

an equitable right. It is clear that he has a legal property right in such secrets. At what point does his right change from a legal right to a mere equity?

All the earlier decisions seem to go off on the broad general doctrine of fairness. It is not until we come to the case of *Pomeroy Sub. Co. v. Pomeroy*, that we find the court theorizing about the matter. In that case the New Jersey court said: "The nature of the right of an inventor or discoverer to a process of manufacture or a composition of matter which has been invented, or discovered is well settled. Such invention or discovery does not of itself confer upon the discoverer an exclusive property right, good against all the world as does the ownership of tangible chattels. . . . But he has a kind of property right in his discovery or invention which he may transfer either absolutely or to a limited extent. Such transfer will pass to the vendee the title either absolute or limited, against the discoverer but as against other than the vendor or transferor, the title depends upon the right of the inventor or discoverer, or his grantee, to prevent the use of the invention or secret process by persons claiming to use them, and this right of prevention is based on special equities or rights against such person which disentitle him to the use. If knowledge has come to such claimant fairly and honestly, and under circumstances which give the inventor no personal claim against him, the use will not be enjoined. In most cases this equity against the use is based on the confidential communication of the invention or process by an employer to employees, and in this case the employee or his grantee will be enjoined from using or communicating the process or invention of his employer."

This court, in the *Pomeroy* case, refers to the right against third persons as an equity. In the light of the cases cited it is submitted that the true theory is that although a trade secret is property, it consists merely of information differing from ordinary chattels in that it is intangible and not capable of being dealt with as we deal with chattels generally. In case of a tangible chattel the purchaser from a thief is not protected, because the fault is with his getting. He may be in good faith