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Unfair Competition--News--Literary Property

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sarily apply to each item embraced therein. *State v. Bond*, 94 W. Va. 255, 118 S.E. 276 (1923).

However, the court does not set a limit on the number of items of equal rank required to be stricken from an appropriation bill to result in an act contrary to legislative intent. Here seventy-one items were found to be unconstitutional and that was held to be "too numerous and extensive." In *In re Opinion of the Justices*, 45 R.I. 289, 120 Atl. 868 (1923), it was the opinion of the court that if a general appropriation act, containing distinct and separable provisions for public and private purposes, were passed by a majority of a quorum, it would not be declared invalid as a whole, but merely as to the appropriations for private purposes which required a two-thirds majority of elected members. And a Wisconsin appropriation bill was upheld where two purposes were invalid but the remaining four important purposes were valid. *State ex rel. Wisconsin Development Authority v. Dommann*, 228 Wis. 147, 280 N.W. 698 (1938).

It is clear from the reported cases that the general rules regarding separability of statutes and saving clauses are applied to appropriation bills and general statutes alike, and that the number of invalid provisions is effective only as a guide to show legislative intent. *State ex rel. Hudson v. Carter*, 167 Okla. 32, 27 P.2d 617 (1934), spells out the test, "Where the valid portions of a general appropriation act are so separate and distinct from the invalid portions thereof that it may be presumed that the legislature would have enacted the valid portions thereof without the invalid portions if it had known of the invalidity," and elision from the act of the invalid portions leaves "a consistent and workable act complete in itself and capable of being executed in accordance with the apparent legislative intent," the valid parts of the act will be given effect. *Id.* at 42, 27 P.2d at 626.

G. W. S. G.

UNFAIR COMPETITION—NEWS—LITERARY PROPERTY.—*D*, the operator of a radio station, which competed with *P*'s newspaper for advertising, broadcast news from the newspaper, the broadcast coinciding in point of time with the completion of distribution of the newspaper to subscribers. *Held*, that a motion to dismiss a bill seeking an injunction, recovery for unjust enrichment, and

damages was properly denied. *Veatch v. Wagner*, 109 F. Supp. 537 (Alaska 1953). *D*, owner of a Texas radio station, had his agent listen to the broadcast of races by *P*'s Arizona radio station; the agent telephoning the bare facts to the Texas station, and the Texas station re-creating the races within a few minutes after the actual happening of events at the race track. *Held*, judgment of the district court denying an injunction affirmed, that a re-creation of the races did not violate any property rights of the Arizona station. *Loeb v. Turner*, 257 S.W.2d 800 (Texas 1953).

One of the questions frequently discussed in this type of case is the constitutional right of freedom of speech and press. No constitutional right is really involved here. The constitutional protection of private and nongovernmental persons engaged in news gathering and dissemination is merely from interference by governmental agencies. *KVOS v. A.P.*, 299 U.S. 269 (1936).

Another problem discussed in this type of case is whether property rights are involved in news. It has finally been recognized that news is property and will be protected as property against any act impairing its value as such. *KVOS v. A.P.*, *supra*; *Pittsburgh Athletic Co. v. KQV*, 24 F. Supp. 490 (W.D. Pa. 1938); *cf. I.N.S. v. A.P.*, 248 U.S. 215 (1918) (not decided on basis of property rights). The cases are not unanimous as to whether these property rights are lost by publication or broadcast, *Pittsburgh Athletic Co. v. KQV*, *supra* (not lost); *Loeb v. Turner*, *supra* (lost). Neither do the cases distinguish between publication and broadcasting, but it seems that broadcasting is merely a form of publication. *Veatch v. Wagner*, *supra*, one of the principal cases, concedes that the identical fact situation present there had not been previously dealt with by the courts, but the court recognizes the right asserted in view of *I.N.S. v. A.P.*, *supra*.

The historical rule that courts of equity will not act except to protect a property right treats any civil right of a pecuniary nature as a property right. *I.N.S. v. A.P.*, *supra*. It seems, then, that relief could be based on the broader principle of protecting the right of one in his business, or the right of one to do business without unreasonable interference from anyone.

News is protected against unfair appropriation under the laws of unfair competition. In one principal case, it is clear from the facts that the newspaper and radio station were in competition with each other. *Veatch v. Wagner*, *supra*. In the other principal

case, the court said that the principle of unfair competition was not applicable, since there was no attempt between the parties to compete, the stations being more than a thousand miles apart. *Loeb v. Turner, supra*. An injunction based on unfair competition was granted in *I.N.S. v. A.P., supra*, in which I.N.S. obtained news from papers in the east, and transmitted this news to papers in the west, the time difference between the areas permitting the western papers to take advantage of this news. However, the injunction was limited to "fresh" news and was effective only in the immediate area where the two agencies and their members were in actual competition with each other. In *Pittsburgh Athletic Co. v. KQV, supra*, where the defendant radio station obtained information concerning games through observers stationed outside the baseball field, it was held to be an interference amounting to unfair competition with the property rights acquired by advertisers from the owners of the team, although the defendant received no compensation, either from advertisers or the public, for these broadcasts. But under a similar set of facts, the only difference being that the plaintiff was ignorant of the method by which the defendant obtained news, the court held that the plaintiff was not entitled to rely on unfair competition where the complaint failed to disclose that admission tickets limited the rights of patrons so that the company had an exclusive right to describe the games. *National Exhibition Co. v. Teleflash*, 24 F. Supp. 488 (S.D.N.Y. 1936). It was held in *KVOS v. A.P., supra*, that *P* had a quasi-property interest in news it had gathered, at least to enable it to enjoin unfair competition by the radio station in pirating news published in member newspapers.

The defendant's conduct in these cases differs from the ordinary case of unfair competition in trade, principally in that, instead of selling its own goods as those of the complainant, it substitutes misappropriation in the place of misrepresentation, and sells complainants goods as its own. *I.N.S. v. A.P., supra*.

From the above cases, it is clear that the courts have consistently granted relief where unfair competition is present; and have just as consistently denied relief where unfair competition could not be shown. The view, then, is justified that news will be protected under the laws of unfair competition.

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