

## Equity - "Clean Hands" Maxim - When Applicable

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## ABSTRACTS

**Criminal Law — Plea of Guilty in a Capital Case Without Counsel.** — Defendant was accused of the crime of murder and without the advice of counsel, signed a written confession. He waived preliminary examination and was bound over to the circuit court for trial. An information was lodged against him and he was taken before the court for arraignment. He was asked if he had counsel and was advised that he was entitled to counsel. Defendant answered that he wished to waive that right. The question was repeated and he again answered that he wished to have no counsel. After the information was read to the defendant, he entered a plea of guilty. The court questioned the defendant, the sheriff, and the coroner, and the defendant repeated the contents of his confession. When the court indicated that he was about to impose a death sentence, the defendant interrupted, and repudiated his confession. The court sentenced the defendant to death. Defendant appealed and claimed that the court erred in receiving the plea of the defendant without advising him of his rights. The state claimed that the accused was a man of native intelligence and that a long criminal record must have acquainted him with court procedure and his rights in the premises. Reversing the judgment it was held that when one accused of a capital offense tenders a plea of guilty, unaided by counsel, nothing less than the utmost of caution will satisfy the requirements of justice. Until the court is persuaded by a painstaking explanation of the rights afforded the accused by the law, and of the extreme consequences the plea may entail, that the accused is acting with volition and understanding, a plea of guilty should not be entered. *State v. Sewell*, 12 N.W. (2d) 198, (S.D., 1943).

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**Equity—"Clean Hands" Maxim—When Applicable.**—Plaintiff, the copyright proprietor of a musical composition entitled "The Waltz You Saved for Me" sought an injunction and damages against defendant for infringing in Wisconsin its copyright under the Copyright Act, 17 U.S.C.A. 25. By contract, the non-dramatic public performing rights in the composition were vested in the American Society of Composers, Authors, and Publishers, which was authorized to license its rendition for profit. When defendant infringed the copyright, a communication was sent to him suggesting he obtain a license, and upon his refusal, suit was brought. Defendant contended that the plaintiff did not come into court with "clean hands" because of its failure to comply with Wisconsin statute 177.01 providing that no person other than the true composer shall issue licenses for the public

rendition of copyrighted musical numbers in Wisconsin unless such person shall first obtain a license from the Secretary of State, and that it is a misdemeanor for a person to attempt to compel persons in Wisconsin to purchase licenses for the rendition of musical numbers unless the license from the Secretary of State has been obtained. The District Court upheld the contention of the defendant and dismissed the complaint. Plaintiff appealed. *Held*, a Wisconsin statute should not be permitted to prohibit the bringing of a federal suit. Plaintiff's failure to obtain a license did not place it outside the protection of the law so that a resident of Wisconsin could confiscate its property. Plaintiff's failure to secure a license was an offense against Wisconsin alone. The "clean hands" maxim should be applied only where the prosecution of the plaintiff's rights would involve the protection of plaintiff's wrongdoing, and not where it involves punishment for extraneous transgressions. *Leo Feist Inc. v. Young*, 138 F. (2d) 972 (C.C.A. 7th, 1943).

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**Real Property — Adverse Possession Under Divorce Decree Claimed to Be Invalid.** — Plaintiffs, heirs of William Johnson, husband, claim title to land also claimed by the heirs of Virginia Johnson, wife. The land was originally conveyed to the husband and occupied by him and his wife as a homestead. Prior to December 9, 1915, the husband deserted the wife who remained in possession of the property. On December 9, 1916, the wife divorced the husband. In the decree, it was provided that the husband be divested of title to the tract and that title be vested absolutely in the wife, who thereafter continued to live on the land. The husband knew of the divorce. Plaintiffs, husband's heirs, contended that the decree of divorce was void because it was rendered in chambers on constructive service and contained a recital to the effect that the husband appeared by attorney ad litem appointed by the court to notify him of the filing of the suit against him, and that the possession of the wife not being hostile in its inception did not thereafter become adverse.

The court did not pass upon the validity of the divorce decree, and held that since the husband knew of the decree and that the wife continue to live on the land owned by him, the wife's possession was adverse to the husband and the wife acquired title to the land. *Bride v. Walker*, 176 S.W. (2d) 148 (Ark. 1943).