

8-1956

Restitution – 1956 Tennessee Survey

John W. Wade

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Property Law and Real Estate Commons](#)

Recommended Citation

John W. Wade, Restitution – 1956 Tennessee Survey, 9 *Vanderbilt Law Review* 1112 (1956)
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol9/iss5/18>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in Vanderbilt Law Review by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact mark.j.williams@vanderbilt.edu.

RESTITUTION—1956 TENNESSEE SURVEY

JOHN W. WADE*

The pervasive principle of Restitution—that “A person who has been unjustly enriched at the expense of another is required to make restitution to the other”¹—makes use of many remedies, both at law and in equity. This year’s Restitution cases will be classified according to the nature of the remedy.

Subrogation and Indemnity

One who pays the obligation of another may be entitled to indemnity, if he has not acted officiously. He may also be entitled to the remedy of subrogation, permitting him to “step into the shoes” of the person to whom he paid and enforce any lien or right which that person may have against the obligor. One illustration of these remedies is given in *State v. Perry*,² involving the right given by statute to the Tennessee Department of Welfare to collect from a husband or father amounts paid by it for the support of a dependent wife or children.³ Two cases illustrate subrogation in connection with workmen’s compensation. The statute provides that when an employee is injured by a third party tortfeasor and the employer pays under the Workmen’s Compensation Act he is “subrogated to the extent of the amount paid or payable under such law” and has a lien on any amount collected by the employee or can himself sue the third party subject to certain restrictions.⁴ *Reece v. York*⁵ holds that when the employee receives a recovery from the third party, payment of workmen’s compensation installments by the employer is deferred “until the sum total of the net credits of weekly installments that would have accrued from the date of the injury would be equal to the net credit” of the recovery.⁶

*United States Fidelity & Guaranty Co. v. Elam*⁷ involved payment to an employee by the insurance carrier of the employer of an amount for medical expenses greater than that required by the workmen’s compensation statute. The employee later brought suit against a third party tortfeasor and plaintiff (employer’s insurer) intervened. The employee then entered into a settlement with defendants, who

* Dean, Vanderbilt University School of Law; member, Tennessee Bar.

1. RESTATEMENT, RESTITUTION § 1 (1937).
2. 280 S.W.2d 919 (Tenn. 1955).
3. TENN. CODE ANN. § 36-908 (1956).
4. *Id.* § 50-914.
5. 288 S.W.2d 448 (Tenn. 1956).
6. *Id.* at 450.
7. 278 S.W.2d 693 (Tenn. 1955).

agreed to indemnify the employee for anything he might have to pay the intervening insurance company. The court held that the insurance company was entitled to recover for the full amount expended. It summarizes its conclusion in this lucid fashion:

An employer who provides for the payment of excess medical and hospital services is not an intermeddler or a volunteer because:

(1) He is satisfying a moral obligation.

(2) He has a substantial interest in restoring his employees to service and in maintaining good will by the knowledge of the protection afforded them.

(3) The provision of such excess medical and hospital protection is in accord with the beneficent intention of the Legislature in passing the Workmen's Compensation Act.

(4) The provision of adequate medical and hospital services for the rehabilitation of every injured employee is in keeping with sound public policy.

In the case at bar the intervenor furnished the excess medical and hospital services under an agreement in its policy providing for conventional subrogation to the right of the employer and employee against the third party, and the employee's agreement to such subrogation will be implied by his having accepted the payment from intervenor of these excess medical and hospital services.⁸

Rescission

Cancellation of a deed for fraud was declared in *Anderson v. Nichols*,⁹ where the court discusses "badges of fraud" at length and indicates that they place the burden of proof on the defendant to establish validity of the deed. *Tucker v. Simmons*¹⁰ involved a bill in equity to rescind a release on the ground that it was induced by fraud and to recover adequate damages. The court affirmed the action of the chancellor in sustaining a demurrer to the bill, since the action was for unliquidated damages to the person. Complainants "could have proceeded in the law court and there had the release set aside and then could have obtained judgment for what unliquidated damages they were entitled to."¹¹ For this reason, resort to equity for rescission was unnecessary.

*Miller v. Hubbs*¹² was an action to set aside transfers made by a woman on her death bed while under the influence of drugs. The chancellor set aside two transfers because they were made without independent advice but upheld the major transfer on the ground that it was made in accordance with the wishes of her deceased husband and was warranted by the circumstances.

8. *Id.* at 704.

9. 286 S.W.2d 96 (Tenn. App. M.S. 1955).

10. 287 S.W.2d 19 (Tenn. 1956).

11. *Id.* at 21.

12. 285 S.W.2d 527 (Tenn. 1955).

*White v. Mid-City Motor Co.*¹³ and *Huddleston v. Lee*¹⁴ both involve rescission of a contract of sale because of breach of contract by the seller. In the first case there was a failure to supply good title and in the second a breach of warranty of merchantable quality. Under the sales act rescission is one of several available remedies. Both cases held that the buyer had not acted in such a fashion as to elect to abide by the sale or to waive his right to rescission.

Quasi-Contract and Equitable Accounting

In *Patrick v. Skinner*¹⁵ equitable accounting was held to be proper relief for a joint adventure. Said the court: "The appellant is entitled to a proper accounting on the joint adventure and will be entitled to show, if he can, that monies belonging to the joint adventure have been improperly diverted to other uses"¹⁶

In *Peavy v. Wilker*,¹⁷ plaintiff broker had a 30-day exclusive listing contract from defendant to sell his property. Plaintiff negotiated with one Bryan, who finally decided that he was more interested in renting than buying. Defendant declined to consider renting until five days after the listing contract had expired; he then rented to Bryan with an option for purchase within the 10-year period of the lease. The court held that the chancellor was correct in giving a conditional decree for the broker's commission in the event Bryan exercised his option to purchase. It declared that "to permit defendant to exploit the services of complainant would amount to constructive fraud" and that since plaintiff was "the procuring cause . . . recovery should be allowed."¹⁸ This may be explained either as recovery on the contract or in quasi-contract for the unjust enrichment.

*Shirley v. State*¹⁹ "involves the question of whether or not the court will return to those engaged in an unlawful gambling game money taken from the participants of the game by the Sheriff and turned over to the County Court Clerk."²⁰ There is involved here a conflict between the principle of unjust enrichment and the policy of declining to give aid to parties involved in an illegal transaction. The latter policy—expressed by the maxim, *In pari delicto potior est conditio defendentis*—prevails as a general rule, but there are many exceptions to the maxim.²¹ Under the precise facts of the instant case,

13. 284 S.W.2d 689 (Tenn. App. E.S. 1955).

14. 284 S.W.2d 705 (Tenn. App. M.S. 1955), 24 TENN. L. REV. 621 (1956).

15. 288 S.W.2d 726 (Tenn. 1956).

16. *Id.* at 731.

17. 284 S.W.2d 1 (Tenn. App. E.S. 1954).

18. *Id.* at 4.

19. 280 S.W.2d 915 (Tenn. 1955).

20. *Id.* at 916.

21. For general treatment, see Wade, *Restitution of Benefits Acquired Through Illegal Transactions*, 95 U. PA. L. REV. 261 (1947); Wade, *Restitution of Benefits Obtained Under Illegal Transactions—Reasons For and Against Restitution*, 25 TEXAS L. REV. 31 (1946).

where the defendant was not a party to the illegal transaction, a majority of the courts have held that the maxim does not apply and have granted relief. There is, however, a substantial minority, and the Tennessee court in this case joins this latter group in holding that no relief will be granted.