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Notes on Recent Cases

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NOTES ON RECENT CASES

PATENTS — Restrictive covenants — Contract restraining seller of a patent from conducting business in United States or elsewhere held in restraint of trade and not enforceable.

Action by the Kex Manufacturing Company to enjoin the Plu-Gum Company and others from operating a repair tire concern in the city of Cleveland or elsewhere. Supreme Court of Ohio, 1928. 162 N. E. 816.

The plaintiff company, which had purchased the business and patents formerly owned by the defendant company, the patents and processes being used in the business of repairing and restoring tires, entered into a written contract with the defendant, by the terms of which the defendant agreed that it would not, either directly or indirectly, by use of the same process or any similar process, enter into and carry on the business of repairing tires anywhere within the United States or in any other country in which a renewal of the patent, or a patent, might be obtained, and that the contract was to last during the lifetime of the patent or any renewals thereof.

It was alleged that almost immediately after the signing of this contract and the turning over of the business sold by the defendant to the plaintiff, some of the other defendants, who were stockholders interested in the Plu-Gum Company, procured a similar process from an owner in New Jersey, and immediately thereafter, in the same vicinity where their shop had been before located, started in the business of repairing tires in direct competition with the plaintiff company, and in violation of the terms of its contract; this action was brought to restrain the defendant from carrying on this business.

The patent itself, the court said, had nothing to do with the case, other than to mark out the term for which this contract was to last, which would be the lifetime of the patent or any renewals thereof; the real question in the case was whether the agreement of the defendant not to enter into a like business anywhere in the United States or in any other country in which a patent might be obtained during the lifetime of the patent, was a valid and binding contract. Whether or not it was depended on whether, to pro-

tect the purchaser of a tire repairing business in Cleveland, it was necessary to make a contract so broad and extensive that it covered the whole United States or more; if not, it was void as in unreasonable restraint of trade.

In the early history of the law, contracts in restraint of trade were held entirely void because, it was alleged, the state was entitled to the services of each of its citizens, and they could be more useful in the trade in which they were accomplished than in some other trade. Therefore any contract which would restrain the right of a man to conduct a business was held to be contrary to public policy and invalid, but, in the multiplicity of inventions and in the extension of commerce and trade, the courts early had to depart from this original proposition, and so they adopted the policy that, while it was true that contracts in total restraint of trade were still against public policy, those in partial restraint of trade were not necessarily so. It would depend on the question of how extensive the contract in restraint was, or for how long a time it should last, and the decisions of the courts are practically uniform to the effect that a contract in restraint of trade in a reasonable area would not necessarily be invalid, unless unlimited as to time; and a contract which covered more territory than was necessary to protect the rights of the purchaser would, as a rule, be invalid. In other words, a contract which prevented a man from going into business over such a large area that it would serve no good to the purchaser, and prevented the state from having the use of his knowledge at all, was invalid; or if it were over a restricted area, and were for all time, it would be invalid.

The whole business of the plaintiff in this case was to repair tires, using the patent process purchased from the defendant in doing so. The repairing of tires can not be a monopoly, since it is impossible for a repairer of tires to have them shipped for any great distance, because the freight or express on them would be greater than the cost of repair; the repairing of tires must be a local business. Applying the principles laid down, the court held that the contract, in prohibiting the defendant from engaging in the business anywhere in the United States, restrained trade over an unreasonably large area, and was absolutely void as being against public policy. And although the parties could have made

a valid contract prohibiting the defendant from engaging in the business in Cleveland, the contract was an entire contract, and could not be divided so as to make it cover a reasonable area, within which trade could have been lawfully restrained, it must either fail or be good in its entirety. The contract was so broad, both as to space and time, as to make it absolutely void, and the plaintiff was not entitled to maintain the suit in injunction to prevent the defendant from carrying on its business.

J. J. Canty.

MASTER AND SERVANT—In proceeding under the Workmen's Compensation Law, injury must arise out of the employment.

This proceeding was brought under the Workmen's Compensation Law, by the widow of one Carlstrom, to recover for his death, alleged to have resulted from injury arising out of his employment. Carlstrom's Case, Supreme Judicial Court of Massachusetts, 1928. 162 N. E. 893.

The deceased, superintendent of the plant of the subscriber in Worcester, had accompanied one Billings, treasurer of the subscriber, on a trip from Worcester to Springfield on the employer's business in an automobile owned by Billings; on their return home, while trying to avoid colliding with a truck, Billings caused the automobile in which they were traveling to skid off the road and down an embankment into a ditch. Billings went for assistance to tow the car from the ditch, and left the car in charge of the deceased, who crossed the street to watch tires being loaded on a truck and, it was alleged, to endeavor to get a chain from the driver of the truck to bring the automobile of Billings out of the ditch. While standing at the rear of the truck, he was struck by another automobile and killed.

The court did not decide whether or not the deceased had the duty to watch the automobile of Billings and was in the employ of the subscriber while so doing, but held that it was not necessary to so decide, because when the deceased left the automobile of Billings and crossed the street to watch the loading of the truck, his injuries could not be found to have arisen out of his employment, since there was no casual relation between his employment and the injury; even assuming that it was part of his

duty or employment to watch the automobile, it was wholly outside that duty for him to cross the street and place himself near the truck, where he met with the injury. Gardner's Case, 247 Mass. 308, 142 N. E. 32.

Nor could the contention that deceased was acting within the scope of his employment in endeavoring to get a chain to bring the automobile back on the road, be sustained; Billings had gone to secure assistance and the deceased had no duty to perform in his absence except to guard the car. And apart from these reasons precluding the claimant from recovering compensation, the court held it to be the settled law that ordinarily, as all persons upon streets are exposed to the dangers incident to such travel, injuries so sustained by employees do not arise out of employment. Hewitt's Case, 113 N. E. 572; Colarullo's Case, 155 N. E. 425. Therefore, the injury from which deceased died did not arise out of his employment, and compensation could not be recovered for his death.

J. J. Canty.

CRIMINAL LAW—In this case of *Yancey v. State*, 271 Pac. 170, an appeal is made from a conviction for murder. The appellants contend that the trial court committed error when it allowed the testimony of an attorney to be admitted as evidence. This contention is based on the ground that the defendants in the prosecution for murder sent for the attorney whose testimony was admitted as evidence, for the purpose of retaining him in their defence. From the facts it appears that the attorney inquired as to the charge and then named a fee which was not raised and that nothing further was done in reference to the employment.

It is well settled that where an attorney, even where no fee has been agreed upon, demanded or asked, and though the services rendered are gratuitous, yet if he has discussed the case with his proposed client or voluntarily listened to his statement of the case, he is thereby disqualified to accept employment on the other side of the case, *Steeley v. State*, 17 Okl. Cr. 252, 187 P. 821. *Ward v. State*, Okla. Cr. 242 P. 575.

HELD, an attorney however, is not disqualified where he does not represent or accept employment by the defendant nor assume to do so, and does not discuss nor voluntarily hear the

preliminary statement of the defendant, but where the services of an attorney are sought by one accused of crime, and he merely ascertains the charge and fixes a fee, which is not paid nor promised and as a consequence the employment is not consumated, certainly this mere seeking of his services, his inquiry as to the nature of the charge as a basis for fixing the fee does not disqualify him. No error.

Marc Wonderlin.

SALES—Where parties treat agreement as in force after delivery date, contract becomes indefinite as to time, and neither party can terminate without notice and reasonable opportunity to perform.

The plaintiff and defendant contracted for the sale and purchase of one thousand automobile frames, plaintiff to furnish them in equal amounts during the months of March to June inclusive. Later the defendant made changes in the specifications and as a result, it became impossible to make deliveries at the time named. Shipments began in May and continued to the middle of July and in that time about one-half the frames had been delivered. No purpose to rescind because of the delay was expressed by the defendant nor after the last shipment was notice given to the plaintiff that immediate forwarding of the balance of the order was necessary to a continuance of the contractual obligation of the purchaser. Plaintiff commenced work on remaining frames in July and sent invoices to defendant in September but it refused to receive them. Action to recover the agreed price resulted in the entry of judgment for the defendant after verdict in favor of the plaintiff. *Parish Mfg. Corporation v. Martin-Parry Corporation.* Pa., 1928; 143 A. 103.

The judgment of the lower court was reversed upon assignment of error, the court deciding that here, time was of the essence of the contract and a failure of the seller to furnish goods within time stipulated in contract is bar to recovery unless there has been an express waiver of the obligation or such a waiver is to be implied from the conduct of the parties; *Riddle Co. v. Taubel,* 277 Pa. 95, 120 A. 776; and that where the parties have treated the agreement as in force after the date specified for delivery, it becomes indefinite as to time and neither party can

terminate it without notice to the other to promptly comply. *Hopp v. Bergdoll*, 285 Pa. 112, 131 A. 698.

If the one not in default insists that a strict compliance will thereafter be insisted on, then a reasonable time to complete the contract must elapse before a recission is justified. There can be no effective cancellation until proper opportunity is given the seller to perform, and what constitutes such is ordinarily for the jury. *Riddle Co. v. Taubel, supra.* The jury in that case found for the plaintiff.

No request was here made to the seller to complete the shipment and the fact that delivery was not tendered until September did not in itself constitute a legal defense and the court holding, as a matter of law, that defendant was relieved of its duty to accept delivery and to pay, committed error under the circumstances and the assignment of error must be sustained.

D. M. Donahue.

AUTOMOBILES—Evidence held to justify finding of driver's negligence in not stopping automobile when blinded by the lights of other cars.

Plaintiff was walking on highway on a dark, foggy night, having left the sidewalk because it was in a poor condition and uncomfortable to walk upon, when she was struck by an auto operated by the defendant who was driving toward his home at a moderate rate of speed. Both plaintiff and defendant were on the right side of the road and defendant's testimony showed that his vision was obscured by fog and that the lights of cars following him shone through the rear window of his car and combined with the lights of approaching cars blinded him so that he did not see plaintiff. A verdict was had for the plaintiff and defendand brought the case to the Supreme Judicial Court on motion. *Cole v. Wilson,* Maine, 1928; 143 A. 178.

Defendant was not guilty of negligence in driving when his vision was obscured by fog alone. A driver encountering a fog while on his way home is not obliged to wait for the fog to lift in order to escape a charge of negligence, but may proceed at a reasonable rate of speed. *Johnson v. State of New York,* 175 N. Y. S. 299. But if the operator of a machine is blinded by the lights from another vehicle so that he is unable to distinguish an object

in front, reasonable care requires that he bring his vehicle to a stop and a failure to do so justifies a charge of negligence. *Jolman v. Alberts,* 192 Mich., 25; *Topper v. Maple,* 181 Ia., 786.

It cannot be said, as a matter of law, that a pedestrian is necessarily guilty of negligence in leaving the sidewalk to walk along the highway, even though the sidewalk may not be impassable. *Booth v. Meagher,* 224 Mass., 472.

Sidewalks are for the exclusive use of pedestrians but the remaining portion of the highway is not for the exclusive use of vehicles. In the absence of a statutory or municipal regulation affecting the question, the pedestrian has equal rights in the street with the operator of an automobile. *Lane v. Sargent,* 217 F. 237. But in so using the highway the pedestrian should be most vigilant for his own safety. *Virgilio v. Walker et al.,* 254 Pa. 241. The evidence here showed that plaintiff was vigilant and that defendant was negligent, therefore the verdict must stand.

D. M. Donahue.

Emerson et al. v. Speak et al., Supreme Court of Arkansas, 1928, 9 S. W. (2d) 780.

This was an appeal by the plaintiff below from a judgment for the defendant below, by the lower court.

The suit was brought to enforce the collection of the balance due on notes executed by W. A. Speak, in part payment of the consideration for a deed to The Northeast Quarter of the Southeast Quarter of Section 17, Township 13 North, Range 8 West, and another (a 72 acre) tract of land.

Defendant Speak admitted the making of the notes in question but defended on the ground that the title to the land had failed. That is, the title to the forty acre tract described above was in the possession of one J. N. King, who claimed title thereto. thereto.

The land described was the Northeast corner of the Southwest quarter which was in fact held by King as his own land. The real intention of the parties was to convey the Northwest quarter of the Southwest quarter which was owned by the grantor the plaintiff here. Thus there was a mistake in description of the land.

The lower court found that the defendant's grantor had never owned the land described in the deed and could not convey that

to which he held no title and on that ground gave judgment to the defendant.

On appeal however the Supreme court held that the intention of the parties to convey and receive the Northwest quarter was known to them and that a mutual mistake had been made in description of the land. On clear, convincing and decisive evidence a deed should be reformed for mutual mistake in description when all necessary parties are before the court.

Decree of lower court was reversed and cause remanded with directions to reform the deed, to conform to the intentions of the parties and to render judgment for unpaid purchase money and to enforce vendor's lien in the deed to appellee, the grantee.

John P. Berscheid.

NEW TRIAL—On charge of murder after former trial on same charge and conviction of manslaughter is not double jeopardy.

The main question which came up for consideration of the United States Circuit of Appeals for the First Circuit in the case of *Carbonell v. People of Porto Rico,* reported in 27 Federal (Second Series), 253, was whether the defendant was subjected to double jeopardy, contrary to section 2 of the Porto Rico Organic Act, 48 USCA section 737.

Carbonell was indicted for murder, and on the first trial, in the district court, he was found guilty of manslaughter. On his appeal to the Supreme Court of Porto Rico, the judgment was reversed. At the second trial defendant pleaded the former conviction as an acquittal of the higher offense and a bar to further prosecution on the murder charge, and contended that the second trial must be limited to the manslaughter charge. The trial court overruled his contentions and he was again found guilty of manslaughter. The judgment was affirmed by the Supreme Court of Porto Rico, and defendant prosecuted a writ of error to the Circuit Court of Appeals.

Circuit Judge Anderson delivered the opinion of the court, in which he held that the Porto Rican Organic Act (48 USCA section 735), continuing existing laws and ordinances in force and effect, did not thereby adopt the construction by California courts of double jeopardy provisions, though Porto Rican Penal Code is largely identical with California Penal Code, especially in view

of Porto Rican Code Criminal Procedure, section 302, providing that "the granting of a new trial places the parties in the same position as if no trial had been had".

The court further held that the "double jeopardy clause in the Organic Act of Porto Rico is to be given the same interpretation as corresponding provision in the Fifth Amendment" of the Federal Constitution, and thereunder, following the decisions of the Supreme Court of the United States, one whose conviction of manslaughter under an indictment for murder was reversed was not subjected to double jeopardy because the new trial was not limited to manslaughter.

J. S. Angelino.

ARREST—Intoxicating Liquors. Officer smelling whisky in abandoned house may enter and arrest without warrant person holding bottle of whisky; evidence that officer smelled whisky in abandoned house, and on entrance person arrested had in hand bottle of whisky, which he broke, held sufficient to go to jury on issue of possession; evidence held to sustain conviction for unlawful possession of intoxicating liquor. *Schillings v. State,* Supreme Court of Miss. (118 So. 137), June 11, 1928.

One Obe Schillings was tried and convicted for the unlawful possession of intoxicating liquor, fined $100 and costs, and sentenced to 30 days in jail, but the jail sentence was suspended on good behavior. From this conviction and sentence, he appeals to this court.

The facts upon which Schillings was convicted were these: Joe Hill, a deputy sheriff of Jones County, Miss., was driving along the public highway between Laurel and Ellisville, and, while passing a vacant house that had been a restaurant and filling station, he detected the odor of whisky, and got out of his car to make an investigation. He discovered appellant, with others, inside the building. Appellant, at the time he (the deputy sheriff) entered the house, had in his hand a bottle containing liquor, but, as the deputy sheriff approached him, he broke the bottle over an old stove which had been left in the abandoned restaurant. The deputy sheriff testified that there was liquor in said bottle so broken.

Appellant denied that there was liquor in the bottle, and denied that he had the unlawful possession, ownership, or control

of any liquor and claimed that the bottle which the deputy sheriff found in his possession was an empty bottle that had been left in the old abandoned restaurant. Another witness testified for the appellant to the same effect.

It was urged for the appellant that the evidence is insufficient to sustain the conviction. The court on this point said: "As we understand the law, the presence of whisky may be established by smell as well as by vision; and the fact that the deputy sheriff smelled liquor as he approached the building and there saw the appellant break the bottle in which there was whisky, and smelled the whisky as it was spilled upon the floor, was sufficient to go to the jury upon the question of whether the appellant was in possession of intoxicating liquor. Having the bottle in his hand and breaking it himself is a fact which, coupled with the fact that the bottle contained whisky, when taken in connection with appellant's denial that there was whisky in the bottle, is sufficient evidence for the jury to infer that appellant was the possessor of the liquor."

After overruling other technical objections, the judgment was affirmed.

J. S. Angelino.

BILLS AND NOTES. In the case of *Olsen v. Hoffman,* 221 N. W. 10, the Supreme Court of Minnesota, held that a holder of notes negotiated by one with defective title has burden of proving that he acquired title as holder in due course. Every holder of promissory notes is deemed prima facie to be a holder in due course: but, when the title of any person who has negotiated them was defective (fraudulently procured), the burden is on the holder that he, or some other person under whom he claims to have acquired the title, is a holder in due course.

To constitute notice of fraud in the inception of a promissory note, it must be made to appear that the person to whom it is negotiated must have had actual knowledge thereof, or knowledge of such facts that his action in taking the paper amounted to bad faith. The general rule is that the purchaser of negotiable paper need not make inquiry or investigation as to the maker, but this rule has its exceptions under special circumstances.

Following a special indorsement on the back transferring a 6 per cent promissory note were the words, "To draw 7 per cent

from 3-5-1920." Held, this memorandum was surplusage, without legal significance, as between the indorsee and the maker, and was not of such character as to put the indorsee upon inquiry. The transferee of negotiable paper need only to sustain the burden of proof which the law imposes upon him. Where one purchases commercial paper in good faith, in the usual course of business, before maturity, for value, and without notice of any facts affecting the validity of the paper he is entitled to the advantages which the commercial law confers upon a bona fide holder.

The plaintiff here sues to recover on four $500 promissory notes. One England was a banker and in 1920 he sold a 160-acre farm to defendant under a contract for deed, which contained a provision that if, after two years from the date thereof, defendant did not want the land, England would take it back and pay back the money which defendant had paid. England took, with the contract that he got from the defendant notes including the ones here involved for deferred payments. Two years later defendant exercised his privilege under the contract and surrendered the land to England, who told him he had used the notes as collateral, but that he would get them and return them, but this was never done.

The plaintiff had in the meantime sent England $2,000 for investment and England sent him back the four notes so given with said contract. England indorsed and guaranteed the notes. Plaintiff knew nothing about the defendant, made no inquiry concerning him, and did not write to him until the fall of 1926 when he for the first time learned the facts.

And the court here laid down the rule that every holder of promissory notes is deemed prima facie to be a holder in due course; but when notes are procured by fraud the burden is on the holder to prove that he or some person under whom he claims to have acquired the title is a holder in due course. The plaintiff acted in the ordinary course of business—the record shows that he acquired the notes in ignorance of the fraud and in good faith. He paid the face of the notes and acquired them long before maturity. This was sufficient. There was nothing in the transaction to incite suspicion, and therefore juddgment must be for the plaintiff. *F. Earl Lamboley.*

IMMIGRATION—Indians of "Six Nations" not Affected by Immigration Laws.

In the case of *McCandless, Commissioner of Immigration v. U. S. ex rel Diabo*, reported in 25 Fed. Rep. Second Series, 71, the question involved is whether the immigration laws of the United States apply to members of the tribe of the Six Nations born in Canada. The proceeding was on a writ of habeas corpus by the United States on the relation of Paul Diabo, against the commissioner of immigration for the port of Philadelphia. The trial court granted the writ and the respondent appealed.

Diabo was a full-blooded Indian of the Iroquois tribe, known as the Six Nations and was born on a reservation of that tribe in the Dominion of Canada. He came to the U. S. first in 1912, and from then on made a number of trips back and forth, working in this country as a structural iron worker. In February, 1925, he was arrested on complaint of Immigration Commissioner McCandless for alleged violation of the law in entering the United States without complying with the immigration laws.

The Circuit Court of Appeals, third District, in its opinion written by Circuit Judge Duffington, upholding Diabo's right to enter this country at will, held that Indians are all wards of the nation, and that general acts of Congress do not apply to them, unless so worded as clearly to manifest an intention to include them in their operation.

By the Jay Treaty of 1794, it was agreed that members of the Six Nations, who previous to the American Revolution lived in territory included in both the United States and Canada, were to be free to pass and repass the border at will. The respondent here claims that the War of 1812 annulled the Jay Treaty.

On this point Judge Buffington quotes from the case of *Society v. New Haven*, 8 Wheat. 464, 494.

"We are inclined to admit the doctrine urged at the bar, that treaties become extinguished, ipso facto, by war between the two governments, unless they should be revived by an express or implied renewal on the return of peace. There may be treaties of such a nature, as to their object and import, as that war will put an end to them; but where treaties contemplate a permanent ar-

rangement of territorial and other national rights, or which, in their terms, are meant to provide for the event of an intervening war, it would be against every principle of just interpretation to hold them extinguished by the event of war."

This case is an authority for the proposition that though a war may occur between this nation and another, treaties made between this nation and the one it was at war with revive in their operation at the return of peace, unless new and repugnant stipulations are made.

F. Earl Lamboley.

LITERARY PROPERTY—"Piracy". In the case of *Moore v. Ford Motor Company*, 28 Fed. (2d) 529, we have the record of an attempt to show a right to a share of the profits of that well known organization. The decision is of general interest because of the fact that a large percentage of the population of the country has at least a superficial acquaintance with a part of the subject matter of the controversy. The principles of law, however, are of long standing.

The action arose out of the introduction and offer to the public of the "Ford Weekly Purchase Plan" in the spring of 1923. Plaintiff alleged and attempted to prove that the defendant had been guilty of piracy in appropriating plaintiff's idea which he had communicated to defendant in a letter dated October 25, 1922. The letter set forth a plan which plaintiff believed would greatly increase the sale of defendant's products. The proposed plan consisted in the making of monthly deposits by customers with the Ford dealers, who were to allow interest at the rate of ten per centum on the deposits and in return would reap the benefits of an additional sale and also have the use of the money so deposited. It suggested a deposit of twenty-five dollars per month for six months. This deposit would then be taken as the down payment, and the Ford car, truck or tractor delivered to the customer. The interest paid on these deposits during the six months period would amount to only $3.11. Should the customer decide to withdraw his money, it was proposed that interest be allowed at the rate of four per centum. The chief merits of the plan were its attractive rate of interest on deposits and the fact that it was designed to reach an entirely new sales field. Mr. Moore's letter concluded with a submission of the

plan with the understanding that there should be no obligation on the part of defendant.

Most of us, as before stated, have at least a passing acquaintance with the Ford Weekly Purchase Plan. It consisted in deposits of five dollars a week by the customer with the local bank, in accordance with an agreement between the bank and the local Ford dealer, interest being paid thereon at the regular savings rate in force at the bank of deposit. At the time of the first deposit the customer was required to select the particular Ford product toward the purchase of which he would direct the accumulation of his hard earned savings. When a specified amount had been deposited, the entire sum was turned over to the dealer, and the car, truck or tractor delivered to the purchaser, who would then arrange to finance the remainder of the purchase price, either through channels of his own selection or through one of the ordinary deferred payment plans offered by defendant. The benefits of this plan to the Ford Motor Company are quite apparent, but, although the circular advertising of the defendant holds to the contrary, its ultimate benefit to the buying public which it was designed to reach might well be doubted. Its claim is based upon the assumption that a Ford product is a universal good. This assumption is scarcely justified by experience.

The action was founded upon the common law property right of an author in his work. The United States District Court for the Southern District of New York held that under the common law the right secured to an author embraces the form, sequence and manner of composition in which he expresses the idea, and not the idea itself. If one discloses an idea to another who then independently works out the application thereof, there is no invasion of the common law rights of the one who made such disclosure. The publicity given by defendant to its Weekly Purchase Plan was evidently not a copy of the letter of plaintiff in which he submitted his idea. The court found as a fact that there was not such imitation of plaintiff's literary composition in setting out the proposed boon to the buying public as would sustain plaintiff's burden of proving that his idea had been adopted with mere colorable alterations by defendant. In deciding the case the court distinguishes the two propositions upon the ground that in Mr. Moore's proposal the payments were to be made

monthly to the Ford dealers at a high rate of interest, while in the plan adopted payments were made weekly to local banks at the regular rate of interest, and neither the dealer nor the defendant were to have the use of the money until a sufficient amount had accumulated to take care of the down payment. Both plans, of course, were fundamentally based upon installment payments, but in this there was nothing original or new which would give plaintiff the right to the exclusive use thereof. The similarity of the two plans and the fact that defendant's offer was announced to the public within about five months after the receipt of plaintiff's suggestions would tend strongly to indicate that there was some causal relation between them, but upon the findings of the court it would appear that such seeming relation is merely the result of the application of the fallacious principle, *"Post hoc, ergo propter hoc"*, which many of us are too prone to acknowledge without investigation. There was, therefore, no invasion of plaintiff's rights, and the bill was accordingly dismissed.

Henry Hasley.