

Special cause

PETITION FOR A WRIT OF CERTIORARI AND SUPERSEDEAS.
To the Honorable Judges of the Supreme Court of South Carolina, sitting at Columbia:

Vanessa Richardson El

vs.

DITECH FINANCIAL, LLC, et al
Thomas F. Marano, Dave Worrall, et al.



RECEIVED

May 15 2023

S.C. SUPREME COURT

Court of Appeals, on appeal from the Court of Common Pleas Charleston County.

Your petitioner, the said Vanessa Richardson El, private and true American citizen, aboriginal and indigenous to the American continent, cestui que trust/true owner, real party in interest, sui heredes, in solo proprio, privately domiciling at all times outside of a federal zone within a non-military estate not subject to the jurisdiction of the “United States”, legally disabled complainant in said cause, hereby certify by way of my next friend, Bakha Yawuti El, of the same private citizen status, that Motion To Reinstate was made and finally ruled on by the Court of Appeals, and hereby respectfully present:

I.

That she is much aggrieved by a final decree made in said cause by the Court of Appeals on the 15th day of March 2023 Christian Calendar Year dismissing her cause and motion to reinstate, aiding in the destruction of her equitable right to be heard. These are exigent circumstances, because her home and property is in the process of being forcefully and inequitably taken without oversight and civilian due process of law. She is a disabled woman who worked hard for her home, with nowhere to go.

II.
That the questions presented for review are as follows:

The issues on the petition for rehearing are the following of fact:

Was the contract valid and enforceable?

Do the decisions of the court officers align with good reason and conscience?

Is not the court supposed to come to the aid of the legally disabled?

Are these not trust relations governing these matters?

Does not equity provide a remedy for all wrongs?

Does not equity prevail in a conflict between the rules of common law and equity?

Does the petitioner not have the right to be heard in her defense?

On what grounds and lawful cause can this petitioner be denied the benefits of her rights in the private?

I, Bakha Yawuti El, grantee, settlor, cestui que trust/true owner, real party in interest, equitable assignee/next friend of Vanessa Richardson El, private and true American citizen outside of a federal district domiciling in a private estate not subject to the jurisdiction of the “United State”, hereby grant personam and subject matter jurisdiction to the Court for the purposes of adjudication per the trust indenture constitution for the united states of America ratified 1791 Christian Calendar Year, as equitable heirs and the consanguine posterity for which it was made, under the rules of equity and its body of Maxims and Jurisprudence. Our intent and purpose is to have any and all claims settled born against the beneficiary VANESSA RICHARDSON and trust res returned.

III.

That the substance of said case, containing the facts material to the consideration of the questions presented to be more fully informed are as follows:

This petition for writ of certiorari arises from a challenge of the validity of a mortgage contract in a foreclosure matter, of which said challenge was filed in the pursuit of equitable fairness and justice, in an attempt to have a void Master In Equity decree set aside for the sale of a disabled woman's home, who in want of proper notice and due process, a legally disabled litigant of unsound mind with a medically diagnosed chronic brain trauma condition, was prevented her day in court, right to be heard and have a defense raised.

The extent of her disability was not revealed to herself, her family and next friends, until she just so happened to have a doctor scheduled MRI scan January 30th, 2018, the month after the foreclosure hearing was held without notice in December of 2017. Vanessa had been battling other debilitating illnesses such as Lupus and Neuropathy for a long time before then which were known to herself, family and next friends, but the MRI scan results revealed brain injury which was causing her memory loss, and the physicians concluded that further investigation would need to be done to determine the full extent of the effect of her brain injuries.

Vanessa made her next friends aware of a letter she saw in late January 2018, that there had been an Order For Foreclosure Sale decreed on December 29th, 2017, by Mikell Scarborough, Master In Equity for Charleston County, and that an auction was scheduled for the first week in February of 2018. This was the first time she, or any of her next friends had any knowledge or awareness of court proceedings in regard to the foreclosure matter. This was when the time to file an appeal was 10 days, before it was changed to 30 days. It should be noted that

we had been sending requests for discovery to the opposing party in this matter before they filed the suit for foreclosure (*see Section IV, #10 below*), that they in bad faith never responded to.

There is no way we would have allowed there to be held any court hearings in regard to this matter be held without attending to defend her interest and estate. If for some reason we were not able to attend, the court officials would have been promptly notified.

Her next friends then notified the court officials that the defending party was in want of notice, defense was filed on her behalf, and a hearing was scheduled for March 2018 to hear the motions, but due to the courts being shut down, the hearing was rescheduled to May 9th, 2018.

The transcript of the hearing will show that Mikell Scarborough was made aware that there was a lack of proper notice in this case, and that she is a disabled party with unsound mind that has been denied due process and the right to be heard before her home and property was foreclosed on. At this hearing of May 9th, 2018, the transcript will show that he was in the act of automatically denying the motions filed on her behalf without even reviewing the evidence, when one of her next friends had to interrupt him and demand that he look at her medical records before making his determination, and he was then handed an MRI report from her physician dated January 30th, 2018, showing that she was diagnosed with a chronic stroke condition, affecting her brain and memory. Mikell Scarborough in a lack of due care said something to the effect of, 'she looks ok to me' or 'she seems fine to me' (Vanessa has a severe Lupus condition that gives her the appearance of someone with Vitiligo. Her head is bald as her hair stopped growing due to her medical conditions over 10 years ago. She would not look "ok" or "fine" to anyone that sees her. The severity of her medical ailments is clear to anyone that sees her), and since then, she has continued having these strokes, and her condition has continuously become

worse. Yet, he did not set aside the decree for sale in accord with the rules of equity, denying her the right to have a defense against the claims, he instead in an abuse of discretion gave 30 days to fill out a loss mitigation application that we never received. A Void Order was filed on Vanessa's behalf of which Scarborough denied, bankruptcy was filed on her behalf to avoid her property being sold, and shortly thereafter the mortgage company filed for bankruptcy, and the company LOANCARE, LLC started sending letters as the assignees of the foreclosure. Covid shut the courts down shortly thereafter, and when the courts opened back up the same attorneys for DITECH FINANCIAL, LLC filed to have the property sold on behalf of LOANCARE, LLC, and the challenge of the mortgage which this petition is an appeal of was filed on Vanessa's behalf, in late 2021 in the Charleston County Court of Common Pleas.

A hearing was held during the week of April 18th, 2022 by Charleston County Circuit Court Judge Bentley Price, in which he was presented with the fact of her disability and inability to contract, and that the opposing parties Motion To Dismiss based on Res Judicata therefore was improper, as a matter such as this with a disabled party with want of notice falls within the exceptions to Res Judicata with evidence of the continuing wrong, and the rights of the plaintiff to have her claims heard that were never heard in the prior suit. Yet, Bentley Price granted the defendants Motion to Dismiss and Vanessa never had her right to be heard in her defense.

Her next friends filed an appeal with a Durable Power of Attorney that was created for the intent and purpose of handling her affairs with efficiency and ease, and the appeals court finally dismissed the cause on the grounds that she does not have an attorney, after a motion to reinstate which was interpreted by the court of appeals judges as a petition for rehearing, was

filed on the question of exclusive equity and equitable remedy, which caused this petition for writ of certiorari to be hereby filed.

IV.

A direct and concise argument in support of the petition. The argument on each question shall include citation of authority and specific reference to pertinent portions of the Record on Appeal.

- A. Mikell Scarborough erred failing to set aside the decree for good cause when he ignored her disability and want of notice.

- B. Bentley Price erred when he granted the defendants Motion to Dismiss and disregarded the continuous wrong given Vanessa's disability and want of notice, and denied Vanessa's right to be heard in lieu of her right to be heard never having taken place the merits of her defense were not allowed in the prior case which was devoid of fairness.

- C. The appeals court judges erred in their dismissal order denying Vanessa's right to equitable relief because the court has a duty to protect the rights and property of the legally disabled and persons of unsound mind. Refusing to allow anything to be filed on her behalf without an attorney when her home is at stake is grossly inequitable, shocking to the conscience, unconstitutional and defies good reason and conscience when the exclusive equity jurisdiction takes direct cognizance over and provides complete remedy in issues concerning relations of confidence with legally disabled parties, next friends, and issues of gross unfairness that defy good reason and conscience.

The supporting authority cited below are taken primarily from Gibson's *Suits In Chancery*, 2nd Edition (1907).

1. a) Mikell Scarborough, as charleston county master in equity trustee breached the trust when he abused his discretion upon an error of fact and refused to perform his fiduciary duty of due care by failing to set aside the sale decree once he was noticed of Vanessa, imputed as surety for the alleged debtor, being prevented from having her defense made due to no fault of her own but want of notice of the proceedings coupled with a good defense on the merits, along with his notice and receipt along with MRI medical records during the hearing of May 9th, 2018, of Vanessa's disability/unsound mind having not appeared on the record at the time he rendered the unfair, unjust and oppressive decree. (*Gibson's Suits In Chancery, 2nd Edition, §1255; §939, 5*)

b) Mikell Scarborough has breached the trust having irregular proceedings (*Gibson's Suits In Chancery, 2nd Edition, §615*) where an unnamed woman who did not identify herself, in regular clothes presided over and conducted the deficiency sale in the seat of the Master (*Exhibit A*).

2. Bentley Price as trustee breached the trust when he abused his discretion upon an error of fact and refused to perform his fiduciary duty of due care by failing to allow for the legally disabled beneficiary and real party in interest Vanessa right to be heard in a full and meaningful way and protecting her rights and interest as a disabled party as he was also noticed in the complaint, motion for injunctive relief, and the one and only hearing dated April 2022, of Vanessa debilitating medical condition and having been prevented from having her defense made in the initial cause due to no fault of her own but want of notice of

the proceedings coupled with a good defense on the merits. (*Gibson's Suits In Chancery, 2nd Edition, §1255; §939, 5*)

3. The officers of the south Carolina court of appeals erred in their decision based on the fact that they have a great duty in aiding the state supreme court to revise and correct, or remand for correction, abuses of discretion upon errors of fact and law such as these made by the inferior Court officers Mikell Scarborough and Bentley Price, to see that the rights and privileges reserved to themselves by the People in their Constitution trust indenture are maintained inviolate; to keep the Court officers within their Constitutional and equitable jurisdiction in obligation to perform the intent and purpose of the Constitution trust indenture for the benefit of the posterity for which it was created to see that right and justice were duly administered by them, whereby the complaining litigant Vanessa was immensely injured and deprived of her equitable asset rights, intent and purpose of civilian due process and right to be heard in a full and meaningful way for full settlement of the matter as cestui que trust/true owner and real party in interest. (*Gibson's Suits In Chancery, 2nd Edition, §1292a and §1293*)

4. The courts of equity were made for relations of confidence such as this particular matter where conflicts exist between the rules of the common law and equity, where as in this matter resulting trusts arise and impose a fiduciary duty on the officer trustees of the court in equity good reason and good conscience, to perform in making decrees in reference to the estate of the disabled party, required for the well-being of her and her property. Where any party not strictly a non compos and yet not able to manage his business affairs may sue by a person

who is sui juris called a next friend. (*Gibson's Suits In Chancery, 2nd Edition, §82 and §85*)

5. When parties are Disabled to act the Chancery Court will act for persons of unsound mind who are disabled to act for themselves who as a rule cannot of themselves enter into any important contract, especially contracts relative to lands as it is often of great importance to their welfare and the law would be greatly defective in this important matter if it furnished no remedy for such emergencies. The Chancery Court gives this remedy, and has full jurisdiction to do everything necessary for the welfare of persons under disability and in general, do any act indispensable to their welfare (*Gibson's Suits In Chancery, 2nd Edition, §35*)

6. The common law has certain rigid molds or formulas, into some one of which every cause of action has to be cast; and if the cause can not be run into any of these molds, there is no redress; and if it can be run into one of the molds, only such redress as the formula gives can be had, regardless of the equities of the case, and the real rights of the parties. Whereas “courts of Equity observe general rules, only in so far as they contribute to the attainment of justice; and they struggle against technical rules which impede its power to do justice. It is manifest that a general rule, established for a proper administration of justice, ought not to be adhered to in cases where it would defeat justice, for then it would destroy the very purpose for which it was established.” (*Gibson's Suits In Chancery, 2nd Edition, §5 and §92*)

7. The Durable Power of Attorney born out of a purely equitable assignment from Vanessa to 3 next friend trustees, created and used for the sole intent and purpose to have Vanessa's intent

and purpose fulfilled by these 3 equitably assigned trustees to navigate with ease in settling the claims made in regard to her estate by the mortgagee. That mistake would not have occurred but for misplaced confidence in what are presented as common law remedies for disabled persons and durable power of attorneys in the Rules of Civil procedure and Durable Power of Attorney Act trust indentures, in exercising the beneficial title holder/true owner's right to participate in the life of the state when so chosen to do so (*U.N. Declaration on the Rights of Indigenous Peoples trust indenture Art. 5*). A mistake may be defined to be an act which would not have been done, or an omission which would not have occurred, but from ignorance, forgetfulness, inadvertence, mental incompetence, surprise, misplaced confidence, or imposition. (*Gibson's Suits In Chancery, 2nd Edition, §940*)

8. The equitable or inherent jurisdiction of the Chancery Court includes all cases of an equitable nature, include all suits resulting from accidents and mistakes, resulting from frauds, actual, and constructive, all suits resulting from trusts, express, constructive, and resulting, all suits for the specific performance of contracts, subrogation, other equitable considerations, all suits for the rescission of written instruments, all suits for the redemption of land or other property, all suits for the construction and enforcement of trusts, all suits to prevent the doing of an illegal or inequitable act to the injury of complainant's property rights, or interests, quia timet, and all other suits where the defendant has done, or is doing, or is threatening to do, some inequitable act to the injury of the complainant, and there is no adequate remedy therefor in any other court. (*Gibson's Suits In Chancery, 2nd Edition, §25, 1-6, 9, 10 17, 19, 31, 33*)

9. **Exigent circumstances clearly exist as just as recently as Monday, April 10th, 2023, Charleston county sheriff Master deputy K. Rudy and another unnamed Charleston county sheriff deputy were sent to Vanessa home with the attached documents (Exhibit B), demanding that the house be vacated in 2 weeks or she may face criminal charges. This is a serious breach of trust and imminent threat to deny her her beneficial and equitable title right to a rule to show cause hearing and jury trial before ejection!**

10. This petitioner has a good defense on the merits with good evidence detailed in the complaint filed in this original cause (*Charleston County Court of Common Pleas #: 2021-CP-10-05261, file date 11-18-2021*) showing therein that the mortgage company with it's representatives who are listed as defendants in this cause, who were all served with discovery requests and communications personally (*Charleston County Court of Common Pleas #: 2021-CP-10-04109, file dates: 9-14-2017, 2-1-18, 12-2-21, 12-3-21*) from which trusts arose and hence had duties in relations of confidence to Vanessa, unjustly benefited from unjust enrichment with unclean hands and no meeting of the minds, financial coercion, lack of disclosure, breach of contract, undue influence, from a contract that was shown to be unconscionable and impossible to fulfill with a legally disabled party of unsound mind.

11. In this cause a constructive trust constructed by a court of equity is prayed for in order to satisfy the demands of justice, in this case where the legal title to Vanessa's property was obtained by in violation of the Master in Equity Mikell Scarborough and the mortgage company agents named as defendants fiduciary duties of honesty, fair play, fidelity and good faith, express and implied, that arise as a result of these trust relations, owed to the true

owner Vanessa Richardson El by way of fraud in the inducement, duress, coercion, and other inequitable means, making use of this relation of confidence to obtain the legal title upon more advantageous terms than could otherwise have been obtained; acquired the property with notice that another is entitled to its benefits. In all such cases, Equity, for the purpose of doing justice in the most efficient manner, constructs a trust out of the transaction, and makes a trustee out of the person thus acquiring the title. (Gibson's Suits In Chancery, 2nd Edition, §931)

12. Having shown good cause for setting the decree aside, and that being denied a fair opportunity of disputing the unjust claim, failing to set the decree aside would destroy the equity, having a good defense on the merits of the case. (Gibson's Suits In Chancery, 2nd Edition, §530 and §889, 4)

13. Petitioner by way of her next friend has private proprietary evidence that needs to be shown to chancellor in private chambers concerning trust relations in this matter, and requires cause to be shown or let it be resolved this matter should proceed sealed and ex parte, petitioner's rights and trusts in the private being irreparably destructed by public proceedings.

Table Of Authorities

1. VALID AND ENFORCEABLE CONTRACT

Gibson §932. **The Rational of the Law as to Fraud, Accident and Mistake.**—Every person who has business dealings with another has the right to expect that he will, in every matter connected with such dealings, do whatever good reason and good conscience require. Indeed, each party to a business transaction, before entering upon any negotiations relative thereto, impliedly contracts with the other or others that, in making and performing his engagements honesty, frankness and fidelity will characterize his conduct.

In consequence of the mutual consciousness of this implied obligation, neither party to an express contract, ordinarily, deems it necessary to inquire of the others, whether such is the understanding. If such inquiry should be made, the party interrogated would almost invariably respond with an emphatic affirmative, accompanied with emotions or expressions of real or pretended indignation because of the implication of distrust contained in the question. This implied contract not only precedes and enters into every express contract, but every express contract is impliedly conditioned upon its faithful performance.

If this fundamental antecedent implied contract is analyzed it will be found to contain the following elements:

1. Neither party will make to the other any material representations concerning the subject-matter of the contract that are not true.
 2. Neither party will conceal from the other anything, within his knowledge, material to the subject-matter of the contract, that the other party ought to know, and cannot easily ascertain by himself.
 3. Neither party has done, nor will do, anything to hinder, delay or defeat a faithful compliance with the contract on his part.
 4. If one of the parties has trust or confidence specially reposed in him by the other, or has special power or influence over the person or property of the other, he will not avail himself of these advantages to the other's detriment.
 5. The express contract when finally agreed on, if to be reduced to writing, shall be so worded as to express the real meaning of the contract; and shall be so executed, as to formalities, as to make the contract obligatory, and enforceable in Court.
 6. If the contract has been reduced to writing, and by accident or mistake, fails to express correctly the contract really made, at the request of the party injured the other party will consent so to reform the writing as to make it conform to the contract.
 7. After the contract has been consummated, each party will, in good faith, do all that the contract requires of him.
 8. Neither party will take advantage of any material mistake by the other concerning the subject-matter of the contract, or his rights or duties relative thereto, such mistake having materially influenced his consent to the contract, and not being the result of any negligence or bad faith on his part.
 9. Neither party will insist upon the other doing anything not fairly required of him by the contract.
 10. If the contract is in writing and should be lost or destroyed, it will be reexecuted, if required by either party having an existing interest in it.
 11. If the performance of the contract is, or becomes, impossible by reason of its very nature, or of something wholly un contemplated by either, or wholly beyond the power of the performer to provide against, then performance, so far as impossible, is to be excused.
- The first six elements of the implied contract above set forth are conditions precedent, and the last five are conditions subsequent. It is, also, an element of the implied antecedent contract, that
12. If any of the implied conditions precedent are violated, the party thereby injured shall have the right to rescind the contract; and that
 13. If any of the implied conditions subsequent are violated, the party thereby injured will be compensated and made whole by the other.

Violations of the first four elements of the implied contract are frauds; violations of the other elements constitute inequitable conduct : all of such violations are redressible in the Chancery Court.

Gibson §949. Cases for Specific Performance.—A contract is an agreement between two or more parties to do, or not to do, some specified thing. To constitute a valid contract enforceable in a Court of Equity there must be 1, The reciprocal or mutual assent of two or more persons, competent to contract; 2, A consideration deemed sufficient in law ; and 3, A thing to be done which is not forbidden by law, or a thing not to be done, the performance of which is not commanded by law. "When a contract is found to be valid all a Court can do is to enforce it. The mere fact that one party or the other may have obtained an advantage does not justify a Court in an endeavor to mitigate the hardship; for the law allows a party to obtain an advantage, provided he occupies no relation of trust or confidence, or practices no fraud, or does no act to mislead or deceive the other party. Courts of Equity do not stand as the guardian of all persons who contract to see that absolute equality prevails between them.

1 When a contract is binding on the parties it is binding on the Courts, for Courts have jurisdiction only to enforce contracts between parties, not to make contracts between them.

2 If a contract is so indefinite or uncertain as to convey no reasonable meaning, it is void for vagueness; if it provides for the doing of something unlawful to be done, or for the omission of something required by the law to be done, it is void for illegality ; if the party seeking to avoid it, was incapable at the time of contracting by reason of some disability, as infancy, coverture, duress, drunkenness or want of mental capacity, then the contract is void for want of a competent party; and if the consideration is wanting or is illegal, the contract is void for want of a legal consideration. If a contract has all the essentials of validity, and is certain in its terms, is based on an adequate and valuable consideration, is fair and just in all its provisions, is free from any fraud, misrepresentation, illegality, or mistake, is capable of being enforced without hardship to either party, and if compensation in damages for its breach is impracticable, or would be inadequate, a bill will be maintained for its specific performance.

2. LEGALLY DISABLED

Gibson §35. When Parties are Disabled to Act the Chancery Court will Act for Them.—Persons of unsound mind are disabled to act for themselves by nature; infants are disabled both by nature and by law, and married women are disabled by law alone. As a rule, none of these three classes can of themselves enter into any important contract, especially contracts relative to lands. But it is often of great importance to their welfare, to convert their property into another form, or to expend it for their urgent necessities; and the law would be greatly defective in this important matter if it furnished no remedy for such emergencies. The Chancery Court gives this remedy, and has full jurisdiction to do everything necessary for the welfare of persons under disability: it may sell, lease or exchange, their lands; convert personality into realty, or realty into personality; order the expenditure of any part of the

principal of their estates for their education, or maintenance; and, in general, do any act indispensable to their welfare, the Court at all times having in view the best interests of the parties; and acting as would a prudent and considerate parent.

Gibson §82. How Minors and Persons of Unsound Mind Must Sue.—Minors and persons of unsound mind, in consequence of their mental incapacity to attend to their business affairs, as well as their inability to bind themselves for the costs of the suit, or to make any contract relative thereto, are not allowed to institute a suit directly in their own names, and on their own motion. But as these persons frequently need the active interposition of the Court to protect their interests, the Court allows their guardians to institute suits in their behalf, to assert their rights, or to vindicate their wrongs. And if they have no guardian, or if the guardian himself neglects his duties, or is the person to be sued, the Court will permit any person who is sui juris to bring suit in their behalf: this person is styled the next friend, or prochein ami, of the infant or person of unsound mind in whose behalf he sues. A person of unsound mind may sue by next friend, either before or after an inquisition of lunacy, but if he have a guardian he must sue by the guardian, unless the latter has violated his trust, in which case the non compos may sue by next friend, making his guardian a defendant.

Gibson §85. Suits by Persons under a Quasi Disability.—Deaf and dumb persons, if also very ignorant and incapable of being fully communicated with as to their property rights, may be allowed to sue by next friend. So may persons in their dotage, or imbecile adults, or any person not strictly a non compos and yet not able to manage his business affairs. If a person has religious scruples against being a party to a suit, he may sue by next friend.

Gibson §92. Exceptions to the General Rules as to Parties.—In the first place, it must be always remembered that Courts of Equity observe general rules, only in so far as they contribute to the attainment of justice; and they struggle against technical rules which impede its power to do justice.⁹ It is manifest that a general rule, established for a proper administration of justice, ought not to be adhered to in cases where it would defeat justice, for then it would destroy the very purpose for which it was established.

Gibson §95. Summary of the Rules as to Parties.—The following is a summary of the general rules as to parties in equitable suits:

1. All persons may sue and be sued; but persons under disability must sue and be sued through persons not under disability, with some exceptions in case of married women.

Gibson §980. The Jurisdiction of Chancery Over Persons of Unsound Mind.—The Chancery Court has jurisdiction to take care of the financial affairs of persons who are mentally incompetent to promote or protect their own interests; and to make any decree in reference to their estates, required for the well-being of their persons or their property. The Court may do anything in reference to their property which they would, in good reason and good conscience, have been bound to do, if capable of making contracts. And by statute the Court is given

jurisdiction over the persons and estates of idiots, lunatics, and other persons of unsound mind,¹ where the estate exceeds five hundred dollars.

Gibson §940. **Cases Arising from Mistake.**—A mistake may be defined to be an act which would not have been done, or an omission which would not have occurred, but from ignorance, forgetfulness, inadvertence, mental incompetence, surprise, misplaced confidence, or imposition.

3. CONFLICT OR VARIANCE IN LAW

“Generally when there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail” (*Fairey v. Gardner*, 233 S.C. 297, 1958)

Gibson §5. **The Common Law as Compared with the Civil Law.**—The common law was then utterly incapable of doing complete justice in many cases ; and, in not a few cases, it furnished no remedy or relief whatever. It had certain rigid molds or formulas, into some one of which every cause of action had to be cast; and if the cause could not be run into any of these molds, there was no redress; and if it could be run into one of the molds, only such redress as the formula gave could be had, regardless of the equities of the case, and the real rights of the parties. The fictions, formalisms and arbitrary technicalities of the common law, and its dialectical refinements, were inexplicable and incomprehensible jargon to the public, and often a costly mockery of justice to the litigants. Those who asked for bread were often given a stone, and those who applied for a fish sometimes received a serpent.

Equity, on the other hand, disregarded forms, ignored fictions, subordinated technicalities to the requirements of justice, and indulged in no dialectical refinements. Its pleadings were simple and natural, and its doctrines were founded upon the eternal principles of right as interpreted by a lofty Christian morality. Its great underlying principles, the constant sources, the never failing roots of its particular rules, were the principles of equity, justice, morality and honesty, enforced according to conscience and good faith, and so adapted to the requirements of each case and the complications of business affairs, that the rights and duties of all the parties were fully determined.

Gibson §6. **Some of the Deficiencies of the Common Law.**—The common law then was not what it has since become under the benign inspiration of the Chancery jurisprudence. At common law, 1, a vendor's lien could not be enforced; 2, a fraudulent conveyance could not be set aside ; 3, a defective instrument could not be reformed; 4, a mistake or accident could not be effectually relieved against; 5, a debt, note or account could not be assigned; 6, a resulting trust could not be set up ; 7, a beneficial interest in property could not be enforced; 8, a void instrument could not be cancelled ; 9, a will or trust could not be construed in advance of action thereon; 10, testimony could not be perpetuated; 11, a trust fund could not be impounded ; 12, a specific performance could not be decreed ; 13, an equitable partition of land could not be had ; 14, a deed could not be declared a mortgage ; 15, title to land could not be effectually quieted 16,

waste, trespasses and other violations of rights could not be stayed; 17, a forfeiture or penalty could not be relieved against; 18, a set-off could not be obtained ; 19, land could not be redeemed from a mortgagee; 20, a lien on realty could not be enforced; 21, a lost instrument could not be set up ; 22, the estates of minors and lunatics could not be administered ; 23, a pro rata distribution of assets could not be had ; 24, a contract could not be apportioned ; 25, a cloud could not be removed from one 's title ; 26, securities could not be marshalled; 27, a partnership could not be wound up; 28, a subrogation or contribution could not be obtained; 29, trusts were not recognized, and could be violated with impunity; 30, a wife's equities did not exist; 31, a title bond was no defence to an action of ejectment; 32, an injunction could not be had in any case, or for any purpose, however great the wrong ; 33, receiverships were unknown 34, equitable rights and interests were not recognized, and, 35, frauds could not be adequately remedied.

Gibson §25. The Equitable, or Inherent, Jurisdiction, Specially Stated.—The equitable or inherent jurisdiction of the Chancery Court includes all cases of an equitable nature, where the debt or demand exceeds fifty dollars. These cases include the following:

1. All suits resulting from accidents and mistakes.
2. All suits resulting from frauds, actual, and constructive.
3. All suits resulting from trusts, express, constructive, and resulting.
4. All suits for the specific performance of contracts.
5. All suits for the reformation, re-execution, rescission, and surrender of written instruments.
6. All suits for an accounting, and for surcharging and falsifying accounts.
9. All suits for subrogation and substitution.
10. All suits for the enforcement of liens created by mortgages, deeds of trust, sales of land on credit, or other equitable considerations.
11. All suits by married women against their husbands, except for divorce.
12. All suits against married women and minors in reference to their estates, not cognizable at law.
13. All suits by wards against guardians, executors, administrators and others, where an accounting, or surcharging or falsifying an account, is necessary.
14. All suits for an apportionment and contribution.
15. All suits for the marshaling of securities.
16. All suits for relief against forfeitures and penalties.
17. All suits for the redemption of land or other property.
18. All suits to have absolute deeds or bills of sale declared to be mortgages.
19. All suits for the construction and enforcement of wills and trusts.
20. All suits to obtain a set-off against a judgment in favor of a non-resident or insolvent.
21. All suits for the discovery and perpetuation of testimony.
22. All suits to compel claimants to interplead.
23. All suits for equitable attachments and receivers.
24. All suits where a ne exeat republica is sought.
25. All suits where an injunction is a substantial part of the relief sought.
26. All suits to remove clouds and quiet titles.
27. All suits for the establishment and execution of charities.
28. All suits for a new trial after a judgment at law.

29. All suits to have void judgments so declared, and to avoid voidable judgments.
30. All suits to execute decrees, and to impeach decrees and judgments.
31. All suits to prevent the doing of an illegal or inequitable act to the injury of complainant's property rights, or interests, quia timet.
32. All suits for the exoneration or protection of sureties.
33. All other suits where the defendant has done, or is doing, or is threatening to do, some inequitable act to the injury of the complainant, and there is no adequate remedy therefor in any other court.

4. TRUST RELATIONS

Gibson §931. **Cases of Constructive Trusts.**—Constructive trusts are so called because they are constructed by Courts of Equity in order to satisfy the demands of justice, without reference to any presumable intention of the parties; they include cases:

- 1, Where a person procures the legal title to property in violation of some duty, express or implied, to the true owner; or,
- 2, Where title to property is obtained by fraud, duress, or other inequitable means; or,
- 3, Where a person makes use of some relation of influence or confidence to obtain the legal title upon more advantageous terms than could otherwise have been obtained; or,
- 4, Where a person acquires property with notice that another is entitled to its benefits. In all such cases, Equity, for the purpose of doing justice in the most efficient manner, constructs a trust out of the transaction, and makes a trustee out of the person thus acquiring the title.

5. NO WRONG WITHOUT A REMEDY

Gibson §24. **The Equitable, or Inherent, Jurisdiction generally Stated.**—The whole inherent jurisdiction of the Chancery Court, aside from its injunctive powers, may be briefly summed up in these four propositions.

1. If a lawful and equitable contract be the subject matter of the suit, all the Court can do is (1) to equitably enforce the contract, or (2) to award compensation for its breach, or (3) to require the party in default to do such act relative thereto as he, in good reason and good conscience, ought to have done without suit.⁸
2. If there be no contract, or the contract be inequitable, and the parties disagree as to their rights and duties, all the Court can do is (1) to require the party in default to do, or refrain from doing, what good reason and good conscience require, or (2) where injury has been done, to make the defendant atone therefor.
3. If any of the parties are under disability, and (1) their interests will be promoted by a sale of their property, or by a conversion of their money into other property, or by using a portion or all

of the corpus of their estate for their maintenance, education or support; or (2) if their rights need protection or enforcement ; on the application of a guardian, or next friend, the Court will (1) by decree do for them what they in reason and conscience would themselves have done if under no disability, or (2) will require the parties who are sui juris to do to or for those under disability, what in good reason and good conscience, they should have done without suit.

Gibson §33. Equity will not Suffer a Wrong Without a Remedy.—This maxim, and the maxim that "Equity operates upon the Person," are two of the principles most active in originating and moulding the Chancery jurisprudence.

The King, as the "fountain of justice," with an oath resting upon his conscience to see that right was done to all his subjects, and believing that he had the prerogative power, as the Supreme Judge of England, to do whatsoever he deemed was right and just as between man and man, without reference to laws, customs, statutes, precedents or Courts ; and prompted, no doubt, by his ecclesiastical Chancellors, was not willing to see a wrong done to a subject, and to be told that there was no power in his kingdom to right that wrong, that the common law furnished no remedy therefor; and that, as a consequence, the wrong-doer, in that particular, was superior to law, and mightier than the King.

Hence was it, that the King, deeming such a state of facts derogatory to himself, disparaging to his prerogative, disgraceful to his kingdom and a dereliction of duty under his oath, took personal cognizance of such matters when petitioned to so do ; and when petitions became too numerous for his personal attention, he referred them to his Chancellors, who were the "keepers of his conscience," with authority to do whatever good conscience and good reason required in the premises.

The common law had a maxim, Ubi jus, ibi remedium, (Wherever there is a right there is a remedy for the violation of that right ;) but the maxim was too general to be true. Had it been true, there would have been no need for a Chancery Court. To support this maxim it was held that if there was no remedy then there was no right, which was the same as saying that the right depended on the remedy; and, unfortunately for the common law, this was true.

For, under the common law, every cause of action had to be adapted to some one of its technical and arbitrary forms of suit, and if this could not be done, then the suit could not be brought; so that, at common law, the right had to be adapted to the remedy, thus violating at the same time, both reason and justice. In the Chancery Court, the opposite rule was adopted and enforced, and the remedy was adapted to the right, and thus made to assume any form the right required. This maxim, or, as it is sometimes expressed, Equity will not suffer a right to be without a remedy, is the original source of the entire equitable jurisdiction of the Chancery Court, exclusive, concurrent and auxiliary; and a full explanation of the scope and meaning of this maxim would require a discussion of the whole system of Equity.

The wrong that Equity will not suffer to be without a remedy, must be a civil injury to the complainant's rights or interests, legal or equitable. There are some duties Equity does not attempt judicially to enforce, such as charity, gratitude and kindness; and some wrongs with which Equity does not interfere, such as violations of honor, or of truth, or of morals, involving no question of property, and no question of pecuniary liability; but any wrong done to a legal or equitable right will be redressed in Equity, unless some other Court has exclusive jurisdiction.

This maxim was originally intended to mean that, in all civil cases within the scope of judicial action, where a wrong had been done, or was threatened to be done, and a full, complete, adequate and certain remedy could not be had in the common law Courts, a remedy would be provided, and enforced, in the Chancery Court ; and all jurisdiction assumed necessary for that purpose. And, in order to enable the Court to adequately exercise this jurisdiction, and to make its remedies effective, without coming into conflict with the powers or processes of the common law Courts, the plan was devised of compelling the defendant himself to execute the decree of the Court of Chancery by imprisoning him, if necessary, until he did so. Hence, the maxim, Equity acts upon the person; and it might be said that on these two maxims hang all Equity.

In pursuance of these two maxims, the Court of Chancery has devised, or adopted, from the Roman, or civil law, the following remedies, none of which existed at common law:

(1) Specific performance of contracts; (2) Injunctions to restrain the violation of rights, to stay unjust proceedings at law, to quiet title, and prevent wrongs; (3) The re-execution of instruments lost or destroyed; (4) the re-formation of deeds, or contracts, erroneously drawn by accident, or mistake; (5) The rescission and cancellation of agreements and conveyances obtained under circumstances of surprise, fraud or mistake; (6) the re-opening of settlements, and adjudication of complicated accounts; (7) The method of winding up all the affairs of a partnership; (8) The marshaling of securities; (9) The redemption and foreclosure of mortgages; (10) The partition of land between tenants in common; (11) The enforcement of trusts and fiduciary obligations; (12) The exoneration, contribution and subrogation of sureties; (13), The administration of estates; (14) The winding up of the (states of insolvent debtors, and insolvent corporations; (15) The enforcement of liens; (16) The protection of the persons and estates of infants; (17) The establishment of a wife's equity; (18) The remedy by interpleader; (19) The perpetuation of testimony; and (20) A discovery in aid. of legal proceedings.

Thus, upon these two maxims, Equity will not suffer a wrong without a remedy, and Equity operates upon the person, was builded that grand structure of jurisprudence called Equity; and although by means of the improvements in the processes of the Courts, aided largely by wise legislation, remedies for every civil wrong known to the Courts, have been devised, and enforced, yet if, in the progress of civilization, if, in the complicated network of mercantile business, if, through the ingenuity and subtlety of the human mind bent on schemes of personal or pecuniary advantages, or intent on devices for aggrandizement, new remedies should be required to circumvent circumvention and to overcome the insidiousness of any sort of machiavelism, the Court of Chancery, operating in obedience to this maxim, will devise a remedy adequate to the emergency, and vindicate the beneficence and capacity of its inherent powers to do justice in any case, and to right every wrong, however intricate the case, however great the wrong, or however powerful the wrong-doer.

Gibson §60. No One Should be Condemned without a Chance to be Heard.—This is a fundamental maxim of Equity jurisdiction, and has always been sacredly observed. Indeed, it is a principle founded in natural justice, and of universal application, that no man can be proceeded against in Court without notice.

The inherent love of fair play contained in the maxim, Audi alteram partem has always and everywhere been recognized by all Judges and Courts; and the practice of all tribunals is to render judgment against no one without giving him a chance to be heard in his own behalf. The law delights in giving to every man a day in Court to make his defence. Were the law otherwise no right would be certain, no property safe, no possession secure; fraud would revel in triumph, and trickery be supreme over good faith. No principle of the common law is more sacred than that no man shall be deprived of his property by the judgment of a Court without personal notice that he has been impleaded therein.

Where the defendant cannot be personally notified of the suit against him, but has property within the jurisdiction of the Court, the law deems it not just that he should enjoy his property, or its proceeds, free from the just' claims of his creditors, and so the Court will substitute a seizure of his property, and a notice to him printed in a local newspaper that he has been sued, in place of direct personal notice of the suit. But even in such a case, so anxious are the Courts to do everything in their power to give the defendant actual notice of the suit against him that they require his property to be actually attached, and due publication thereof to be made, before they will dispense with the service of a subpoena upon him. In such a case the attachment of his property and the published notice are substituted for an attachment of his person in the cause, or at least substituted for actual notice by service of a subpoena, The notification to the defendant that he has been sued, made by service of subpoena, or by attachment of his property, and publication, or, in some specific cases, by publication without attachment, is essential to the jurisdiction of the Court over his person, and if the Court has no jurisdiction over his person, actual or constructive, it has no power to render any (decree against him in personam, nor against his property, even when the property is within its jurisdiction; but any such decree will be absolutely void.

Additional authorities:

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Surah As shu`araa' (26), Aayat 181-184

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Ecc. 2:21.

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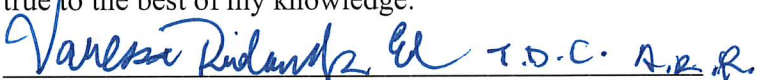
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15. A Treatise On The Law Of Trusts And Trustees, By Jairus Ware Perry 1872
16. Gilbert's Law Summaries: Trusts 13th Ed. 2007 By Edward C. Hallbach, Jr.
17. A Treatise On Conveyancing & The Law Of Merger, Vol. III By Richard Preston 1829
18. Commentaries On Equity Pleadings 10th Ed. 1892 By Joseph Story
19. General Rules of the Supreme Court of the United States 1884 Samuel A. Blatchford
20. Maxims of Equity:

Equity Regards Done What Ought To Be Done.
Equity Shall Not Suffer A Wrong To Be Without A Remedy.
Equity Acts Specifically, And Not By Way Of Compensation.
Equity Chancery Has Jurisdiction For One Purpose, It Will Take Jurisdiction For All Purposes.
Equity Delights In Equality.
Equity Imputes An Intent To Fulfill An Obligation.
Equity Delights To Do Complete Justice, And Not By Halves.
Equity Acts In Personam.
Equity Abhors A Forfeiture.
Equity Does Not Require An Idle Gesture.
Equity Shall Take Jurisdiction To Avoid A Multiplicity Of Suits.
Equity Follows The Law.
Equity Shall Not Allow A Statute To Be Used As A Cloak For Fraud.
Equity Will Undo What Fraud Has Done.
Equity Shall Not Allow A Trust To Fail For Want Of A Trustee.
Equity Looks To The Intent Rather Than To The Form.
Equity Requires Diligence, Clean Hands And Good Faith.
Equity Regards The Beneficiary As The Real Owner.
Equity Will Not Aid A Volunteer.
Equity Will Not Perfect An Imperfect Gift.
Equity Comes To The Aid Of The Legally Disabled.
Superior Equity Shall Always Prevail; Where There Are Equal Equities The Law Shall Prevail,
Otherwise Priority Shall Prevail.

I make oath subscribe and affirm that all contained herein is true to the best of my knowledge:

 T.D.C. A.R.R.

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