

Equitable Servitude: Chattels

Thomas W. Bertz

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release of records from subordinates such as the one in the *Boske* case is still valid in spite of the Hennings-Moss Act,¹⁹ because a subordinate relies on the departmental order, not 5 U.S.C. §22, as authority for withholding information. Testifying before the Subcommittee on Constitutional Rights, the Attorney General said that the amendment "wouldn't amount to much" because it would merely prevent people from incorrectly citing 5 U.S.C. §22 as authority for withholding information, the true authority being the "executive privilege."²⁰

The *Trimble* case, in conjunction with the "executive privilege," leads to the conclusion that the release of government records must be determined by the branch of government which controls them. This conclusion will sound harsh to those who advocate less secrecy in government. However, any attempt to decrease secrecy in government must proceed with a realization that the separation of powers doctrine leaves no alternative. The judicial branch of the government in the *Trimble* case recognized this fact and followed the wise course of non-interference.²¹

FRANCIS SKIBA

Equitable Servitudes: Chattels—Plaintiff purchased from a railroad company a quantity of Kraft-brand fruit salad that had become frozen in transit. Plaintiff agreed he would allow the goods to enter retail outlets under the Kraft label. Plaintiff then sold the merchandise to a wholesaler with the restriction that the goods were to be removed from the jars and the jars with caps and cases were to be returned to plaintiff. Subsequently, a wholesaler sold a portion of the goods to the defendant. Although defendant had knowledge of the restriction at the time of sale, he refused to comply with it and sold some of the goods in the Kraft-jars to retailers. The trial court granted plaintiff injunctive relief against the defendant upon the basis of broad equitable

¹⁹ 104 Cong. Rec. 15695 (daily ed. July 31, 1958).

²⁰ *Supra* note 13 at 5.

²¹ Occasionally, recognition of the importance of the separation of powers doctrine in the area of federal records proceeds from Congress. In May of 1948, a resolution came up in the House of Representatives which would have required the executive department and agencies of the Federal Government, which had been created by Congress, and those serving in them, to make available to Congress information which would enable it to legislate, provided that the request was made by a majority vote of the committee seeking the information and had been approved by either the Speaker or the president pro tempore of the Senate. During the debate on the resolution, Representative Rayburn admonished the House: "Pass this resolution. The President says to his cabinet officer, 'No, you are my agent, you are my alter ego; do not give that information to Congress.' What are you going to do about it? You might have an unseemly row upon the floor of the House of Representatives. What are you going to do about it? Are you going to impeach the President of the United States because he says that the giving up of certain information is not in the public interest?" This reply can be found in H. Rep. No. 1461, 85th Cong., 2nd Sess. 19, 20 (1958).

principles. The California Supreme Court affirmed the decision of the trial court for plaintiff on the ground that the facts warranted an application of the equitable servitude doctrine to chattels. *Nadell & Co. v. Grasso*, 175 Adv. Cal. App. 449, 346 P. 2d 505 (1959).

One element necessary for the application of the doctrine to chattels was knowledge of the restrictive agreement by the third party (defendant). Privity of contract was not essential, and the doctrine rested in the real property principle of dominant tenement.¹ In reality, the dominant tenement is that property benefited by the restrictive agreement. In the application of the real property doctrine to personalty, the dominant tenement was the good will of the business.² Thus, the transition of the real property doctrine to personalty was completed.

The court followed equitable principles of relief when it enforced the restriction. Thus, it found that the remedy at law was inadequate³ and the performance of the restriction did not cause any unreasonable burden to the defendant.⁴

The doctrine of equitable servitudes had its origin in land contracts in a nineteenth century English case.⁵ The court held that in the sale of land the vendor could make restrictions as to its use, and future purchasers who had knowledge of the restrictions would have to comply with them. The restrictions would be enforced in equity independently of the question of whether or not it ran with the land.⁶ The basis of the *Tulk*⁷ decision was that inequities in prices would arise by letting the vendee sell the property to another who would not have to comply with the restrictions.⁸ This decision was followed by the California

¹ For a discussion of this real property principle applied to chattels see Ames, *Specific Performance For and Against Strangers to the Contract*, 17 Harv. L. Rev. 174, 181 (1903-4) and Chafee, *Equitable Servitudes on Chattels*, 41 Harv. L. Rev. 945, 964 (1928). Public policy considerations should be the basis for the application of this principle. 18 B. U. L. Rev. 441 (1938), 22 Minn. L. Rev. 559 (1938) and Chafee, *The Music Goes Round and Round: Equitable Servitudes and Chattels*, 69 Harv. L. Rev. 1250 (1956); cf., 22 Colum. L. Rev. 351 (1922) and 36 Harv. L. Rev. 107 (1922). Compare Giddings, *Land, Restrictions Upon the Use Of*, 5 Harv. L. Rev. 274 (1891-2) with 17 Harv. L. Rev. 415 (1904).

See Restatement, Property §§454-456 (1944). For reasons against dominant tenement as the legal principle that underlies the equitable servitude doctrine, see Stone, *The Equitable Rights and Liabilities of Strangers to a Contract*, 18 Colum. L. Rev. 291, 309 (1918).

² Good will is considered a property interest; *Smith v. Bull*, 50 Cal. 2d 294, 325 P.2d 463 (1958).

³ 1 Pomeroy, *Equity Jurisprudence* §217 at 367 (5th ed. 1941).

⁴ *Anderson v. Neal Institutes Co.*, 37 Cal. App. 174, 173 P. 779 (1918); *Poultry Producers of Southern California, Inc., v. Barlow*, 189 Cal. 278, 208 Pac. 93 (1922).

⁵ *Tulk v. Moxhay*, 41 Eng. Rep. 1143 (1848). See Clark, *Equitable Servitudes*, 16 Mich. L. Rev. 90 (1917-8).

⁶ 4 Pomeroy, *Equity Jurisprudence*, §1295 at 846 (5th ed. 1941).

⁷ *Supra* note 5.

⁸ However, see Clark, *Equity* §109 at 141-42 (1954).

Court in applying the equitable servitude doctrine to real estate transactions.⁹

Two subsequent early English cases broadened the application of the restrictive agreements to include chattels. In one case, the plaintiff entered into a charter with a shipowner for the purpose of making a voyage. Later the ship was mortgaged to the defendant with knowledge of the charter. When the defendant wanted to interfere with the voyage, he was enjoined by the court.¹⁰ In the other case, the plaintiff was a patentee who had granted the patent under a contract which required the grantee and his assigns to pay a fixed percentage of the net profits to the plaintiff. Upon the failure of the defendant, the assignee of the patent, to make payments to the plaintiff, the court held the defendant liable to an accounting.¹¹ Jessel, M.R., stated that there was an obligation running with the patent. His view did not represent the reasoning of his associates on the Court of Appeal although they had agreed with him in the granting of the accounting.¹²

With some exceptions,¹³ the English courts then all but struck restrictive agreements from the list of enforceable equitable devices. Price maintenance was not generally recognized by the English courts. A tobacco manufacturer who had sold packet tobaccos subject to printed terms and conditions fixing a minimum price was unable to enforce the proviso against a third party.¹⁴ Later the court refused to grant

⁹ *Werner v. Graham*, 181 Cal. 174, 183 Pac. 945 (1919); *Marra v. Aetna Construction Co.*, 15 Cal. 2d 375, 101 P. 2d 490 (1940).

¹⁰ *De Mattos v. Gibson*, 4 De G. & J. 276, 282, 45 Eng. Rep. 108, 110 (Ch. 1858).
 “. . . where a man, by gift or purchase, acquires property from another, with knowledge of a previous contract, lawfully and for valuable consideration made by him with a third person, to use and employ the property for a particular purpose in a specified manner, the acquirer shall not, to the material damage of the third person, in opposition to the contract and inconsistently with it, use and employ the property in a manner not allowable to the giver or seller. This rule, applicable alike in general as I conceive to movable and immovable property, . . .” See *Wade, Restriction on User*, 44 *Law Quarterly Rev.* 51, 52 (1928).

¹¹ *Werderman v. Société Générale d'Électricité*, 19 Ch. D. 246, 251, 252 (1881).
 “. . . the parties intended certain liabilities to attach to the patent itself . . . it is quite plain that nobody could take the patent with notice of that arrangement, and say we will keep all the profits and will not be liable to account. . .” See *Keasbey, Restrictive Covenants as Applied to Territorial Rights in Patented Articles*, 10 *Harv. L. Rev.* 1 (1896-7).

¹² *Ibid.*

¹³ Usually listed as exceptions are restrictions involving “tied houses” and the *Lumley* doctrine. “Tied house” restrictions are agreements between a brewer and the owner of a public house stipulating that the owner would buy beer exclusively from the brewer. These restrictions were upheld against subsequent owners. *John Bros. Abergarw Brewery Co. v. Holmes*. [1900] 1 Ch. 188; *Osborne v. Bradley* [1903] 2 Ch. 446. *Cf.*, *Stone, The Equitable Rights and Liabilities of Strangers to a Contract*, 18 *Colum. L. Rev.* 291 (1918). See, however, 2 *American Law of Property* §9.32 at 428 (1952). The *Lumley* doctrine holds that a stranger to a contract is liable in tort for inducing its breach. *Lumley v. Gye*, 2 El. & Bl. 215, 118 Eng. Rep. 749 (K.B. 1853). *Cf.*, 42 *Law Quarterly Rev.* 139 (1926) and *Chafee, Equitable Servitudes on Chattels*, 41 *Harv. L. Rev.* 945, 969 (1928).

¹⁴ *Taddy v. Sterious*, [1904] 1 Ch. 354.

an injunction against a third party who had sold rubber heels below the minimum price stipulated by the manufacturer on the lid of each box.¹⁵

Restrictions on patented articles imposed by the owner of the patent were upheld by the English courts.¹⁶ A patentee was allowed to enforce price and use restrictions on his patented article against third parties.¹⁷ Restrictions placed upon copyrights were less favorably situated than those placed upon patents. An author who had assigned to a publishing company the exclusive right to publish his book could not hold a subsequent assignee of the right liable for royalties. The right of royalties, the court explained, did not extend to third parties.¹⁸ However, in another case concerning copyrights, the court enjoined a publishing company from publishing a particular book when the author made a prior agreement with another publisher to print it. The injunction was granted on the ground that the first publisher had an interest in the property of the copyright against third parties.¹⁹

In the United States, restrictive agreements²⁰ on chattels received some consideration by the courts although they seldom spoke in terms of equitable servitudes. Restrictive agreements involving patented articles were generally not enforced.²¹ The statutory monopoly granted

¹⁵ *McGruther v. Pitcher*, [1904] 2 Ch. 306.

¹⁶ *National Phonograph Co. v. Menck*, [1911], A.C. 336, 350, where the court in quoting from *Incandescent Gas Light Co. v. Cantelo*, [1895] 12 R. Pat. Cas. 262, said "The sale of a patented article carries with it the right to use it in any way that the purchaser chooses to use it, unless he knows of restrictions. Of course, if he knows of restrictions and they are brought to his mind at the time of the sale, he is bound by them. He is bound by them on this principle: the patentee has the sole right of using and selling the articles, and he may prevent anybody from dealing with them at all. In as much as he has the right to prevent people from using them or dealing in them at all, he has the right to do the lesser thing, that is to say, to impose his own conditions. It does not matter how unreasonable or how absurd the conditions are. . . ."

¹⁷ *Ibid. Cf.*, Chafee, *Equitable Servitudes on Chattels*, 41 Harv. L. Rev. 945, 955 (1928) for additional patent cases.

¹⁸ *Barker v. Stickney*, [1919] 1 K.B. 121.

¹⁹ *Erskine Macdonald v. Eyles*, [1921], 1 Ch. 631.

²⁰ Note that the various types of restrictive agreements on chattels include, but are not limited to, price maintenance restrictions, territorial restrictions, resale restrictions, use restrictions and tying restrictions. Chafee, *Equitable Servitudes on Chattels*, 41 Harv. L. Rev. 945, 948 (1928). The restriction can be placed upon a common article of sale or upon an article which has been granted a statutory monopoly such as patented or copyrighted articles. Restrictive agreements are usually placed upon chattels by a contract; however, authorities agree that the doctrine of equitable servitudes had its origin in contract. Stone, *The Equitable Rights and Liabilities of Strangers to a Contract*, 18 Colum. L. Rev. 291, 295 (1918); 32 Ky. L. J. 309 (1944).

²¹ *Boston Store of Chicago v. American Graphophone Co. et al*, 246 U.S. 8 (1918) (price restriction); *Straus v. Victor Talking Machine Co.*, 243 U.S. 490 (1917) (price restriction); *Motion Picture Patents Co. v. Universal Film Mfg. Co.*, 243 U.S. 502 (1917) (tying restriction). Powell, *The Nature of a Patent Right*, 17 Colum. L. Rev. 663 (1937); 25 Harv. L. Rev. 641; Keasbey, *Restrictive Covenants as Applied to Territorial Rights in Patented Articles*, 10 Harv. L. Rev. 1 (1896). One reason for upholding restrictions placed upon

by the patent gave the patentee only the right to prevent others from using, making or selling that which had been patented²² and unlike the English courts,²³ the courts in the United States did not include in the granting of the patent the right to make restrictive agreements.

Restrictions placed upon copyrights²⁴ were looked upon more favorably than those placed upon patents.²⁵ In an early decision involving a copyright it was held that an assignee of a copyright could not publish more books than could his assignor, which number was fixed by a prior contract with the author.²⁶ In New York, a price restriction agreement on a copyright book was enforced by the court. In that case, the publisher entered into a contract with the owner of a copyright to buy plates of a prayer book and publish it at a stipulated price. When the publisher sold the plates to another publisher, the subsequent publisher was enjoined from selling the prayer book at a lower price than that which was agreed upon by the first publisher.²⁷ In another case involving a copyright, when the owner of a copyright of music was granted royalties against a subsequent publisher,²⁸ Judge Augustus Hand stated: "One who takes property with notice that it is to be used in a particular way receives it subject to something resembling an equitable servitude."²⁹

A use restriction was upheld in New York when a purchaser of a machine with knowledge of a restrictive use agreement between the seller and another was enjoined from using the machine contrary to such restriction.³⁰ However, use restrictions were generally disfavored by the courts³¹ as were tying restrictions.³²

In a decision upholding a territorial restriction, the plaintiff sold a

statutory monopolies is that the defendant will not be able to avail himself of the plaintiff's industry and gain a "free ride". 46 Harv. L. Rev. 1171, 1173 (1932); 47 Harv. L. Rev. 1419, 1424 (1934). See *infra* note 38.
(1932); 47 Harv. L. Rev. 1419, 1424 (1934). See *infra* note 38.

²² Bauer v. O'Donnell, 229 U.S. 1 (1912).

²³ See *supra* note 16.

²⁴ 61 Stat. 652 (1947), 17 U.S.C. §1 (1958).

²⁵ See Waring v. WDAS Broadcasting Station, Inc., 327 Pa. 433, 194 Atl. 631 (1937) (use restriction). However, see earlier decisions, Jeweler's Mercantile Agency v. Jeweler's Weekly, 155 N.Y. 241, 49 N.E. 872 (1898) (publication restriction) and Bobbs-Merrill Co. v. Straus, 210 U.S. 339 (1908) (price restriction). The distinction between limited and general publication is discussed in Werkmeister v. American Lithograph, 134 Fed. 321 (2d Cir. 1904) and Berry v. Hoffman 125 Pa. Sup. 261, 189 Atl. 516 (1937).

²⁶ In Re Rider et al, 16 R.L. 271, 15 Atl. 72 (1888).

²⁷ Murphy v. Christian Press Ass'n. Pub. Co., 38 App. Div. 426, 56 N.Y.S. 597 (1899).

²⁸ In re Waterson, Berlin & Snyder Co., 48 F. 2d 704 (2d Cir. 1931).

²⁹ *Id.* at 708.

³⁰ New York Bank-Note Co. v. Hamilton Bank Note Engraving & Printing Co., 83 Hun. 593, 31 N.Y.S. 1060 (1895).

³¹ National Skee-Ball Co. v. Seyfried, 110 N.J. Eq. 18, 158 Atl. 736 (1932); In Re Consolidated Factors Corp., 46 F. 2d 561 (S.D. N.Y. 1931) (restrictive sale of stock); Garst v. Hall, 179 Mass. 588, 61 N.E. 219 (1901) and Coca-Cola Co. v. Bennett, 238 Fed. 513 (8th Cir. 1916) (trademark restriction).

³² Motion Picture Co. v. Universal Film, 243 U.S. 502 (1917).

quantity of inferior quality cigarettes to a certain company on the condition that they would not be resold in the United States. Subsequently, the defendant purchased the cigarettes with knowledge of the restriction and imported a portion of them into this country; however, he was enjoined by the court from selling more.³³

California's first application of the equitable servitude doctrine to personalty was in the *Nadell* decision although the state recognized price restrictive agreements on chattels as early as 1909.³⁴ In upholding the price restriction the California Supreme Court stated: "There is nothing either unreasonable or unlawful in the effort by a manufacturer to maintain a standard price for his goods."³⁵

Price restrictions were extended by the court to third parties with notice in a later decision.³⁶ These two cases prepared the way for the constitutional validity of the fair trade laws in that state.³⁷

Price fixing³⁸ under the Sherman Act³⁹ was generally considered a restraint of trade by the courts.⁴⁰ The McGuire Act⁴¹ which amended the Sherman Act gave the manufacturers and vendors the right to stipulate resale prices within reasonable limitations. Violations of these price fixing contracts were remedied by injunctive relief.

Although not all states have adopted fair trade laws,⁴² among those

³³ *P. Lorillard Co. v. Weingarden*, 280 Fed. 238 (W.D.N.Y. 1922). *Cf.*, *Russel v. Tilghman*, 275 Fed. 235 (E.D. Va. 1921).

³⁴ *Grogan v. Chaffee*, 156 Cal. 611, 105 Pac. 745 (1909).

³⁵ *Id.* at 747.

³⁶ *D. Ghirardelli Co. v. Hunsicker et al*, 164 Cal. 355, 128 Pac. 1041. (1912).

³⁷ *Max Factor & Co. v. Kunsman*, 5 Cal. 2d 446, 55 P. 2d 177 (1936); *Scovill Manufacturing Co. v. Skaggs Pay Less Drugs*, 45 Cal. 2d 881, 291 P. 2d 936 (1955).

³⁸ Note that since *Old Dearborn Distributing Co. v. Seagram-Distillers Corp.*, 299 U.S. 183 (1936), which upheld the Illinois fair trade laws, the courts have looked more favorably upon price fixing agreements as applied to third parties. Thus, the year 1936 marks the date in which the equitable servitude doctrine was given new life inasmuch as fair trade laws are considered a type of equitable servitude. Chafee, *The Music Goes Round and Round: Equitable Servitudes and Chattels*, 69 Harv. L. Rev. 1250, 1255 (1956). Compare the date of cases cited with 1936 and also determine whether the state in which the case was decided has upheld the constitutionality of the fair trade laws as applied to third parties. See *infra* notes 42 and 43.

³⁹ 26 Stat. 209 (1890), 15 U.S.C. §1.

⁴⁰ *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373 (1911); Annot., 7 A.L.R. 449 (1920); Annot., 19 A.L.R. 925 (1922); Annot., 32 A.L.R. 1087 (1924); Annot., 103 A.L.R. 1331 (1936); Annot., 125 A.L.R. 1335 (1940) and Annot., 64 A.L.R. 2d 758 (1959).

⁴¹ 66 Stat. 631 (1952), 15 U.S.C. §45(a)(3). The Sherman Act was changed by the Miller-Tyding Amendment, 50 Stat. 693 (1937), 15 U.S.C. §1, which validated resale price maintenance contracts in interstate commerce, thus placing them beyond the sanctions of the Sherman Anti-Trust Act. In 1952, the McGuire Act specifically exempted nonsigner provisions from the Sherman Act. The McGuire Act was held constitutional in *Norman M. Morris Corp. v. Hess Bros., Inc.*, 243 F. 2d 274 (3d Cir. 1956); 64 A.L.R. 2d 750 (1959).

⁴² The states that do not have fair trade laws: Alaska, Missouri, Nebraska, Texas and Vermont. The states that have passed fair trade laws, but do not have rulings concerning their constitutionality as to nonsigners: Ala-

states which have them there exists a difference of opinion as to the constitutionality of price restrictions against third parties (non-signers).⁴³ A factor in predicting whether a court will recognize the application of the equitable servitude doctrine to chattels is whether the court has previously upheld the constitutionality of price fixing agreements as applied to nonsigners. For example, the Louisiana Supreme Court in *Dr. G. H. Tichenor Antiseptic Co. v. Schwegmann Brothers Giant Super Markets*⁴⁴ declared that the extension of the fair trade laws to include nonsigners is unconstitutional and the court also stated:

Equitable Servitudes running with a movable and restraints on the alienation of movable property are disfavored under the public policy of this State. Once a movable is sold, the seller relinquishes all interest therein and conditional sales whereby the vendor retains title to the property, are not recognized in Louisiana.⁴⁵

On the other hand, California, which was the first state to adopt the fair trade laws and further upheld their constitutionality against nonsigners, recognized without difficulty the doctrine of equitable servitudes applied to chattels.⁴⁶

The two major devices employed to effectuate restrictive agreements on chattels are equitable servitudes and sub-contracts. Of the two devices, the equitable servitude device has many advantages over the other. One of the advantages is that the right which exists in equitable servitudes is a right *in rem* whereas in sub-contracts there exists only a right *in personam*.⁴⁷ Therefore, the restriction can be enforced regardless of whether privity of contract exists between the owner of the right *in rem* and the person who has not respected this right. The non-contractual nature of the equitable servitude device would eliminate the necessity of overseeing that the restriction is continued by a series of sub-contracts. Of course, the continuance of a restriction by means of sub-contracts is more burdensome when third parties are reluctant to accept them or to continue them. The sub-contract device becomes even more cumbersome when the volume of sales increases.

bama, Idaho, Maine, Montana, Nevada, North Dakota, Tennessee, Virginia and Wyoming. CCH Trade Reg. Rep. ¶¶3003 and 10,000.

⁴³ The states that have upheld the constitutionality of the fair trade laws as to nonsigners: Arizona, California, Connecticut, Delaware, Hawaii, Illinois, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Dakota and Wisconsin. The states that have rejected the nonsigner clause as being unconstitutional: Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, South Carolina, Utah, Washington and West Virginia. CCH Trade Reg. Rep. ¶¶3003, 10,000.

⁴⁴ 231 La. 51, 90 So. 2d 343 (1956), 60 A.L.R. 2d 410.

⁴⁵ *Id.* at 350.

⁴⁶ *Nadell & Co. v. Grasso*, 175 Adv. Cal. App. 449, 346 P. 2d 505 (1959).

⁴⁷ 2 Pomeroy, Equity Jurisprudence, §429 at 198 (5th ed. 1941).

The equitable servitude device may be useful in protecting a manufacturer from suits of breach of warranty by allowing him to have his labels removed by a wholesaler or retailer before the goods are sold to the consumer. Manufacturers have been held liable for their products when they were not up to the standard indicated by the label.⁴⁸ Thus, the risk of liability would be placed upon the retailer if the goods are faulty and are sold without a label. However, if the manufacturer's label is not removed he could possibly recover damages⁴⁹ from the one who had the duty to remove the labels and also by the use of the equitable servitude device he could enjoin him from putting more of his labelled goods on the market.⁵⁰

CONCLUSION

The application of real estate principles to personalty is not unusual in equity courts. The rights of a *cestui que trust* developed in real estate, but now the majority of trust property consists of personalty.⁵¹ Other notable equitable interests in personal property that had their origin in land are specific performance in the sale of certain chattels and the interest created by a contract to deliver certain chattels.⁵² Therefore, the extension of the real property doctrine of equitable servitudes to include chattels has had early precedents.

Thus, the California Supreme Court in applying a real estate principle to chattels was one of the first courts to speak in terms of equitable servitudes. Prior to this decision, the development of the law concerning restrictive agreements placed upon personalty was conflicting both as to the legal principle upon which these agreements rested and as to the justification of certain types of restrictions. Although the far reaching effect of the decision in the principal case remains to be seen, it will undoubtedly give the doctrine of equitable servitudes as applied to chattels more clarity as well as new impetus.

THOMAS W. BERTZ

Practice: Equitable Relief from Suit in an Inconvenient Form—
Plaintiffs brought an action in Walker County, Georgia, to enjoin defendants as residents of Walker County from prosecuting a pending action in the Circuit Court of Tennessee against the plaintiffs for damages arising out of an alleged cause of action originating in Walker

⁴⁸ Lane v. C. A. Swanson & Sons, 130 Cal. App, 2d 210, 278 P. 2d 723 (1955); Rogers v. Toni Home Permanent Co., 105 Ohio App. 53, 139 N.E. 2d 871 (1957), *aff'd*, 167 Ohio 244, 147 N.E. 2d 612 (1958).

⁴⁹ 1 Pomeroy, Equity Jurisprudence §112 at 147 (5th ed. 1941).

⁵⁰ Note that the use of the equitable servitude device for this purpose might not be upheld by the courts because it might be contrary to public policy especially when the merchandise is food and drink. See *supra* note 1.

⁵¹ Chafee, *Equitable Servitudes on Chattels*, 41 Harv. L. Rev. 945, 960 (1928).

⁵² Lord Strathcona Steamship Co. v. Dominion Coal Co., (1926) A.C. 108.