misrepresentation is not necessary to render the dealing objectionable. Failure to indicate clearly the true nature of the article is sufficient.[18] Secondly, trade-mark infringement must be avoided. The purchaser must not be led to believe that he is dealing with the product or the agent of the company indicated by the trade-mark.[19] Otherwise business might be diverted from the holder of the trade-mark.[20] Moreover, the reputation of the product might be harmed, because a used article, even if repaired, may well have "lost much of its original character and excellence."[21] Trade-marks should be removed or obliterated if possible.[22] If, for the express purpose of preventing remaking and resale without infringement, a manufacturer places the trade-mark in such a position as to make its removal impossible, the courts seem inclined to bar him from equitable relief.[23] J. M. F.

WILLS—NET INCOME ARISING DURING ADMINISTRATION—RIGHTS OF LIFE TENANTS AND REMAINDERMEN—[District of Columbia].—Testator, after providing for payment of debts, specific devises, and legacies, devised and bequeathed to defendant all the residue of his estate, in trust, to divide into equal shares and to pay the net income therefrom to named beneficiaries, with remainder over. *Held*, that $23,000, which accrued on certain securities later sold to pay the debts, legacies, and costs, was to be added to the residuary fund as part of its corpus.[1]

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14. Stipulation No. 508 (1929) 13 Fed. Trade Comm. Rep. 440.

15. Federal Trade Comm. v. Korb and Dwyer (1922) 4 Fed. Trade Comm. Rep. 418.

16. Federal Trade Comm. v. Premier Electric Co. (1923) 5 Fed. Trade Comm. Rep. 385.

17. Federal Trade Comm. v. Jones, Paul, Ironclad Tire Co., et al. (1919) 1 Fed. Trade Comm. Rep. 380.

18. See cases cited supra, notes 8 to 17.

19. (1905) 33 Stat. 728 (1927) 15 U. S. C. A. sec. 96; Prest-o-lite Co. v. Bournonville (1915) 260 Fed. 442 (refilling and resale of acetylene gas tanks bearing original trade marks); General Electric Co. v. Re-New Lamp Co. (C. C. D. Mass. 1904) 128 Fed. 154.

20. Buick Motor Co. v. Buick Used Car Exch. (1928) 132 Misc. 158, 229 N. Y. S. 219; Dodge Bros. v. East (D. C. E. D. N. Y. 1925) 8 F. (2d) 872, 875.

21. Champion Spark Plug Co. v. Emener (D. C. E. D. Mich. 1936) 16 F. Supp. 816; Champion Spark Plug Co. v. Reich (D. C. W. D. Mo. 1938) 24 F. Supp. 945.

22. In the Emener case (D. C. E. D. Mich. 1936) 16 F. Supp. 816, the court ordered that the trade-mark be removed, the word "used" be indented in the metal shell, and the shell and the bushing nut be covered with a distinguishing red paint. The Reich case (D. C. W. D. Mo. 1938) 24 F. Supp. 945 stated that removal of the trade mark was not necessary if impossible without damage to the article and if sufficient care was taken to give notice to the purchaser.

23. General Electric Co. v. Re-New Lamp Co. (C. C. D. Mass. 1903) 121 Fed. 164; General Electric Co. v. Re-New Lamp Co. (C. C. D. Mass. 1904) 128 Fed. 154.

1. Proctor v. American Security & Trust Co. (App. D. C. 1938) 98 F (2d) 599.

Though this seems to be the majority rule,[2] another line of decisions holds that such income should be paid to the life beneficiary.[3] The majority rule proceeds on the theory that such income as accrued from the property later sold to pay the debts, legacies, and costs was not a part of the residue at the time of the testator's death, and the life beneficiary is therefore not entitled to such sum as net income from the residue.[4] This view would seem to be the more logical since by judicial definition "residue is what remains after payment of debts, funeral charges, expenses of administration, and legacies."[5] The minority rule proceeds on the basis that the life beneficiary is the first and immediate object of testator's bounty and that testator did not intend the trust fund to be swelled at the expense of the life beneficiary.[6] This view would seem to be more in keeping with the probable intent of the testator.

In the first American case, decided in New York in 1837,[7] the court after reviewing the English authorities stated: "In the bequest of a life estate in a residuary fund, where no time is prescribed in the will for the commencement of the interest or the enjoyment of the use or income of such residue, the legatee for life is entitled to the interest or income of the clear residue as afterwards ascertained to be computed from the time of death of the testator." It is noteworthy that New York has since changed this rule by statute,[8] so that such income now goes to the life beneficiary. Though perhaps less logical, this may yet be the more desirable result. Any favor between the life beneficiary and the remainderman should be shown the former in view of the fact that he is more likely to have been closer to the testator than was the remainderman. B. S.

2. Bridgeport Trust Co. v. Fowler (1925) 102 Conn. 318, 128 Atl. 719; Equitable Trust Co. v. Kent (1917) 11 Del. Ch. 334, 101 Atl. 875; Grainger's Ex'rs & Trustees v. Pennebaker (1933) 247 Ky. 324, 56 S. W. (2d) 1007; York v. Md. Trust Co. (1926) 150 Md. 354, 133 Atl. 128, 46 A. L. R. 231; Estey v. Commerce Trust Co. (1933) 333 Mo. 977, 64 S. W. (2d) 608; White v. Chaplin (1929) 84 N. H. 208, 148 Atl. 21; Restatement, *Trusts* (1935) sec. 234, comment g; 2 Perry, *Trusts* (7th ed. 1929) 938-940, secs. 550-551.

3. Old Colony Trust Co. v. Smith (1929) 266 Mass. 500, 165 N. E. 657; Wachovia Bank and Trust Co. v. Jones (1936) 210 N. C. 339, 186 S. E. 335, 105 A. L. R. 1189; City Bank Farmers' Trust Co. v. Taylor (1933) 53 R. I. 126, 163 Atl. 734, (1933) 13 Boston U. L. Rev. 385. See also, on the related problem of the allocation of a stock dividend between life tenant and remainderman, Comment (1928) 13 ST. LOUIS LAW REVIEW 223; In re Nichols Trust Fund (1934) 228 Mo. App. 489, 68 S. W. (2d) 917; Selleck v. Hawley (1933) 331 Mo. 1038, 56 S. W. (2d) 387; Lynn v. Mississippi Valley Trust Co. (Mo. 1925) 274 S. W. 825.

4. Proctor v. American Security & Trust Co. (App. D. C. 1938) 98 F. (2d) 599; see also Old Colony Trust Co. v. Smith (1929) 266 Mass. 500, 165 N. E. 657.

5. In re Mahlstedt's Will (Surr. Ct. 1931) 140 Misc. 245, 250 N. Y. S. 628; Addeman v. Rice (1898) 19 R. I. 30, 31 Atl. 429.

6. Lovering v. Minot (1851) 9 Cush. (Mass.) 151; City Bk. Farmers' Trust Co. v. Taylor (1933) 53 R. I. 126, 163 Atl. 734.

7. Williamson v. Williamson, 6 Paige 298.

8. N. Y. Cahill's Consol. Laws (1931-35 supp.) c. 42, sec. 17b. See Surrogate Foley's praise of the statute, quoted in City Bank Farmers' Trust Co. v. Taylor (1933) 53 R. I. 126, 134, 163 Atl. 734, 737.