A TREATISE
ON
EQUITY JURISPRUDENCE
AS ADMINISTERED IN
THE UNITED STATES OF AMERICA
ADAPTED FOR ALL THE STATES
AND
TO THE UNION OF LEGAL AND EQUITABLE REMEDIES
UNDER THE REFORMED PROCEDURE
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FIFTH EDITION
BY
SPENCER W. SYMONS
IN FIVE VOLUMES
VOLUME II
BANCROFT-WHITNEY COMPANY
SAN FRANCISCO
THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY
ROCHESTER, N. Y.
1941
§ 397. General Meaning of This Principle.—This maxim is sometimes expressed in the form, He that hath committed iniquity shall not have equity. Like the one described in the preceding section, it is not, in its ordinary operation and effect, the foundation and source of any equitable estate or interest, nor of any distinctive doctrine of the

The maxim has been held to include within its operation certain other maxims, to wit: "No right of action can arise out of an immoral cause"; "No right of action can arise out of fraud or deceit"; "A right cannot arise to anyone out of his own wrong"; "Both parties to the litigation being equally at fault, the defendant's position is the stronger." Annotation: 4 A. L. R. 46.
equity jurisprudence; it is rather a universal rule guiding
and regulating the action of equity courts in their inter-
position on behalf of suitors for any and every purpose,
and in their administration of any and every species of re-
lief. Resembling the former maxim in this respect, it
differs from that principle in some most important and
essential features. In applying the maxim, He who seeks
equity must do equity, as a general rule regulating the
action of courts, it is necessarily assumed that different
equitable rights have arisen from the same subject-matter
or transaction, some in favor of the plaintiff and some of
the defendant; and the maxim requires that the court
should, as the price or condition of its enforcing the plain-
tiff’s equity and conferring a remedy upon him, compel
him to recognize, admit, and provide for the corresponding
equity of the defendant, and award to him also the proper
relief. The maxim does not assume that the plaintiff has
done anything unconscientious or inequitable; much less
does it refuse to him all relief; on the contrary, it grants
to him the remedy to which he is entitled, but upon con-
dition that the defendant’s equitable rights are protected
by means of the remedy to which he is entitled. On the
other hand, the maxim now under consideration, He who
comes into equity must come with clean hands, is much
more efficient and restrictive in its operation. It assumes
that the suitor asking the aid of a court of equity has him-
self been guilty of conduct in violation of the fundamental
conceptions of equity jurisprudence, and therefore re-
fuses him all recognition and relief with reference to the
subject-matter or transaction in question. It says that
whenever a party, who, as actor, seeks to set the judicial
machinery in motion and obtain some remedy, has vi-
lolated conscience, or good faith, or other equitable principle,
in his prior conduct, then the doors of the court will be

20. Quoted in annotation: 4 A. L. R. 753, 66 A. L. R. 143,
45. quoting the text.
§ 398. Is Based upon Conscience and Good Faith.—The principle involved in this maxim is merely the expression of one of the elementary and fundamental conceptions of equity jurisprudence. We have seen (§§ 55, et seq.) that


Ala.—Harton v. Little, 188 Ala. 640, 65 So. 951; Ashe-Carson Co. v. Bonifay, 147 Ala. 376, 41 So. 816.


Ill.—City of Chicago v. Union Stock Yards & Transit Co. 164 Ill. 224, 45 N. E. 430, 35 L. R. A. 281.

Ind.—Miller v. Jackson Township, 178 Ind. 503, 99 N. E. 102.


Me.—Conners v. Conners Bros. Co. 110 Me. 428, 38 A. 843.


Minn.—Scott v. Austin, 36 Minn. 460, 32 N. W. 89, 864.

Mo.—Stierlin v. Teschemacher, 333 Mo. 1298, 64 S. W. (2d) 647, 91 A. L. R. 121.

Nearly all of the above cases quote or cite the author.

Annotation: 4 A. L. R. 44.

"He that hath committed iniquity shall not have equity. He that hath engaged in a fraudulent enterprise cannot complain that his associate in fraud has not kept the faith." Primeau v. Granfield, 193 F. 911, 114 C. C. A. 549, certiorari denied in 225 U. S. 708, 56 L. ed. 1267, 32 S. Ct. 839.

in the origin of the jurisdiction the theory was adopted that a court of equity interposes only to enforce the requirements of conscience and good faith with respect to matters lying outside of, or sometimes perhaps opposed to, the law. The action of the court was, in pursuance of this theory, in a certain sense discretionary; and the terms "discretionary" and "discretion" are still occasionally used by modern equity judges while speaking of their jurisdiction and remedial functions. Whatever may be the strictly accurate theory concerning the nature of equitable interference, the principle was established from the earliest days, that while the court of chancery could interpose and compel a defendant to comply with the dictates of conscience and good faith with regard to matters outside of the strict rules of the law, or even in contradiction to those rules, while it could act upon the conscience of a defendant and force him to do right and justice, it would never thus interfere on behalf of a plaintiff whose own conduct in connection with the same matter or transaction had been unconscientious or unjust, or marked by a want of good faith, or had violated any of the principles of equity and righteous dealing which it is the purpose of the jurisdiction to sustain. While a court of equity endeavors to promote and enforce justice, good faith, uprightness, fairness, and conscientiousness on the part of the parties who occupy a defensive position in judicial controversies, it no less stringently demands the same from the litigant parties who come before it as plaintiffs or actors in such controversies. This fundamental principle is

Annotation: 4 A. L. R. 44.

4. Mr. Justice Brewer, speaking for the court in Deweese v. Reinhard, 165 U. S. 386, 390, 41 L. ed. 757, 759, 17 S. Ct. 340, 341, said: "A court of equity acts only when and as conscience commands, and if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses and whatever use he may make of them in a court of law, he will be held remediless in a court of equity."

5. The text is quoted in Carmen v. Fox Film Corp. (C. C. A. 2d) 269

93
expressed in the maxim, He who comes into a court of equity must come with clean hands; and although not the source of any distinctive doctrines, it furnishes a most important and even universal rule affecting the entire administration of equity jurisprudence as a system of remedies and remedial rights.\(^6\)

\section*{§ 399. Limitations upon Principle.—} Broad as the principle is in its operation, it must still be taken with reasonable limitations; it does not apply to every unconscientious act or inequitable conduct on the part of a plaintiff. The maxim, considered as a general rule controlling the administration of equity, has been cited in a number of cases, such as:


A court of equity will not aid a tenant who, in connection with the matter in controversy, has been guilty of inequitable conduct toward his landlord, or, in the case of a joint tenancy, toward his cotenant. However, where the wrong of a tenant was not directly connected with the subject-matter of the suit, the case has been held not to be one for the application of the principle involved in this maxim.

Annotation: 4 A. L. R. 58.
Sec. IV] MAXIM AS TO CLEAN HANDS. § 399

ministration of equitable relief in particular controversies, is confined to misconduct in regard to, or at all events connected with, the matter in litigation, so that it has in some measure affected the equitable relations subsisting between the two parties, and arising out of the transaction; it does not extend to any misconduct, however gross, which is unconnected with the matter in litigation, and with which the opposite party has no concern. When a court of equity is appealed to for relief it will not go outside of the subject-matter of the controversy, and make its interference to depend upon the character and conduct of the moving party in no way affecting the equitable right which he asserts against the defendant, or the relief which he demands.⁷ [A court of equity is not an


In Lewis's Appeal, supra, the court say: "It is not every unfounded claim which a man may make, or unfounded defense which he may set up, which will bar him from proceeding in a court of equity. The rule that he who comes into equity must come with clean hands must be understood to refer to willful misconduct in regard to the matter in litigation: Snell's Equity, 25. All the illustrations given in Francis's Maxims of Equity, 5, under the maxim, as he states it, He that hath committed iniquity shall not have equity, show this."


Ala.—Ashe-Carson Co. v. Bonifay, 147 Ala. 376, 41 So. 816; Bethea v. Bethea, 116 Ala. 265, 22 So. 551; Foster v. Winchester, 92 Ala. 497, 9 So. 83.

Cal.—American-Hawaiian Engineering & Construction Co. v. Butler, 165
avenger of wrongs committed at large by those who resort to it for relief, however careful it may be to withhold its approval from those which are involved in the sub-


Mo.—Williams v. Beatty, 139 Mo. App. 167, 122 S. W. 323 (a prior trespass by plaintiff is no defense to injunction against defendant’s similar trespass); Viertel v. Viertel, 99 Mo. App. 710, 75 S. W. 287.


Ohio.—Kinner v. Lake Shore & M. S. R. Co. 69 Ohio St. 339, 69 N. E. 614, Chafee, Cases on Equitable Relief Against Torts, 381.


Tenn.—Upchurch v. Anders (Tenn. Ch. App.) 52 S. W. 917.


Wash.—Langley v. Devlin, 95 Wash. 171, 163 P. 395, 4 A. L. R. 32.


Wis.—Post v. Campbell, 110 Wis. 378, 85 N. W. 1032.

Many of the above cases quote or cite the text.

Annotation: 4 A. L. R. 65, 91.
ject-matter of the suit, and which prejudicially affect the rights of one against whom relief is sought. The rule does not go so far as to prohibit a court of equity from giving its aid to a bad or a faithless man or a criminal. The dirt upon his hands must be his bad conduct in the transaction complained of. If he is not guilty of inequitable conduct toward the defendant in that transaction, his hands are as clean as the court can require.

[Thus it has been held or stated that the fact that the plaintiff is a member of an illegal association or combination, or a lawful association committing unlawful acts or

8. Kinne v. Lake Shore & M. S. Ry Co. 69 Ohio St. 339, 69 N. E. 614, Chafee, Cases on Equitable Relief against Torts 381; Primeau v. Granfield, 180 F. 847 (rule laid down that maxim applies only when prosecution of suitor's rights itself involves the protection of wrongdoing); Ely v. King-Richardson Co. 265 Ill. 148, 106 N. E. 619, L. R. A. 1915B, 1052 (plaintiff an employee of defendant, having been discharged for bad faith in organizing a rival company, sought an accounting to determine his past compensation; held, the maxim did not apply, as the relief was not founded in any way on his wrongful conduct); Dempster v. Baxmyer, 231 Pa. 28, 79 A. 805 (fact that plaintiff agreed to improper use of a portion of a fund will not bar his right to an account for balance).

Where the superintendent of banks advanced the entire amount of the stockholders' statutory liability to pay in full the depositors of an insolvent bank, it was held, in a suit by the superintendent against a stockholder to enforce such liability, on the ground that the superintendent was subrogated to the depositors' rights, that the stockholder might not defend on the ground that the superintendent's act in advancing the money was a technical violation of the law. Love v. Robinson, 161 Miss. 585, 137 So. 499, 78 A. L. R. 608.

And see Chafee, Cases on Equitable Relief against Torts, p. 383, note.


The maxim does not repel all sinners from courts of equity, nor does it apply to every unconscientious act or inequitable conduct on the part of the complainants. Neubeck v. Neubeck, 94 N. J. Eq. 167, 119 A. 26, 27 A. L. R. 172.

It has been held that the principle of "unclean hands" can apply to the case of a complainant in a court of equity, alleged to be tainted with illegality, only when, in order for him to recover in the suit, it is necessary for him to disclose the preceding illegal transaction. Cohn v. Pitzele, 117 Ill. App. 342, affirmed in 217 Ill. 30, 75 N. E. 392.

Annotation: 4 A. L. R. 64.
employing unlawful methods, is no defense to a suit to enjoin ticket "scalping," or infringement of a patent, or unfair and fraudulent competition. This limitation on the doctrine has been frequently applied in cases involving labor disputes. For example it has been held that equitable relief cannot be denied because complainant is a member of an illegal combination in restraint of trade or has violated some statutory provision unrelated to the matter in hand.  

[Perjury unconnected with or only indirectly connected with the subject-matter of a suit will not defeat the right of a party to the suit to the relief prayed.]


And see Kirby v. Union Pac. R. Co. 51 Colo. 509, 119 P. 1042, Ann. Cas. 1913B, 461, Chafee, Cases on Equitable Relief Against Torts, 355.


13. Carpenters' Union v. Citizens' Committee, 323 Ill. 225, 164 N. E. 393, 63 A. L. R. 157 (suit to enjoin illegal boycotting); Moore Drop Forging Co. v. McCarthy, 243 Mass. 554, 137 N. E. 919 (wherein the failure of the employer's representative to keep an engagement to meet a committee of employees was held not to prevent relief in another controversy).

But see Cornellier v. Haverhill Shoe Mfrs. Ass'n, 221 Mass. 554, 109 N. E. 643, L. R. A. 1916C, 218, wherein the plaintiff, suing for injunction against blacklisting, was denied relief because he was in a combination to strike and joined in unlawful methods of conducting the strike.


16. Foster v. Winchester, 92 Ala. 497, 9 So. 53, wherein perjury was committed in procuring patent for land.

In Delaware Surety Co. v. Layton (Del. Ch.), 50 A. 378, the plaintiff sought an injunction to prevent the secretary of state from taking the plaintiff's certificate of incorporation into another state for use in a prosecution against its president and secretary for perjury in swearing to the certificate; it was held that such perjury was not so connected with the subject-matter as to justify the application of this maxim to the plaintiff's suit.
Sec. IV] MAXIM AS TO CLEAN HANDS. § 399

[Fraud of agent.—The reprehensible conduct complained of, it is said, must have been that of the person against whom the maxim is sought to be invoked, or, if it was that of an agent, to be chargeable to the principal it must have been performed with his knowledge.\textsuperscript{17} However, specific performance of a contract induced by the misrepresentations of an agent has been refused although the plaintiff was unaware thereof until the institution of suit.\textsuperscript{18}

[Necessity for injury to complainant.—The party to a suit, complaining that his opponent is in court with “unclean hands” because of the latter’s conduct in the transaction out of which the litigation arose, or with which it is connected, must show that he himself has been injured by such conduct, to justify the application of the principle to the case.\textsuperscript{19} The wrong must have been done to the defendant himself and not to some third party.\textsuperscript{20}


The maxim assumes some degree of moral guilt on the part of the complainant; that the fraud of an agent is imputed by law to his principal does not render the latter’s hands “unclean,” within the meaning of the maxim: Vulcan Detinning Co. v. American Can Co. 72 N. J. Eq. 387, 67 A. 339, 12 L. R. A. (N. S.) 102, per Garrison, J., reversing 70 N. J. Eq. 588, 62 A. 881. \textit{Sed quaere.} Fraud, in equity, often consists in the unconscientious use of a legal advantage originally gained with innocent intent: See \textit{post}, chapters on Actual and Constructive Fraud, \textit{passim}. This case (Vulcan Detinning Co. etc.) is also reported in Chafee, Cases on Equitable Relief against Torts, p. 401. And see note on p. 412.


See § 400. And see Chafee and Simpson, Cases on Equity, note, c. X, sec. 1, p. 1287.


Annotation: 4 A. L. R. 58.

§ 400 EQUITY JURISPRUDENCE. [Pt. II, Ch. I

[A wrong which has been righted] may not be pleaded against a party to a suit in equity, on the theory that the party charged therewith is in court with "unclean hands." Therefore one who has asserted the wrongful nature of an act, and recovered from the perpetrator damages in a court of law, cannot, under the principle of this maxim, set up the wrong in a suit in equity arising out of the transaction in connection with which the wrong was committed.  

§ 400. Illustrations—Specific Performance.—I shall now give some examples to illustrate the circumstances under which this principle operates in the administration of equitable relief, and the manner in which it is applied. The first instance which I shall mention is found in the familiar doctrine which controls the equitable remedy of the specific performance of contracts. A contract may be perfectly valid and binding at law; it may be of a class which brings it within the equitable jurisdiction, because the legal remedy is inadequate; but if the plaintiff's conduct in obtaining it, or in acting under it, has been unconscientious, inequitable, or characterized by bad faith, a court of equity will refuse him the remedy of a specific performance, and will leave him to his legal remedy by action for damages. It is sometimes said that the rem-

fraud is not prevented from quieting his title against a subsequent grantee from the common grantor, by the maxim that "he who comes into equity must come with clean hands."

As to assignability of cause of action for fraud, see 4 Am. Jur., Assignments, p. 256, §§ 38, et seq. And see infra, §§ 1275, et seq.

In Langley v. Devlin, 95 Wash. 171, 163 P. 395, 4 A. L. R. 32, it was held that if a fraud practised on a third person by both parties to a suit in equity was separate and distinct from a fraud previously perpetrated by the defendant on the plaintiff, the latter fraud being the subject-matter of the complaint in the litigation, the defendant might not successfully invoke the principle of "unclean hands" against the plaintiff because of the plaintiff's participation in the fraud practiced on the third person.


2. The text is quoted in Weegham
edy of specific performance rests with the discretion of the court; but, rightly viewed, this discretion consists mainly in applying to the plaintiff the principle, He who comes into a court of equity must come with clean hands, although the remedy, under certain circumstances, is regulated by the principle, He who seeks equity must do equity (see § 392). The doctrine, thus applied, means that the party asking the aid of the court must stand in conscientious relations towards his adversary; that the transaction from which his claim arises must be fair and just, and that the relief itself must not be harsh and oppressive upon the defendant. ³ By virtue of this principle, a specific performance will always be refused when the plaintiff has obtained the agreement by sharp and unscrupulous practices, by overreaching, by concealment of important facts, even though not actually fraudulent, by trickery, by taking undue advantage of his position, or by any other means which are unconscientious; and when the contract itself is unfair, one-sided, unconscionable, or affected by any other such inequitable feature; and when the specific enforcement would be oppressive upon the defendant, or would prevent the enjoyment of his own rights, or would in any other manner work injustice. ⁴ This applica-


Ala.—Harton v. Little, 188 Ala. 640, 65 So. 951 (quoting the text).

Cal.—Cooper v. Pena, 21 Cal. 403, 411.


Md.—Fox v. Fraebel, 140 Md. 54, 116 A. 876.

Mass.—Florimond Realty Co. v. Waye, 258 Mass. 475, 167 N. E. 635; Banaghan v. Malaney, 200 Mass. 46,
tion of the principle, better perhaps than any other, illustrates its full meaning and effect; for it is assumed that the contract is not illegal; that no defense could be set up against it at law; and even that it possesses no features or incidents which could authorize a court of equity to set it aside and cancel it. Specific performance is refused simply because the plaintiff does not come into court with clean hands.\(^5\)


Tenn.—Caldwell v. Virginia F. & M. Ins. Co. 124 Tenn. 593, 139 S. W. 698.

Va.—Duncan v. Duncan, 104 W. Va. 600, 140 S. E. 689.

Wis.—Gloede v. Socha, 199 Wis. 503, 226 N. W. 950.

Eng.—Lamare v. Dixon, L. R. 6 H. L. 414, 423, per Lord Chelmsford.


See, also, §§ 1404, 1405.

In Rust v. Conrad, 47 Mich. 449, 11 N. W. 265, 41 Am. Rep. 720, Chafee and Simpson, Cases on Equity, 1446, Mr. Justice Cooley stated the rule to be that "when a party comes into equity, it should be very plain that his claim is an equitable one. If the contract is unequal; if he has bought land at a price which is wholly inadequate; if he has obtained the assent of the other parties to unreasonable provisions; if there are any indications of overreaching or unfairness on his part, the court will refuse to entertain his case, and turn him over to the usual remedies."

§ 400a. — Injunction.—The maxim is likewise applied in suits for injunctive relief. Equity will not grant an injunction to aid a party in the continuance of a legal wrong and trespass. Even though the defendant is also trespassing, equity will not adjust differences between wrongdoers. The operation of the principle has been held to preclude the granting of equitable relief to one whose purpose, in bringing a suit for an injunction against the enforcement of a law or ordinance regulating the drilling (holding that a party who has intentionally made false statements is not entitled to specific performance although such statements were not relied on); Riggins v. Trickey, 46 Tex. Civ. App. 569, 102 S. W. 918.


The power of equity to grant specific performance will not be exercised in aid of a contract secured by conduct savoring of injustice. If there are misrepresentations by or in behalf of the plaintiff on a material point, or unfair or unethical manipulations, even though insufficient to invalidate the contract, specific performance will nevertheless be refused, for this relief will be granted only upon equitable considerations, in view of all the circumstances of the particular case. Florimond Realty Co. v. Waye, 268 Mass. 475, 167 N. E. 635.

Overreaching or taking advantage by a dealer, or his agent, of the ignorance, old age, and physical disability of the owner of land will furnish a sufficient ground for the court, in the exercise of its discretion, to refuse the specific performance of a contract thus secured, although the contract was a legal contract, and was not procured by such fraud as to entitle the vendor to avoid it. Banaghan v. Malaney, 200 Mass. 46, 85 N. E. 839, 19 L. R. A. (N. S.) 871, 128 Am. St. Rep. 378.

Non-disclosure of facts as a defense to the specific enforcement of contracts in equity, see § 905.


An injunction restraining a riparian owner from diverting water from a reservoir made by a dam constructed by the complainant, which dams water back on the lands of the riparian proprietor, will not be granted, since it would aid in the continuance of a legal wrong and trespass. Humphreys-Mexia Co. v. Arseneaux, supra.

It is held, in accordance with the maxim, that a plaintiff who maintains a nuisance has no standing in equity to enjoin its unauthorized abatement: Pittsburgh, C. C. & St. L. R’y Co. v. Town of Crothersville, 159 Ind. 350, 64 N. E. 914.

And see Chafee, Cases on Equita- ble Relief Against Torts, p. 412, note, and cases and authorities there cited.
of oil wells, was merely to appropriate all of the oil and gas obtainable before others who had a community interest therein could reach it. Courts will not however, refuse an injunction to protect clear legal rights merely because the complainant may be actuated by motives which the court might not approve, particularly where the refusal of the injunction will not only deprive the complainant of his property, but will also grant the beneficial use of it to the defendant. Nor is relief denied where the conduct complained of is unrelated to the rights asserted (see § 399).

§ 401. — Fraud.—Another familiar illustration of the principle may be found in all cases where the plaintiff's claim is affected by his own fraud. Whatever be the nature of the plaintiff's claim and of the relief which he seeks, if his claim grows out of or depends upon, or is inseparably connected with, his own prior fraud, a court of equity will, in general, deny him any relief, and will leave him to whatever remedies and defenses at law he may have. The maxim is more frequently invoked

8. Cityco Realty Co. v. Slaysman, 160 Md. 357, 153 A. 278, 76 A. L. R. 296, wherein the complainant had reserved a one-foot strip of land between a road built by it and the lands of the defendant, who refused to contribute to the cost of the road, it was held that the complainant might properly enjoin trespasses on the one-foot strip by the defendant.
9. A railroad may enjoin a city from removing its tracks, although it has used its road for certain unauthorized purposes not involved in the suit; City of Chicago v. Union Stock Yards Co. 164 Ill. 224, 45 N. E. 430, 35 L. R. A. 281.
in cases upon fraudulent contracts.\textsuperscript{11} If a contract has been entered into through fraud, or to accomplish any fraudulent purpose, a court of equity will not, at the suit of one of the fraudulent parties, \textit{a particeps doli}, while the agreement is still executory, either compel its execution or decree its cancellation, nor after it has been executed, set it aside, and thus restore the plaintiff to the property or other interests which he had fraudulently transferred.\textsuperscript{12} [A person who comes into court with a

63, 88 A. 330 (fraudulent misrepresentations as to editorship of publication in suit for injunction to restrain similar act); Roche v. Hoyt, 71 N. J. Eq. 323, 64 A. 174; Farrow v. Holland Trust Co. 74 Hun, 585, 26 N. Y. S. 502; White v. Cuthbert, 10 App. Div. 220, 41 N. Y. S. 818 (cancellation of note given to assit fraudulent attachment refused); Southern Mut. Aid Assn. v. Blount, 112 Va. 214, 70 S. E. 487; Kallison v. Poland (Tex. Civ. App.) 167 S. W. 1104; Sanders v. Cauley, 52 Tex. Civ. App. 261, 263, 133 S. W. 560; Robinson v. Brooks, 31 Wash. 60, 71 P. 711 (one who files a lien knowing it to contain nonlienable items, cannot maintain bill to foreclose it); Raasch v. Raasch, 100 Wis. 400, 76 N. W. 591.

Annotation: 4 A. L. R. 85.

A creditor who obtains an assignment through fraud is not entitled to the aid of a court of equity to enforce his claim under the assignment: Commercial Nat. Bank v. Burch, 141 Ill. 519, 31 N. E. 420, 33 Am. St. Rep. 331.

Knowingly and consciously making an untrue and excessive claim will defeat the right to a lien under a statute: Camden Iron Works v. City of Camden, 64 N. J. Eq. 723, 52 A. 477.

As another example, a party who fraudulently or wrongfully alters a written instrument cannot maintain a suit to obtain the remedy of a reformation: Marcy v. Dunlap, 5 Lans. (N. Y.) 365; and see Bleakley's Appeal, 66 Pa. 187.

11. Harton v. Little, 188 Ala. 640, 65 So. 951 (concealments in partnership agreement); Miller v. Kraus (Cal. App.) 155 P. 834, rehearing denied in (Cal.) 155 P. 838 (misrepresentations in partnership agreement); Langford v. Read, 69 Fla. 198, 68 So. 723 (sham bid for construction work).

claim which the pleadings show to have had its origin in a fraudulent transaction cannot ask a court of equity to act upon the conscience of a defendant, and force him to do right towards one whose own legal conscience is not void of offense.\textsuperscript{13} Equity will leave such parties in exactly the position in which they have placed themselves, refusing all affirmative aid to either of the fraudulent participants. The only equitable remedies which they can obtain are purely defensive. Upon the same principle, wherever one party, in pursuance of a prior arrangement, has fraudulently obtained property for the benefit of another, equity will not aid the fraudulent beneficiary by compelling a conveyance or transfer thereof to him; and generally, where two or more have entered into a fraudulent scheme for the purpose of obtaining property in which all are to share, and the scheme has been carried out so that all the results of the fraud are in the hands of one of the parties, a court of equity will not interfere on behalf of the others to aid them in obtaining their shares, but will leave the parties in the position where they have placed themselves.\textsuperscript{14}

\textsuperscript{13} One who wrongfully appropriates the

\textsuperscript{14} In re Great Berlin S. Co. L. R. 26 Ch. Div. 616; Reynell v. Sprye, 1 De Gex, M. & G. 660, 688, 689 (decision dismissing the cross-bill of the defendant Sprye).

Annotation: 4 A. L. R. 79.

\textsuperscript{13} Picture Plays Theatre Co. v. Williams, 75 Fla. 556, 78 So. 674, 1 A. L. R. 1.


property of another for his own use will not receive the aid of a court of equity in any matter with which such

Musselman v. Kent, 33 Ind. 452; Hunt v. Rowland, 28 Iowa, 349; Hibernia etc. Soc. v. Ordway, 38 Cal. 679. In Johns v. Norris, 22 N. J. Eq. 102, where a widow, by a prior arrangement, procured a third person to buy in the real estate of her husband at a foreclosure sale at a price far below its real value, by contrivances agreed upon to deter other persons from bidding, and by giving out that the purchase was for the benefit of the widow and her family, it was held that she was a participant in the fraud against the heirs and creditors, and did not come into court with clean hands, in a suit to compel the confederate to convey the land to her, and relief was therefore refused. In Walker v. Hill, 22 N. J. Eq. 513, the same was held with respect to an execution debtor who had by a secret arrangement procured a person to buy in the property at the execution sale for the debtor's benefit, in such a manner as to be fraudulent against other creditors and purchasers. The court refused to grant relief by compelling a conveyance by the purchaser to the execution debtor. In Bleakley's Appeal, 66 Pa. St. 187, the principle was applied under different circumstances. One I. was the vendee under a land contract, and had paid part of the purchase price. A judgment was then recovered against him by L.; whereupon I. assigned the contract to B., antedating the assignment, so that it appeared to precede the recovery of the judgment. This assignment was made both by I. and B. for the purpose of defrauding L. B. afterwards paid to the vendor in the land contract the residue of the purchase-money. L. in the mean time issued an execution, and L.'s interest under the land contract was sold at execution sale, and bought in by the judgment creditor, L. L. brings this suit against the vendor to compel a specific performance of the contract by a conveyance to himself. Held, that L. was entitled to such specific performance and conveyance by the vendor, without repaying to B. the amount of the purchase price which he had paid to the vendor. Speaking of B.'s claim to be repaid, the court said: "He (B.), standing thus before a chancellor, cannot ask him to make repayment to him a condition to a degree removing the fraudulent obstruction he threw in the way. The payment is one of the very steps he took to consummate the fraud upon L. If he have a legal right of recovery, he must resort to his action at law; if he can have none, it is a test of his want of equity. And in addition to all this, it is a rule that a chancellor will not assist a party to obtain any benefit arising from fraud. He must come into a court of equity with clean hands. It would be a singular exercise of equity which would assist a party, who had paid money to enable him to perpetrate a fraud, to recover his money, just when the chancellor was engaged in thrusting out of the way of his doing equity to the injured party the very instrument of the fraud. He who does iniquity shall not have equity: Hershey v. Weitling, 14 Wright, 244." See, also,
reprehensible conduct is connected. 15 A court of equity will not aid one who, standing in a relation of confidence to another, commits acts in violation of his trust which, are immediately connected with the subject-matter of the litigation. 16]  

§ 401a. — Conveyances in Fraud of Creditors and Others.—One of the most common occasions for the enforcement of this rule arises in cases where a debtor has conveyed or assigned or in any manner transferred his property for the purpose of defrauding his creditors, and afterwards seeks to set aside the transfer as against the grantee or assignee and recover back the property. The door of a court of equity is always shut against such a claimant. 17 [The same rule applies to a conveyance in

Odessa Tramways Co. v. Mendel, L. R. 8 Ch. Div. 235.

The text is quoted in Milhous v. Sally, 43 S. C. 318, 21 S. E. 268, 885, 49 Am. St. Rep. 834. And see Larron v. Estes, 167 Mass. 181, 45 N. E. 90, 57 Am. St. Rep. 450; Lyons v. Elston, 211 Mass. 478, 98 N. E. 93 (A and B obtain deed of their mother’s property, by undue influence; the deed was taken to A; equity will set the deed aside in behalf of C, another child, but not in behalf of B).


Annotation: 4 A. L. R. 54.

In Hill v. Kavanaugh, 118 Ark. 134, 176 S. W. 326, 4 A. L. R. 1, it was held that a county treasurer who placed public money in his personal account to obtain for himself the interest was not in court with clean hands in seeking subrogation after the failure of the bank and an accounting by him.


Ala.—Baird v. Howison, 154 Ala. 359, 45 So. 668.

Conn.—Brown v. Brown, 66 Conn. 493, 34 A. 490 (property conveyed by third party to defendant in trust for plaintiff, in order to defraud plaintiff’s wife).

Idaho.—Bowes v. Cottrell, 15 Idaho, 221, 96 P. 936.


Ind.—Reed v. Robbins, 58 Ind. App. 659, 108 N. E. 780.

Kan.—Durand v. Higgins, 67 Kan. 110, 72 P. 567 (grantor of conveyance in fraud of creditors cannot
fraud of the dower of the grantor's wife. And one who, in fraud of his creditors, has purchased property in the

have his title quieted as against such conveyance).


Mo.—Wertheimer-Swartz Shoe Co. v. Wyble, 261 Mo. 675, 687, 170 S. W. 1128; Creamer v. Bivert, 214 Mo. 473, 113 S. W. 1118; Miller v. Miller, 206 Mo. 341, 103 S. W. 962.


Ohio.—Pride v. Andrews, 51 Ohio St. 405, 38 N. E. 84.

Okla.—King v. Antrim Lumber Co. 70 Okla. 52, 172 P. 958, 4 A. L. R. 21 (wherein the plaintiff prayed for the removal of a cloud created by a deed recorded without delivery, and thereafter surreptitiously taken by the grantee).
name of a third person as grantee, will be denied relief when he seeks to recover the property, although an enforceable trust would otherwise have arisen. If, however, the grantee recognizes the trust and reconveys the property to the grantor, the courts will not interfere with the latter’s possession, no question being raised as to the

S. W. 412 (no resulting trust when conveyance was taken in name of third party in order to cut off dower of purchaser’s wife).

In Bush v. Rogan, 65 Ga. 320, 38 Am. Rep. 785, it is held that the grantee can maintain ejectment against the grantor; but see Kirkpatrick v. Clark, 132 Ill. 342, 24 N. E. 71, 8 L. R. A. 511, 22 Am. St. Rep. 531.

In Asam v. Asam, 239 Pa. 295, 86 A. 871, it was held that where the bill against the holder of the legal title did not show a purpose to defraud the wife, so that it was possible that such arrangement might have been made with the full knowledge and approval of the wife, the mere suspicion of fraud attendant upon the transaction, not amounting to fraud in law, was insufficient to prevent the enforcement of a resulting trust—the property having been purchased by the complainant and title having been taken in the name of the defendant.


Annotation: 117 A. L. R. 1465.


A minority of the courts take the view that, where one paying the purchase price of property causes the title thereto to be taken in the name of another for the purpose of avoiding creditors, a resulting trust nevertheless arises, and that the rule applies that where a party to an action may prove his case without showing fraud on his part, the fact that the transaction on which the action is based may have been tainted with improper motives or conduct will not serve as a defense in equity, so that the fraudulent purpose of the purchaser is no defense in an action by him to have a resulting trust declared and the property conveyed to him. Hazleton v. Lewis, 267 Mass. 533, 166 N. E. 876; Lufkin v. Jakeman, 188 Mass. 528, 74 N. E. 933; G.Parse v. Gerace, — Mass. —, 16 N. E. (2d) 6, 117 A. L. R. 1459; Monahan v. Monahan, 77 Vt. 133, 59 A. 169, 70 L. R. A. 935.

Annotation: 117 A. L. R. 1472.
See. IV] MAXIM AS TO CLEAN HANDS. § 401b

rights of creditors. The grantee cannot successfully set up the original fraudulent conveyance.

[§ 401b. — — Right of Personal Representative or Heirs to Relief.—The right of the personal representative to attack or set aside a conveyance or transfer made by his decedent in fraud of creditors is frequently denied by the courts on the ground that the personal representative stands in the shoes of the decedent. Neither the fraudulent grantor, nor his administrator, nor his heirs can enforce or undo the corrupt transaction. Other cases, how-


Annotation: 89 A. L. R. 1168.

Relief is not denied to a party to a conveyance claimed to be fraudulent as to creditors if he can make out his case without reference to the fraudulent elements in the facts, in a suit to which no defrauded creditor is a party. O'Gasapian v. Danielson, 284 Mass. 27, 35, 187 N. E. 107, 89 A. L. R. 1159.

2. Either because of special circumstances, or in direct conflict with the decisions supporting the right, as against his grantee's creditors, of a grantor after a reconveyance to him of property fraudulently conveyed in the first instance, there are a number of decisions which deny him the protection in-


4. Stierlin v. Teschemacher, 333
ever, accord to the representative the right to sue to set aside such conveyances.\textsuperscript{5} And a right of action is by statute sometimes given to the representative.\textsuperscript{6}

\textbf{[§ 401c. --- Right of Fraudulent Grantee in Respect of Expenditures for Taxes and Encumbrances.---}One who knowingly takes a conveyance or assignment to aid and abet a scheme to defraud creditors cannot hold the fraudulent instrument, or any interest under it, as against the creditors, for the satisfaction of taxes paid or encumbrances discharged upon the property. He is not regarded as coming into court with clean hands.\textsuperscript{7} A contrary rule is, however, supported by a few decisions.\textsuperscript{8} If, however, the grantee is not guilty of actual fraud, but is chargeable with knowledge of such facts that the law holds him guilty

Mo. 1208, 64 S. W. (2d) 647, 91 A. L. R. 121.
Annotation: 91 A. L. R. 134.

The holdings are ordinarily placed on the ground that the plaintiff acts not only as representative of the heirs of the estate, but also as trustee of the creditors. Chester County Trust Co. v. Pugh, 241 Pa. 124, 88 A. 319, 50 L. R. A. (N. S.) 320, Ann. Cas. 1915B, 211.
Annotation: 8 A. L. R. 530.

Annotation: 8 A. L. R. 530.

8. Ackerman v. Merle, 137 Cal. 169, 69 P. 983 (mortgage); Smith v. Grimes, 43 Iowa, 356 (assignment of liens to grantee).
Annotation: 8 A. L. R. 533.

In Hutchinson v. Park, 72 Ark. 509, 82 S. W. 843, the questions in issue were between the parties to the fraud, the action being by the grantors, and not by their creditors, to set aside the conveyance.

112
of constructive fraud, it would seem that, on the setting aside of the conveyance, he is equitably entitled to reimbursement for sums expended by him in good faith to discharge taxes or prior mortgages on the property.9 And a similar rule is applied to those who claim through the grantee, as to sums expended in good faith to discharge prior liens on the property.10 And, in an action for an accounting of rents and profits or the proceeds of the property, the fraudulent grantee is ordinarily entitled to an allowance for such expenditures.11]

[§ 401d. — — Transactions to Evade Payment of Taxes.—The right to enforce a mortgage, supported by a valid consideration, is not defeated by the fact that the mortgage was taken by the mortgagee in the name of a third person or executed in the form of an absolute deed in order to evade payment of taxes by the mortgagee.12

9. Lynch v. Burt, 132 F. 417, 67 C. C. A. 305; Tibbetts v. Terrill, 26 Colo. App. 64, 140 P. 936; Printz v. Brown, 31 Idaho, 443, 174 P. 1012 (mortgage and taxes); La Salle Opera House Co. v. La Salle Amusement Co. 289 Ill. 194, 124 N. E. 454 (violation of Bulk Sales Act); Adams v. Young, 200 Mass. 588, 86 N. E. 942 (violation of Bulk Sales Law; rule approved); Hicks v. Beals, 83 Or. 82, 163 P. 83, L. R. A. 1917D, 1067 (violation of Bulk Sales Law); Anderson v. Fuller, 16 S. C. Eq. (1 M’Mull.) 27, 36 Am. Dec. 290; Carpenter v. Scales (Tenn.), 48 S. W. 249 (where an advance for taxes was made in good faith by grantee at the time of the conveyance); Dickinson v. Patton, 110 Va. 5, 65 S. E. 529 (payment of purchase money lien).

Annotation: 8 A. L. R. 535.


Annotation: 8 A. L. R. 537.


Annotation: 8 A. L. R. 539.

However, the Maryland court in Strike’s Case, 1 Bland, Ch. (Md.) 57, affirmed in 2 Harr. & G. 191, rejected the claim of the fraudulent grantee, who was a party to the fraud, to an allowance, on an accounting for rents and profits, for sums paid for taxes, street assessments, and ground rent, to which the property was subject.

In such case the turpitude of the mortgagee is no ground for a discharge of the mortgagor from the payment of his just debt. The revenue laws, it is said, provide ample punishment for the evasion by taxpayers of their just dues. Moreover the intent to evade taxes is regarded as collateral to the contract.

[On the other hand where a conveyance was executed merely for the purpose of evading taxes, it appears that the courts will deny relief when the grantor or his heirs seek to set aside the deed. The parties are regarded as being in equal wrong. The case is analogous to situations where

Annotation: 21 A. L. R. 396.
In Johnson v. Harvey, 83 Kan. 471, 112 P. 108, the court held insufficient a statement in the answer to a suit to foreclose a mortgage in the form of a warranty deed, that one reason for putting the mortgage in the form of a deed was to avoid the payment of taxes.
In Berridge v. Gaylord, supra, it is stated that Sheldon v. Pruessner, 59 Kan. 579, 35 P. 201, 22 L. R. A. 709, goes no further than to hold that, if the mortgagee, while retaining the beneficial ownership, makes a mere colorable assignment in order to escape the payment of taxes, and a foreclosure is attempted in the name of the assignee, no recovery can be had in that action.
In Drexler v. Tyrrell, 15 Nev. 114, it was held however (one of the three justices dissenting) that a mortgage which is made in the name of someone other than the lender of the money, in order to escape the payment of taxes, is wholly void.
Annotation: 114 A. L. R. 372.
But where a property owner leased premises and, in order to make the rent appear small for taxing purposes, executed two instruments, one of which purported to be the lease, and the other a contract for services which the landlord was bound under the lease to render, it was held that he was precluded by his unlawful purpose from asking the assistance of a court in enforcing either the lease or the collateral agreement, even though the subterfuge succeeded only for a time. Alexander v. Rayson [1986] 1 K. B. 169, 114 A. L. R. 357.
In Blake v. Ogden, 223 Ill. 204, 79 N. E. 68, where the husband brought suit to set aside a deed of his wife's property executed by him and her, the court held that where the plaintiff's allegations admitted that the deed was made for the express purpose of depriving the state of inheritance taxes, equity would not interfere to set aside the deed.
In Andreas v. Andreas, 84 N. J. Eq. 375, 94 A. 415 (affirmed in 85
a grantor makes a conveyance for the purpose of defrauding his creditors and thereafter seeks to have his conveyance set aside. The state is the creditor, the taxpayer, the debtor, and the statute is designed to discourage conveyances to defeat the tax debt. In such situations the rule is that the conveyances of real property to defraud creditors, though void as to creditors are nevertheless valid and binding on the parties themselves and their personal representatives.¹⁰]

[§ 401e. Maxim as Applied to Infants—Insane Persons. Infants are no more entitled than adults to gain benefits to themselves by fraud. The fact that a contract has been dishonestly or dishonorably obtained may, in some circumstances, be a bar to relief in equity.¹⁷ Thus relief is fre-

N. J. Eq. 210, 96 A. 39), a suit by a husband to compel his wife to re-convey to him property which he had previously deeded to her, the court held that, inasmuch as it had been shown that the transfer was made for the purpose of obtaining a reduction of taxes, the suit must fail, as the transaction was void as against public policy. In Delgado v. Delgado, 42 N. M. 582, 82 P. (2d) 909, 118 A. L. R. 1175, the court denied the right of heirs of a grantor to set aside a warranty deed executed by the latter to her son, an honorably discharged soldier from the United States army, who, as such, was exempt up to a certain amount of taxes on real estate owned by him, even though the court assumed for the purposes of the decision that the sole object of the transfer of the property was to defraud the state of its revenue. And see Collins v. Becklenberg, 236 Ill. App. 324, wherein a common-law trust was organized merely to evade taxation.


¹⁷. Carmen v. Fox Film Corp. (C. C. A. 2d) 269 F. 928, 15 A. L. R. 1209, Chafee, Cases on Equitable Relief Against Torts, 396 (writ of certiorari denied in 255 U. S. 569, 65 L. ed. 790, 41 S. Ct. 323), denying the right to a moving picture actress to disaffirm a contract to render services, made during minority, so as to enable her to fulfill a contract negotiated with another person under the misrepresentation that she was free to enter into the second contract.

In Weegham v. Killefer, 215 F. 168, affirmed 215 F. 289, 131 C. C. A. 558, L. R. A. 1915A, 820, the complainants sought an injunction to restrain the defendant from playing baseball with any club other than their own. It was found by the court that he was a player of unique,
EQUITY JURISPRUDENCE.  

116

§ 401e  

quently denied to infants who have induced contracts by fraudulent representations that they were of full age. This is a matter which is dealt with in another place (see § 945).

[In respect of the right to enforce performance of agreements to adopt, or to provide for, a child taken into a family, the circumstances may be such as to preclude the application of the maxim of clean hands, although the child may have been mischievous and, to some extent, disobedient. Specific performance is decreed upon a proper showing if such relief would not be unfair, inequitable, or unjust.18 On the other hand, where, because of misconduct on the part of the child, good conscience and natural justice do not require an enforcement to the contract, specific performance will not be awarded.19

[The equitable maxim that he who comes into equity must come with clean hands will not preclude recovery on a fire insurance policy covering property set on fire by the assured while insane.20 This is so because the law places no stigma of unclean hands upon either a litigant

excep{}tional, and extraordinary skill. But complainants, knowing that he had entered into an unenforceable agreement to play as a member of another club, had induced him, by the offer of a larger salary, to break his agreement and play with their own club. Then he was induced to repudiate the agreement with the complainants and to enter into a new agreement to play with the club with which he had originally contracted. An injunction was sought by complainants to restrain him from doing so. This was refused on the ground that complainants' conduct in inducing him to break his unenforceable agreement was such misconduct in regard to the matter in litigation as honest and fair-minded men would condemn and pronounce wrongful, and, although, insufficient to constitute the basis of a legal action, was quite sufficient to bar relief in equity. The complainants' hands were not clean.


Annotation: 11 A. L. R. 819.

Sec. IV] MAXIM AS TO CLEAN HANDS. § 402

who is insane, or one who is representing the insane person's interests in such a case. ¹

§ 402. Illegality.—Another very common occasion for invoking the principle is illegality (see §§ 929, et seq.).² Wherever a contract or other transaction is illegal, and the parties thereto are, in contemplation of law, in pari delicto, it is a well-settled rule, subject only to a few special exceptions depending upon other considerations of policy, that a court of equity will not aid a particeps criminis, either by enforcing the contract or obligation while it is yet executory, nor by relieving him against it, by setting it aside, or by enabling him to recover the title to property which he has parted with by its means.³ The principle is

With respect to a loss caused by the burning of property by a mentally incompetent or insane insured the rule stated in 6 Couch on Insurance, § 1483, is as follows: "An insane person can form no wrongful or fraudulent design in destroying his own property, so far as insurers are concerned, and the insurers are liable, although insured himself burns the property when insane, since the burning of the property by the insured while insane will not absolve the insurer from liability, in the absence of any provision to that effect in the policy."

Annotation: 110 A. L. R. 1060.


The subjects treated in this and the following paragraph are discussed more at length in §§ 937-942.


Ark.—Shattuck v. Watson, 53 Ark. 147, 13 S. W. 516, 7 L. R. A. 551.


Ill.—Vock v. Vock, 365 Ill. 432, 6 N. E. (2d) 843, 109 A. L. R. 1170; International Coal & Min. Co. v. Nicholas, 293 Ill. 524, 127 N. E. 703, 10 A. L. R. 1010; Lines v. Willey, 253 Ill. 440, 97 N. E. 843 (a conveyance made for an unlawful purpose, viz., to enable the grantees, women, to vote at a drainage district election at which they could not legally vote unless they actually owned land, cannot be set aside or reformed by the grantor or his heirs).
thus applied in the same manner when the illegality is merely a _malum prohibitum_, being in contravention to some positive statute, and when it is a _malum in se_, as being


_Mo._—Wortheimer-Swartz Shoe Co. v. Wyble, 261 Mo. 675, 170 S. W. 1128; Modern Horse Shoe Club v. Stewart, 242 Mo. 421, 146 S. W. 1157 (violation of charter of club and of law prohibiting sale of liquor without license); Garrett v. Kansas City Coal Min. Co. 113 Mo. 330, 20 S. W. 965, 35 Am. St. Rep. 713; Barnum v. Barnum, 177 Mo. App. 68, 164 S. W. 129.


_N. M._—Delgado v. Delgado, 42 N. M. 582, 82 P. (2d) 909, 118 A. L. R. 1175.


Annotation: 4 A. L. R. 64, 80, 104.
contrary to public policy or to good morals. Among the latter class are agreements and transfers the consideration of which was violation of chastity, compounding of a violation of the anti-trust law, cannot maintain a creditor’s bill against a fraudulent grantee of the judgment debtor.

4. Greer v. Payne, 4 Kan. App. 153, 46 P. 190; Harris v. Hardridge, 7 Ind. Ter. 532, 104 S. W. 826 (no specific performance of a contract to transfer land, where at the time statute prohibited transfer, though the prohibition was afterward removed); Vincent v. Moriarty, 31 App. Div. 484, 52 N. Y. S. 519.


In York Coal & Coke Co. v. Hamilton, 182 Ky. 345, 206 S. W. 616, the suit was to quiet title, and was brought by one who had, under an abandoned survey, secured a patent to lands which he knew had been patented by another. It was held that he was not in court with clean hands.

A contract to stifle bidding at a judicial sale will not be specifically enforced: Camp v. Bruce, 96 Va. 521, 31 S. E. 901, 43 L. R. A. 146, 70 Am. St. Rep. 873.

In Public Service Commission v. Brooklyn Heights R. Co. 105 Misc. 254, 172 N. Y. S. 790, P. U. R. 1919B, 258, it was held that years of delay on the part of a street railway company to provide needed cars precluded it from objecting that an order requiring the furnishing of cars was inequitable, because of the high prices due to war conditions.


Benyon v. Nettlefield, 3 Macn. & G. 94, 102, 103; Bodly v. ———, 2 Cas. Ch. 15, per Lord Nottingham.

And see Am. Law Inst. Restatement, Contracts, p. 1098, § 589.

In the following cases relief was given, in some to the man or his representatives; in others to the woman, upon contracts of the same general nature; but on examination none of them will be found in opposition to the principle: the exact question either was not raised by the pleadings, or the consideration was not, in the view of the court, illegal: Sismey v. Eley, 17 Sim. 1;
§ 402  EQUITY JURISPRUDENCE.  [Pt. II, Ch. I

felony [or forbearance to prosecute for a crime,]\(^6\) gambling or a lottery,\(^7\) false swearing, the commission of any crime, or breach of good morals.\(^8\) It should be observed, how-

Knye v. Moore, Sim. & St. 61; Matthew v. Hanbury, 2 Vern. 187; Robinson v. Cox, 9 Mod. 263; Clark v. Periam, 2 Atk. 333; Marchioness of Annandale v. Harris, 2 P. Wms. 432; Hall v. Palmer, 3 Hare, 353.


Annotation: 4 A. L. R. 81.


But see Davies v. London etc. Co. L. R. 8 Ch. Div. 469. This and other cases of the same class in which relief is given are explained in § 403.


Annotation: L. R. A. 1918 C, 251.
ever, in order to avoid any misapprehension and seeming inconsistency in the decisions, that there are agreements which appear, at first blush, to be founded upon an immoral consideration, or which would at one time perhaps have been regarded as contrary to public policy, which courts of equity do not consider to be illegal, and which they will therefore enforce, if properly coming within their jurisdiction. Of this kind are some contracts made upon the consideration of an improper cohabitation being of their trust. This suit was brought by a share-holder against some of the trustees, to compel them to carry out the trusts, and to make them liable for the sums lost through their breaches of trust. The questions were very fully discussed by Jessel, M. R., who held that the suit could not be maintained. He said (p. 193): "Now, the authorities on the subject seem to be quite plain when you come to examine them. They are really to this effect, that you cannot ask the aid of a court of justice to carry out an illegal contract; but in cases where the contract is actually at an end, or is put an end to, the court will interfere to prevent those who have, under the illegal contract, obtained money belonging to other persons on the representation that the contract was legal, from keeping that money." Again, he said at page 197: "I think the principle is clear that you cannot directly enforce an illegal contract, and you cannot ask the court to assist you in carrying it out. You cannot enforce it indirectly; that is, by claiming damages or compensation for the breach of it, or contribution from the persons making the profits realized from it. It does not follow that you cannot, in some cases, recover money paid over to third persons in pursuance of the contract; and it does not follow that you cannot, in other cases, obtain, even from the parties to the contract, moneys which they have become possessed of by representations that the contract was legal, and which belonged to the persons who seek to recover them; but I am bound to say I think there is no pretense for saying that an illegal contract will in any way be enforced or aided by a court of law or equity."

In Wegby v. Connol, L. R. 14 Ch. Div. 482, 491, a member of a "trades union" had been expelled for violating certain rules of the society which were stringently in restraint of trade, and he brought this suit to be restored to his rights of membership and the property rights belonging thereto. Trades unions had been legalized by an act of Parliament for certain specified purposes, but not for all purposes. The court held that, independent of the statute, the society and the articles of agreement between its members were clearly illegal, because contrary to public policy; that the suit did not come within the operation of the statute; and therefore a court of equity could give the plaintiff no relief. In Carey v. Smith, 11 Ga.
§ 402a  EQUITY JURISPRUDENCE.  [Pt. II, Ch. I

terminated, and those providing for children born from such cohabitation. 9

[§ 402a. — Infringement Suits as to Patents, Copyrights and Literary Property. — The principle under consideration is applicable to a complainant who seeks pro-

539, 547, both parties had been engaged in transactions violating the statutes concerning banking. See, also, Johnson v. Shrewsbury etc. R'y, 3 De Gex, M. & G. 914, per Knight Bruce, L. J.; Aubin v. Holt, 2 Kay & J. 66, 70, per Page Wood, V. C.

One who by agreement with an officer of the bank, changed a public account to an individual one, in order to profit from the interest on such account, has been prevented, after the insolvency of the bank, from showing that the account was a public one in order to hold the stockholders of the bank liable for the deposit. Hill v. Kavanaugh, 118 Ark. 134, 176 S. W. 336, 4 A. L. R. 1.

9. With respect to contracts upon the consideration mentioned in the text, see the following cases: Sis- mey v. Eley, 17 Sim. (Eng.) 1; Knye v. Moore, 1 Sim. & St. 61; Matthew v. Hanbury, 2 Vern. 187; Robinson v. Clark, 9 Mod. 263; Clark v. Periam, 2 Atk. 333; Marchioness of Annandale v. Harris, 2 P. Wms. 432; Hall v. Palmer, 2 Hare, 532.

It is now settled that an agreement of separation between a husband and wife is not illegal, not against public policy, and if drawn in a proper form, so that there are two parties capable of contracting, will be specifically enforced at the suit of either spouse. The earlier decisions were undoubtedly the other way (see § 932).

In Fisher v. Apollinaris Co. L. R. 10 Ch. 297, 302, 303, it was held by the court of appeal, as a general rule, that where an offense is of such a nature that the offender may be proceeded against either criminally or civilly, or both, and he is prosecuted criminally, there is nothing illegal nor improper in a compromise of the whole proceedings; such agreement of compromise is valid, and will be enforced by equity, if coming within the equitable jurisdiction. It should be observed, however, that this rule is confined to those wrongs which are capable at the common law of being prosecuted both civilly and criminally; it does not, of course, extend to offenses for which modern statutes have given an action at law for damages, such as homicide.

It was held, however, in Windhill Local Board v. Vint, 45 Ch. Div. 351, that any agreement to compromise or postpone a prosecution for a public offense—as an interference with a public highway—is illegal; and Fisher v. Apollinaris Co. L. R. 10 Ch. 297, so far as it holds otherwise, is overruled. See further, § 936.

Maxim as to Clean Hands

The court will not, however, go outside of the subject-matter of the controversy, and make its interference depend upon conduct not affecting the equitable right asserted by the defendant, or the relief which he demands (see § 399). 12 One who was alleged to have made certain misrepresentations with respect to rating his customers, was held not debarred from procuring the aid of equity to

10. In Stone & McCarrick v. Dugan Piano Co. 220 F. 837, 136 C. C. A. 583, it was held that the author of a book which contained made-to-order advertisements for the use of dealers who should be licensed by the author to use them, and which contained statements which could not be true as to the business of all of the licensees, was not entitled to the protection of a court of equity in the enjoyment of his copyright for the reason that the particular advertisements were not copyrightable, being deceptive of the public, and the plaintiff was guilty of inequitable conduct.

In Mann & Co. v. Americana Co. 83 N. J. Eq. 309, 91 A. 87, L. R. A. 1916D, 116, modifying 82 N. J. Eq. 63, 88 A. 330, the maxim was applied to the case of a plaintiff who was guilty of misrepresentations as to the editorship of a publication, which misrepresentations were pleaded in defense of a suit for an injunction restraining similar acts of the defendant.


12. In Edward Thompson Co. v. American Law Book Co. 122 F. 922, 59 C. C. A. 148, 62 L. R. A. 607, there are dicta to the effect that the publisher of a law encyclopaedia which in some instances was guilty of "piracy" in copying the language of copyrighted works without the consent of the owners of the copyrights has no standing in a court of equity to complain of infringement of its copyright by a rival encyclopaedia, consisting in copying lists of cases and authorities from complainant's work. But quaere, whether complainant's misconduct was not unconnected with the matter in litigation.

123
§ 402b  EQUITY JURISPRUDENCE.  [Pt. II, Ch. I

protect his business and copyrights in books used by him in a collection and rating business.¹³

[As to what constitutes unconscientious or inequitable conduct which will debar a complainant from obtaining relief, it has been held that a news service which had habitually taken items published by other news agencies as “tips” to be investigated, was not thereby debarred from suing to enjoin the pirating of the complainant’s news service by the appropriation and republication of items thereof without further investigation.¹⁴]

[§ 402b. — Trademarks and Tradenames.—One who is guilty of misrepresentations affecting the public in conducting his business and advertising his products is not entitled to the aid of a court of equity if the representations are directly connected with the subject-matter of the suit in which the aid of the court is sought.¹⁵ This rule is frequently applied in suits to enjoin alleged infringement of trademarks and tradenames (see § 934), or corporate names,¹⁶ of those who have misrepresented the properties


In Vulcan Detinning Co. v. Assmann, 185 App. Div. 399, 173 N. Y. S. 334, it was held that a corporation was not precluded from relief against the illicit use of a secret process because of the fact that it introduced a spy into the works of the rival concern solely to obtain evidence of the infringement of its rights, and not for the purpose of copying any methods of the rival.


See also, Chafee and Pound, Cases on Equitable Relief Against Torts, chap. IV, pp. 379, et seq., note.

In Fay v. Lambourne, 124 App. Div. 245, 108 N. Y. S. 874, order affirmed without opinion in 196 N. Y. 575, 90 N. E. 1155, a business which was alleged mind-reading and the supposed telling of past as well as future events was held to be in itself a fraudulent deception of the public, justifying the application of the principle of “unclean hands” to the suit of a person seeking to enjoin the use by another of his business name used in such venture.


It was held in Warshawsky & Co. v. A. Warshawsky & Co. 257 Ill.
of articles, particularly proprietary medicines, advertised for sale to the public at large, and in suits to protect the exclusive rights of the owner in a trademark or trade-marked label containing misrepresentations as to the identity of the manufacturer of the labeled article, or false representations as to the place of manufacture (see § 934). But if a statement, apparently deceptive, is in fact true, the case is not one for the application of the principle of the maxim, and the aid prayed of a court of equity should not for that reason be denied. Nor has the principle application where the representations are not connected with the matter in litigation (see § 399), or where such representations amount to mere "trade boasting."
[§ 402c. — Corporation and Stock Transactions.—
The maxim is applied in various situations where relief is sought in courts of equity with respect to corporation and stock transactions. One who stands as the fraudulent holder of shares of stock of a corporation will not be allowed, in a court of equity, to attack the validity of the action of the board of directors with regard to such stock. 

A promoter who, in violation of subscription agreements, has obtained control of a corporation, may not complain in equity that such control has been taken away from him through sales of stock by the directors of the corporation. 

[It is ordinarily held that corporate securities acts, existing in the several states, commonly known as Blue Sky Laws, are primarily for the benefit of the buyer or subscriber. A stock subscription which has been made without complying with the Blue Sky Law cannot be enforced against the subscriber. But if the buyer is not in pari delicto with the seller (and he is generally not so regarded), the general rule is that he may, within a reasonable time, recover his money, or property exchanged for stock, by tendering back the stock received by him. The buyer cine," was held not to debar the proprietor from relief against unfair competition, though there were in fact other remedies on the market, made from the same formula. 


Annotation: 87 A. L. R. 105.

In O-So-White Products Co. v. Richards Mfg. Co. 238 Mich. 443, 213 N. W. 866, it was held that specific performance would not be granted of a contract for the sale of securities, where the sale was illegal under the Blue Sky Law, in that the provision of law requiring the stock of the plaintiff corporation to have been accepted for filing by the corporation commission had not been complied with.

3. Ala.—Gil Printing Co. v. Goodman, 224 Ala. 97, 139 So. 250.
will be denied relief only where the record shows that he is equally culpable with the seller, and, mere knowledge

Ark.—Blanks v. American Southern Trust Co. 177 Ark. 832, 9 S. W. (2d) 310.


Idaho.—Intermountain Title Guar- anty Co. v. Egbert, 52 Idaho, 402, 16 P. (2d) 390.

Ill.—Caldwell v. Cole, 326 Ill. 502, 158 N. E. 159.


Ky.—Smith v. Crawford, 228 Ky. 420, 15 S. W. (2d) 249.


Minn.—Marin v. Olson, 181 Minn. 327, 232 N. W. 523.

Miss.—Bankers’ Mortg. Co. v. State (Miss.) 141 So. 335.

Mo.—Landwehr v. Lingenfelder (Mo. App.) 249 S. W. 723.


Or.—Salo v. Northern Sav. & L. Assn. 140 Or. 351, 12 P. (2d) 765.

Utah.—Buttrey v. Guaranteed Secur- ities Co. 78 Utah, 39, 300 P. 1040.


Wis.—Bechtel v. Columbia Casualty Co. 198 Wis. 114, 223 N. W. 508.


A purchaser of stock in ignorance of the failure to comply with a statute which provides that no security shall be sold unless and until notice of intention to sell and data relative to the security offered shall be filed with the public service commission, which is empowered to forbid the sale if of the opinion that it is fraudulent or will result in fraud, is not in pari delicto with the seller so as to preclude him from rescinding the transaction and recovering back the price paid. Kneeland v. Emerton, 280 Mass. 371, 183 N. E. 155, 87 A. L. R. 1.

One having a single transaction in exchanging corporate stock owned by him with a foreign corporation which has not obtained the consent of the corporation commission to sell its stock within the state, and is not therefore entitled to do so, is not, in case he acted under the bona fide belief that the corporation was so authorized, in pari delicto, so as to be prevented from rescinding the contract. Edward v. Ioor, 205 Mich. 617, 172 N. W. 620, 15 A. L. R. 256.

EQUITY JURISPRUDENCE.

§ 402d of the terms of the permit or of the fact that no permit has been issued, may not alone be sufficient to raise the guilt of the purchaser or subscriber to that degree.5

[§ 402d. — Industrial Disputes.—By the operation of this principle, equitable relief from the consequences of labor disputes has frequently been denied both to employers and labor unions who have been guilty of misconduct in connection with the disputes.6 While they may conduct their own affairs in any way that does not violate the law, neither the employer nor the employee may be guilty of conduct that invades the rights of the other in regard to, or at all events connected with, the matter in litigation, without forfeiting all right to resort to the extraordinary powers of equity7 A court of conscience will not extend its strong arm to protect one who has pur-


The federal court in Cecil B. DeMille Productions, Inc., v. Woolery (C. C. A.) 61 F. (2d) 45, which arose in California, reached a contrary conclusion as to the rights of purchasers of royalty interests where the permit of the commissioner of corporations has not been obtained. The federal court relied on California decisions prior to Eberhard v. Pacific Southwest L. & M. Corp. 215 Cal. 226, 9 P. (2d) 302, 303. In so far as said decisions are in conflict with the Eberhard case they have been overruled.


In Cornellier v. Haverhill Shoe Mfrs’ Assn. 221 Mass. 554, 109 N. E. 643, L. R. A. 1916C, 218, an employee who had participated in a strike carried on by unlawful means was held precluded from obtaining relief against a black list issued because of the strike.

sued such a course of conduct. It will leave the applicant for relief where he has deliberately chosen to place himself. Thus a breach of contract by an employer, for the deliberate purpose of provoking a controversy with the union, is ground for denying an injunction against subsequent acts of violence by the union. And where the members of a local union, working in the territory of another local union which called a strike, quit work in sympathy with the striking union, in violation of the terms of a contract between their union and the employers under whom they were working, an injunction was refused in favor of the local union against a lockout, adopted by the employers as a retaliatory measure.

[In several cases the question has arisen as to whether an employer who is a member of an employers’ association organized to fight the unions, or who has conspired with other employers to destroy or hinder the unions, or who has entered into a combination with other manufacturers to depress wages, is without clean hands. Such membership or combination is ordinarily held not to preclude the employer from obtaining relief against unjustifiable invasions of his rights. And a complainant is not


So, a person cannot complain of a wrongful act of a combination to boycott where he himself was formerly a member of the combination. Beechley v. Mulville, 102 Iowa, 602, 70 N. W. 107, 71 N. W. 428, 63 Am. St. Rep. 479.

An injunction will not be granted against the sending of circulars to complainant’s customers, urging them not to patronize complainant, where complainant has, by similar methods, sought to prevent the employment of those with whom he is in controversy. Sinsheimer v. United Garment Workers, 77 Hun, 215, 28 N. Y. S. 321, reversing 5 Misc. 448, 26 N. Y. S. 152.


Annotation: 66 A. L. R. 1091.


Annotation: 95 A. L. R. 50.


II Equity Jur.—5 129
to be denied equitable relief because he has declared war on a union by discharging all members found in his employ.\textsuperscript{13} But, on the other hand, it has been held that, if it appears that the plaintiff has entered into a conspiracy to destroy the defendant union and to oppress its members and prevent workers generally from obtaining a living, the plaintiff will be turned out of court, even though it appears that both the plaintiff and the defendants are of equal guilt.\textsuperscript{14} And an injunction against attempting to induce plaintiff's employees to abandon plaintiff's employ and join the union, in violation of their contracts of employment, has been denied to one who has attempted to reduce the wage scale provided for in an agreement with the union, without the latter's consent, and without resort to the readjustment machinery agreed upon.\textsuperscript{15}

[It has been held that the employer's refusal to arbitrate or to accept mediation is not ground for denying equitable relief against unlawful acts in furtherance of a strike.\textsuperscript{16} And the failure of the employer's representative to meet a committee of employees was held not such bad faith as to preclude the employer from obtaining relief in equity, where the committee were notified that he would not be able to meet them until a later date, and they made no effort to see him at that time.\textsuperscript{17}]

[It is obvious that in these disputes each case is largely controlled by its own facts. In some cases relief is

\begin{itemize}
\item \textsuperscript{13} Gill Engraving Co. v. Doerr (D. C. S. D. N. Y.) 214 F. 111.
\item \textsuperscript{15} S. W. Annotation: 66 A. L. R. 1092.
\item \textsuperscript{16} S. W. Annotation: 66 A. L. R. 1090.
\item \textsuperscript{17} S. W. Annotation: 66 A. L. R. 1091.
\item S. W. Annotation: 66 A. L. R. 1091.
\end{itemize}
granted where it appears that the parties are not *in pari delicto*. Other cases are held not to be governed by the operation of the principle since the conduct of the moving party is considered not to be immediately connected with the subject-matter of the litigation (see § 399).


In International Organization, U. M. W., v. Red Jacket Consol. Coal & Coke Co. (C. C. A. 4th) 18 F. (2d) 839 (certiorari denied in 275 U. S. 536, 72 L. ed. 413, 48 S. Ct. 31), the fact that certain of the complainant companies had once operated under union rules and had paid the "check-off" required by the union was held not to make them *in pari delicto* with the union, so as to prevent the issuance of an injunction in their favor against unlawful acts of the union.

An employer is not deprived of his right to the interposition of equity to protect him against a boycott upon the theory that he first boycotted the union by taking a stand which he knew would, under the rules of the union, prevent members in regular standing who wished to retain their membership, from being employed by him, where he distinctly stated that he did not desire thereby to have any of his employees quit their work, and that he would still maintain the union prices. *Barr v. Essex Trades Council*, 53 N. J. Eq. 101, 30 A. 881.

And see *New England Wood Heel Co. v. Nolan*, 268 Mass. 191, 167 N. E. 323, 66 A. L. R. 1079, in which the evidence was held insufficient to show that an employer, seeking an injunction against picketing, had maliciously induced members of the union to violate their union obligations, and was, therefore, without "clean hands."

19. In *Niles-Bement-Pond Co. v. Iron Molders' Union*, 246 F. 851, a corporation owning a controlling interest in another corporation was held not to be precluded, on the theory that it was in court with "unclean hands," from obtaining an injunction restraining striking workmen of the plant of the latter concern from committing unlawful acts in furtherance of the strike, because of the breach by the subsidiary company of an agreement entered into with its workmen on the occasion of a previous strike, which agreement induced the men to return to their work. The reason given for this ruling was that the breach referred to was not immediately connected with the subject-matter of the litigation.

The fact that a labor union, in a controversy with employers, had employed force, intimidation and physical violence, has been held not so connected with the subject-matter of the controversy as to prevent the union coming into a court of equity to enjoin an unlawful boycott, maintained by a committee not directly interested in a dispute between employers and employees, where such boycott illegally interfered with the
§ 402e  

EQUITY JURISPRUDENCE.  [Pt. II, Ch. I

§ 402e. — Illegal Marriage. — Illegality affecting a marriage contract has been held to be sufficient, in the application of the principle of "unclean hands," to justify a court of equity in refusing to lend its aid to either of the parties thereto in a suit arising out of the contract, provided the rules of public policy are not violated. 1 Therefore unlawfully entering into a miscegenetic marriage has been held sufficient to justify a refusal of its aid by a court of equity to a party thereto seeking the annulment of such a marriage. 2 On the other hand the maxim has no application where its enforcement would result in sustaining an act declared by statute to be void, or against public policy. 2 In such cases, the interest of right of the complainants to a free market for their labor and to freedom of contract with employers, and if successfully carried out would eventually result in the destruction of the union. Carpenters' Union v. Citizens' Committee, 333 Ill. 225, 164 N. E. 393, 63 A. L. R. 157.

In Ely v. King-Richardson Co. 265 Ill. 148, 106 N. E. 619, L. R. A. 1915B, 1052, it appeared that the employees of a corporation organized a rival concern, and induced employees of the older company to break their contracts of employment with that concern and enter the employ of the new company. It was held that the acts complained of were so unconnected with the subject-matter of the suit, which was to recover compensation for the services of the organizers of the new company, earned while they were employees of the older concern, that they would not preclude a recovery by the complainants under the principle of the maxim, "He who comes into equity must come with clean hands."


Annotation: 4 A. L. R. 72. And see 24 Marquette L. Rev. 212.

In Bays v. Bays, 105 Misc. 492, 174 N. Y. S. 212, a boy who procured a woman to marry him, and his marriage license, by falsely stating his age, was held to be in court with unclean hands in seeking an annulment because of his non-age.


Annotation: 4 A. L. R. 81.


132
society intervenes, and the state is regarded as a third party. It is the duty of both parties to make restitution by having the marriage annulled promptly. The courts therefore annul a marriage although the party seeking relief knew when he married of a former undissolved marriage, or cohabited with his spouse after such information was obtained. Even in this situation, however, it has been held that a person who marries another, knowing that the latter has a husband or wife living, is not an "innocent or injured party," and the courts will refuse a formal decree of nullification. The question appears to

Annotation: 54 A. L. R. 85.

See also Heflinger v. Heflinger, 136 Va. 289, 118 S. E. 316, 32 A. L. R. 1088, wherein the court said that the equitable doctrine of "clean hands" did not prevent either party to a marriage contracted before a certain period after the divorce of one of the parties had elapsed, in violation of a state statute, and rendered void thereby, from maintaining an action to have the void marriage declared a nullity.


In Simmons v. Simmons, 19 F. (2d) 690, 57 App. D. C. 216, 54 A. L. R. 75, it was held that the fact that one who, when he married another, knew that the latter's divorce had been fraudulently obtained and was therefore void, rendering their marriage void under the District of Columbia Code, will not preclude him from setting up the nullity of their marriage in a divorce proceeding against him, the rule of pari delicto and the equitable principle of "clean hands" being inapplicable, since the state is an interested third party.

4. Martin v. Martin, 54 W. Va. 301, 302, 46 S. E. 120, 1 Ann. Cas. 612, wherein an aunt and nephew, citizens of West Virginia, went to Pennsylvania and were married, and returned to West Virginia and lived together as husband and wife for eighteen years, and at the time of suit had a son ten years old.


In Tyll v. Keller, 94 N. J. Eq. 426, 120 A. 6, in an action by a husband to annul a marriage on the ground that at the time it was contracted his wife was married to another man, it was held that in order to obtain the annulment it was necessary for him to show by a preponderance of the evidence that when he married his wife he was ignorant of the fact that she had a husband living from whom she had not been divorced. The court said:
be largely as to whether the marriage, in the particular jurisdiction, is regarded as contrary to the public policy of the state, so as to justify the intervention of the court on behalf of society. 7

[Reprehensible conduct of a litigant which is unconnected or indirectly connected with the marriage contract, such as illicit cohabitation prior to the marriage, will not, in the application of the maxim, preclude a recovery in a court of equity of the relief prayed. 8 And in a suit brought after the termination of the marriage by death, to enforce property rights, the widow is not to be denied relief on the ground that her marriage was in contravention of statute, where the statute had no extraterritorial effect and the widow did not return to the state after her marriage which was legal under the laws of the state where contracted. 9]

§ 402f. — Accounting in Illegal Transactions.— Courts of equity will not in general decree an accounting as to matters growing out of an illegal or immoral transaction in which parties have jointly engaged. 10 But re-

"If he had this knowledge, and, notwithstanding it, went through the marriage ceremony with the respondent, and cohabited with her for more than a year, the fact that he afterward tired of his bargain did not entitle him to the relief that he now seeks from a court of equity." See also White v. Kessler, 101 N. J. Eq. 369, 139 A. 241, and Keller v. Linsenmyer, 101 N. J. Eq. 664, 139 A. 33.

The New York courts have apparently made a distinction between the case of one under disability as to the relief and that of one not under disability as to the relief. Annotation: 54 A. L. R. 83.

7. See the cases cited in this paragraph.
10. McMullen v. Hoffman, 174 U. S. 639, 43 L. ed. 1117, 19 S. Ct. 839; Primeau v. Granfield, 193 F. 911, 114 C. C. A. 549, writ of certiorari denied in 225 U. S. 708, 56 L. ed. 1287, 32 S. Ct. 889 (plaintiff's cause of action for an accounting inextricably bound up in the proof that the business was that of defrauding investors in mining schemes); Miller v. Kraus (Cal. App.) 155 P. 834 (plaintiff's deceit in inducing defendant to become his partner, defense to suit for account-
lief is sometimes granted after the transaction has been completed and closed, and nothing is asserted but title to the money which has arisen from the transaction (see § 403). It is also held, in cases where the parties are not in pari delicto, and where there are elements of public policy more outraged by the conduct of one than of the other (see § 403), that equity will decree an accounting. A cotenant who has not participated in the letting of the common property for immoral use will not be denied an


See 1 Am. Jur., Accounts and Accounting, p. 302, § 54.

11. Daniel v. Daniel, 116 Wash. 82, 198 P. 728, 27 A. L. R. 177, stating, arguendo, that there is authority to the contrary.

Where two partners made illegal purchases with the funds of one and resold the property purchased, and there remained in the hands of the other partner money and property which were the result of such illegal business, the former may maintain a bill for an accounting of such money and property against the other. Brooks v. Martin, 2 Wall. (U. S.) 70, 17 L. ed. 732. But in Hoge v. George, 27 Wyo. 423, 200 P. 96, 18 A. L. R. 469, it was said, arguendo, that the fact that the transaction, under a contract invalid as against public policy, is fully completed, will not sustain an action for accounting and division of profits.

12. Berman v. Coakley, 243 Mass. 348, 137 N. E. 667, 26 A. L. R. 92, wherein it was held that equity has jurisdiction of a suit by a client for accounting by his attorney of money paid the attorney to settle a criminal prosecution which the attorney falsely represented to the client was about to be instituted against him.

Where money has been received by an agent or joint owner, by force of a contract which was illegal, he cannot protect himself from accounting for what was so received by setting up the illegality of the transaction in which it was paid to him. Kinsman v. Parkhurst, 18 How. (U. S.) 289, 16 L. ed. 385.
accounting of his share of the rents and profits because the property was leased for such purposes.\textsuperscript{13}

[To bar the right of the complainant to an accounting, it is also the rule that the illegal or immoral transaction in which he was engaged must affect the right which he demands (see § 399).\textsuperscript{14} The fabrication of evidence as to some items in an account will not bar relief as to other items or claims.\textsuperscript{15} And it has been held that where the husband and wife own property as tenants by the entirety, the wife, even though she has deserted her husband without justifiable cause and is living in adultery, is entitled to an accounting of the rents collected by her husband from the common property.\textsuperscript{16}]

§ 403. Limitation in Cases of Fraud and Illegality; Parties not in Pari Delicto.—Upon the general doctrine stated in the preceding paragraphs concerning the effect of fraud and illegality upon the remedial rights of parties seeking the aid of equity, there are certain limitations, founded mainly upon motives of policy, which require a brief mention. Wherever a case falls within the limitation, and not within the general rule, the court may give relief against

\textsuperscript{13} Daniel v. Daniel, 116 Wash. 82, 198 P. 728, 27 A. L. R. 177.

\textsuperscript{14} In an action to hold the promoter accountable to the company for secret profits realized on the sale of the patents to the company, based upon the concealment from the latter of the fact of an agreement between the promoter and the patentee to divide the proceeds of the sale, it was held that the illegality of the contract made by the company for the purchase of the patent was so unconnected with the matter in litigation as not to bar the relief sought in the action by the company under the principle of "unclean hands." Yale Gas Stove Co. v. Wilcox, 64 Conn. 101, 29 A. 303, 25 L. R. A. 90, 42 Am. St. Rep. 159. Annotation: 4 A. L. R. 82.

\textsuperscript{15} Barnes v. Barnes, 282 Ill. 593, 118 N. E. 1004, 4 A. L. R. 4.

\textsuperscript{16} Where an assignment of a fund to a party to a fraudulent scheme was fraudulent only as to a part of the fund, of which an accounting was sought, the maxim was held not to be applicable in respect of the part which was not tainted with the fraud. Dempster v. Baxmyer, 231 Pa. 28, 79 A. 805. Annotation: 4 A. L. R. 100.

the improper transaction, or may even enforce the obligation arising from the tainted agreement, at the suit of one of the parties thereto. The first of these limitations may be given in the following general formula, and all the others may be regarded as merely particular deductions or corollaries from it. Assuming that a contract is fraudulent, or against public policy, or illegal, still, where the parties to it are not in pari delicto, and where public policy is considered as advanced by allowing either, or at least the most excusable of the two, to sue for relief, relief may be given to him, either against the transaction by setting it aside and restoring him to his original position, or even, in some cases, by enforcing the contract, if executory. 17

17. This general limitation is thus stated by Knight Bruce, L. J., in the great case of Reynell v. Sprye, 1 De Gex, M. & G. 660, 679: "But where the parties to a contract against public policy, or illegal, are not in pari delicto (and they are not always so), and where public policy is considered as advanced by allowing either, or at least the most excusable of the two, to sue for relief against the transaction, relief is given to him, as we know from various authorities."

The whole subject is discussed in a most able and exhaustive manner, the authorities are reviewed, and the contracts to which the rule applies are described and classified by Sel- den and Comstock, JJ., in Tracy v. Talmage, 14 N. Y. 182, 67 Am. Dec. 132, and by some of the opinions in the great case of Curtis v. Leavitt, 15 N. Y. 9.

Among the ordinary instances where equity will set aside a fraudulent or illegal transaction at the suit of the party supposed to be comparatively innocent, wholly on grounds of public policy, is the familiar case of a borrower suing to have the usurious contract and securities surrendered up and canceled, and where, in a composition purporting to be effected on terms of equality by an insolvent with all his creditors, secret bargains are made with some of them by which they are to obtain more favorable terms than the others, or where, in an assignment by an insolvent, a secret arrangement is made with the assignee in order to secure benefits out of the property to the debtor or his family, such agreements, being in fraud of creditors, will be set aside by a court of equity, even at the suit of the insolvent himself. Such relief, however, is plainly not given out of consideration for the debtor, but solely for the purpose of protecting the creditors: See Eastabrook v. Scott, 3 Ves. 456; Cullingworth v. Loyd, 2 Beav. 385, 390, note; McNeill v. Cahill, 2 Bligh, 228; Bellamy v. Bellamy, 6 Fla. 62, 103, and cases cited.

The following are some particular illustrations: In Benyon v. Nettlefold, 3 Macn. & G. 94, a gentleman
The second limitation I cannot better state than in the carefully considered language of Sir George Jessel: "You cannot ask the aid of a court of justice to carry out an illegal contract; but in cases where the contract is actually at an end, or is put an end to, the court will interfere to prevent those who have, under the illegal contract, obtained money belonging to other persons, on the representation that the contract was legal, from keeping that money. . . . It does not follow that you cannot, in some cases, recover money paid over to third persons in pursuance of the contract; and it does not follow that you cannot, in other cases, obtain, even from the parties to the contract, moneys which they have become possessed of by representations that the contract was legal, and which belong

had given a deed containing covenants binding him to pay an annuity to trustees for the benefit of a certain woman during her life. The real consideration of this deed was continued furtive cohabitation with the woman as his mistress; but another consideration was stated in the deed, so that it was valid on its face. An action at law was brought against him to recover the unpaid amount of the annuity. It was well settled that he would have a perfect defense at law if the real facts as to the consideration could be brought out in evidence. He then filed a bill in equity for the purpose solely of obtaining a discovery from the other parties as to the real nature of the consideration, but not asking any relief against the instrument. Upon demurrer to the bill the court held that while a suit for relief could not be maintained under these circumstances, a suit for discovery alone in aid of the defense at law was proper, and a discovery would be compelled.

In Osbaldiston v. Simpson and Bowles, 13 Sim. 513, the plaintiff had given to Simpson, for the benefit of Bowles, his promissory notes, which said defendants had obtained from the plaintiff by threatening to accuse him of having cheated Bowles at cards, and to sue him for the penalties for that offense under a certain statute. It was held that the plaintiff was entitled to a decree for the surrender of and cancellation of the notes, even on the assumption that he had actually been guilty of the alleged cheating.

See also, the following cases:


Ala.—Mobile & O. R. Co. v. Dismukes, 94 Ala. 131, 10 So. 289, 17 L. R. A. 113.

Ariz.—Coleman v. Coleman, 48 Ariz. 337, 60 P. (2d) 441, 106 A. L. R. 1309 (where conveyance, claimed to be fraudulent, was made by the plaintiff, an ignorant man, to his well-educated son, at the son's solicitation).

Cal.—Donnelly v. Rees, 141 Cal. 56,
to the persons who seek to recover them."18 One of the parties to an illegal contract may therefore, in some cases, maintain a suit against a third person to recover money which the latter has received under the contract.19 In

74 P. 433 (conveyance obtained by undue influence).

Ill.—Herrick v. Lynch, 150 Ill. 283, 37 N. E. 221.

Iowa.—Williams v. Collins, 67 Iowa, 413, 25 N. W. 682; Davidson v. Carter, 55 Iowa, 117, 7 N. W. 466.


Md.—Baker v. Howard County Hunt, 171 Md. 159, 188 A. 223, 107 A. L. R. 1312 (applying the rule as to right to injunctive relief against the overrunning of the complainant's land by defendant's pack of foxhounds, although the complainant had shot some of the hounds while they were molesting his poultry).


Miss.—O'Conner v. Ward, 60 Miss. 1025.

Mo.—Holliway v. Holliway, 77 Mo. 392.

Neb.—Kleeman v. Peltzer, 17 Neb. 381, 22 N. W. 793.


Vt.—Harrington v. Grant, 54 Vt. 236.

Wash.—Melbye v. Melbye, 15 Wash. 648, 47 P. 16.

Wis.—Clemens v. Clemens, 28 Wis. 637, 9 Am. Rep. 520.

See Am. Law Inst., Restatement, Contracts, p. 1120, § 604.

For cases where the parties were not in pari delicto, see post, § 942, and notes.

Equitable relief has been granted to a plaintiff against unlawful interference with a contract existing between him and another, although, in some minor respect, the plaintiff himself had violated provisions of the contract. Husting Co. v. Coca Cola Co. 205 Wis. 356, 237 N. W. 85, 238 N. W. 626, 84 A. L. R. 22.


19. Thus if a trust should be created whereby A was illegally to pay money to the trustee, B, for the benefit of C, the beneficiary could not compel A to make the payment; but if A should voluntarily pay over the money into the hands of B, the beneficiary, C, could then maintain
order, however, that such legal relations may arise incidentally and collaterally from an illegal contract, the illegality itself must not be of a nature intrinsically immoral or evil; it must be an illegality resulting from

a suit and recover the money, and B could not set up the illegality of the original trust as a defense, and thus retain the property. Thomson v. Thomson, 7 Ves. 470; Tenant v. Elliott, 1 Bos. & P. 3; Farmer v. Russell, 1 Bos. & P. 296; Sharp v. Taylor, 2 Phill. Ch. 801; Joy v. Campbell, 1 Schoales & L. 328, 339; McBlair v. Gibbs, 17 How. 232, 237, 15 L. ed. 132; Brooks v. Martin, 2 Wall. 70, 81, 17 L. ed. 732; Tracy v. Talmage, 14 N. Y. 162, 67 Am. Dec. 132.

In Tenant v. Elliott, 1 Bos. & P. 3, there was an illegal contract between the plaintiff and a third person. The defendant received money in pursuance of the contract from that third person to the use of the plaintiff. It was held that the plaintiff could recover such money from the defendant, although he could not have enforced the contract against the third person.

In Farmer v. Russell, 1 Bos. & P. 296, there was an illegal contract between the plaintiff and a third person, by which the plaintiff agreed to deliver certain counterfeit coins to the third person for a stipulated price. The defendants were carriers employed by the plaintiff to deliver the articles and receive the price, which they did. The plaintiff suing the carriers to recover the money in their hands, the defense of illegality was set up, but overruled, and the plaintiff was held entitled to maintain the suit. Sharp v. Taylor, 2 Phill. Ch. 801, was decided in accordance with the same rule, but upon quite different circumstances. It has been regarded as a leading case, and has been followed by subsequent decisions; but some of the reasoning of Lord Cottenham, in his opinion, is sharply criticised, and shown to be unsound, by Sir George Jessel, in the case, already quoted, of Sykes v. Beadon, L. R. 11 Ch. Div. 170, 195, 196.

In McDonald v. Lund, 13 Wash. 412, 43 P. 348, it was held, chiefly in reliance on these English cases, that when plaintiff had been engaged with defendant in an illegal gambling business, and after the business had terminated left in defendant's hands the undivided profits of the business, under an agreement that he was entitled to a certain portion thereof, the plaintiff might recover the sum thus left on deposit. It is plain that this decision is quite unsupported by the English cases cited, in all of which the fruits of the illegal transaction were deposited with a third party.

In Worthington v. Curtis, L. R. 1 Ch. Div. 419, 423, 424, a father took out a policy of life insurance in the name of and on the life of his son, in whose life he had no insurable interest, which policy was in fact intended by the father for his own benefit alone. The policy, as between the company and the assured, was illegal and void, under certain statutes. The son died intestate, and the company voluntarily paid the sum insured by the policy to his administrator. Held, that although neither the father nor
motives of expediency or policy. In all the cases where a right of action arising collaterally from an illegal contract has been thus recognized and enforced, it will be found

the administrator of the son could have maintained any action on the policy against the company on account of its illegality, yet the money having been voluntarily paid by the company, as between the father and the estate of the son, the father was entitled to such money, and could recover the same.

In Davies v. London etc. Ins. Co. L. R. 8 Ch. Div. 469, 477, the manager of the company accused one of their agents, named Evans, of embezzlement, and threatened to prosecute him. In order to prevent the threatened prosecution, the plaintiff, in pursuance of an agreement to that effect with the manager, deposited a sum of money with a third person, and now sues to recover it back. The company defended on the ground that the agreement was illegal, and that the court would not aid a particeps criminis. Held, that even if the agreement was illegal, as compounding a felony, the court would interfere in a case where money was actually in the hands of trustees, or where pressure had been used to obtain it. The court said (p. 477): "It is said that, assuming the contract to be illegal, Davies was equally a party to that illegal contract, and that therefore the court will stay its hand, and then the maxim, In pari delicto melior est conditionis defendentis, will prevail. But, in the first place, there is great difficulty in applying that principle to a case where money has been placed in medio, and where the court must do something with it, or else leave it to be locked up forever. In the next place, it appears to me to be clear that illegality resulting from pressure, and illegality resulting from an attempt to stifle a prosecution, do not fall within that class of illegalities which induce the court to stay its hand, but are of a class in which the court has actively given its assistance in favor of the oppressed party, by directing the money to be repaid." He cites, as sustaining this conclusion, the case of Williams v. Bayley, L. R. 1 H. L. 200; and the case of Osbaldiston v. Simpson, 13 Sim. 513, the facts of which are stated ante, is also directly in point. See, also, Ex parte Pyke, L. R. 8 Ch. Div. 754, in which it was held that money loaned to enable the borrower to pay a bet illegal by statute could be recovered back.

For another and different mode in which the general limitation described in the text may operate, see Powell v. Knowler, 2 Atk. 224. A and B had made an agreement for the division and conveyance to each other of parts of certain land which they expected to recover. This contract was champertous and illegal, and could not, as a contract, be enforced. But one of the parties, who had thus agreed to convey a portion of the land to the other, by a clause in his will directed the agreement to be performed, and created a trust for that purpose. It was held that the trust thus created by the will should be enforced against the trustee, although the original contract was also thereby specifically performed.
that the agreement was illegal because opposed to some statute, or to so-called public policy.20

[The rule that relief may be granted in some situations where the parties are not in pari delicto does not ordinarily apply where the actor in the fraud or wrong doing is the one who is seeking the aid of equity. Thus one who, with intent to defraud his creditors, placed the title to his property in the name of the defendant, may not obtain affirmative equitable relief in respect of such property on the ground that the defendant did not participate in his fraudulent design.1 However, where public policy is considered as advanced by allowing either party to sue for relief against the transaction, then relief is given to him (see § 941).2]

§ 404. Conclusion.—The special rules contained in the foregoing paragraphs will serve to illustrate the meaning and operation of the principle, He who comes into a court of equity must come with clean hands; but they by no means exhaust its scope and effect. It is not alone fraud or illegality which will prevent a suitor from entering a court of equity; any really unconscientious conduct, connected with the controversy to which he is a party, will repel him from the forum whose very foundation is good

20. For cases illustrating the rule which sometimes permits a party to an agreement prohibited by statute, or ultra vires, and not involving a malum in se, to recover money or property in the hands of the other party, see post, § 942; Bond v. Montgomery, 56 Ark. 563, 20 S. W. 525, 35 Am. St. Rep. 119, citing this paragraph of the text (statute imposed penalty on one party only, who was the party defendant in the suit).


Annotation: 7 A. L. R. 150.

conscience. [A court of equity acts only when and as conscience commands; and, if the conduct of the plain-
tiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses, and whatever use he may make of them in a court of law, he will be held remediless in a court of equity. Misconduct which will bar relief in a court of equity need not necessarily be of such nature as to be punishable as a crime or to constitute the basis of legal action. Under this maxim, any willful act in regard to the matter in litigation, which would be condemned and pronounced wrongful by honest and fair-
minded men, will be sufficient to make the hands of the applicant unclean.]

