

regard entirely the fact that before his retirement the partnership relation had imposed upon appellant a primary obligation.¹⁸

This supposed equitable consideration was enough to convince the court to call into play the peculiar status of a compensated surety which itself was a product of equitable considerations. The court did not mention that even though the status of a compensated suretyship relation reduces the otherwise severe impact that would be imposed upon the creditor's rights if a gratuitous suretyship were involved, the fact nevertheless remains that the creditor's rights have been unilaterally diminished.

The UPA has codified the principles of release without consideration¹⁹ and gratuitous suretyship by operation of law.²⁰ It is submitted that both principles are undesirable in legal theory and in practical effect. It is unfortunate that the court in this case adopted the former principle and modified the latter, not only because of the inherent inequity in the doctrine, but also because there existed no compelling statutory or case precedent²¹ in the jurisdiction.

EDWARD B. GINN

Sales—Unfair Competition—Equitable Servitudes on Chattels.—*Independent News Co. v. Williams*.¹—Plaintiff, Independent News Co. (Independent), is a large scale distributor of comics; plaintiff, National Comics Publications Inc., is a publisher of comic books under some forty-five different titles; plaintiff, Superman, Inc., owns the copyright and trademarks covering the various titles and characters appearing in the comic books. They brought an action for a preliminary injunction against a secondhand periodical dealer (Williams) to prevent his selling cover-removed² comics purchased by him from waste paper dealers. Williams purchased them from certain wholesalers who were contractually bound to plaintiff, Independent, to sell the cover-removed comics as waste paper only. The contracts between

¹⁸ *White v. Brown*, supra note 1, at 728.

¹⁹ See UPA § 36(2) cited in note 6 supra.

²⁰ UPA § 36(3):

Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

²¹ *White v. Brown*, supra note 1.

¹ 293 F.2d 510 (3d Cir. 1961).

² It must be emphasized that there is a vital difference between a cover-removed periodical and a secondhand periodical. A secondhand periodical is one which has been placed on the market and sold. It subsequently, through one channel or another, finds its way into the hands of a secondhand magazine dealer who may have collected it himself from a reader or acquired it by purchase from some other collector. A cover-removed periodical represents one which has had its cover removed by a Wholesaler who had returned such cover to the Distributor for full credit. The remains of such a periodical represents the subject matter of this lawsuit.

Brief for Appellant, pp. 3-4.

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Independent and the wholesalers regulated a distribution system which was operated uniformly throughout the country. Independent sells the comics to a wholesaler, who resells them to retail outlets; the retailers agree to sell them for a specified period and then to return unsold copies for full credit to the wholesaler. In turn, the wholesaler, upon fulfilling certain specified obligations, *i.e.*, removing and returning the covers to Independent, mutilating the comics so that they are fit only for use as waste paper, and disposing of them as waste paper, is entitled to full credit from Independent.³ In accord with this policy Independent inscribes in each magazine the legend:

This periodical may not be sold except by authorized dealers and is sold subject to the conditions that it shall not be sold or distributed with any part of its cover or markings removed, nor in a mutilated condition, nor affixed to, nor as part of any advertising, literary or pictorial matter whatsoever.⁴

The District Court denied injunctive relief.⁵ The Court of Appeals affirmed. HELD: There was *no evidence* that the waste paper dealers from whom defendant purchased the comics had any contractual obligation to use the comics as waste paper only, nor that the waste paper dealer had any notice of any restriction whatsoever on the cover-removed comics, nor that defendant had any knowledge that any of the waste paper dealers from whom he purchased was obligated to sell the coverless comics as waste paper only. Thus, when the waste paper dealer purchased the comics from the wholesaler he obtained the totality of property rights in the comics which included the right to sell them to defendant for sale as reading material.⁶ Furthermore, there was no violation by defendant of the federal trademark⁷

³ The contract between Independent and the wholesalers provides, *inter alia*, as follows:

Except as hereinafter provided, returns shall consist of top parts of front covers showing dates of issues, but before Wholesaler shall become entitled to credit for returns of unsold copies, Wholesaler must recover such copies whole, and after detaching front covers thereof shall destroy or mutilate the remaining portions thereof so as to render them unsalable as publications. Wholesaler agrees that such destroyed or mutilated portions of return copies shall be disposed of or sold for no other purpose than waste paper, and that he will obtain a written commitment from the purchasers of such destroyed or mutilated return copies that the same will be used only for waste and will not be resold.

Supra note 1, at 512.

⁴ *Id.* at 517.

⁵ *Independent News Co. v. Williams*, 184 F. Supp. 877 (E.D. Pa. 1960).

⁶ UCC 2-403(2). There is some question as to exactly what issues were considered and determined by the decision. Plaintiff, in its brief, argued alternatively for a prospective injunction to prevent defendant from future acquisitions and sales of plaintiff's cover-removed magazines, if it were determined that an injunction as to the magazines now in defendant's possession would prove too great a hardship on defendant. Brief for Appellant, pp. 42-3. This request was not discussed in the opinion. It does not seem as if the determination as to notice would be determinative as to the request for the prospective injunction.

⁷ 60 Stat. 427 (1946), 15 U.S.C. §§ 1051-127 (1958). *Prestonettes, Inc. v. Coty*, 264 U.S. 359 (1924). The cases of *R. B. Semler, Inc. v. Kirk*, 27 F. Supp. 630 (E.D. Pa. 1938), and *Bayer Co. v. Sumner Printing Co.*, 7 F. Supp. 740 (N.D. Ohio 1934), were not in point because the defendant did not in any way change or alter the form, contents or appearance of the comics.

or copyright laws,⁸ nor was he practicing unfair competition.⁹

In recent years, the question here presented has also troubled both the courts and the legislature of New York. In *People v. Bunis*,¹⁰ section 436-d of the N.Y. Penal Law, stating:

Any person who knowingly sells, offers or exposes for sale (except in bulk as waste paper) any newspaper, magazine, periodical or other publication, except a rare book, manuscript or educational text, from which the title, trade name, trade mark or other identification mark has been removed or obliterated, is guilty of a misdemeanor.

was held unconstitutional. The decision was based on the breadth of the statute,¹¹ and the court explicitly refrained from deciding what result would have been reached on a statute which confined itself to proscribing illicit traffic in the cover-removed type of comic which had been returned for credit.¹²

While the criminal prosecutions were still in process, an injunction pendente lite was allowed in the case of *Yachting Publishing Corp. v. Friedman*.¹³ The facts before that court were similar to those in the principal case. The court stated:

If defendant was aware that contracts between the distributor and the wholesalers required the latter to dispose of the returned copies only as waste paper his resales of returned copies purchased from wholesalers as back numbers of the magazines, and not as waste paper, were made with knowledge that he was aiding breaches of the contracts between the distributor and the wholesalers. In any event, whether defendant purchased from wholesalers or from dealers in waste paper, he purchased personal property, the title to which had not passed to the wholesalers or to the dealers in waste

⁸ 61 Stat. 652 (1947), 17 U.S.C. §§ 1-215 (1958). *Harrison v. Maynard*, Merrill & Co., 61 Fed. 689 (2d Cir. 1894); *United States v. Wells*, 176 F. Supp. 630 (S.D. Tex. 1959).

⁹ Plaintiff next intends to proceed to a final hearing at which time it will attempt to establish new facts so that defendant may be enjoined within the scope of the opinion. Letter from Alexander N. Rubin, Jr., Counsel for the Plaintiff, to the B.C. Ind. & Com. L. Rev., Nov. 14, 1961. The new facts will in all probability be directed to showing the inapplicability of UCC 2-403(2).

¹⁰ 9 N.Y.2d 1, 210 N.Y.S.2d 505 (1961).

¹¹ *Id.* at 3, 210 N.Y.S.2d at 506.

¹² *Ibid.* *People v. Bunis* reviewed two lower court holdings which had reached opposite conclusions as to the constitutionality of the statute. The explicit ground for the holding of the Appellate Division is interesting because, while affirming *People v. Simmers*, 13 Misc. 2d 1097, 181 N.Y.S.2d 388 (Sup. Ct. 1958), it did not affirm its reasoning. That decision had held the statute unconstitutional as an invalid exercise of the police power because it was enacted for the purpose of protecting trade in an economic sense from unauthorized resale rather than for the protection of the health, morals, safety, and welfare of the public. The decision which was reversed, *People v. Bunis*, 24 Misc. 2d 561, 205 N.Y.S.2d 517 (Sup. Ct. 1960), had upheld the statute on the ground that it was aimed at an evil perpetrated by "unscrupulous sellers of cover-removed magazines," and furthermore that it, "... set forth reasonable regulation ... in order to prevent a fraud on the public and to facilitate the operation of a reasonable business practice." *Id.* at 565, 205 N.Y.S.2d at 521.

¹³ 15 Misc. 2d 810, 182 N.Y.S.2d 664 (Sup. Ct. 1958).

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paper because the returned copies had not been so mutilated or destroyed that they were fit for use only as waste paper.¹⁴

In view of the evident dissatisfaction of New York with conduct similar to defendant's,¹⁵ the knowledge that several courts had allowed consent decrees to be entered in cases based on similar facts,¹⁶ the importance to plaintiff of protecting a merchandizing system that had received the blessing of a court as long ago as 1936,¹⁷ and the incalculable loss caused Independent by defendant's conduct,¹⁸ it might have been expected that the Third Circuit would have been anxious to find a theory whereby it could afford relief. Plaintiff hoped that, relying on the approach of such cases as *International News Service v. Associated Press*,¹⁹ *Waring v. WDAS Broadcasting Station*,²⁰ and its own 1956 decision of *Ettore v. Philco Television Broadcasting Corp.*,²¹ the court would adopt or extend one of several available remedial theories.²² This, however, was not the case; rather the decision is notably reflective of the prevailance in our jurisprudence of that policy which favors the free and unfettered alienability of chattels.²³

The key to the decision was the holding that the waste paper dealers who purchased from the wholesalers did so without notice or knowledge of any

¹⁴ Id. at 812, 182 N.Y.S.2d at 666.

¹⁵ Supra notes 10-4.

¹⁶ Dell Publishing Co. v. Sturman (N.D. Ohio 1959); Independent News Co. v. David Bunis, Supreme Court of New York #2359/59 (1959). Cited in Brief for Appellant, pp. 34-5.

¹⁷ In *Butterick Publishing Co. v. FTC*, 85 F.2d 522 (2d Cir. 1936), the court said:

Much has been made in argument of a claim that the practice of accepting the return of covers only for credit or reimbursement has enabled unscrupulous dealers to sell as reading matter the coverless magazines for which they have paid nothing. . . . such a practice is possible and . . . is one which the publishers have the right to prevent by all fair means. It is no answer to the publishers that they may prevent the wrong by refusing to accept covers for credit. That is a reasonable method for them to adopt if they want to in conducting their business, and they have the right to prevent the sale of the body of the magazines as reading matter whose covers they have taken, or agreed to take, back for credit or reimbursement.

Id. at 526-27.

¹⁸ Brief for Appellant, pp. 4-5.

¹⁹ 248 U.S. 215 (1918).

²⁰ 327 Pa. 433, 194 Atl. 631 (1937).

²¹ 229 F.2d 481 (3d Cir. 1956).

²² *International News Service v. Associated Press*, supra note 19, is famed as a leading case where the doctrine of unfair competition was extended from misrepresentation to misappropriation. Unfortunately for plaintiff this case is often distinguished and cited as applicable only on its facts. See opinion of Judge Learned Hand in *Cheney Bros. v. Doris Silk Corp.*, 35 F.2d 279 (2d Cir. 1929). *Waring* and *Ettore* are instances where courts accepted arguments based on the doctrine of equitable servitudes on chattels, combined with arguments of unfair competition or other types of tortious interference with plaintiff's rights. For an excellent recent treatment of the development of tort law in protecting business relations, see Green, *Protection of Trade Relations Under Tort Law*, 47 Va. L. Rev. 559 (1961).

²³ See opinion of Judge Learned Hand in *RCA Mfg. Co. v. Whiteman*, 114 F.2d 86 (2d Cir. 1940). "Restrictions upon the uses of chattels once absolutely sold are at least prima facie invalid; they must be justified for some exceptional reason, normally they are 'repugnant' to the transfer of title." Id. at 89.

contractual arrangement between publisher and wholesaler.²⁴ Thus, when plaintiff urged that UCC 2-403(1)²⁵ was applicable, and that upon returning the covers for credit the wholesaler had become its agent with only limited authority to dispose of the comics as waste²⁶ and with no authority to transfer title to them as literary works, the court was able to apply Section 2-403(2)²⁷ and find that the defendant had acquired the full complement of property rights in the comics. The strict holding against plaintiff as to the knowledge of the purchaser was important because to apply Section 2-403(2) the court had to find that the waste paper dealers purchased "... in good faith and without knowledge that the sale to him was in violation of ownership rights or security interest of a third party in the goods."

²⁸

After properly finding that the federal copyright²⁹ and the trade-

²⁴ Supra note 6.

²⁵ Pa. Stat. Ann. tit. 12A, § 2-403(1) (1954):

A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. . . .

²⁶ Citing Sperry & Hutchinson v. Mechanics Clothing Co., 135 Fed. 833 (1st Cir. 1904) (trading stamp case); Culbertson v. Cook, 308 Pa. 557, 162 Atl. 803 (1932); Restatement, Agency §§ 175(1), 201(1) (1958); Clark Car Co. v. Clark, 11 F.2d 814 (W.D. Pa. 1925).

²⁷ Pa. Stat. Ann. tit. 12A, § 2-403(2) (1954):

Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in the ordinary course of business.

²⁸ UCC 1-201(9) states:

Buyer in ordinary course of business means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind. . . .

In *Yachting Publishing Corp. v. Friedman*, supra note 13, the defendant took with notice; here the court relied upon its somewhat tenuous holding that the record showed no knowledge by defendant of the contractual arrangement between plaintiff and its wholesalers. It would seem that in view of the twenty-year history of litigation surrounding this type of contract, the legend contained in the magazine which is clearly visible once the cover is removed, and the quite general use of such contracts throughout the magazine industry, that it might be expected that a court would hesitate before finding good faith and lack of knowledge on the part of a purchaser, and that a proper record might thus show sufficient "knowledge" to take the transaction out of UCC 2-403(2). If this were so, and if a different record, based on a similar commercial situation, might show 2-403(2) not applicable, then the doctrine of equitable servitudes on chattels, discussed *infra*, would be available. However, it must be considered whether the conclusion of the court resulted from an overall lack of sympathy with Independent, from an unsatisfactory record, or whether it is indicative of a developing propensity of courts to give a broad interpretation to the possible application of UCC 2-403(2). For an interesting discussion of the intended limitations upon UCC 2-403(2), see 1 Report to the New York Legislature of the Law Revision Commission of 1955, Study of the UCC, 227-51, 454-60.

²⁹ Supra note 8. Plaintiff urged that under the Copyright Act it had the exclusive right to "vend" its copyrighted work, and maintained that defendant only bought scrap paper at a fractional cost of its price as a literary work. Thus it argued, there was no first sale of the comic as a comic. The court answered this by stating, "Once lawful ownership of the chattel was transferred to a first purchaser, the copyright holder's power of control in the sale of the copy ceases." 293 F.2d at 517. 61 Stat. 652 (1947), 17 U.S.C. 27 (1958) states, "... nothing in this act shall be deemed to forbid, prevent,

mark³⁰ statutes did not afford protection to plaintiff in this instance, the court quite summarily dispatched the allegation of unfair competition.³¹ The leading *Waring* and *International News* cases were distinguished, the court finding a lack of the essential element of misappropriation involved in those cases; nor was there any misrepresentation or "palming off" as traditionally involved in unfair competition.³² Despite a recent willingness of some courts to extend the doctrine of unfair competition to new situations as the needs of justice and business require,³³ the court in the instant case was in no such mood. It suggested that if the plaintiff had properly enforced the contractual provision between itself and the wholesalers, the defendants would be unable to purchase the coverless books.³⁴ In discussing the importance of the legend to the plaintiff's case the court again returned to this theme. All the facts, said Judge McLaughlin, must rightly call for relief, and in this case, "... the totality of facts does not provide proper foundation for the issuance of an injunction."³⁵

Although the principal case was significant for the readiness of the court to apply UCC 2-403(2), it is also important for what it did not do. By use of the legend and the contractual arrangements the plaintiff was attempting to enforce an equitable servitude upon a chattel. Yet the court did not discuss this. Unless this case is to be taken, *sub silentio*, as a complete public policy declaration against the doctrine of equitable servitudes on chattels, then upon a record where notice of the distribution contract is proved against a defendant, the enigmatic question of equitable servitudes cannot be ignored. Because of conflicting authority³⁶ as to the doctrine's availability and usefulness, such a discussion would be enlightening and useful. While referring to the various theories often proposed for this purpose, and to their treatment by the judiciary, Judge Biggs in *Ettore v. Philco Television Broadcasting Co.*,³⁷ admitted that "the state of the law is still that of a haystack in a hurricane."³⁸ In the areas where some protective restrictions on personalty are allowed, such as under copyright and trademark statutes, or under the theory of unfair competition, the breadth of the protection is limited.³⁹ Why the courts have not filled in gaps left by these theories to prevent obvious wrongs (what Professor Chafee refers to as "dirty tricks"),⁴⁰ by developing the theory of equitable servitudes on

or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained."

³⁰ Supra note 7.

³¹ See The Federal Law of Unfair Competition, 47 Va. L. Rev. 600 (1961). See also, Chafee, Unfair Competition, 53 Harv. L. Rev. 1289 (1940).

³² See *Philco Television Broadcasting Corp. v. Ettore*, supra note 21, at 490.

³³ See Chafee, Unfair Competition, supra note 31, and Green, Protection of Trade Relations Under Tort Law, supra note 22.

³⁴ Supra note 1, at 517.

³⁵ Id. at 518.

³⁶ Compare *Waring*, supra note 20, with *RCA Mfg. Co. v. Whiteman*, supra note 23.

³⁷ Supra note 21.

³⁸ Id. at 37.

³⁹ See supra notes 7, 8, 22, 23, 26, 29, 31 and 33. Chafee, Unfair Competition, supra note 31, states at 1301:

"'Unfair' is a word of art. It leaves out plenty of shabby conduct."

⁴⁰ Id. at 1289.

chattels, is partly explained by the judicial antipathy to restraints upon the free alienation of chattels as unwise public policy,⁴¹ and partly by a traditional hesitancy to experiment. Frequently in equitable servitude situations the reasoning is obscure, several other theories are often presented to buttress the contractual argument, and, as a result, the basis of the decisions are uncertain.⁴² But notwithstanding the uncertainty of the reasoning and the frequent public policy considerations mitigating against their use, equitable servitudes may be,⁴³ and have been, enforced.⁴⁴

In an article written in 1928, Professor Chafee suggested that "on general principles equitable servitudes on chattels seem a reasonable and flexible device, which the courts might use when desirable."⁴⁵ But he suggested that such use should first be given careful consideration,⁴⁶ and in a later article he suggested a formula as a guide in such consideration.

The big point is that the imposition of a novel burden, either on land or a chattel or both, ought not to depend solely on the will of the parties. The validity or invalidity of the burden they want to create ought to depend on considerations of public policy. Do business needs make it desirable to create this novel burden? Does its enforcement involve grave possibilities of annoyance, inconvenience, and useless expenditure of money that it should not be allowed? In other words, is the game worth the candle?⁴⁷

Recently, two cases, influenced by the Chafee argument, have enforced

⁴¹ The right of alienation is one of the essential incidents of a right of general property in movables, and restraints upon alienation have been generally regarded as obnoxious to public policy, which is best subserved by great freedom of traffic in such things as pass from hand to hand. . . .

Judge Lurton in *John D. Park & Sons v. Hartman*, 153 Fed. 24, 39 (6th Cir. 1907). Also see Chafee, *The Music Goes Round and Round: Equitable Servitudes and Chattels*, 69 Harv. L. Rev. 1261 (1956), and dissent of Judge Hastie in *Ettore*, supra note 21, at 498.

⁴² See *P. Lorillard Co. v. Weingarden*, 280 Fed. 238 (W.D.N.Y. 1922); *Waring*, supra note 20; *Metropolitan Opera Ass'n, Inc. v. Wagner-Nichols Recorder Corp.*, 199 Misc. 786, 101 N.Y.S.2d 483 (Sup. Ct. 1950), aff'd, 279 App. Div. 632, 107 N.Y.S.2d 795 (1951).

⁴³ On general principles equitable servitudes on chattels seem a reasonable and flexible device, which the courts might use when desirable.

Chafee, *Equitable Servitudes on Chattels*, 41 Harv. L. Rev. 945, 1007 (1928).

⁴⁴ Supra note 42. Also *In re Waterson, Berlin & Snyder Co.*, 48 F.2d 704 (2d Cir. 1931) (A publishers' trustee in bankruptcy was not allowed to sell copyrights to other publishers free and clear of royalty agreement with authors); *Murphy v. Christian Press Ass'n Pub. Co.*, 38 App. Div. 426, 56 N.Y. Supp. 597 (1899); *Pratte v. Balatsos*, 99 N.H. 430, 113 A.2d 492 (1955); *Nadell & Co. v. Grasso*, 175 Cal. App.2d 420, 346 P.2d 505 (Dist. Ct. App. 1959). For leading case contra see *Dr. Miles Medical Co. v. Park*, 220 U.S. 373 (1911), affirming 164 Fed. 813 (6th Cir. 1908).

⁴⁵ Chafee, *Equitable Servitudes on Chattels*, supra note 43, at 1007.

⁴⁶ Plaintiffs should be put:

. . . on their mettle to prove that their restrictions are not merely the gratification of a personal whim, but carry out a commercial purpose as valuable as that which underlay *Tulk v. Moxhay*. . . . In this way the controversy is removed from pure theory.

Id. at 986.

⁴⁷ Chafee, *The Music Goes Round and Round: Equitable Servitudes and Chattels*, supra note 41, p. 1258.

equitable servitudes on personalty. One enforced an equitable servitude upon a juke box.⁴⁸ The second allowed a promisor, who had agreed upon the purchase of damaged goods that they should not be sold in their original container, to enforce this agreement against a later purchaser, who took with knowledge of plaintiff's promise and of a similar promise to plaintiff by the person from whom the defendant purchased.⁴⁹ This case, as do most cases where equitable servitudes are enforced, involved elements of unfair competition, tortious interference with contractual and business relations, and, importantly, a consideration of public welfare.⁵⁰

As already mentioned, the practice which Independent sought to protect by injunctive relief was given judicial approval in 1936.⁵¹ Since then, at least one court has found conduct such as defendant's improperly offensive to a magazine distributor's carefully developed merchandising system,⁵² while several defendants have allowed consent decrees to be entered against them.⁵³ It is submitted that in a situation like the present, where there are considerations of public policy favoring the enforcement of the restriction as a proper business practice, as well as considerations favoring the unrestricted mobility of chattels, much good might come from a thorough re-examination of the doctrine of equitable servitudes on chattels. It might provide a practical and proper remedy; it might be more beneficial to the public than an indiscriminate application of UCC 2-403(2); or, in Chafee's terms, the game might be found to be "worth the candle."

JOHN M. CALLAHAN

Trade Regulations—Clayton Act Section 3—Tie-In Sales—Proper Business Reason.—*Dehydrating Process Co. v. A. O. Smith Corp.*¹—A. O. Smith is a national manufacturer of storage equipment. It manufactures a patented glass lined silo and a patented unloading device designed for use with its silo. From 1951 through 1957 it sold its unloaders separately on request. During this period it sold eighty unloaders to thirty-six customers which were used with silos other than those of the defendant's manufacture. It received complaints from eighteen of these customers and six unloaders were returned for refund. In 1958, as a result of the volume of complaints, the defendant adopted a policy of selling its unloaders only for use in simultaneously purchased or previously acquired silos of its own

⁴⁸ *Pratte v. Balatsos*, supra note 44. In a notable comment upon this case, Chafee failed to give it his wholehearted approval. He was skeptical of the wisdom, on grounds of public policy, of tying a juke box to a business. *Id.*

⁴⁹ *Nadell & Co. v. Grasso*, supra note 44.

⁵⁰ See extensive note in 48 *Calif. L. Rev.* 337 (1960). Also noted in 74 *Harv. L. Rev.* 617 (1961). *Albrecht*, 1 *B.C. Ind. and Com. L. Rev.* 215, 216 (1960), suggested:

In view of the interest of the public in permitting the unrestricted transfer of chattels, it would seem better to grant such power (that of enforcing restrictive covenants by injunction) only to the manufacturer.

⁵¹ Supra note 17.

⁵² Supra note 12.

⁵³ Supra note 16.

¹ 292 F.2d 653 (1st Cir. 1961), cert. denied, 82 S. Ct. 368 (1961).