Buffalo Law Review

Volume 2 | Number 2 Article 19

4-1-1953

Literary Property—Elements of Ownership of an Idea

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Recommended Citation
Robert L. Manuele, *Literary Property—Elements of Ownership of an Idea*, 2 Buff. L. Rev. 331 (1953).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol2/iss2/19

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The defense of a violation of the constitutional right against unreasonable searches and seizures is equally untenable in both the *Rochin* case, *supra,* and in the instant case. The evidence obtained thereby is not necessarily inadmissible in the state courts. *Wolf v. Colorado,* 338 U. S. 25 (1949). California admits evidence obtained by an illegal search and seizure. *People v. Gonzales,* 20 Cal. 2d 165, 124 P. 2d 44 (1942).

Apparently, neither the privilege against self-incrimination nor the protection against unreasonable search and seizure is the "principle" of the *Rochin* case, within which the instant case is said to fall. In the *Rochin* case, the court referred to the stomach pumping as "conduct that shocks the conscience," as a procedure "bound to offend even hardened sensibilities," as acts which "offend the community's sense of fair play," and as "brutal conduct." Thus it appears that in that case Frankfurter, J., disapproved primarily of the violence and the force used, the emphasis being on the method and not the evidence obtained thereby.

The writer of the annotation at 25 A. L. R. 2d 1407 (1952) suggests that the aim of the decision is to strike at illegal police, rather than court, practice. Coerced confessions are prohibited by the due process clause of the Fourteenth Amendment in both federal and state courts on like grounds; the police, to convict a man, cannot extract by force what is in his mind. *Watts v. Indiana,* 338 U. S. 49 (1949); *Malinski v. New York,* 324 U. S. 401 (1945). The *Rochin* case apparently applies this principle to prohibit the use of evidence obtained by exacting by force what is in his stomach.

The element of force is conspicuously lacking in the instant case. Moreover, since the defendant was in need of a blood transfusion, even if the law enforcement authorities had not wanted a blood sample, she would have undergone exactly the same treatment. It is submitted that the taking of blood under these circumstances does not come within the rule of *Rochin v. California, supra,* and is not a violation of due process.

Paul Gonson

LITERARY PROPERTY—ELEMENTS OF OWNERSHIP OF AN IDEA

Plaintiff, engaged in the advertising business, conceived an idea for a radio program. He outlined it to defendant, indicating that he expected compensation if the idea were used. Later, defendant put the program on the radio via another advertising agency. Alleging his ownership of the idea, plaintiff sued to re-

cover for its use. *Held:* Judgment for plaintiff. Whether the idea was original and whether it had been reduced to a form sufficiently definite and concrete were questions for the jury. *Belt v. Hamilton National Bank,* 108 F. Supp. 689 (D. C. 1952).

There may be property rights in an idea which the courts will protect. *Stanley v. Columbia Broadcasting System,* 35 Cal. 2d 653, 221 P. 2d 73 (1950); *William A. Meier Glass Co. v. Anchor Hocking Glass Corp.,* 95 F. Supp. 264 (W. D. Pa. 1951); *Ketcham v. New York World's Fair 1939, Inc.,* 34 F. Supp. 657 (E. D. N. Y. 1940). These rights may not be protected under copyright laws, which look not so much to the idea as to the originality of its expression. *Baker v. Selden,* 101 U. S. 99 (1879); *Seltzer v. Sunbrock,* 22 F. Supp. 621 (S. D. Cal. 1938). Similarly, these ideas are not necessarily protected by patent laws, which protect "any new and useful art, machine, manufacture or composition of matter." REV. STAT. § 4886 (1875), 35 U. S. C. § 31 (1946). See *Fowler v. City of New York,* 121 Fed. 747 (2d Cir. 1903). An idea is not an "art." *Hotel Security Checking Co. v. Lorraine Co.,* 160 Fed. 467 (2d Cir. 1908).

An idea, to be protected, must be novel. *Lueddecke v. Chevrolet Motor Co.,* 70 F. 2d 245 (8th Cir. 1934). The question of the novelty of the idea is ordinarily for the jury. *Ketcham v. New York World's Fair 1939, Inc., supra.*

The idea must be reduced to a concrete form. *Thomas v. R. J. Reynolds Tobacco Co.,* 350 Pa. 262, 38 A. 2d 61 (1944). While concreteness was found in *Stanley v. Columbia Broadcasting System, supra,* where plaintiff had prepared a script, recording, and format of a sample program, it was found lacking in *O'Brien v. RKO Radio Pictures,* 68 F. Supp. 13 (S. D. N. Y. 1946), noted, 20 So. CAL. L. REV. 371 (1947), where four brief suggestions for story treatment of a movie were submitted. See also, *Bowen v. Yankee Network, Inc.,* 46 F. Supp. 62 (Mass. 1942). Ideas for advertisements were held sufficiently concrete in *Liggett & Myers Tobacco Co. v. Meyers,* 101 Ind. App. 194 N. E. 206 (1935), where the idea was to picture two gentlemen, one saying, "Have one of these," and the other replying, "No, thanks; I smoke Chesterfields," and in *Ryan & Associates, Inc. v. Century Brewing Ass'n,* 185 Wash. 600, 55 P. 2d 1055 (1936), which involved an advertising slogan: "The Beer of the Century." However, concreteness was lacking where only a "scrip" was submitted to an advertising agency. *Stone v. Liggett & Myers Tobacco Co.,* 260 App. Div. 450, 23 N. Y. S. 2d 210 (1st Dep't 1940).

As in the case of a common law copyright, an idea may meet the requirements of novelty and concreteness, but upon its publi-

cation to the public the originator loses all his rights of ownership. *F. W. Dodge Corp. v. Comstock,* 140 Misc. 105, 251 N. Y. Supp. 172 (Sup. Ct. 1931); *American Tobacco Co. v. Werkmeister,* 207 U. S. 264 (1907). The courts have confined their definition of what is publication. The compilation of information for distribution to subscribers under an agreement not to divulge the information is no publication. *F. W. Dodge Corp. v. Comstock, supra.* Exhibition of an artist's picture in a gallery where no one was permitted to copy it was held no publication, *American Tobacco Co. v. Werkmeister, supra;* nor was the disclosure of a new "loop" design for glassware made in a demonstration of a new method of fire polishing. *William A. Meier Glass Co. v. Anchor Hocking Glass Corp., supra.* It has also been held that if an idea cannot be sold, negotiated, or used without disclosure, a contract must regulate such disclosure or the idea becomes the acquisition of whoever receives it. *Young v. Ralston-Purina Co.,* 88 F. 2d 97 (8th Cir. 1937). This seems almost prohibitory of disclosure without a contract.

There are three theories upon which recovery has been granted. One who uses another's idea which is entitled to protection is said to have been unjustly enriched. *Matarese v. Moore-McCormack Lines, Inc.,* 158 F. 2d 170 (2d Cir. 1946). Another theory of recovery is an implied agreement that the person to whom the idea is disclosed will not use it for his own benefit. *Gilbert v. General Motors Corp., Inc.,* 41 F. Supp. 525 (W. D. N. Y. 1941), *aff'd,* 133 F. 2d 997 (2d Cir. 1941), *cert. denied,* 319 U. S. 743 (1943). Where there is no contractual relationship implied, the courts have proceeded on a theory of confidential disclosure. *Hoeltke v. C. M. Kemp Mfg. Co.,* 80 F. 2d 912 (4th Cir. 1935), *cert. denied,* 298 U. S. 673 (1936); *Becker v. Contours Laboratories,* 279 U. S. 388 (1928). Fundamental to recovery upon any ground is that remuneration be expected when the idea is disclosed. *Liggett & Myers Tobacco Co. v. Meyers, supra; Lueddecke v. Chevrolet Motor Co., supra.*

Since some business ideas which have met the requirements of novelty and concreteness have great monetary value, the originator of the idea should be protected against its unauthorized exploitation. This is merely the same type of protection given both to common law copyrights and presently to trade secrets. *A. O. Smith Corp. v. Petroleum Iron Works Co. of Ohio,* 73 F. 2d 531 (6th Cir. 1934).

Robert Louis Manuele