rev. 574.

8. Pacific Finance Corp. v. Hendley (1932) 119 Cal. App. 679, 7 P. (2d) 391; Globe Securities Co. v. Gardner Motor Co. (1935) 337 Mo. 177, 85 S. W. (2d) 561; Boice v. Finance & Guaranty Corp. (1920) 127 Va. 563, 102 S. E. 591, 10 A. L. R. 654; Comment (1931) 45 Harv. L. Rev. 375; Note (1932) 87 A. L. R. 302.

9. Forgan v. Gordon Motor Finance Co. (1932) 350 Ill. 445, 183 N. E. 462; Sunbury Finance Co. v. Boyd Motor Co. (1935) 119 Pa. Super. 412, 180 Atl. 103.

10. Pacific Finance Corp. v. Hendley (1932) 119 Cal. App. 679, 7 P. (2d) 391; Forgan v. Gordon Motor Finance Co. (1932) 350 Ill. 445, 183 N. E. 462.

11. C. I. T. Corp. v. American National Bank (1930) 256 Ill. App. 38; Perkins v. Lippincott Co. (1918) 260 Pa. 473, 103 Atl. 877.

1. Champion Spark Plug Co. v. Reich (D. C. W. D. Mo. 1938) 24 F. Supp. 945.

The instant case raises the question of the restrictions on the right to sell used goods. Important limitations are imposed by the law of patents and by the law of unfair competition.

One acquiring ownership of a patented article has the right to repair and sell it.[2] But the owner is not permitted to reconstruct.[4] The line of demarcation cannot be determined by any set rule; each case must be decided upon its facts in the light of the purpose and scope of the invention and the intent of the parties.[5] Replacing lost and injured parts is generally regarded as repair and not reconstruction.[6] The right to repair and resell is not confined to the immediate purchaser from the holder of the patent.[7]

The seller of a used article, patented or unpatented, must not engage in unfair competition. In connection with used goods, two basic types of practices are prohibited. First, there must be no misrepresentation of the nature of the goods. Repaired articles are not to be sold as rebuilt. This practice has been attempted where tires were repaired, repainted, and sold as rebuilt,[8] where watches were overhauled and sold as rebuilt,[9] and, in the instant case, where spark plugs were cleaned, adjusted, and sold as reconditioned.[10] Nor may used goods be sold as new. This practice has been condemned in connection with the resale of men's felt hats,[11] rope,[12] typewriters,[13] files,[14] adding machines,[15] telephones,[16] and tires.[17] Affirmative

2. Thus the sale of a patented "second-hand" safe on which the locking device has been repaired is permissible. Ely Norris Safe Co. v. Mosler Safe Co. (C. C. A. 2, 1933) 62 F. (2d) 524. See also Champion Spark Plug Co. v. Emener (D. C. E. D. Mich. 1936) 16 F. Supp. 816; Goodyear Shoe Machinery Co. v. Jackson (C. C. A. 1, 1901) 112 Fed. 146, 149, 55 L. R. A. 692. The right to repair does not extend to a case where the part to be replaced has been separately patented unless it is quickly perishable. National Malleable Casting Co. v. American Steel Foundries (C. C. D. N. J. 1910) 182 Fed. 626, 640; Bassick Mfg. Co. v. Ready Auto Supply Co. (D. C. E. D. N. Y. 1927) 22 F. (2d) 331, 340.

4. Miller Hatcheries v. Buckeye Incubator Co. (C. C. A. 8, 1930) 41 F. (2d) 619; Goodyear Shoe Machinery Co. v. Jackson (C. C. A. 1, 1901) 112 Fed. 146, 150, 55 L. R. A. 692. Riveting together ends of metallic cotton-bale ties "licensed to use only once" is reconstruction. Cotton Tie Co. v. Simmons (1882) 106 U. S. 89.

5. Goodyear Shoe Machinery Co. v. Jackson (C. C. A. 1, 1901) 112 Fed. 146, 55 L. R. A. 692.

6. Foglesong Mach. Co. v. Randall Co. (C. C. A. 6, 1917) 239 Fed. 893, where a new hopper and stuffing-rod nose were put on a horse-collar stuffing machine.

7. Champion Spark Plug Co. v. Emener (D. C. E. D. Mich. 1936) 16 F. Supp. 816; Goodyear Shoe Machinery Co. v. Jackson (C. C. A. 1, 1901) 112 Fed. 146, 55 L. R. A. 692.

8. In re Douglas P. Borden (1935) 21 Fed. Trade Comm. Rep. 168.

9. Stipulation No. 633 (1930) 13 Fed. Trade Comm. Rep. 512.

10. Champion Spark Plug Co. v. Reich (D. C. W. D. Mo. 1938) 24 F. Supp. 945.

11. Federal Trade Comm. v. Gilman Hat Co. (1933) 17 Fed. Trade Comm. Rep. 352; In re Grand Hat Co. (1933) 17 Fed. Trade Comm. 399.

12. Federal Trade Comm. v. Federal Rope Co. (1922) 5 Fed. Trade Comm. Rep. 120.

13. Federal Trade Comm. v. Typewriter Emporium (1918) 1 Fed. Trade Comm. Rep. 105.

misrepresentation is not necessary to render the dealing objectionable. Failure to indicate clearly the true nature of the article is sufficient.[18] Secondly, trade-mark infringement must be avoided. The purchaser must not be led to believe that he is dealing with the product or the agent of the company indicated by the trade-mark.[19] Otherwise business might be diverted from the holder of the trade-mark.[20] Moreover, the reputation of the product might be harmed, because a used article, even if repaired, may well have "lost much of its original character and excellence."[21] Trade-marks should be removed or obliterated if possible.[22] If, for the express purpose of preventing remaking and resale without infringement, a manufacturer places the trade-mark in such a position as to make its removal impossible, the courts seem inclined to bar him from equitable relief.[23] J. M. F.

WILLS—NET INCOME ARISING DURING ADMINISTRATION—RIGHTS OF LIFE TENANTS AND REMAINDERMEN—[District of Columbia].—Testator, after providing for payment of debts, specific devises, and legacies, devised and bequeathed to defendant all the residue of his estate, in trust, to divide into equal shares and to pay the net income therefrom to named beneficiaries, with remainder over. *Held*, that $23,000, which accrued on certain securities later sold to pay the debts, legacies, and costs, was to be added to the residuary fund as part of its corpus.[1]

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14. Stipulation No. 508 (1929) 13 Fed. Trade Comm. Rep. 440.

15. Federal Trade Comm. v. Korb and Dwyer (1922) 4 Fed. Trade Comm. Rep. 418.

16. Federal Trade Comm. v. Premier Electric Co. (1923) 5 Fed. Trade Comm. Rep. 385.

17. Federal Trade Comm. v. Jones, Paul, Ironclad Tire Co., et al. (1919) 1 Fed. Trade Comm. Rep. 380.

18. See cases cited supra, notes 8 to 17.

19. (1905) 33 Stat. 728 (1927) 15 U. S. C. A. sec. 96; Prest-o-lite Co. v. Bournonville (1915) 260 Fed. 442 (refilling and resale of acetylene gas tanks bearing original trade marks); General Electric Co. v. Re-New Lamp Co. (C. C. D. Mass. 1904) 128 Fed. 154.

20. Buick Motor Co. v. Buick Used Car Exch. (1928) 132 Misc. 158, 229 N. Y. S. 219; Dodge Bros. v. East (D. C. E. D. N. Y. 1925) 8 F. (2d) 872, 875.

21. Champion Spark Plug Co. v. Emener (D. C. E. D. Mich. 1936) 16 F. Supp. 816; Champion Spark Plug Co. v. Reich (D. C. W. D. Mo. 1938) 24 F. Supp. 945.

22. In the Emener case (D. C. E. D. Mich. 1936) 16 F. Supp. 816, the court ordered that the trade-mark be removed, the word "used" be indented in the metal shell, and the shell and the bushing nut be covered with a distinguishing red paint. The Reich case (D. C. W. D. Mo. 1938) 24 F. Supp. 945 stated that removal of the trade mark was not necessary if impossible without damage to the article and if sufficient care was taken to give notice to the purchaser.

23. General Electric Co. v. Re-New Lamp Co. (C. C. D. Mass. 1903) 121 Fed. 164; General Electric Co. v. Re-New Lamp Co. (C. C. D. Mass. 1904) 128 Fed. 154.

1. Proctor v. American Security & Trust Co. (App. D. C. 1938) 98 F (2d) 599.