Greetings Ms. Kitchings,

Enclosed in this deposit you will find the following: four weeks newspaper advertisement with legal notice affidavit of Assumed Name Henry R. Gibson's Maxims and Principles of Equity. Per our phone conversation I am requesting certified copies of the documents in this mailing. This is also a second request for the instruments and papers that I requested by email sent to you on 2 may 2023. Please inform me of the costs of certified copies.

Thank you,

collins, samuel tucker jr/private name holder

LUKE 11:52 KJV

**2nd Attempt to Recieve Certified copies.

["Thou Shall Have No Other Jurisdiction/God Before Mine/Me"
Exodus 20:3, Torah Law] kjv

CONTENTS IN ORDER

May sixth, Two Thousand Twenty Three

1. Definition Page. [1]
2. Copy of Alleged ORDER. [1 pg.]
3. Response, to 'ORDER' [3 pgs.]
4. Demand for Equity Overlay [1 Pg.]
5. Certified Copy request, titled 'miscellaneous' [2pgs]
6. Assumed Name Certificate [3 pgs.]
7. Assumed Name Certification of Record [1 pg.]
8. Assumed Name Status Active and In Good Standing. [1 pg.]
9. Assumed Name Certificate of Existence and Registration. [1 pg.]
10. Assumed Name Newspaper Advertisement with Affidavit [5 pgs.]
11. Affidavit Notice of Liability regarding Trespassing Remedy and Schedule Fee [21 pgs.]
12. Court Certified Copy Declaration of Nationality Affidavit [12 pgs.]
13. *Court Certified Copy Affidavit of Non-Resident Alien Status [26 pgs.]*
14. Court Certified Copy Certificate of U.S. Non-Citizen National Status [41 pgs.] w/supporting Congressional Record [24pgs]
15. Free National Name Notice Newspaper Advertisement w/Affidavit. Collins El [1pg.]
16. Henry R. Gibson "A Treatise on Suits in Chancery" Chapter III Maxims and Principles of Equity. [31 Pgs.]

Total 175 Pages for the record. Per your website, https://clarendoncountygov.org/clerk-of-court/ the total cost break-down is. 1st 4 pages @ $2=$8.00. 171 pages X .25= $42.75 + $8 = $50.75. Self addressed return envelope and *Postal Money order enclosed for Certified Copies.*

Collins, Samuel Tucker Jr

Collins, Samuel Tucker Jr CEO/private name holder

CC

VIA EMAIL REGISTERED MAIL

Roberts, Beulah G. clerk of court dba BEULAH G. ROBERTS CLERK OF COURT
3 West Keitt Street,
Manning, S.C. 29102-0136
Telephone: (803) 435 -4443
Fax: (803) 435 -4844
Email: clerkofcourt@clarendoncountygov.org

["Let us hear the conclusion of the whole matter: Fear God, and keep his commandments: for this *is* the *whole duty* of man." Ecclesiastes 12:13, Torah Law] kjv

The Evidence of a Political Status Cures the Error of Subrogation;
The Evidence of Subrogation Proves the Want for Political Status"

collins, samuel tucker jr- CEO/name holder/sole beneficiary
for: SAMUEL TUCKER COLLINS JR
C/o 2398 Hotel Street
Alcolu, South Carolina [29001]
email: themoorigethemooriwant@protonmail.com

williams, harris bruce dba H. BRUCE WILLIAMS CHIEF JUDGE,
ISLN # 902743494 / BAR MEMBER #P6128
1220 Senate Street
Columbia, South Carolina 29201
email: hwilliams@sccourts.org
ph.(803) 734-2139

kitchings, jenny abbot dba JENNY ABBOTT KITCHINGS CLERK OF COURT
ISLN# 921666095 / BAR MEMBER #P72669
1220 Senate Street
Columbia, South Carolina 29201
email: jkitchings@sccourts.org
(803) 734-1890

VIA EMAL- Pursuant to FRCRMP 4.1 Complaint, Warrant, or Summons by Telephone or Other Reliable Electronic Means.

AFFIDAVIT OF DEMAND OF "WRIT OF TESTE OF CHIEF JUDGE";
NOTICE OF ASSUMED/BUSINESS NAME; REQUEST FOR CERTIFIED COPIES

Hello Ms. Kitchings,

I greet you in Love, Truth, Peace, Freedom, and Justice. As per our phone conversation, I am formally requesting certified copies of affidavits that are already on the court's record. Attached is a cover sheet titled **'miscellaneous'** listing the "certified by your hand", papers I am requesting. The deposit receipt number for the requested documents is #97817 for the deposit of $125.00. I request that the copies be in color.

In addition, I am requesting certified copies of the affidavits and supporting exhibits that are now entered in, on and for communication/record in response to your letter titled "ORDER" dated 4-21-2023. I have "grave" concerns about the order's authenticity as it appears to have rubber-stamped signatures from judges with no other identifying information. The Clerk's Stamp and Seal is missing. The order also states, ***"we have taken careful consideration",*** "no one from this court has placed any consideration on the record", but as the sole beneficiary, I am the only one who has proven consideration [on the Court's record] in this matter. Therefore, I am demanding the "Teste seipso" of Williams, Harris Bruce, dba H. BRUCE WILLIAMS CHIEF JUDGE, pursuant to the Act of Congress of May 8, 1792. The certified "teste seipso" witness of Chief Judge Williams, Harris Bruce, to this **ALLEGED ORDER** will be deemed proper

and acceptable consideration by law and equity and the special and private beneficiary collins, samuel tucker jr.

Attached in this email are: registered affidavits of Assumed Name Certificate, Certificate of Existence and Registration, and Certification of Record, which are active and in good standing and **Affidavit Notice of Liability regarding Trespassing Remedy and Fee Schedule** as **NOTICE** to you, Kitchings, Jenny Abbott dba JENNY ABBOTT KITCHINGS, CLERK OF COURT, and Williams, Harris Bruce, dba H. BRUCE WILLIAMS CHIEF JUDGE, as to my special and private status entered in, on, and for this record,

Also, be advised that I have withdrawn the business name "SAMUEL TUCKER COLLINS JR" from all commercial venues, commercial districts, commercial jurisdictions STATE and FEDERAL and ALL actions for or against without my expressed [verbal] and written consent. The enclosed "Affidavit, Notice of Liability Regarding Trespassing, Remedy, and Fee Schedule" is attached for my protection from trespass and destruction of my rights and interests by Federal/State/County/City/Municipal/Judicial/Corporations /Employees/Agents/Individuals, Bureaus, and Bureaucrats. Charges begin to accrue Upon signed receipt of said fee schedule.

My instruments of Nationality, Affidavit of Non-Resident Alien Status, and Certificate of Non-U.S. National Status, "all certified by your hand" Ms. Kitchings, have not been answered by the court. According to the United Nations Declaration of Rights of Indigenous People 1948, Article 11(2), the **"States shall provide redress through effective mechanisms,** which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and [redacted] or in violation of their laws, traditions, and customs." Additionally, the American Declaration of Indigenous People and the Universal Declaration of Human Rights support and protect my rights and interests.

There is also a conflict between law and equity in this matter pursuant to the Judicature Act 1873/1875. "Whenever there is a conflict or variance between law and equity pertaining to the same matter, equity shall prevail". **Equity Maxim-** "Equity sees no fiction". The court's record will reflect my honourable attempts at seeking justice in the jurisdiction of my god, 'exclusive equity see Exodus 20:3', away from the public, press, rebels and enemy belligerents. It will also reflect the CLERK/clerk of Court's coercive actions and attempts to thwart and block my right to face ***'inter vivos',*** those who are trying to STEAL MY SACRED TEMPLE, while at the same time trying to force me to assimilate to the Christian, Commercial War Powers side of the court, see Luke 11:52 kjv. **The UNITED STATES CORPORATION EIN NO. 52-2283179; SOUTH CAROLINA CORPORATION EIN #576000289; and CLARENDON CORPORATION EIN# 57-6000337** are CORPORATE FICTIONS and I vehemently refuse, reject, deny, denounce your evil machinations, artifices and devices and **FALSE DEFECTIVE ORDERS** created by legislative statutes and court rules from the hands and minds of Colorable Actors and CORPORATE FICTIONS that hinder me from being heard by a **living soul created from and by 'The God of Men.'**

Finally, if it is the intention of this court to continue with this **ALLEGED UNJUST ORDER,** then consider this as my appeal to Exclusive Equity in either the Supreme Court or Federal District Court. I am not a legal scholar in the least, but the laws of the most-high god have revealed to me that You, Ms. Kitchings are in a 'Precarious Position. °Prophecy for this record- "your next action for or against me, "is an action for or against thine own self", See Psalms 9:15, and 1Chronicles 16:21-22.

The Evidence of a Political Status Cures the Error of Subrogation;
The Evidence of Subrogation Proves the Want for Political Status"

I appreciate your prompt attention to this matter and look forward to receiving the requested documents.

in full life and at arm's length,

Collins, Samuel Tucker Jr CEO / Name holder

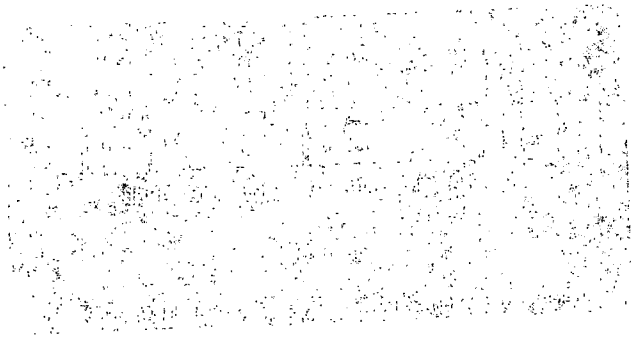
Collins, Samuel Tucker Jr. CEO/private and special name holder.

Witness #1
Name DeWayne Steven Thompson Endorsement _____ Address _____
1440 Thompson Dr. Manning, SC 29102

Witness #2
Name Bruce Riley Bey Endorsement Bruce Riley Bey Address _____
170 Emma RD Manning SC 29102

Witness #3
Name Malik El Endorsement Malik El Address _____
217 Weatherly RD Sumter SC 29150

"Let us hear the conclusion of the whole matter: Fear God, and keep his commandments: for this *is* the *whole duty* of man." Ecclesiastes 12:13 KJV



Assumed Name (ANA)
ADVERTISEMENT

Affidavit of Publication

In

The Manning Times

Personally appeared before me, Leigh Ann Maynard, who, being duly sworn, says that she is the publisher of The Manning Times, published on Thursday of each week in Manning, Clarendon County, State of South Carolina: that the notice, of which printed copy is hereby attached, was published in The Manning Times for

One (1) issues and publication commencing on
3/16, 2023 and ending on 3/16, 2023

Leigh Ann Maynard

Sworn to me on this 17th day of March

Maggie Bell

Notary Public for the State of South Carolina

Commission expires October 25th 2026

MAGGIE BELL
NOTARY PUBLIC
SOUTH CAROLINA
COM EXP 10-25-2026

@LEGALS CONT.

Filing of Assumed Name
ASSUMED NAME: SAMUEL TUCKER COLLINS JR.
Principle Place of Business: 2398 Hotel Street Manning, SC 29001
Nameholder (S)
Name collins, samuel tucker jr. CEO/Name Holder
Address: 2398 Hotel St Manning, SC 29001
By typing my name, I, the undersigned certify that I am signing this document as the person whose signature is required, or as agent of the person(s) whose signature would be required who has authorized me to sign the document on his/her behalf, or in both capacities. I further certify that I have completed all required fields, and that the information in this document is true and correct in compliance with the amicable chapter of Minnesota Statues. I understand that by signing this document I am subject to the penalties of perjury as set forth in Section 609.48 as if I had signed this document under oath
Signed by: Collins Jr, Samuel Tucker
Mailing Address: 2398 Hotel Street Alcolu, SC 29001
Email for official Notices: justmemyself@protonmail.com
(03/16)

CONT. ON PAGE 8

ANA 1

The Manning Times

The Manning Times

Publication Name:
The Manning Times

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Publication County:
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The Manning Times

The Manning Times

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The Manning Times

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CHAPTER III.

MAXIMS AND PRINCIPLES OF EQUITY.

ARTICLE I. Maxims and Principles of Jurisdiction.
ARTICLE II. Maxims and Principles of Adjudication.
ARTICLE III. Maxims Applicable to the Court, and to its Practice, and to Pleadings.

ARTICLE I.

MAXIMS AND PRINCIPLES OF JURISDICTION.

§ 31. Maxims generally Considered.
§ 32. Equity Acts upon the Person.
§ 33. Equity will not Suffer a Wrong Without a Remedy.
§ 34. Equity Acts Specifically, and Not by Way of Compensation.
§ 35. When Parties are Disabled to Act Chancery will Act for Them.
§ 36. When Chancery has Jurisdiction for One Purpose, it will Take Jurisdiction for All Purposes.
§ 37. Chancery never Loses its Jurisdiction by Implication.
§ 38. Equity Delights to do Complete Justice, and Not by Halves.
§ 39. He who Seeks Equity must Do Equity.
§ 40. Courts of Equity will not Tolerate any Interference with their Officers, Process or Decrees, by the Courts of Law.

§ 31. Maxims generally Considered.—There are certain great underlying principles, often called *Maxims*,[1] which are the fruitful sources of a vast number of particular rules concerning both rights and remedies. These principles are a component part of Equity jurisprudence.[2] They lie at the foundation of universal justice; are the sources of municipal law; and have been worthily and aptly called *legum leges*—the laws of the laws.[3] These maxims are, in the strictest sense, the *principia*,[4] the beginnings, out of which has been developed the entire system of Equity jurisprudence, by a process of natural evolution. The student who has made these principles a part of his mental habit, who has, as it were, incorporated them into his very intellectual being, has already mastered the *essence* of Equity; and has made the acquisition of its particular rules an easy task.[5]

1 Maxim *ita dicta quia maxima est ejus dignitas et certissima auctoritas atque quod maxime omnibus probetur.* Co. Lit., 11. (A maxim is so called because its dignity is *maximum* and its authority the most certain, and because approved at the *maximum* by all.)

2 1 Pom. Eq. Jur., § 120.

3 2 Kent's Com., 553. So fundamental are these maxims that he who disputes their authority is regarded as beyond the reach of reason. *Contra negantem principia non est disputandum.* Coke says, "Maxims of law are holden for law." Coke, Litt., 11, 67; and Bacon says, "They are the fountains of justice from which flow all civil laws." In Box v. Lanier, 4 Cates, 409, Beard, Ch. J., says, "Maxims have their foundation in universal law; they are embodied in the common law, and are an essential part of its warp and woof."

4 *Principia probant, non probantur.* (Maxims are proof, and need no proving.)

5 1 Pom. Eq. Jur., §§ 121; 360. So vast is the number and variety of suits in Chancery, that it is impossible for a Solicitor to find a precedent for every case, even if it existed; but he who has the maxims mastered is saved much of the drudgery of hunting precedents. Out of the twenty-six letters of the alphabet, by permutations and combinations, are made the countless multitudes of words and sentences written by earth's millions since writing was invented. So, out of a few fundamental maxims can be deduced the rules which, by proper application, will determine the equities of the vast proportion of equitable suits instituted in Chancery. *Melius est petere fontes quam sectari rivulas.* (It is better to seek the fountains [the maxims of the law] than to follow the rivers [hunt for adjudications based on maxims.]

The maxims and principles contained in this Chapter are not all strictly maxims and principles of Equity; many of them are maxims and principles of the common law. Nevertheless, they have all been adopted into the family of equitable doctrines and are constantly used and applied by our Chancery Courts. The author has long been convinced that no one can master the jurisprudence of Equity who

§ 32. Equity Acts upon the Person.[6]—When the Chancellors first began to exercise judicial functions, they refrained from using common law, or statutory processes, probably to avoid conflicts with the common law Courts, which were jealous of the extraordinary powers exercised by the Chancery Court. 1, Instead of commanding the Sheriff to make the money, decreed the complainant, out of the defendant's property, the Chancellor commanded the defendant to pay the money; 2, Instead of empowering the Master to divest the title to land out of the defendant, and vest it in the complainant, or the purchaser, the Chancellor required the defendant to execute a deed to the complainant, or to the purchaser; 3, Instead of forbidding a Court of law to proceed in a suit, or to enforce its judgment in a given case, the Chancellor forbade the plaintiff from proceeding in the suit, or doing any act towards obtaining an execution; and, 4, In general, the decrees of the Chancery Court were enforced through the personal act of the party himself.[7] If the party failed or refused, to do what the Chancellor by his decree required him to do, compulsory process was issued. But no compulsory process issued until the party had been served with a mandate, commanding him to do what the Court required of him.[8] If he then disobeyed, he was adjudged in contempt, and was committed to prison until he complied with the orders of the Court. If he still refused, his property, real and personal, was sequestered and applied to the satisfaction of the decree.

This was formerly the practice in North Carolina and Tennessee; but in 1787, in consequence of the then mode of "carrying into effect the decrees of the Court of Equity by attachments, habeas corpus, attachments by proclamation and commissions of rebellion being in many cases dilatory, oppressive and inadequate," the Legislature of North Carolina authorized executions to issue on Chancery decrees, as at law; and in 1801, the Legislature of Tennessee enacted that "instead of decreeing parties to convey lands, as theretofore practiced in equity," the Court was given power by decree to divest the title out of the person against whom the decree was pronounced.[9] Since the passage of these two acts, our Courts of Chancery have not acted, ordinarily, *in personam*. The vast majority of Chancery decrees are now enforced by executions, attachments of property, writs of possession, divestiture of title, and orders of sale; so that it may now be said that our Courts of Chancery do not act, ordinarily, *in personam*.

Nevertheless, the maxim that *Courts of Equity operate on the person*, is true; and most important results follow from the maxim; and although in practice, our Chancery Court acts ordinarily on the property of the party, yet it has all of its original authority to act on the person of the party, as will be seen by inspecting the Code, §§ 4478-4488; and as will be more fully shown hereafter.[10]

The principal cases in which Equity now operates on the person in Tennessee are the following:

1. **Where the Parties Reside within the Jurisdiction of the Court,** but the land, or other subject matter in controversy, is not. In such case, if Equity so require, the Court may, by attachment, compel one party to convey the land to the other.[11] Hence, a specific performance will be decreed as to lands in a foreign country; so, a trust will be declared and enforced, or a mortgage foreclosed or redeemed, or a fraudulent judgment overhauled, and even the sales under such a judgment, when the lands, or the judgment, are in a foreign country.[12] But

has not thoroughly comprehended that subtle alchemy in its maxims whereby the most difficult problems are readily solved; and, so believing, no little space has been devoted to them. These principles and maxims constitute a system of jurisprudence based on good reason and good conscience; and are designed to enable the Courts of Equity to do complete justice between all the parties in any litigation, however novel, abstruse, complicated or numerous, the questions involved may be.

6 *Æquitas agit in personam.* Code, § 4305.

7 1 Pom. Eq. Jur., § 428.

8 2 Dan. Ch. Pr., 1043.

9 1 Scott's Rev., 389; 602.

10 See Chapter on the Enforcement of Decrees.

11 Miller v. Birdsong, 7 Bax., 537. It is not enough that a subpœna to answer was served on the defendant; he must be an actual resident within the territorial jurisdiction of the Court. Wicks v. Caruthers, 13 Lea, 353.

12 Sto. Eq. Jur., §§ 1201-1204. In general the fact that the property is not within the jurisdiction constitutes no bar to a proceeding in a Court of Equity, if the person is within

where, in order to give the relief sought, it is necessary to deal directly with the land itself, without the agency of the parties, then the fact that the land is outside of the jurisdiction of the Court would debar the Court from granting the relief, because the Court will not make a decree that it cannot enforce by its own authority.[13] Thus, a bill cannot be brought for a partition of land outside of the jurisdiction, for the Court cannot send commissioners there; but a bill may be maintained for rents and profits of land outside of the jurisdiction.[14]

2. **Where a Discovery of Facts, or of Property,**[15] or the delivery of documents, or the surrender of personal property, or trust funds, is commanded.[16]

§ 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,[17] 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

the jurisdiction; for a Court of Equity acts upon the person; or, to use the appropriate phrase, *Æquitas agit in personam*. But questions may arise under a bill respecting funds, or other things, in a foreign country, so purely local, that a Court of Equity in another country might very properly decline to interfere, and remit it to the domestic forum. Sto. Eq. Pl., § 489. See also Johnson v. Kimbro, 3 Head, 557.

13 *Extra territorium jus dicenti non paretur impune.* (The decree of a Judge who undertakes to exercise jurisdiction beyond his State may be disobeyed without punishment). Telegraph Co. v. Railroad, 8 Bax., 61.

14 2 Sto. Eq. Jur., §§ 1292-1300.

15 Code, §§ 4283-4285.

16 On the jurisdiction of the Chancery Court to act *in personam*, see Pom. Eq. Jur., §§ 135; 170; 1317-1318.

17 The Constitution of our State, which may be called our "fountain of justice," provides that "every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay." Const. Tenn., Art. I, § 17. For every injury, the Constitution declares there shall be a remedy; and the Chancery Court has had, from its foundation, the inherent right to provide, or adopt, a remedy for any case or injury wherefor no remedy clearly appears. 1 Pom. Eq. Jur., §§ 21-29; Bisph. Pr. Eq., §§ 6-7; 1 Sto. Eq. Jur., §§ 30-44.

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.[18] And now that the jurisdiction of the Chancery Courts has been so greatly enlarged by statutes in Tennessee, the force of the maxim and its beneficence have been proportionately enlarged.

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 estates 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 net-work 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

[18] 1 Pom. Eq. Jur., § 423.

the case, however great the wrong, or however powerful the wrong-doer.[19] The powers that lie dormant in this potent maxim will awaken, as the necessities for their action arise; and they will be found commensurate with every necessity.

It must not be forgotten, however, that this remedy may be forfeited or lost by the party wronged: *forfeited*, (1) by some fraudulent, illegal, or unconscientious conduct in connection with the wrong he complains of, whereby his hands have become stained with iniquity; or (2) by having, through his fault or negligence, occasioned, or contributed to, the loss complained of; for, when one of two persons must suffer, the loss must be borne by him whose act caused it.[20] Or the remedy may be *lost*, (1) by the fact that the adverse party has an equal, or a superior, equity; or (2) by *laches*, or acquiescence; or (3) by subsequent contract, or estoppel.

§ 34. **Equity Acts Specifically, and Not by Way of Compensation.**[20a]—This principle runs through the whole system of Chancery jurisprudence. Equity aims at putting the parties exactly in the position they ought to occupy, giving them *in specie* what they are entitled to enjoy; and putting a stop to injuries which are being inflicted. Thus, Equity decrees the specific performance of a contract, instead of giving damages for its breach. So, Equity restrains the commission of a trespass, instead of compensating the aggrieved party by damages. In some cases, also, a party will be compelled to specifically make good his representations by which another has been misled.[21] So, Equity will declare a person who has knowingly acquired trust property, a trustee; and will make property purchased in his own name by a fiduciary with trust funds, trust property; will construe and enforce wills and other express trusts; and will set up lost or destroyed instruments and records; and will cancel fraudulent deeds, and remove clouds on title, and will, by injunction, protect a party in his rights, or restrain a party in his wrongs. In all the foregoing cases, the common law either gave no remedy, or else merely allowed damages for the wrong, the latter remedy when allowed being often wholly inadequate, and sometimes, from the poverty of the defendant, wholly worthless.

§ 35. **When Parties are Disabled to Act the Chancery Court will Act for Them.**[21a]—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.[22]

[19] Chancery has been the handmaid of all courts in affording process to meet exigencies. She has done so in the face of tyranny, to break loose the iron hand of power when grasping against conscience. Peck, J., in Cox *v.* Breedlove, 2 Yerg., 499; 520. Before the establishment of the Chancery Court in England it might have been often said, *De legibus non curat maximus.*

[20] 1 Sto. Eq. Jur., § 387.

[20a] Snell's Pr. Eq., 47.

[21] Bisph. Pr. Eq., § 51.

[21a] While this is not a maxim, it is nevertheless a fundamental principle of Equity.

[22] Ridley *v.* Halliday, 22 Pick., 607. It is the peculiar province of Courts of Equity to give all needed and appropriate relief in case of infants whose rights have been sacrificed. Cody *v.* Roane Iron Co., 21 Pick., 515. The Chancery Court acts as guardian for all persons under disability; and, on proper application, will protect them from the cupidity of faithless guardians and relatives, and the rapacity of unscrupulous strangers. But while accorded full protection they are not entitled to have technicalities strained in their behalf, especially against a stranger guilty of no unconscientious conduct.

§ 36. **When Chancery has Jurisdiction for One Purpose, it will Take Jurisdiction for All Purposes.**—This maxim is not always so broadly stated in the reports and text books, but in the light of the Act of 1877, extending the common law jurisdiction of the Chancery Courts, there can be no doubt about the correctness of the rule as given. Pomeroy states the rule thus: "Where a Court of Equity has obtained jurisdiction over some portion or feature of a controversy, it may, and will in general, proceed to decide the whole issues, and to award complete relief, although the rights of the parties are strictly legal, and the final remedy granted is of the kind which might be conferred by a Court of law."[23] The reason of the rule is, the duty of Courts to prevent a multiplicity of suits; and Courts of Equity delight to do complete justice, and not by halves. Our Chancery Court acted in accordance with this rule prior to the Act of 1877;[24] and it may now be considered as an invaluable rule, and one attended with very beneficent results.[25]

Where suits are brought to enjoin the further prosecution of a pending action at law, or the enforcement of a judgment recovered at law, either on the ground of some equitable defense not cognizable by the law Courts, or on the ground of some fraud, mistake, accident, or other incident of the trial at law, which rendered the legal judgment inequitable, in such cases a Court of Equity, having obtained jurisdiction for the purpose of an injunction, will decide the whole controversy, and render a final decree, even though the issues are legal in their nature, and capable of being tried by a court of law; and the legal remedies, therefore, are adequate. This rule is general in its operation, and extends to all suits brought to obtain the special relief of injunction, and is not confined to suits for the purpose of enjoining actions, or judgments, at law. It may be stated as a general proposition, that wherever the Chancery Court has jurisdiction to grant the remedy of injunction for some special purpose, even though the injunction covers only a portion of the controversy, it may go on and decide all the issues, and make a final decree, granting full relief in the same manner as could a Court of law, decreeing damages for the wrongs enjoined when proper.[26]

Particular instances of the operation of this general rule concerning the remedy of injunction may be seen in cases of waste, of private nuisance, and of continuous or irreparable trespasses, where, the Chancery Court having obtained jurisdiction by injunction, will complete the relief the complainant is entitled to, by decreeing him damages for the injuries done.[27]

If the Chancery Court obtains jurisdiction of a suit for the purpose of granting some distinctively equitable relief, such, for example, as a discovery, or the specific performance of a contract, or the rescission, or cancellation, of some instrument, and it appears from facts disclosed on the hearing, but not known to the complainant when he brought his suit, that the special relief prayed for has become impracticable, and the complainant is entitled to the only alternate relief possible, that of damages, the Court then will, instead of compelling the complainant to incur the double expense and trouble of an action at law, retain the cause, decide all the issues involved, and decree the payment of compensatory damages.[28]

It is a fundamental rule of Equity jurisprudence, that the Court of Chancery, in any cause coming before it for decision, if the circumstances of the case permit, and all the parties in interest are or can be brought before it, will

[23] 1 Pom. Eq. Jur., § 231.
[24] Almony *v.* Hicks, 3 Head, 41; Johnson *v.* Cooper, 2 Yerg., 524; Jones *v.* Perry, 10 Yerg., 59.
[25] 1 Sto. Eq. Jur., § 64 *k*; McHaney *v.* Cawthorne, 4 Helsk., 508; Hudgins *v.* Fanning, 4 Bax., 574; Smith *v.* Taylor, 11 Lea, 744.
[26] 1 Pom. Eq. Jur., § 181. See *post*, § 826.
[27] 1 Pom. Eq. Jur., § 181.
[28] Richi *v.* Chattanooga Brewing Co., 21 Pick., 705; Pearl *v.* Nashville, 10 Yerg., 179; 1 Pom. Eq. Jur., §§ 224-228; 236-237; 1 Sto. Eq. Jur., § 64 *k*. Equity will not decree a suit where it may decree a remedy. Fran. Max., 42. The maxim, Equity delights to do complete justice and not by halves, is similar in its operation to the maxim above treated, and much that is found under its head might have been pertinently incorporated here. See *post*, § 38.

determine the entire controversy, and award full and final relief; and thus do complete justice to all the litigants, whatever may be the amount or nature of their interest or liability, and thus to bring all possible litigation over the subject-matter within the compass of one judicial determination. By virtue of this rule, and in order to promote justice, the Court, having obtained jurisdiction of a controversy for one purpose, will extend its judicial cognizance over rights, interests, and causes of action which are purely legal in their nature, and will award remedies which could have been adequately bestowed by a Court of law.[29] All this could have been done before the Act of 1877; and since that act the rule herein stated has become one of the ordinary jurisdiction of the Court.

§ 37. **The Chancery Court never Loses its Jurisdiction by Implication.**—Exactly what effect our Constitution has, on the stability and jurisdiction of the Chancery Court, has not been determined. That this jurisdiction can be *increased* is certain;[30] but it is doubtful whether its *equitable* jurisdiction can be *taken away*, or even *seriously impaired*. The system of Equity jurisprudence is tacitly recognized by the Constitution as a part of the fundamental law of the land. Hence, all the stronger in Tennessee is the rule that a Court of Equity never loses its jurisdiction by implication. In all cases where the Court had, originally, jurisdiction because of some want of adequate remedy at law, that jurisdiction is not lost by the fact that the Courts of law now give a remedy. The jurisdiction of the Chancery Courts cannot be made thus to ebb and flow. Their jurisdiction must be permanent, and must remain fixed until changed by a new Constitution, or by the Legislature acting within the present Constitution.[31] The common law Judges cannot diminish the inherent jurisdiction of a Court of Equity by enlarging their own jurisdiction; and when the Legislature enlarges the jurisdiction of the common law Courts, the rule is well settled that, unless the statute shows a clear legislative intent to restrict, or abolish, the jurisdiction of the Chancery Courts, such jurisdiction will continue unabridged,[32] for, without some positive act, the just inference is that the Legislature desires the jurisdiction in Equity to remain upon its old foundations.[33]

§ 38. **Equity Delights to do Complete Justice, and Not by Halves.**—This maxim has grown out of the desire of the Chancery Court to so completely decide every matter involved in the litigation that there will be no roots of controversy left out of which other suits may spring.[34] Hence, the Court requires that all persons interested, either legally or beneficially, in the subject-matter of the suit shall be made parties to it, either as complainants or as defendants, so that there may be a decree that will bind them all. By this means, the Court is enabled to make a complete decree between all the parties interested in the controversy, and thus not only to prevent future litigation by taking away the necessity of a multiplicity of suits, but to make it perfectly certain that no injustice has been done to any party interested in the subject-matter of the suit.[35] This, too, is one of the purposes of the Court in enforcing the maxim, *He who seeks equity must do equity;* for, by giving the defendant his rights in a cause, the Court not only does justice in full and not by halves, but the defendant is relieved from the necessity of instituting a suit in his own behalf. It is the constant and zealous aim of the Chancery Court to so frame its decrees as to adjust and compose all disputes as to all matters, legal and equitable, involved in the controversy. A Court of Equity will always do

29 1 Pom. Eq. Jur., § 242.

30 Jackson *v.* Nimmo, 3 Lea, 597; Nolen *v.* Woods, 12 Lea, 616.

31 1 Sto. Eq. Jur., § 64 *f.*

32 1 Pom. Eq. Jur., §§ 278-279.

33 Womack *v.* Smith, 11 Hum., 482; Bright *v.* Newland, 4 Sneed, 442; Smith *v.* Taylor, 11 Lea, 744; Bedwell *v.* Jones, 9 Lea, 168. In this last case the paragraph on page 171, beginning with "If one," should read "It is one," &c.

34 *Boni judicis est lites dirimere, ne lis ex lite oriatur.* (It is the duty of a good Judge to put an end to controversies, and not allow one suit to grow up out of another.) *Interest reipublicæ ut sit finis litium.* (The State is interested in having an end put to litigation.)

35 Sto. Eq. Pl., § 72.

directly what can be done indirectly or circuitously, and will strive to prevent a multiplicity of suits.[36]

Formerly the jurisdiction of the Chancery Court ended where that of the Circuit Court began, and, as a consequence, it was often unable to do complete justice; but after doing half justice, was obliged to remit the complainant to the Circuit Court for the other half. This was especially true:

1. On bills to remove a cloud, or recover land, the complainants after recovering the land in the Chancery Court, were obliged to go to the Circuit Court to collect the rents and profits.

2. On bills to enjoin a nuisance, the complainants, after having the nuisance enjoined, were remitted to the Circuit Court to recover their damages.

3. On bills for a new trial, the parties complaining, after proving their case in Chancery, were remitted to the Circuit Court, if plaintiffs there, in order to obtain a recovery.

4. On bills to set up lost deeds, notes of hand, or other contracts, the complainants, after having their lost instruments set up in Chancery were obliged to resort to the Circuit Court to have them enforced.

5. On bills to enjoin waste, after a perpetual injunction was had in Chancery, the complainants were remitted to the Circuit Court to get compensation for the waste committed.

6. On bills to reform instruments, after getting them reformed in Chancery, the complainants were obliged to go to the Circuit Court, to obtain damages for their breach, or recover what was due on them.

7. On bills to enjoin a defendant in the Circuit Court from making an inequitable defence, or to enjoin a plaintiff from asserting an inequitable claim, after obtaining such relief the suits in the Circuit Court were often left pending.

8. On bills to declare the defendant a usurper, the complainant was given the office, but remitted to further litigation to recover his fees.

In most of the above instances the Chancery Court now administers full justice, its hand being no longer stayed by the fear of trespassing on the domains of the law Courts;[37] and the disposition of the Chancellors now is to disregard decisions and precedents absolete since the Act of 1877, and administer justice to the full extent of their jurisdiction, and no longer remit a party to the Circuit Court, or force him to institute a second suit, when all the questions involved in the litigation, or incidental to it, can be effectually determined in the suit pending in the Chancery Court;[38] so that partial or half justice is now very seldom administered.[39]

§ 39. **He Who Seeks Equity Must Do Equity.**—Under the operation of this maxim, Courts of Chancery are enabled to adjust the equities of the complainant to the equities of the defendant, and thus do complete justice between the parties. Formerly, it was the practice of the Court to refuse relief to the complainant, unless the complainant would acknowledge, or concede, or provide for, the rights, claims and demands justly belonging to the defendant, and growing out of, or necessarily connected with, the subject-matter of the controversy. The ecclesiastical Chancellors sought to enforce in their Courts the divine injunction of doing unto others as we would have others do unto us, which is only another form of the maxim. But now, the Court of Chancery does not wait for the complainant to offer to do equity, but acts on the supposition that, knowing the rule of the Court, he is willing to do whatever equity towards the defendant the Court may require of him. (1), If a borrower of money upon usury seeks the aid of the Chancery Court to have cancelled the

[36] Two suits are a multiplicity. Pearl v. Nashville, 10 Yerg., 179, 185.

[37] The Act of 1877 gives the Chancery Court a free hand in dealing with most matters formerly cognizable exclusively in the Courts of Law.

[38] *Boni judicis est ampliare jurisdictionem.* It is the duty of a good judge to amplify his jurisdiction, when necessary to do full justice.

[39] This maxim in its operation is similar to the maxim, When Chancery has jurisdiction for one purpose, it will take jurisdiction for all purposes. See *ante*, § 36.

usurious contract, the Court will require him to do equity by paying the lender what is legally due him; (2), If a taxpayer seeks relief from an over-assessment, he must pay what is justly due; (3), If a party seeks to have a tax-deed declared a cloud, he must pay all the taxes paid by the holder of the deed; (4), If a person asks for partition, he must pay his proportion of any incumbrance removed by the defendant;[40] (5), If a husband seeks the aid of a Chancery Court to reduce his wife's personal estate to possession, he will be required to do equity to the wife by allowing the Court to settle upon her, for the sole and separate use of herself and children, a reasonable portion of the proceeds of said estate; (6), If the owner of land allows another to make improvements thereon under the belief that he has the right, a Court of Chancery will compel such owner, seeking to assert his title, to pay for such improvements;[41] (7), Where a complainant seeks to have a certain fund decreed to him, he will be required, if insolvent, to pay the defendant what he owes him;[42] (8) Where a complainant has his deed declared a mortgage he must pay the consideration he received; (9), Where the complainant obtains the rescission of a contract, or the cancellation of an instrument he must make the defendant whole; (10), Where a married woman avoids a sale she must restore the consideration she received; (11), A mortgagor will not be allowed to redeem, without paying an incumbrance discharged by the mortgagee;[43] (12), A judgment will not be enjoined, unless complainant pays what he owes the judgment creditor,[44] and, (13), In general, whenever a complainant seeks to recover property from which the defendant has removed an incumbrance, or to the value of which the defendant has added in good faith, relief will be granted the complainant only on condition that the defendant be reimbursed to the extent the complainant has been by him benefited.

It will thus be seen that, in giving the complainant relief, a Court of Chancery will require of him whatever the defendant may, in good reason and good conscience, be entitled to in reference to the subject-matter of the suit, although this requirement may be one the Court would not otherwise enforce.[45] The condition thus imposed on the complainant is, as it were, the *price* of the decree the Court gives him. Under this maxim, an equitable right may be secured to the defendant which could not be obtained by him in any other manner—which he could not have secured by a suit brought for that purpose. The equity the complainant is required to do must, however, be connected with the subject-matter of the suit, or grow out of the very controversy before the Court; and conditions must not be arbitrarily imposed.[46]

The principle contained in this maxim enlarges the powers and jurisdiction of the Court when equities arise, in favor of the defendant, out of the subject-matter of the controversy; and hence, this might be termed a *jurisdictional* maxim. It, also, enables the Chancellor to determine the whole controversy in all is branches, and, if necessary, to make a sort of equitable compromise decree, giving to each party what, in good reason and good conscience, he ought to have; and requiring of each what, in good reason and good conscience, he ought to do;—thus fulfilling that other maxim, *Boni judicis est lites dirimere, ne lis ex lite oriatur.* (It is the duty of a good judge to so thoroughly decide a suit that another suit will not arise out of it.)

§ 40. **Courts of Equity will not Tolerate any Interference with their Officers, Process or Decrees, by the Courts of Law.**—This is an old and well-settled rule, and was adopted in the infancy of the Court of Chancery as a sort of law of self-preservation. For, if the Courts of common law could have had their way, they would have throttled the Chancery Court in its cradle. In those semi-barbarous times the beauties of Equity and Christian ethics were not appreciated;

40 1 Sto. Eq. Jur., § 64.
41 Pom. Eq. Jur., §§ 389-390.
42 Alexander *v.* Wallace, 10 Yerg., 105.
43 Wilson *v.* Carver, 4 Hay., 90; Wood *v.* Chilcoat, 1 Cold., 423.
44 Creed *v.* Scruggs, 1 Heisk., 590.
45 Wilson *v.* Carver, 4 Hay., 90.
46 1 Pom. Eq. Jur., §§ 386-387.

and the rude, stern, arbitrary code of the common law was deemed the perfection of reason, and no higher or better law was deemed possible, or desirable.

It is manifest, that, from the necessity of the case, one Court cannot allow another Court to question its proceedings, to interfere with its process, to disturb its officers, or to thwart its decrees. All the authorities concur in considering it as settled law that a Court of Chancery will protect its own officers against any suit brought against them for acts done under its process.[47] This rule applies to Receivers, Sequestrators, and all other officers acting under the orders of the Court; and any interference with them will be deemed a contempt of Court, and punished as such.[48] Even a stranger to the suit, who has been dispossessed, must apply to the Court for redress, and cannot bring a forcible entry and detainer suit in another Court.[49] A party wrongfully dispossessed should file a petition for a writ of restitution.[50]

Every Court must have an inherent power of enforcing its judgments and decrees; and surely to no tribunal can this power more properly belong than to the Chancery Court.[51] And, in general, if any person suffers any injury, in consequence of any order, or proceeding, of the Chancery Court, or by reason of anything which has occurred in the execution of its process, he must apply to that Court for redress, and not to a Court of Law. If the matter complained of involves a question of jurisdiction, or of the validity or effect of its order or process, the Chancery Court will never allow such a question to be carried for decision to a Court of Law; but will, at its discretion, either itself give redress to the party aggrieved, or permit him to proceed at Law, as justice and convenience may require.[52]

[47] Turner *v.* Breeden, 2 Lea, 713.
[48] 2 Dan. Ch. Pr., 1056; 2 Sto. Eq. Jur., § 833, *a*.
[49] Scott *v.* Newsom, 4 Sneed, 456.
[50] *Ibid.*
[51] Deaderick *v.* Smith, 6 Hum., 146.
[52] Smith's Eq. Jur., 32.

§ 42. He who Comes into Equity must Come with Clean Hands.[2]—This maxim declares that a complainant, who has been guilty of unconscientious conduct or bad faith, or has committed any wrong, in reference to a particular transaction, cannot have the aid of a Court of Equity in enforcing any alleged rights growing out of such transaction. The Court of Chancery was regarded by the ecclesiastical Chancellors as a Temple into which none could come except those who had "clean hands and pure hearts." In the origin of the jurisprudence, the theory was adopted that a Court of Equity interposed only to enforce the requirements of good conscience and good reason, as to matters not equitably determinable in the Law Courts; and this interposition being deemed a matter of Grace, it would not be exercised in favor of a person, whose conduct, in the matter he had complained of, had been unconscientious, or in bad faith; or who had violated any of those principles of Equity and righteous dealing, which the Court had been constituted to enforce. But the operation of the maxim is confined to misconduct connected with the particular matter in litigation; and does not extend to any misconduct, however gross, which is unconnected therewith, and with which the defendant is not concerned.[3] Under the operation of this maxim, the complainant must show that the transaction from which his claim arises is fair and just, that there is nothing unconscientious in his conduct relative thereto, and that the relief he seeks is equitable, and not harsh or oppressive upon the defendant. Hence, a specific performance will be refused when the complainant has obtained the agreement by sharp and unscrupulous practices, by over-reaching, by concealment of important facts, by taking undue advantage of his position, or by any unconscientious means; or, when the contract itself is unfair, one-sided, unconscionable, or affected by any other such inequitable circumstance; or, when the specific enforcement of the agreement would be oppressive upon the defendant, or would, in any other manner, work injustice.[4] So, if a contract is affected with fraud, or has a fraudulent purpose, none of the parties to such fraud can have the assistance of the Court either to compel the execution of such contract, or to have it cancelled, or to have the property or interests, transferred thereunder, restored. Equity will leave such parties where they have placed themselves, and will refuse all affirmative aid to either of the fraudulent participants. It is on this principle that the door of a Court of Equity is always shut against a debtor when he seeks to recover back property he has conveyed to hinder, delay or defraud his creditors. *Ex dolo malo non oritur actio.* (No right of action arises out of a fraud.) Agreements and transfers, the consideration of which is based on a violation of chastity, or on compounding a felony, or on gambling, or on the commission of any crime, or on any breach of good morals, are all deemed illegal, and no participant therein can get any relief, in the Chancery Court, whether the relief sought is an enforcement of the agreement, or a rescission of it.[5] *In pari delicto potior est conditio defendentis.* (Where parties are equally in the wrong the condition of the defendant is the stronger.) But where the parties are not *in pari delicto*, and where public policy is promoted thereby, the more excusable of the two may be granted relief by the Court setting aside the agreement and restoring him to his original position. A Court of Chancery will not enforce an usurious contract even when the defence of usury is not made; but will relieve against usurious contracts; and will also restore money or property lost upon any game or wager.[6]

§ 43. Equity Looks to the Intent rather than to the Form.—This maxim is

[2] There are several maxims akin to this: He who hath committed iniquity shall not have equity; *Ex turpi causa non oritur actio*, (No right of action arises out of an immoral transaction;) *In pari delicto potior est conditio defendentis*, (Where both parties are equally in fault, the situation of defendant is the stronger.)

[3] 1 Pom. Eq. Jur., §§ 398-399. The uncleanness of complainant's hands will defeat his suit whenever and however it appears. Simmons Medicine Co. v. Mansfield Drug Co., 9 Pick., 84. See, Horton v. Lyons, 13 Pick., 180.

[4] 1 Pom. Eq. Jur., § 400. Horton v. Lyons, 13 Pick., 180.

[5] 1 Pom. Eq. Jur., §§ 401-402.

[6] Code, §§ 1771; 1954; Bank v. Mann, 10 Pick., 17.

connected with the one that says, *Equity regards that as done which in good conscience ought to have been done;* for it is only by looking at the *intent*, rather than at the *form*, of a transaction that Equity can treat as done what ought to have been done. The two maxims act together and aid each other;[7] and with the further help of the maxim, that *Equity imputes an intention to fulfil an obligation*, a Court of Chancery will not only hold a resulting trustee, or a constructive trustee, liable as such, but will impute to him an *intention* to act as such, regardless of the *form* of the transfer, or conveyance.

Equity heeds not forms, but strives to reach the substance of things; and to ascertain, uphold and enforce rights and duties which spring from the real relations and the actual transactions of the parties. Looking to the intent rather than to the form, whenever a penalty is designed merely to secure the payment of a given sum of money, or the performance of some act, Equity will relieve the obligor from the penalty, upon his paying the debt, or the actual damages, resulting from his default. So, if a lease has been forfeited for non-payment of rent, or for breach of some, but not all of the covenants contained in the lease, if the lessor can be adequately compensated for the breach of the contract, Equity will regard the forfeiture clause as merely a means of securing the observance of the contract, and a Court of Chancery will relieve from the forfeiture.[8] So, looking at the intent rather than at the form of the contract, Equity will consider the forfeiture clauses in mortgages and trust deeds as merely means of enforcing the payment of the money contracted to be paid, and will relieve from forfeitures incurred, upon the payment of the debt.[9] Equity will, also, upon parol evidence, convert an absolute deed into a mortgage; and will, in general, unless prohibited by some statute, set up and enforce the real contract of the parties, regardless of the form, or of the want of form; for Equity looks not at the outward form, but to the inward substance of every transaction, recurring to principles and disregarding ceremonies,[10] looking upon forms as made for justice, and not justice made for forms. Where there is substance for the Court to act on, the want of form will be disregarded, for Equity regards substance and not ceremonies. This is true not only in adjudicating the equities of the parties, but is true in matters of pleading, also. Thus if the bill makes out a case for relief, any want of formality, or any misnomer of the bill, or any eccentricity of phraseology, will not defeat the complainant's right to relief on the facts alleged and proved.[10a] So, if the necessary parties are before the Court, and a case for relief is alleged and proved, the fact that parties are made complainants who should have been made defendants, or *vice versa*, will not prevent the Court from decreeing according to the equities of the parties; and this is so even when persons under disability are to be affected by the decrees. The fact that the proper facts are alleged, and the proper parties are before the Court, is substance; the manner of alleging the facts and the position of the parties in the suit is ceremony.

No one is presumed to give something for nothing, and no one can in reason and conscience expect to receive something for nothing. Whenever a person parts with a consideration he is presumed to intend to acquire whatever that consideration pays for; and he who acquires the legal title to property for which another's money has paid, is bound in reason and conscience to hold it subject to the orders of the person whose money went into it. Reduced to the last analysis, the property acquired by another's money is only that money in an-

7 Pom. Eq. Jur., § 378.
8 Pom. Eq. Jur., § 381.
9 Pom. Eq. Jur., § 382.
10 Bond *v.* Jackson, 3 Hay., 191. Equity looks beneath the veil of form, and discerns the real features of the transaction, acting on the maxim, *Non quod dictum est, sed quod factum est, inspicitur.* Snell's Pr. Eq., 41. Equity considers the real and the substantial, and allows no rule of evidence at law, no fiction of Courts of law, and no acts or subterfuges of parties, to tie its hands, or shackle its feet, or dim its sight, in searching for the real truth of the transaction under investigation. Courts of Equity act upon the circumstances and justice of the particular case, whereas Courts of law rather regard precedents, forms, rules of procedure and the strict letter of the law.

10a See *post*, §§ 139, note 10; 269; 431, note; 681; 719; 64, sub.-sec. 4.

other form; and property conveyed without receiving another's money therefor, continues, in Equity, the property of the conveyor. Hence, it is the passing of a consideration and not the form of the contract that in Equity passes title;[11] and whatever the form of the transaction, if no consideration passes, in Equity no title passes.[12]

§ 44. **Equity Imputes an Intention to Fulfil an Obligation.**—A Court of Conscience will not hastily conclude that an unconscientious act has been done, if the conduct of the actor is susceptible of a more charitable construction. The Court will presume an innocent intention, if such presumption will not hazard the equitable rights of the complainant. This maxim, therefore, is a mere statement of the general presumption upon which a Court of Equity acts; and it means that, whenever a duty rests upon an individual, in the absence of all evidence to the contrary, it will be presumed that he intended to do right rather than wrong; to act conscientiously rather than in bad faith; to perform his duty rather than to violate it.[13] Thus, when a person covenants to do an act, and he afterwards does something which is capable of being considered either a total or a partial performance of that act, he will be presumed to have done it with the intention of performing his covenant, although no such intention was expressed. So, whenever a trustee, or other person in a fiduciary position, acting apparently within the scope of his powers (that is, having authority to do what he does do), purchases lands, or personal property, with trust funds, and takes the title to such property in his own name, without any declaration of a trust, a trust with respect to such property at once results in favor of the beneficiary of said funds, and the purchaser becomes with respect to such property, a trustee. A Court of Equity assumes that the purchaser intended to do his fiduciary duty, and not to violate it; and he will not be heard to dispute this assumption. All the evidence the Court needs to create the trust is the proof that the trust funds were actually used in the purchase.

This maxim is applied to trustees proper, to executors and administrators, to directors and managers of corporations, to guardians of infants or of persons of unsound mind, to agents using the money of their principals, to partners using partnership funds, to husbands purchasing property with the separate estate of their wives, and generally, to all persons who stand in fiduciary relations to others.[14] And when it is shown that such persons have used money, by them so held in trust, in the purchase of any property, real or personal, taking the title in their own name, a Court of Chancery will impute to them an intention to fulfil their obligation, namely, to make the purchase for the benefit of the person entitled to the use of the consideration money; and they will be decreed to hold such property as trustees for the benefit of the parties whose funds were used in the purchase.

§ 45. **Equity Regards that as Done which Ought to be Done.**—In a Court of Chancery *ought to be* becomes *is;* and whatever a party ought to do, or ought to have done, in reference to the property of another, will, ordinarily, be regarded *as done;* and the rights of the parties will be adjudicated as though, in fact, it *had been done.*[15] This maxim is far-reaching in its operation, and full of beneficent consequences; the doctrines and rules creating and defining equitable estates or interests being, in a great measure, drived from it.[16]

As between the party *by* whom, and the party *for* whom, an act ought, in good conscience, to be done, or to have been done, Equity will consider it *as done.* For the purpose of reaching exact justice, Equity will frequently consider that property has assumed certain forms with which it ought, in justice, to be

11 *Solutio pretii emptionis loco habetur.* (The payment of the purchase-money is equivalent to a purchase.)

12 This is the reason a purchaser without a valuable consideration has no equity. See *post,* §§ 332; 300.

13 1 Pom. Eq. Jur., § 420. The law requires that good faith be observed in all transactions between man and man. Craddock *v.* Cabiness, 1 Swan, 483.

14 1 Pom. Eq. Jur., §§ 421-422.

15 Stephenson *v.* Yandle, 3 Hay., 115; Wayne *v.* Fouts, 24 Pick., 145.

16 1 Pom. Eq. Jur., § 364.

stamped,[17] or that parties have performed certain duties which they, in justice, ought to fulfill; and will regulate the ownership of estates and interests accordingly.[18] In such matters another maxim is sometimes invoked: *Equity regards the substance, not the forms of things.* Thus, (1) the vendor of land is regarded in Equity as the owner of the purchase-money, and the vendee is looked upon as the owner of the land; (2) the purchaser of a possible interest in land becomes the equitable owner of the interest; (3) the sale of a chattel not yet in existence, or not yet the property of the seller, becomes effective in Equity as soon as the thing comes into existence, or becomes the property of the seller; (4) the assignment of a thing in action gives the assignee all the rights of the assignor; and (5) in general, whenever a party, for a valuable consideration transfers, or contracts to transfer, any interest in any property, or in any rights of property, a Court of Chancery places the assignee, or vendee, in the shoes of the vendor as to all the interests and rights transferred, or agreed to be transferred.[19] So, (1) when an agent invests his principal's money in land, and takes title in his own name; or (2) a partner uses partnership funds to buy land in his own name; or (3) when a guardian uses his ward's funds in the purchase of property in his own name; or (4) an executor, administrator, or any other trustee, uses trust money to buy property in his own name, in all such cases Equity will regard that as done which the purchaser ought to have done, that is, will regard the purchaser as holding the legal title for the benefit of the party who was entitled to the purchase money, and will decree accordingly. So, when a party acquires the legal title to property by fraud, he will be decreed to hold it as trustee for his vendor. And where an act is prevented from being done, by fraud, Equity will consider the act as done, in order to avoid the effects of the fraud.[20] Thus, a widow prevented by fraud from dissenting to a will, in Equity will be given all the rights she would have acquired by a dissent in due time.[21] And if a son pretend to destroy deeds to enable his father to devise the lands, but destroys only copies, Equity will treat the deeds as destroyed.[22] Equity, treating that as done which ought to have been done, will consider land as redeemed when the redeemer has done all that was required of him, and the purchaser refuses to re-convey, or to take the redemption money. This maxim is nearly allied to another maxim, *No one can take advantage of his own wrong.* To prevent a party deriving advantage from his own wrong, Equity regards that as done which, in good reason and good conscience ought to have been done. Hence, agreements based on a valuable consideration are, in Equity, considered, in the interests of the person entitled to their performance, as performed, and performed at the time when, and in the manner in which, they ought to have been performed.[23] And the same consequences attach to the agreement as though it had actually been performed, so that the party in default shall not benefit by his wrong, nor the other party suffer thereby.[24]

So where land is ordered to be sold by a will, it is considered as personalty; and where land devised by a will is afterwards contracted to be sold, it is deemed converted,[25] and the devisee gets nothing but the naked legal title without any beneficial interest in the property.[26] Money directed by a will to be invested in land is considered as land, and descends to the heirs of the original beneficiary, and not to his personal representatives; and, on the other hand, land directed by a will to be converted into money goes to the personal representatives of the original beneficiary, or is included in the general term "personal property."[27]

17 Wheless *v.* Wheless, 8 Pick., 293.
18 Bisph. Pr. Eq., § 44.
19 1 Pom. Eq. Jur., §§ 368-369.
20 Townsend *v.* Townsend, 4 Cold., 83.
21 Smart *v.* Waterhouse, 10 Yerg., 93; 1 Sto. Eq. Jur., §§ 187; 256.
22 Belcher *v.* Belcher, 10 Yerg., 120.
23 Cook *v.* Cook, 3 Head, 719.
24 1 Sto. Eq. Jur., § 64 *g*.
25 The doctrine of equitable conversion is firmly fixed in the jurisprudence of Tennessee. Wayne *v.* Fouts, 24 Pick., 145.
26 But the contract of sale must be one that is enforceable. Blair *v.* Snodgrass, 1 Sneed, 24.
27 McCormick *v.* Cantrell; 7 Yerg., 615; Green *v.* Davidson, 4 Bax., 488; Jones *v.* Kirkpatrick, 2 Tenn. Ch., 606; 1 Pom. Eq. Jur., § 371; 1 Sto. Eq. Jur., §§ 790-793; 1212-1214.

But an administrator has no power to make a conversion; and if he does, the money put into land will be deemed personality, at the election of those entitled to the money.[28]

In reference to agreements the maxim is sometimes stated thus: "What is agreed to be done is considered as done,"[29] and sometimes thus, "Equity treats that as done which is agreed to be done upon sufficient considerations."[30] But it must be borne in mind that this maxim seeks no more than to enforce an equitable obligation. There must be a right on one side and a corresponding duty on the other side. Equity does not regard as done what *might* have been done, or what *could* have been done, but what *ought*, in good reason and good conscience, to have been done. Nor does this rule operate in favor of any one except him who has the equitable right to have the act performed, and those standing in his shoes; nor does it operate against any one except him upon whom the duty has devolved, and upon those who stand in his place.[31]

§ 46. No Person Bound to Act for Another in any Matter can, as to that Matter, Act for Himself.—This, while not a maxim, is a fundamental doctrine of Equity, and one fruitful of many most beneficent consequences.[32] In the first place, whoever undertakes to act for another's benefit, impliedly contracts that in every matter affecting the other, he will do for him all that good reason and good conscience require. In order to avoid any possible contention, and to leave absolutely no room for casuistry, Courts of Equity lay it down as a rule, without exception, that no trustee shall in any case, or under any circumstances, directly or indirectly, acquire any personal interest or title in or to the trust property, or its proceeds, or make any personal profits out of the trust, or by means of his trust character, without the full consent of the beneficiary, given under circumstances that leave no room whatever to question the perfect fairness and good faith of the whole transaction. Even then, a Court of Equity acts hesitatingly in confirming such transactions; and when they are questioned, requires conclusive evidence of the fullest good faith on the part of the trustee, and the most thorough understanding of the facts, and the most absolute freedom of action, on the part of the beneficiary. When a relation of confidence is once shown, a Court of Chancery will presume that the dominion or influence arising therefrom was exercised.[33] Of course, if the beneficiary is a minor, or person of unsound mind, he is utterly incapable of giving any such consent.

This rule is potent of consequences in matters of implied trusts, and constructive frauds; and, under its operation, all trustees and quasi-trustees are kept in the strict line of their true and full duty; and when such duty is violated, Equity will, as far as possible, deal with them and their doings as though they were really intending to do their duty, and act for the beneficiary's benefit;

[28] Roberts *v.* Jackson, 3 Yerg., 77.

[29] The maxim is sometimes generalized thus: Equity looks on that as done which ought to have been done, or which has been agreed to be done, or which has been directed to be done. Snell's Pr. Eq.; Stephenson *v.* Yandle, 3 Hay., 115.

[30] Griffey *v.* Northcutt, 5 Heisk., 755.

[31] 1 Pom. Eq. Jur., § 365.

[32] Cannon *v.* Apperson, 14 Lea, 579-580.

[33] Bayliss *v.* Williams, 6 Cold., 441. No person who undertakes or assumes to act for another's welfare in any matter, can, without violating good reason and good conscience, so act in that matter as to obtain an advantage for himself, at the expense of the person for whom he assumes to act. A party who takes advantage of the trust or confidence reposed in him by another, and thereby benefits himself to the other's injury, is guilty of the grossest possible breach of good faith. A person who undertakes to act for another impliedly contracts with him to give him the full benefit of his wisdom, skill and diligence; and to prefer his principal's or ward's interest to his own. A person holding a relation of trust, confidence or agency, is bound by every consideration of reason and conscience to loyally discharge the duties he undertakes, with an eye single to the welfare of the party trusting him; and before he can act for himself in any matter, affecting the interests of the person trusting him, he must surrender the relation in good faith, and acquaint such person with all the facts in his possession necessary to a complete understanding of those matters.

No greater business wrong can be committed, under the form of a contract, than the acquisition of the property, or taking other advantage, of a person by the betrayal of his confidence. Such an act is a sort of treason against good faith, and shocks the conscience of all mankind. In order to remove the temptation to such gross treachery, and thereby more effectually to prevent such wrongs, Courts of Equity consider all contracts between the person trusting and the person trusted as voidable at the election of the former. This rule applies to all persons who undertake or assume to act for others, or to become their confidential advisers, and to every case where influence is acquired and abused, or confidence is reposed and betrayed. See Scarcy *v.* Kirkpatrick, 1 Overton, 423; *post*, § 57.

and will accordingly give the beneficiary all the benefits accruing to the trustee, or the quasi-trustee, by means of the transaction in question; will give the beneficiary the property or profits acquired, and will require the trustee, or quasi-trustee, to make good any loss caused by his conduct in the matter.

The reason of the rule, that a trustee can never act for himself in any trust matter, is the necessity of absolutely removing from him any temptation to violate his full duty, and the imminent peril of allowing him to occupy a situation wherein he may have occasion to doubt when he might, or might not, act for himself, and when he must, or may, act for the beneficiary or person confiding in him.[34]

In the meaning of this section, and also, wherever used in this book, the general term "*trustee*" denotes and includes executors, administrators, Clerks of Courts, Receivers, Special Commissioners, Sheriffs, constables, and all guardians, officers and persons who give bonds for the faithful discharge of their duties, and all other persons on whom fiduciary or trust duties are conferred by any instrument of writing, or by any statute, ordinance or by-law, public, corporate or private; and the term "*quasi-trustee*" denotes and includes husband, wife, parent, person in a parental situation, attorney, guardian *ad litem*, next friend, partner, agent, business manager, clerk, steward, secretary, treasurer, book-keeper, auctioneer, consignee, bailee, physician, spiritual adviser, the promoters, president, directors and other officers or managers of a corporation or association, vendor, creditor, principal debtor in cases of suretyship, and, in general, all other persons who undertake, or assume, the character of confidential advisers, or managers of another's affairs, or who occupy a position or relation that enables them to greatly influence the action of those relying upon them, or who in any way acquire influence and abuse it, or possess another's confidence and betray it. The term trustee includes both trustees and quasi-trustees, and the term *beneficiary* denotes and includes every one who expressly or impliedly confides or trusts his property, business or affairs, to another, and every one for whose benefit an express or implied trust arises, or a constructive fraud can be declared.[35]

§ 47. **Equity Delights in Equality.**—This maxim is sometimes more strongly expressed thus: *Equality is Equity.*[36] The common law delighted in preferences; it was the law of a people fond of distinctions, distinctions in personal rank, in social positions, in forms of procedure, in evidences of debt, and in forms of actions. But the Chancery Court, early in its history, endeavored to break down these distinctions in so far as property was concerned. Joint obligations were made several; liens were apportioned; contribution was enforced among co-contractors, co-sureties and co-legatees; and the estates of debtors were divided ratably among their creditors. These changes in the common law, thus enforced originally in Equity, have long since, by statute or otherwise, become a part of the general law of the land.

In accordance with this equitable maxim, a Court of Chancery will divide a common fund equally between those entitled; and if the fund is not sufficient to pay all in full, a *pro rata* distribution will be ordered. So, when a common

[34] A man cannot serve two masters at the same time, especially in case of conflicting trusts. Denning *v.* Todd, 7 Pick., 427. *Quicquid acquiritur servo acquiritur domino.* (Whatever is acquired by the servant is acquired by the master.) Whatever profit a trustee makes out of trust property is the profit of the beneficiary. The parable of the talents well illustrates this rule of Equity. Matt., ch. 25, v. 20.

[35] Our legal nomenclature is deficient in satisfactory terms to express the relations of a general trustee and a general correlative to such trustee. The term trustee, while a good one, has been largely appropriated to denote an express trustee, and the terms, beneficiary and *cestui que trust*, inadequately express the entire class of persons, for whose benefit implied trusts are created, and implied frauds constructed. Inasmuch, as in almost every variety of trust there is an express or implied relation of confidence, it is with reluctance and misgivings suggested that the word *confidor* appropriately and not inadequately denotes and includes every one who, expressly or impliedly, confides or trusts; and the word *confidee* equally as well denotes and includes every one in whom confidence or trust is expressly or impliedly reposed.

[36] Also, thus: *Æquitas est quasi æqualitas.* (Equity is equality, as it were.)

liability rests upon several persons in favor of a single claimant, as where several persons owe the same debt, a Court of Chancery will require each person, so liable, to discharge an equal proportion of the liability; or, if any one of them should pay more than his share, Equity will require the others to contribute enough to make good the excess.

Where an insolvent partnership, an insolvent corporation, or an insolvent estate, is wound up in Chancery, the Court always proceeds upon the principle that equality is equity, and apportions the assets *pro rata* among all the creditors, preferring none unless they have prior liens. The same rule prevails, when, in any case, any creditor files a bill, on behalf of all other creditors, to wind up the business of a debtor under a general assignment. So, where there is not enough money to pay all the legacies in full, Equity will make a *pro rata* deduction from each.[37] And so it may be stated, in general terms, that whenever there is a common burden, it must be borne equally by all; and when there is a common benefit, it must be shared equally by all. Of course, this maxim will not prevent parties, by contract among themselves, changing the operation of this general rule.

§ 48. **Equity will Undo What Fraud has Done.**—Fraud,[38] in the sight of a Court of Equity, vitiates every contract or transaction into which it enters, at the election of the injured party;[39] and the Court will not only undo what fraud has done, but will treat acts as done which fraud prevented from being done.

All Courts require good faith in dealings between men, and reprobate bad faith.[39a] But as the Courts of common law respected forms and ceremonies, and would not look beneath a seal, nor behind a writing, nor beyond the verdict of a jury, nor allow a judgment to be questioned, fraud took advantage of these rules, and made forms, writings, seals, verdicts, and judgments its instrumentalities and agencies in effecting its nefarious schemes for the undoing of the weak, the inexperienced, the trusting and the needy. When, however, Equity established her Courts, she disregarded forms, discredited ceremonies, peered beneath the seal, looked behind writings, questioned the verdicts of juries, and did not hesitate to set aside the solemn judgments of Courts, when found to be unjust and procured by fraud. Courts of Equity set aside deeds or converted them into mortgages, set aside the verdicts of juries in Courts of law and awarded new trials, and forbade the enforcement of judgments, when good reason and good conscience required. Whatever fraud touched was declared to be vitiated, wherever fraud trod was declared unholy ground, and whatever fraud did was pronounced null and void. All the haunts of fraud were laid bare, all of its paths, however crooked, were sign-boarded, all of its subterfuges pointed out, all of its false coins branded, and all of its allies detected and marked with badges. Fraud has been so crippled and hedged about by the Chancery Court that its power to deceive and do evil has been much weakened, and the remedies for its rascalities much increased, but it has not yet gone out of business.

37 1 Pom. Eq. Jur., §§ 405-411. In Equity, no one gets the lion's share, unless he has superior rights, or prior liens.

38 *Fraus* (fraud) was one of the names of Mercury, the god of speech, traffic and theft; and it is curious, if not instructive, to note how his history and offices, in ancient mythology, illustrate the appropriateness of this *alias*. Mercury's first act was to cheat Apollo out of a herd of cattle by means of a lyre; he lulled the hundred-eyed Argus to sleep, and then murdered him; he overcame Prometheus, the wise, and bound him to Mt. Caucasus; he invented astrology, was the go-between of gods and women; the gull was his favorite bird, and he was worshiped, and prayed to for luck, by thieves and schemers. His wand was gilt at the point, blue in the middle, and black at the handle, and so his victims first felt rich, then blue, then in black despair. He always wore a smile on his face, and curls in his hair; carried a purse in his hand, and was generally in a hurry. The metal, mercury, named for him, is very bright, but very elusive, hard to find, difficult to seize, impossible to hold; and is used by miners to gather gold, and by quacks to salivate their patients.

39 Gwinther *v.* Girding, 3 Head., 197. See maxim, Equity regards that as done which ought to be done, *ante*, § 45.

39a The law requires good faith to be observed in all transactions between man and man. Craddock *v.* Cabiness, 1 Swan, 488. See *ante*, § 4; and *post*, 58.

In the grand temple to Jupiter on the Capitoline Hill in ancient Rome, the statue of *Fides* stood on one side of Jupiter's and the statue of *Victoria* on the other, thus proclaiming that

As physicians diagnose internal disease by certain external signs, so Courts of Chancery diagnose the existence of fraud by certain signs termed "badges of fraud," which are treated of elsewhere.[40] In Courts of law it is a maxim that "Fraud is odious and not to be presumed,"[41] by which is meant that before so detestable a crime can be imputed to anyone it must be proved. But Courts of Chancery, while considering fraud more odious than do Courts of law, they nevertheless in certain cases presume fraud; that is, certain states of fact are considered in Chancery incompatible with an honest purpose, and when proved or admitted, fraud is presumed.[42] Courts of Chancery will, ordinarily impute fraud to a party on less evidence than is required in Courts of law;[43] and they allow a much greater latitude of proof in the search for fraud, and a more minute examination of witnesses.[44] And whatever the shapes and disguises fraud has invented in the refinements and diversities of commerce and the progress of civilization, the Courts of Equity have, always, been able to detect and expose it, to redress the wrong done by it, and to keep it odious, regardless of the rank or wealth of the perpetrator.[45]

§ 49. **Equity Aids the Vigilant, not Those who Sleep upon their Rights.**[46]—This maxim is designed to promote diligence on the part of suitors. Equity requires a party to assert his rights in a reasonable time after he discovers that he has been wronged. A person who delays suit, not only by his negligence makes the proof of his wrongs more difficult, but induces the other party to believe that he acquiesces in the situation. Besides, if Courts allow suits to be delayed, a party may wait until an adverse witness dies, or moves away, before he brings suit. A party in the wrong may be so misled by the non-action of the party wronged as do such acts, and otherwise so change his situation, that it would embarrass the Court in granting relief. He who seeks equity must keep himself in a condition to do equity; and if, by his own delay, he is disabled from doing equity he will be debarred from receiving equity. It is bad faith for a party wronged to delay suit until the wrong cannot be righted without doing another wrong. Good conscience requires a party to do no act that will mislead another to his detriment, even though that other may have done him wrong. Hence, it has been said that "nothing can call a Court of Chancery into activity but conscience, good faith and reasonable diligence."[47] In many cases, equitable relief depends upon the discretion of the Chancellor, and the *laches* of the complainant is often one of the most important of the elements taken into consideration when that discretion is exercised.[48] This maxim is

good faith among the people is as important in peace as is victory in war.

40 See Article on "Fraudulent Conveyances," *post*, §§ 1009-1017.

41 *Fraus est odiosa et non præsumenda.*

42 See *post*, §§ 449; 1011. By "presumption" in such cases, inference is meant.

43 *Ibid.*

44 *Post*, §§ 448; 1010.

45 Frauds are viewed with great horror and indignation by Courts of Equity, as destructive of that honorable confidence necessary for human intercourse, and as constituting a sort of treason against society itself. The subtle character of these violations, the great difficulty in making the proof, the absolute necessity, oftentimes, for probing the conscience of the alleged offender by searching interrogatories, the discerning intelligence required to ferret out the wrong and to detect fraud in its manifold and cunning disguises, the strong sense of equity necessary for the correction of secret acts of bad faith, and the inadequacy of the common law remedies to meet the manifest demands of justice, made it necessary for parties who had been defrauded to apply to a Court of Conscience in order to obtain complete redress; and to this fact the Chancery Court largely owes its existence and its jurisdiction; and the altars of this Court have always been the favorite refuge of parties seeking relief against those who have defrauded them. See 1 Sto. Eq. Jur., § 185; 1 Pom. Eq. Jur., §§ 31-37. The following are some of the

Maxims and Sayings Relating to Fraud:

1. *Dolosus versatur in generalibus.* (A person who intends to perpetuate a fraud uses general terms.)
2. *Fraus et jus nunquam cohabitant.* (Fraud and justice never dwell together.)
3. *Fraus est celare fraudem.* (It is a fraud to conceal a fraud.)
4. *Dolus circuitu non purgatur.* (Fraud is not purged by indirect action.)
5. *Suppressio veri suggestio falsi.* (The suppression of the truth is the suggestion of what is false.)
6. *Ex dolo malo non oritur actio.* (A right of action cannot arise out of a fraud.)
7. *Fraus latet in generalibus.* (Fraud lurks in general expressions.)
8. Once a fraud, always a fraud.
9. Fraud poisons all it touches.
10. Fraud has the outward visible sign of honesty, but lacks the inward spiritual grace.
11. The knot that fraud ties, Equity delights to untie.
12. Fraud strives to cover up its tracks.

46 *Vigilantibus non dormientibus æquitas subvenit.*

47 Lafferty *v.* Turley, 3 Sneed, 177; 1 Pom. Eq. Jur., § 419.

48 Bisph. Pr. Eq., § 39; Snell's Pr. Eq., 39.

constantly applied where a party delays too long before he applies for an injunction, or to be relieved against a fraud, or seeks a specific performance of a contract, or the rescission of a contract. It applies, also, to persons who do not inquire after being put upon inquiry; to purchasers at public sales where there are no warranties of quality or title; and to those whose duty it is to take necessary steps to perfect their rights by giving notice of an assignment to them of a non-negotiable *chose in action;* or by having their instruments duly registered. Equity delights in diligence, and is slow to aid the slow. It not only requires clean hands and a pure heart, but also swift feet. But if the defendant has caused the complainant to sleep he can not complain of it, for that would be to take advantage of his own wrong.

§ 50. **So Use Your Own as Not to Injure Another.**—While this is a law maxim it is often applied in Equity. The Chancery Court frequently enforces this maxim by enjoining the erection, or commission, of nuisances to the complainant on the land of the defendant; because, although a man may own the land, he has no right to so use it as to prevent his neighbors from enjoying their land. A man may be driven from his home by bad smells, noxious vapors, unbearable noises, shocking spectacles, and other intolerable nuisances upon his neighbor's land, quite as effectually as though driven away by physical force. A man cannot so divert a stream on his own land as to turn water injuriously upon a neighbor's land; and he cannot dig so near the land of his neighbor as to cause the latter's land to cave in, or so near as to endanger his neighbor's wall; he cannot pollute a stream that flows through his neighbor's land; nor can he so stop, or change, the current of a stream as to prevent its ordinary flow through the land of another.[49]

A creditor, having his choice of two funds, ought to exercise his right of election in such a manner as not to injure other creditors, who can resort to only one of these funds.[50] And it may be laid down as a general rule, that no one can so exercise a right as to impair the right of another, especially if the latter right is of equal dignity in the sight of the law. The rights of life, liberty, property and the pursuit of happiness, must all be so used and exercised as not to impair or injure the equal enjoyment of these rights by another.

The Chancery Court will, on due application, enjoin the defendant from so using his property, or so exercising a right, as to injure the property or rights of the complainant.

§ 51. **No one Can Take Advantage of His Own Wrong.**[51]—In vain should he seek the aid of Equity who has violated equity.[52] Such a person, in the sight of a Court of Chancery, has unclean hands. If a person could take advantage of his own wrong it would be a direct bribe to commit the wrong. This maxim applies where a trustee buys property in his own name with trust funds; where a trustee makes a profit by means of his trust; where any fiduciary obtains a good bargain by means of his position of confidence or influence; where a tenant or trespasser cuts down timber; where a party stands by and does not object to his own goods being sold as another's; where the true owner allows a *bona fide* purchaser to make improvements; and where a defendant fraudulently conceals the cause of action from the complainant and then pleads the statute of limitation. Where a party, by his words or conduct wilfully causes another to believe in the existence of a certain state of facts, and induces him to act on that belief, the former is concluded by his words or conduct; as also is one who negligently allows another to contract on the faith and understanding of a fact which he can contradict. In brief, this

49 Terminal Co. *v.* Jacobs, 1 Cates, 741; Cox *v.* Howell, 24 Pick., 130. *Sic utere tua ut alienum non lædas.*

50 Parr *v.* Fumbanks, 11 Lea, 395.

51 *Nullus commodum capere potest de injuria sua propria.*

52 Equity has a two-fold meaning: it means (1) that system of jurisprudence administered exclusively in Chancery, and (2) a right, or claim, recognized by a Court of Equity as just. When used in the former sense it begins with a capital.

maxim operates to estop all persons, whose words, acts or silence, have misled another to his injury.[53]

§ 52. **Where One of Two Persons must suffer Loss He should Suffer whose Act or Neglect Occasioned the Loss.**—The reason of this maxim consists in the fact that the equity of the one, whose act caused the loss, is less than the equity of the other party; for the latter is entirely without fault and wholly innocent.[54] This maxim applies where a loss happens to a trust fund by the failure of a bank, or the misconduct of the trustee's agent or attorney, or the insolvency of the borrower. In such cases, the loss must be borne by the trustee, for he deposited the money in the bank, he chose the agent or attorney, and he loaned the money. The maxim applies, also, to cases where an agent has been given apparent authority to sell goods, or do any act, and, taking advantage of this apparent authority, sells the goods, or does the act, in fraud of the principal's rights, and misapplies the proceeds.[55] In such cases the loss falls not on the party who deals with the agent, but on the principal.[56] So, if a fraudulent vendee sell to an innocent purchaser before the vendor take steps to disaffirm the sale, such a sale will be good, because the act of the vendor enabled the vendee to make the sale.[57] Where a party signs a forged note as surety, believing the principal's signature thereto genuine, and the payee parts with value for such note, the party so signing as surety must bear the loss.[58] The intrinsic equity of this maxim is similar to that of the maxim, *No one can take advantage of his own wrong;* and it applies to a party who stands by and allows his property to be sold as another's; to any person who, even innocently, misleads, or who innocently enables another to mislead, a third party to his detriment; and, in general to all cases of estoppel, and to all other cases where one has innocently acted on the faith of another's acts or words.

The maxim is often expressed thus: Where one of two persons must suffer loss by the acts or fraud of a third party, he who enabled that third party to occasion the loss, or to commit the fraud, ought to be the sufferer.[59]

§ 53. **Equity Follows the Law.**—Equity follows the law in the following particulars:[60] (1) In adjudicating questions affecting legal estates, rights, interests or duties, Equity applies those rules of law the Circuit Courts would apply in like cases; (2) In adjudicating questions affecting equitable estates, rights, interests, or duties, Equity will follow the analogies of the law where any analogy clearly exists, especially the law in reference to the descent and distribution of estates, and the husband's right to his wife's chattels, but subject to her equity; (3) Where the Legislature has passed an act not expressly applicable to proceedings in Equity, nevertheless the Courts of Chancery will follow such statute, unless it contravenes some fundamentable equitable right or some equitable remedy; (4) Where the Courts of law and of Equity have concurrent jurisdiction, the statutes of limitations will be enforced in Chancery.[61] Indeed, it may be generally said that a Court of Chancery in enforcing a legal right, or in applying a legal remedy, will follow the law when no fundamental rule of Equity is thereby violated. Were it otherwise, a man's legal rights, or legal duties or liabilities, might, to some extent, depend on the Court in which the suit was pending. This remark, however, must not be so construed as to intimate that, when a legal cause of action is pending in Chan-

53 Broom's Leg. Max., 276-295.

54 Coles *v.* Anderson, 8 Hum., 493; Whitby *v.* Armour, 4 Lea, 686; Bank *v.* Wolf, 6 Cates, 255.

55 King *v.* Fleece, 7 Heisk., 281.

56 Walker *v.* Skipwith, Meigs, 509.

57 Arendale *v.* Morgan, 5 Sneed, 704.

58 Trevathan *v.* Caldwell, 4 Heisk., 535.

59 Walker *v.* Skipwith, Meigs, 509; Susong *v.* Williams, 1 Heisk., 631; Trevathan *v.* Caldwell, 4 Heisk., 538. He who enables another to commit a fraud is answerable for the consequences, as (1) where the owner knowingly permits his property to be sold by another; or (2) where a creditor, who has obtained a secret and undue advantage, signs a composition and thereby induces other creditors to sign it. Snell's Pr. Eq., 474-475.

60 By "law," in this section, is meant the common and statutory law.

61 Nicholson *v.* Lauderdale, 3 Hum., 200; Peebles *v.* Green, 6 Lea, 475; Hughes *v.* Brown, 4 Pick., 586. But Chancery will not enforce the statute of limitations when the defendant fraudulently concealed the cause of action. Smart *v.* Waterhouse, 10 Yerg., 104; Vance *v.* Matley, 8 Pick., 310.

cery, the Court has not the power to apply the maxims and principles of Equity, and to enforce any equities that may exist in the case; and especially the power to compel the complainant to do equity.[62]

But this maxim must not be too broadly interpreted; for, as a rule, instead of Equity following the law, it widely departs from the law. Courts of Chancery follow the law as to the competency of witnesses, and the methods of obtaining testimony,[63] but contravenes the rules of law as to the admissibility and force of evidence, especially in cases of fraud, and in cases where parole evidence is heard to explain, vary, contradict or nullify a written instrument, or to assail a judgment or decree.[64]

§ **54. Where there is Equal Equity the Law must Prevail.**—If two persons have equal equitable claims as to the same subject-matter, and, as to their equitable interests therein, are equally entitled to the aid of the Court, but one of them has the legal estate to said subject-matter, then he will prevail.[65] *In æquali jure melior est conditio possidentis et defendentis.* (Where the right is equal the condition of the possessor and of the defendant is the better.)[66] The equity is equal between persons who are equally innocent and have been equally diligent. It is upon this account that the Chancery Court constantly refuses to interfere, either for relief or discovery, against a *bona fide* purchaser of the legal estate for a valuable consideration without notice of the adverse title, if he avails himself of this defence at the proper time and in the proper mode. In such a case, the equities being equal, the legal title prevails.[67]

§ **55. Where there are Equal Equities, the First in Order of Time shall Prevail.**—This maxim is generally given in its Latin form, *Qui prior est tempore potior est jure.* (He who is prior in time is superior in right.) The maxim is sometimes misunderstood and misapplied. Its true meaning is this: As between persons having equitable interests only, if their interests are in all other respects equal, priority in time gives superiority in right. And, in a contest between persons having only equitable interests, priority of time will give superiority of right, provided there is not other sufficient ground of preference between them.[68] For, if the equities are equal, and one of the parties has, in addition, the legal title, then another maxim would apply: *Where there is equal equity the law must prevail.*[69] In a Court of Chancery, in a conflict of equities, the party having the superior equity will prevail; and if the equities are equal, and neither party has the legal title, then priority prevails; and if no priority the defendant prevails.

Under the operation of this maxim, grantees and incumbrancers take and are ranked according to the dates of their securities. Parties claiming liens or having judgments, or attachments, or execution liens, or assignments, all hold in order of time, provided there is no other ground of preference.[70] In a race of diligence between creditors having equal rights in law, or equal rights in Equity, he who is first in time becomes first in right,[71] for Equity rewards according to diligence.

§ **56. To Protect and Enforce Rights to Property the Object of Suits in Chancery.**—The term "property," as used in this section, includes everything that is the subject of exclusive individual ownership; or, to be more specific, includes not only lands, houses, goods and chattels, rights and credits, but, also, a man's person, and his wife and minor children, and his right to work, and to sell and acquire property, and engage in any lawful business, and his and their

62 Courts of Equity will not, in a case of purely legal cognizance, grant relief contrary to the settled maxims and principles of Equity jurisprudence; but will apply and enforce those maxims and principles even in cases where the rules of the Circuit Court are otherwise. Lenoir *v.* Mining Co., 4 Pick., 168.

63 Code, § 4455.

64 See *ante*, §§ 6-7, for cases where law follows Equity.

65 Perkins *v.* Hays, Cooke, 163.

66 Broom's Leg. Max., 690.

67 1 Sto. Eq. Jur., § 64 *c*; Reeves *v.* Hager, 17 Pick., 712.

68 1 Pom. Eq. Jur., §§ 414, 678-734.

69 Perkins *v.* Hays, Cooke, 163.

70 Pom. Eq. Jur., §§ 414; 415, 678-734; and see Priorities, *post*, §§ 73-74.

71 Hillman *v.* Moore, 3 Tenn. Ch., 460; Jordan *v.* Everett, 9 Pick., 396.

reputation, health and capacity to labor, and his and their right to enjoy the senses of sight, smell, hearing and taste, and his and their right of speech and locomotion, and his and their right to enjoy their sense of moral propriety when normal.

As men live by their labor and property, no man is presumed to part with either without receiving or expecting an equivalent in value. Hence, whenever one person has obtained either the labor or proprty of another he should pay or account therefor, unless he can prove it was a gift; and so, whatever injury one person does to another's property or capacity to labor should be made good.

To declare and define the rights of property, and regulate its tenure, possession, enjoyment and transfer, is the business of the Legislature; and to protect and enforce those rights, compel atonement for their violation, and conform the tenure, possession, enjoyment and transfer of property to the requirements of law and Equity, so that each person may have his own, and no person have what is another's, is the business of the Courts.

Questions involving partisan politics, denominational religion, ecclesiastical controversies, scientific theories, mere breaches of moral rectitude and violations of criminal law, are not within the domain of Equity Jurisprudence, and the Chancery Court has no jurisdiction of them, unless they involve rights of property, and then only as to such rights.

§ 57. **Equity Regards the Beneficiary as the Real Owner.**—In a Court of law in case of an express trust, the beneficiary is not recognized, and has no rights the trustee is bound to respect. On the face of the deed the legal title is in the trustee, and the Courts of law will look no further, and will hear no proof in behalf of the beneficiary. Indeed, if the beneficiary is in possession the trustee can eject him by suit in a Court of law. In short, in the eye of the law the beneficiary is not known.[72]

But in Equity, where the intent of the grantor and not the form of the grant prevails, the beneficiary is regarded as the real owner; and the trustee is considered as a mere manager of the trust property for the benefit of the beneficiary,[73] and liable to the beneficiary for any and every breach of the trust. If the trustee fail to do his duty, the Chancery Court will remove him, on proper application.

And all this is true not only of trusts created by wills, deeds or other instruments in writing, but is also true of trusts created by law. Thus every administrator, executor, and guardian, and, to a less extent, every Court Clerk, Receiver, Sheriff, County Trustee or other public officer entrusted with the money of others, by the law, and especially where he has given bond to secure those entitled, is liable to be called by the beneficiaries to account in Chancery; and, in all such cases, the Court regards the beneficiary as the real owner of the property, although the legal title is in the officer having it in possession.

But while the Chancery Court regards the beneficiary as the real owner in order more fully to guard his interests and assert his rights, it, also, regards him the real owner as to his liabilities, and, except in cases where the trust is declared by a will or deed duly registered,[74] will subject his interest in the trust property to the satisfaction of his debts, on a proper bill filed for that purpose, as hereafter shown. In dealing with the beneficiary's interest in the trust property Equity follows the law, and treats such property as descendible, devisable and alienable.[75]

In all cases of trusts, including trust deeds, assignments for the benefit of creditors, and even constructive and resulting trusts, the Chancery Courts

[72] 2 Sto. Eq. Jur., § 964, 968; 2 Pom. Eq. Jur., § 979.

[73] 4 Kent's Com., 303-304; Lewin on Trusts, 572; 2 Pom. Eq. Jur., § 989. *Quicquid acquiritur servo acquiritur domino.* See *ante*, § 40.

[74] Code, § 4283.

[75] 2 Sto. Eq. Jur., § 974; 2 Pom. Eq. Jur., § 989.

are ever ready to lend a helping hand to the beneficiary as against him who holds the legal title.

§ 58. Equity Enforces What Good Reason and Good Conscience Require.—Whatever good reason and good conscience require a party to do or refrain from, in a matter affecting another's property or rights, that a Court of Chancery requires of him, unless the other party has forfeited his right to relief by his negligence or participation in the wrong done. Conscience itself might make too refined or too unstable a standard for the determination of human conduct in the Courts; and reason of itself might give too wide a range for sharp practices in matters of trade, or other dealings. Indeed, conscience without reason might degenerate into fanaticism, or gross eccentricity; and, on the other hand, reason without conscience might become trickery, or even downright knavery.[76] Hence, in the administration of justice, conscience must be conformed to reason and thus become good conscience, and reason must be conformed to conscience and thus become good reason; and whatever good conscience and good reason unite in approving is the nearest approach to perfect justice man is able to attain.[77] This union of good reason and good conscience is what in a general way is meant by the term Equity in the administration of justice.

Whenever anyone is about to do, or has done, any act which in good reason and good conscience he ought not to do or have done, or is about to fail or has failed to do any act which in good reason and good conscience he ought to do, or have done, whereby another person is about to be or has been injured in his estate or rights, such person has the right to invoke the aid of the Courts to prevent the injury threatened, or obtain compensation for the wrong done; and if the Courts of law are inadequate to afford a sufficient remedy the Courts of Equity have inherent power to take full jurisdiction and adminster complete relief.

All obligations enforceable in Chancery, arise from contracts express or implied, or are imposed by statute. Implied contracts are both general and special. 1. *The general implied contract* is the agreement every member of the community impliedly makes with every other member of the community that in every relation he may occupy as citizen, husband, father, confidant or bargainor, he will, in every transaction connected with such relation, do whatever good reason and good conscience require. 2. *The special implied contract* is that each person who has business relations with another will, in all matters of business, do all that good reason and good conscience require; and that every person having relations of trust or confidence with another, will, in reference to all matters connected therewith, do whatever good reason and good conscience require, and will refrain from doing whatever good reason and good conscience forbid. Each party to any matter of business has both the moral and legal right to expect and require the observance of this implied contract by the other party. This just expectation constitutes the foundation of all human intercourse, on it is built the superstructure of all business dealings, and Courts of Chancery will not allow it to be disappointed.

The implied contract surrounds every express contract, and fills all the interstices thereof. As the atmosphere pervades all spaces not occupied by other substances, so the implied contract pervades the whole world of legal rights and duties not occupied by express contracts; and under this all comprehensive implied contract, conclusively presumed by law, every person is held to act, in word and deed, and to it every person is bound to conform. This implied contract is, in substance, what in the Roman or civil law is called "*bona fides*," and

[76] *Judex habere debet duos sales, salem sapientiæ ne sit insipidus et salem conscientiæ ne sit diabolus.* (A Judge ought to have two salts, the salt of wisdom that he may do nothing foolish, and the salt of conscience that he may do nothing wicked.) Coke, 3 Inst., 147.

[77] Lube's Eq. Pl., 17; 286; 1 Pom. Eq. Jur., §§ 55-57; see note 17 to § 4, *ante*.

it is the foundation of a large proportion of the adjudications in the Chancery Court.[78]

§ 59. **Stare Decisis et Non Quieta Movere.**—(Adhere to the decisions, and do not unsettle questions put at rest.) It is more important to a people to have their laws known and fixed than to have them precisely just; for our conceptions of justice differ, but what is fixed is certain, and can be conformed to.[79] The decisions of our Courts are like sign-boards whereby we shape our course and keep on the road of safety. The law must run on straight lines, and cannot be crooked to suit supposed exceptions.[80] Fluctuations of judicial decisions have an effect similar to the shifting of the magnetic needle; no one is sure that he is travelling in the right direction, and no one can give safe counsel. Hence it is that Courts deem a decision which has become a rule of property as binding on them as a legislative enactment,[81] and this is so whether the decision was originally correct or not,[82] or whether it affects property, or a point of practice.[83] Laws are made for the greatest good of the greatest number, and must necessarily be general. It is better that the individual conform to the law than that the law conform to the individual; and it is better that a particular case of hardship be unredressed than that the law be violated, when the violation would occasion much mischief,[84] and especially would unsettle the foundations of property rights, and disturb the landmarks of the law.[85]

But the rule of *stare decisis* is not so inflexible when the decision is recent, and has not given satisfaction.[86]

And what is true as to precedents about property is equally true as to precedents about pleadings, practice, proof, and procedure.[87] Courts abhor innovations in pleadings or procedure,[88] and "delight with measured step to tread the beaten path of precedent."[89] A Solicitor who departs from established precedents in pleadings, proofs and procedure violates his duty both to his clients and to the Court: he needlessly endangers the success of the former, and perplexes the mind of the latter. Such innovations are mischievous and should not be tolerated.

78 The propositions laid down in the text in regard to implied contracts are fully sustained by the best law writers. Blackstone says, "Implied contracts are such as reason and justice dictate, and which therefore the law presumes every man undertakes to perform, and upon this presumption makes him answerable to such persons as suffer by his non-performance." Vol. 3, 158. Implied contracts arise from natural reason and from the general implication and intendments of the Courts that every man hath engaged to perform what his duty or justice requires. *Ibid*, 161. See 1 Spence Eq. Jur., 411. Parsons, in his great work on Contracts, says, "The law of contracts in its widest extent, may be regarded as including nearly all the law which regulates the relations of human life; * * * for out of contracts, express or implied, declared or understood, grow all rights, all duties, all obligations, all law." 1 Parsons' Cont. 3. Whatever a man ought to do, that the law supposes him to have promised to do. * * * Implied contracts form the warp and woof of actual life * * * Implied contracts are co-ordinate and commensurate with duties. *Ibid.* 4. Every member of society has impliedly contracted to do whatever the law requires of him. Walker's Am. Law. 468. This implied contract arises from man's nature as a social animal, and without it society could not exist, and men would become beasts of prey. See *post*, § 932.

79 *Misera est servitus ubi jus est vagum aut incertum.* (Miserable is the servitude where the law is vague or uncertain.) Atkinson *v.* Dance, 9 Yerg., 427.

80 Bank *v.* Skillern, 2 Sneed, 698, 701; Franklin *v.* McCorkle, 16 Lea, 629. The laws of nature cause individual hardships. Rains bless many but ruin some. The frost stays the pestilence, but shortens the crops.

81 McKinney *v.* Stacks, 2 Heisk., 284.

82 Case Co. *v.* Joyce, 5 Pick., 337; Steedman *v.* Dobbins, 9 Pick., 397; Wilkins *v.* Railroad, 2 Cates, 422. Where a decision lays down a rule of property, it is as much law as an Act of the Legislature, and should remain until changed by the Legislature. Courts should adhere to the old landmarks of the law, and not be swayed or confused by new decisions of other States. Jackson Ins. Co. *v.* Freeman, 9 Heisk., 300.

83 Thompson *v.* French, 10 Yerg., 458; Smith *v.* Harris, 3 Sneed, 553, 557.

84 Neal *v.* Cox, Peck., 440; Franklin *v.* McCorkle, 16 Lea, 629.

85 Smith *v.* McCall, 2 Hum., 163; Wilkins *v.* Railroad Co., 2 Cates, 420. In the latter case, Neil, J., reviews the Tennessee authorities in an exhaustive opinion.

86 Sherfy *v.* Argenbright, 1 Heisk., 143; Barton *v.* Shall, Peck, 233. But even in such a case it is better to let the Legislature change the law than for the Courts to change it. Cocke *v.* McGinnis, Mart. & Yerg, 364. The Legislature can repeal statutes passed by it, but Courts are not vested with repealing power, and a decision once made is made forever. Clouston *v.* Barbiere, 4 Sneed, 339.

87 Thompson *v.* French, 10 Yerg., 458; Smith *v.* Harris, 3 Sneed, 553, 557.

88 *Omnis innovatio plus novitate perturbat quam utilitate prodest.* (Every innovation disturbs more by its novelty than benefits by its utility.)

89 Coke has said, *Via trita, via tutissima.* (The road that is worn by travel is the safest.) And Chancellor Kent has declared that the old way is the safe way—*via antiqua via est tuta.* Manning *v.* Manning, 1 Johns, Ch. 527.

§ 60. **No One Should be Condemned without a Chance to be Heard.**[90]—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.[90a] The inherent love of fair play contained in the maxim, *Audi alteram partem*,[91] 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.[92] 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.[93]

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,[94] 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 subpœna 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 subpœna,[95]

The notification to the defendant that he has been sued, made by service of subpœna, 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.[96]

90 *Nemo inauditus nec summonitus condemnare debet si non sit contumax.* (No one ought to be condemned unheard and unsummoned, if he be not contumacious.) If the defendant evade or attempt to evade the service of the subpœna, the officer shall leave a copy at the usual residence of the defendant, which shall be a sufficient service. Code, § 4346. The defendant will not be allowed to take advantage of his own contumacy.

90a Ridgeway *v.* Bank, 11 Hum., 523.

91 Hear the other party.

92 Peck, J., in Roberts & Phillips *v.* Stewart, 1 Yerg., 392.

93 Gasget & Co. *v.* Scott, 9 Yerg., 244. This great principle, which has always been considered so important to the safety of the citizen, has been violated in but few instances, and in those only where the evils resulting from requiring the notice would more than counterbalance those arising from proceeding without it, as in cases of attachments of property, motions against public officers of the State, and of sureties against their principals; and such violations are watched with great jealousy, and the statutes authorizing them are strictly construed. *Ibid.*

94 A man's property is, in a sense, a part of himself, and when his property is seized by another he is presumed to know it, the property being in the possesion of himself or agent, and the knowledge of the agent being considered the knowledge of the principal. See *post*, § 65, sub-sec., 2.

95 Walker *v.* Cottrell, 6 Bax., 273; Ingle *v.* McCurry, 1 Heisk., 26; Rains *v.* Perry, 1 Lea, 39.

96 See authorities next above cited; also, Fogg *v.* Gibbs, 8 Bax., 467; Finley *v.* Gaut, 8 Bax., 152; Walker *v.* Day, *Ibid.* 80; Bell *v.* Williams, 1 Head, 229; Kinzer *v.* Helm, 7 Heisk., 675; Barrett *v.* Oppenheimer, 12 Heisk., 302; Sherrill *v.* Goodrum, 3 Hum., 430; Hughes *v.* Bryant, 6 Yerg., 471.

ARTICLE III.

MAXIMS APPLICABLE TO THE COURT, AND TO ITS PRACTICE AND PLEADINGS.

§ 61. Maxims Applicable to the Court, and its Orders.
§ 62. Maxims Applicable to the Practice of the Court.
§ 63. Maxims Applicable to Pleadings.
§ 64. Other Principles and Maxims.

§ 61. Maxims Applicable to the Court, and its Orders.—The following are some of the maxims applicable to the Court, and its orders:

1. *Actus Curiæ neminem gravabit.* (An act of the Court injures no one.) Whenever the Court makes some order, or does some act, on its own motion, during the progress of a cause, such order or act will not be allowed to work an injury to any of the parties. Where a decree has been delayed by the act of the Court, it will, if necessary to justice, be entered *nunc pro tunc.*

2. *Actus judiciarius coram non judice irritus habetur.* (A judicial act outside of the Judge's authority is null and void.)

3. *Consensus facit legem.* (Consent makes law.) Whatever the parties agree to, during the progress of a suit, is binding upon the Court, if (1) the parties consenting are under no disability, and if (2) the consent is in violation of no law. Every person *sui juris* can do what he pleases with his own, so long as he violates no law and injures no one else. The agreements of parties during the progress of a suit are favored, and the Court cannot go behind them, or revise them, or disregard them, or set them aside, except for fraud, accident or mistake. Where parties consent, they bind the Court; where they do not, or cannot consent, the Court binds them. *Conventio vincit legem.*[1]

4. *Cursus Curiæ est lex Curiæ.* (The practice of the Court is the law of the Court.) Rules of procedure are indispensable to the orderly administration of justice, and all Courts have such rules, and require strict obedience to them. They are a part of the means whereby the law is enforced. Law would be of no value if there were no means of enforcing it. Another maxim is, *Quando aliquid mandatur, mandatur et omne per quod pervenitur ad illud.*[2] (When anything is commanded, every means of accomplishing it is also commanded.) So when Courts were created, by necessary implication, power was given them to make such rules of practice as are necessary to enable them to apply and administer the law. These rules when established have all the force and effect of law, as well upon the Courts themselves, as upon their officers and litigants, until duly changed on due notice.

5. *Fieri non debet, factum valet.* (What ought not to have been done is valid when done.) Thus, a decree that is erroneous is, unless duly reversed by the Supreme Court, as binding on the parties as though in strict accordance with the law and the facts. So, an injunction that should not have been granted must be obeyed as implicitly as though fully warranted by the facts. All irregular procedures are valid, unless the irregularities are duly questioned and corrected. In brief, every judicial act is binding so long as it is not appealed

[1] The agreement of the parties is stronger than the law; that is, the law cannot violate or loosen the agreement, if it be a lawful one. Courts are established to enforce contracts, not to make them. It is not even in the power of the Legislature to violate, or set aside, a contract. The inviolability of contracts is required by the Constitution of the United States. Art. I, sec. 10; and the Constitution of the State. Art. I, sec. 20. As to the effect of consent, see *post*, § 72.

[2] Or, as it is otherwise expressed, *Cui jurisdictio data est, ea quoque concessa esse videntur sine quibus jurisdictio explicari non potest.* (When jurisdiction is given, those things, also, are deemed to be given which are necessary to the exercise of that jurisdiction).

from, or reversed by writ of error, however irregular or full of errors the act may be. But a judgment or decree that is void binds no one, benefits no one, and protects no one: void things are no things.

6. *Omnia præsumuntur rite et solenniter esse acta.* (All things are presumed to be rightly and regularly done.) The Courts presume that whatever is done by a Court, or by an officer of the law, is properly done. Whatever is done by the Legislature is presumed to have been correctly done. The Courts presume that when a Court of general jurisdiction pronounces a decree that every necessary step preliminary thereto was duly taken. All presumptions are in favor of the regularity of the proceedings of all sworn officials.

7. *Qui jussu judicis aliquod fecerit non videtur dolo malo fecisse, quia parere necesse est.* (He who does anything by command of the Judge will not be deemed to have acted from an improper motive, because it was necessary for him to obey.) This rule protects a Clerk who pays out money, or does any other act, by order of the Court; it protects the Sheriff in the proper execution of the orders, decrees and process of the Court; and protects Receivers, Special Commissioners and others, who do any act in pursuance of an order or decree of a Court. The party dissatisfied with any such order or decree must take the proper steps to have it suspended, corrected or reversed.

§ 62. Maxims Applicable to the Practice of the Court.—The following are some of the principal maxims that may be applied to questions of practice:

1. *De non apparentibus et non existentibus eadem est ratio.* (What does not appear in the record, and what does not exist in fact, are one and the same in law.) Courts can act upon nothing that does not duly appear in the record. Courts of law may hear and determine, but Courts of Chancery must *see* and determine: they cannot take cognizance of oral statements unless and until reduced to writing in due form and made part of the record. The Chancellor cannot regard his personal knowledge of men, character or facts, for these are not in the record: *non refert quid notum sit judicii, si notum non sit in forma judicii.*[3] This maxim is sometimes more tersely expressed thus: *Quod non apparet non est.* (What does not appear [in the record] does not exist [so far as the suit is concerned].)

2. *In judicio non creditur nisi juratis.* (In a judicial proceeding, nothing is believed unless proved upon oath.) This is one reason why the Chancellor, the Clerk and Master, the Solicitors and the Sheriff are all sworn. No witness can be heard unless sworn, or unless his oath is expressly waived. Statements of fact made in Court by parties, or on behalf of parties, will not be heeded unless sworn to, or agreed to by the opposite side. The Court cannot credit anything not verified by the oath of the proponent, and this is the reason why affidavits are required in support of motions.

3. *Melior est conditio defendentis.* (The situation of defendant is preferable to that of complainant.) The reason of this rule is that the burden of proof usually rests upon the complainant; and, ordinarily, the defendant need make no proof until the complainant has made out a *prima facie* case. The complainant must satisfy the Court that he has a right to the thing in dispute; and, until he does so, the defendant can keep his arms folded, and his mouth closed.[4] So, where each party is equally at fault, the Court will not aid either, as a rule, for *in pari delicto potior est conditio defendentis.* Both the defendant and the possessor may stand still until the complainant has proved a right.[5] *Melior est conditio possidentis, et rei quam actoris.*

4. *Omnis innovatio plus novitate perturbat quam utilitate prodest.* (Every

[3] See *post*, §§ 451, 1141, sub-sec. 10. It matters not what is known to the Judge, if it be not known to him judicially. The Judge, as a *man*, may know facts pertinent to the case which do not appear of record, but he can no more consider such facts than can a juror under like circumstances. The Judge has no eyes to see, and no ears to hear, and no mind to consider, anything not in the record of the cause. *Judicis est judicare secundum allegata et probata.*

[4] Pinson *v.* Ivey, 1 Yerg., 308. See *post*, § 64, sub-sec. 20.

[5] See *post*, § 453.

innovation disturbs more by its novelty than benefits by its utility.) This is especially true in matters of pleading and practice. Solicitors, from inexperience or carelessness, are constantly departing from the proper form of pleadings, orders and decrees; and are constantly making innovations on the regular practice of the Courts.[6] *Stare decisis et non movere quieta.*[7] This maxim applies as well to questions of pleading and practice as to property rights.

5. *Qui facit per alium facit per se.* (He who does any thing by another, does it himself.) The act of the agent is the act of the principal; and among partners each one is the agent of all the others. If the principal, or master, ratifies an act of his agent or servant, the effect is the same as though such act was expressly authorized before it was done; for *omnis ratihabitio retrotrahitur, et mandato æquiparatur.*[8] Delegated power, however, cannot be delegated. Representation in Courts is indispensable, and litigants will be as fully bound by the acts of their Solicitors as though such acts had been done by themselves in person. When the Court is once satisfied that a Solicitor is authorized to appear, it will not question his authority to bind his client in any way, or by any act, or agreement, in the progress of the cause. And as Solicitors are sworn well and truly to demean themselves in Court, the Court will presume they have authority to appear when the opposite side, or the client himself, does not dispute that authority.

6. *Quilibet potest renunciare juri pro se introducto.* (Any one can waive a law made for his benefit.) No one is obliged to act on, or make use of, all the rights he is entitled to: he may waive any of them. And the failure to exercise a right in due season will generally be deemed a waiver; and if, in consequence of a seeming waiver, the opposite party has taken a legitimate step, the party making the waiver will be concluded and estopped from recalling his waiver.[9] This rule is strictly enforced in practice.[10]

7. *Qui sentit commodum, sentire debet et onus.* (He who enjoys the benefit ought also to bear the burden.) This rule is enforced by requiring the party who obtains a benefit in a judicial proceeding, to pay a part, or all, of the costs, when they cannot be otherwise made.[11]

8. *Ubi lex aliquem cogit ostendere causam, necesse est quod causa sit justa et legitima.* (Where the law requires any one to show cause the cause must be just and legal.) In Court a party is frequently required to show cause: (1) Why he did so and so; or, (2) why he did not do so and so; or, (3) why he should be allowed to do so and so; or (4) why the other party should not be allowed to do so and so. It may be stated generally that what is meant by "showing cause" is showing *good* cause, that is, showing a good, legal, substantial and meritorious reason or reasons, justifications, or excuses, for the action in question. The law despises trifles and quibbles,[12] and when the law or the Court requires a party to "show cause," such party must, in good faith, make such a showing as to demonstrate that justice is clearly on his side. If he is showing cause to be relieved, or to shield himself, he must make it clearly appear that he has been guilty of no inexcusable *laches* or negligence, and of no acts of bad faith or disregard of duty, and that he has a meritorious claim or defence. In a word he must show *good* cause.[13] If he is showing cause to obtain the right to do an affirmative act which should have been done or applied for in due season, he must likewise show good reason or excuse for his delay, and show that he acted

6 Chancellor Kent has declared that the old way is the safe way—*via antiqua via est tuta.* Manning *v.* Manning, 1 Johns. Ch., 527.

7 Stand by what has been decided, and do not disturb what is settled. See *ante*, § 50, where this maxim is fully considered.

8 Every ratification of what has been done is equivalent to a prior command to do it.

9 Brasher *v.* Van Cortlandt, 2 Johns. Ch., 242. *Nemo potest mutare consilium suum in alterius injuriam.* (No one can change his plan to the injury of another). So, if one has two rights or remedies, and he repudiates one or elects one, he is estopped to change his action. O'Bryan Bros. *v.* Glenn Bros., 7 Pick., 106. See Article on Estoppel, *post*, § 67.

10 See Article on Waiver and Consent, *post*, §§ 71-72.

11 See *post*, §§ 587, 593.

12 See maxims: (1) *De minimis non curat lex;* (2) *Apices juris non sunt jura;* (3) *Lex non favet delicatorum votis;* (4) *Lex non præcipit inutilia;* (5) *Lex neminem cogit ad vana seu inutilia peragenda;* (6) *Aucupia verborum sunt judice indigna;* and (7) *Qui hæret in litera hæret in cortice.*

13 And "good cause" means merits. Cain *v.* Jennings, 3 Tenn. Ch. 131; Gill *v.* Wyatt, 6 Heisk., 88.

as soon as he had knowledge and an opportunity. Good faith, diligence and merits must be shown by every party who comes into the Chancery Court for relief. A party applying for leave to do something in Court which should have been done before, must show not only a good excuse for his failure to act in season, but must set forth such merits as will show that he has the right on his side, and these merits must be shown not by general allegations but by specific facts.[14] A party required to show cause is ordinarily a suppliant for the mercy of the Court,[15] and he should realize his extremity and conform to every requirement of the law, the practice and good reason;[16] and this "cause," or "good cause," should be shown (1), *in due season*, which means at the first opportunity after its necessity became known; (2) *in due form*, that is in the manner required by the practice of the Court; and (3) *by due particularity*, that is by a full disclosure of all the facts and circumstances bearing on the matter in question. And the writing setting forth this good cause thus shown should be verified by the oath of the party, or of his Solicitor when the facts are in the latter's personal knowledge, but not otherwise.

The most usual cases where a party is required to show good cause are: (1) for not answering in season; (2) for leave to withdraw an answer and demur or plead; (3) for not amending his bill in season, or not sooner applying so to do; (4) for setting aside a *pro confesso;* (5) for amendment to answer; (6) for leave to re-examine a witness; (7) for a continuance; (8) for recommitment of a Master's report; (9) for setting aside a sale; (10) for leave to file an amended or supplemental or cross bill; (11) for extension of time to take proof; and (12) for doing or having done any act in Court out of course, or for undoing any act in Court that was done in course.

§ **63. Maxims Applicable to Pleadings.**—The following maxims apply to pleadings, and their interpretation:

1. *Allegans contraria non est audiendus.* (He who makes assertions that are contrary to each other will not be heard.) This maxim applies both to pleadings and proof. A bill or answer containing contradictory statements becomes a nullity as to such statements; nor will the Court allow a pleading to be amended, when the amendment is contradictory or repugnant to the pleading. So, testimony that is contradictory destroys itself, and a witness who contradicts himself is not to be heard.

2. *Allegari non debuit quod probatum non relevat.* (That ought not to be alleged which, if proved, would not be relevant.) No useless allegations should be made, and no surplusage inserted, in pleadings. Poetry, rhetoric, sarcasm, pathos—all are alike irrelevant and impertinent, and will be stricken out on motion.

3. *Benigne faciendæ sunt interpretationes chartarum, ut res magis valeat quam pereat.* (Written instruments should be liberally construed so that they may stand rather than fall.) This is our rule in dealing with bills, the Court making every reasonable presumption in their favor, when assailed by a demurrer, or a motion to dismiss.[17] The English rule is the reverse, following the maxim, *ambiguum placitum interpretari debet contra proferentem.*[18] In Tennessee, a liberal interpretation is given to all writings, the purpose of the Court being to ascertain, and give effect to, the intention of the makers of the instrument. The intention is the substance, the words are but the shadow;

14 See *post*, §§ 235; 511; 960-961. General allegations in such cases are mere *vox et praterea nihil*. Montgomery *v.* Olwell 1 Tenn. Ch., 172.

15 Cheatham *v.* Pearce & Ryan, 5 Pick., 608.

16 If you have merits, and the inclination of the Chancellor is against you, make your presentation so clear, strong and equitable that he will be obliged to yield; if his inclination is favorable, give him good grounds to grant your application.

17 Code, § 2884; Thompson *v.* Paul, 8 Hum., 117; Lincoln *v.* Purcell, 2 Head, 143; Hobbs *v.* M. & C. Railroad, 9 Heisk., 879; same case, 12 Heisk., 531; French *v.* Dickey, 3 Tenn. Ch., 302; Gregory *v.* Hasbrook, 1 Tenn. Ch. 218.

18 An ambiguous pleading ought to be interpreted against the party pleading it. This maxim is properly applied in England, where all solicitors are thoroughly trained and skilled; but in Tennessee, where solicitors are admitted to practice without thorough preparation, a liberal interpretation of pleadings, and other legal instruments, is necessary and equitable. See Quinn *v.* Leake, 1 Tenn. Ch. 71.

and so the intention is the only infallible touchstone for the interpretation of contracts.[19] In construing wills, the intention of the testator is the polar star by which the Court should be guided. *Animus hominis est anima scripti,*[20] the intention of the writer is the soul of the writing, or, as it has otherwise been expressed, words are the body, the meaning is the soul. The office of interpretation is to deduce the true sense from the words, and not to inject a false sense into them. *Expositio, quæ ex visceribus causæ nascitur, et aptissima et fortissima in lege.*[21] And while the words are deemed of less importance than the meaning of the entire instrument, nevertheless it is only by means of the words that this meaning can be ascertained. *Divinatio non interpretatio est quæ omnino recedit a litera.*[22] Neither bad writing, bad punctuation, nor bad grammar will, in the least, prejudice the instrument, for *mala grammatica non vitiat chartam.*[23]

4. *Falsa demonstratio non nocet.* (A false description does no harm.) This is a maxim of frequent application, and applies to cases where the wrong name is given to a person, or thing, otherwise sufficiently described in the instrument. Where a bill is misnamed, the Court will disregard the name, if it contain an equitable ground of suit.

5. *Utile per inutile non vitiatur.* (The useful is not vitiated by the useless.) Surplusage works no injury, and may be ignored. This rule applies to unnecessary words and phrases in deeds, contracts and pleadings; they are deemed mere trifles which the law disregards. *De minimis non curat lex.* The Court will order surplus matters in pleadings to be stricken out, or will ignore them.

§ **64. Other Principles and Maxims.**—For the convenience of Chancellors and Solicitors, the following additional maxims and principles are here inserted.

1. *Accusare nemo se debet, nisi coram Deo.* (No one is bound to criminate himself, except before his God.) No man can be forced to criminate himself in any Court, except the Court of his own conscience.

2. *Actus Dei vel legis nemini facit injuriam.* (The act of God, or of the law, causes a loss to no one.) As in cases of accident and forfeitures caused by flood, pestilence and sickness; or an act of the Legislature put in force from and after its passage operating on contracts by parties before the law was made known.

3. *Actus judiciarius coram non judice irritus habetur.* (A judicial act outside of the Judge's authority is null and void.) As a decree or order not warranted by the pleadings, or a decree in a case over which the Court has no jurisdiction.

4. *Causæ dotis, vitæ, libertatis, fisci, sunt inter favorabilia in lege.* (Suits involving dower, life, liberty and revenue are favored in law.)

5. *Certum est quod certum reddi potest.* (That is deemed certain which can be made certain.) As when one instrument calls for a second, and the latter contains what was deficient in the former.

6. *Cessante ratione legis, cessat ipsa lex.* (When the reason for the law has ceased, the law itself ceases.)[24] As the laws in the Code of 1858, never repealed, relating to slaves and free negroes.

7. *Debitum et contractus sunt nullius loci.* (Neither a debt nor a contract are

19 Officer *v.* Sims, 2 Heisk., 506.

The following are some of the principal Maxims of Interpretation:

1. *Maledicta expositio quæ corrumpit textum.* (Accursed is the exposition which destroys the text).

2. *Ex antecedentibus et consequentibus fit optima interpretatio.* (The best interpretation is made by considering both what precedes and what follows the matter in doubt).

3. *Qui hæret in litera hæret in cortice.* (He who sticks to the letter sticks to the bark).

4. *Nimia subtilitas in jure reprobatur.* (Too much subtlety is reprobated in law).

5. *Nihil facit error nominis cum de corpore vel persona constat).* An error in the name amounts to nothing when there is certainty as to the thing or person).

6. *Verba ita sunt intelligenda ut res magis valeat quam pereat.* (Words should be so interpreted that the subject-matter may be preserved rather than destroyed).

7. *Verba relata inesse videntur.* (Words referred to are considered as inserted).

8. A meaning should be drawn out of the words and not forced into the words.

20 The intention of the party is the life of the instrument.

21 That interpretation, which is born of the bowels of the case, is, in law, the fittest and most powerful.

22 It is a guess, not an interpretation, which disregards the words of an instrument.

23 Brown *v.* Hamlett, 8 Lea, 732.

24 Battelle & Co. *v.* Youngstown Co., 16 Lea, 360.

ARTICLE II.

MAXIMS AND PRINCIPLES OF ADJUDICATION.

41. Maxims of Adjudication Generally Considered.
42. He who Comes into Equity must Come with Clean Hands.
43. Equity Looks to the Intent rather than to the Form.
44. Equity Imputes an Intention to Fulfil an Obligation.
45. Equity Regards that as Done which Ought to be Done.
46. No Person Bound to Act for Another can Act for Himself.
47. Equity Delights in Equality.
48. Equity will Undo What Fraud has Done.
49. Equity Aids the Vigilant, Not Those who Sleep upon their Rights.
50. So Use your Own as Not to Injure Another.
§ 51. No one Can Take Advantage of His own Wrong.
§ 52. Where One of Two Persons must Suffer a Loss, He should Suffer whose Act or Neglect Occasioned the Loss.
§ 53. Equity Follows the Law.
§ 54. Where there is Equal Equity the Law must Prevail.
§ 55. Where there are Equal Equities, the First in Order of Time shall Prevail.
§ 56. To Protect and Enforce Rights to Property the Object of Suits in Chancery.
§ 57. Equity Regards the Beneficiary as the Real Owner.
§ 58. Equity Enforces What Good Reason and Good Conscience Require.
§ 59. No One Should be Condemned Without a Chance to be Heard.
§ 60. *Stare Decisis, et Non Quieta Movere.*

§ 41. Maxims of Adjudication Generally Considered.—In the adjudication f the questions that arise in Equity it is seldom that any statute is determina-ive, and not always that any decision of our Supreme Court is applicable; and ience the Chancellor is forced to rely on the rules of practice and pleading, and he maxims and principles of law and Equity, as his guides. These rules, max-ms and principles are generally so thoroughly incorporated into his judgment hat he uses them unconsciously in making a decision. But, if his opinion is vritten and analyzed, it will often be discovered that these rules, maxims and rinciples controlled the decision.

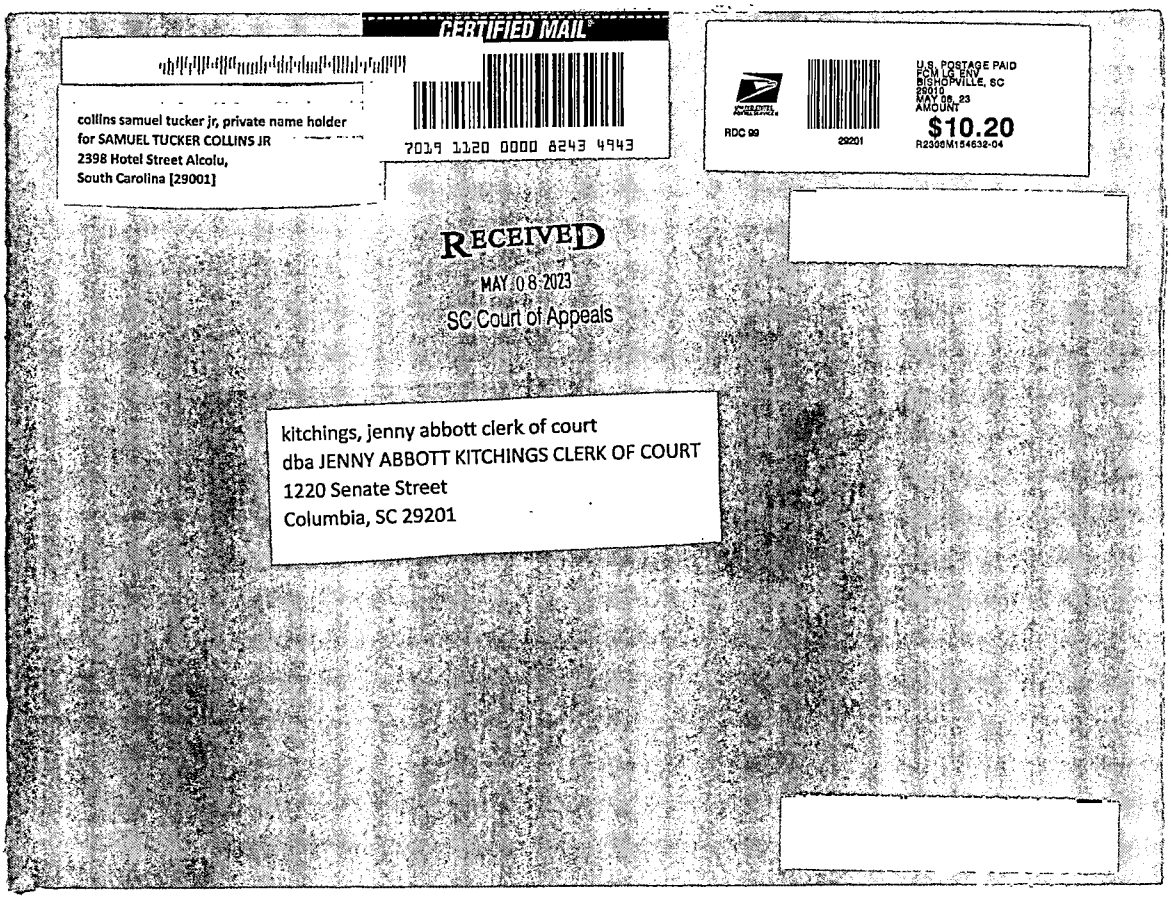
The principal maxims on which the Chancellor acts in adjudicating an equita-le matter are the following, which might be designated as

THE TWELVE TABLES[1] OF EQUITY.

1. Equity acts upon the person, (forcing him to do what conscience requires.)
2. Equity will not suffer a wrong without a remedy.
3. Equity imputes an intention to fulfil an obligation.
4. Equity acts specifically, and not by way of compensation.
5. Equity regards that as done which ought to be done.
6. Equity requires him who seeks equity to do equity.
7. Equity regards the beneficiary as the real owner.
8. Equity delights to do complete justice, and not by halves.
9. Equity acts for those disabled to act for themselves.
10. Equity looks to the intent rather than to the form.
11. Equity delights in equality.
12. Equity requires diligence, clean hands and good faith.

Some of these maxims have been considered in the preceding Article, being, lso, maxims of jurisdiction.

1 In analogy to the Twelve Tables of the Roman Law.



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