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cause of action.²⁸ However, the civilian concept of cause of action is much more restricted, and the object of the suit would not coincide with the cause of action.²⁹ The allegedly inexact date in the first suit, the grounds for the allegation that deceased died intestate in the second suit, and the allegation that deceased could not have possibly signed the will due to his absence from the state in the present suit would constitute different causes under the civil law.³⁰ Therefore, invalidity of the will would have been only the object of the suit and nothing more.

It is suggested that the civil law concepts of cause of action and *res judicata* should preclude the general applicability of the "might have been pleaded" maxim in Louisiana. Although public policy requires that litigation have an end, *res judicata* should not be applied unless there is present a *thing adjudged*, according to the requisites of Article 2286. Furthermore, the holding in the instant case appears to undo much of the good work of *Hope v. Madison* and the several cases following it.³¹ It is suggested that an adherence to the civilian concepts of cause of action and *res judicata* as expressed in the above case and the dissent in the present case would alleviate the confusion resulting from the co-existence of two discordant lines of authority.

Burrell J. Carter

SALES — AUTOMOBILES — BONA FIDE PURCHASER DOCTRINE

Plaintiff, an Alabama automobile dealer, agreed to sell an automobile to a Louisiana used car dealer for cash on delivery. Plaintiff's agent was instructed to deliver the car to New Orleans and to accept only cash in payment. When the agent delivered the car, however, he accepted a draft. The agent returned to Alabama and delivered the draft to plaintiff who made no effort to annul the sale or to secure the return of the car, but kept the draft for several days and then deposited it for collection. In the meantime, the used car dealer sold the automobile to defendant, a good faith purchaser. The draft was dishonored,

28. See note 4 *supra*.

29. *Hope v. Madison*, 194 La. 337, 193 So. 666 (1940). See note 14 *supra*. See also Comment, 2 LOUISIANA LAW REVIEW 347, 491 (1940).

30. See note 29 *supra*. They would, however, be reasons according to the common law concept of cause of action.

31. *E.g.*, *Leadman v. First Nat. Bank*, 198 La. 466, 3 So.2d 739 (1941); *Lloveras v. Reichert*, 197 La. 49, 200 So. 817 (1941).

and a criminal action was brought against the used car dealer, which resulted in his conviction of theft. Plaintiff brought this suit to recover the automobile from defendant on the ground that under Article 67 of the Louisiana Criminal Code the original transaction amounted to theft and no title passed either to the used car dealer or to defendant. The district court rendered judgment for plaintiff. On appeal to the Supreme Court, *held*, reversed. Failure to repudiate the payment by draft and the subsequent deposit of the draft for collection constituted a ratification of the agent's unauthorized act. This ratification converted the transaction into a credit sale, thus giving title to the used car dealer and hence to the good faith third party purchaser. The statutory definition of theft is part of the substantive criminal law and does not alter the provisions of the Civil Code applicable to a civil action. *Jeffrey Motor Co. v. Higgins*, 230 La. 857, 89 So.2d 369 (1956).

Under the provisions of both the French¹ and the Louisiana² Civil Codes, there is a general rule that the sale of a thing belonging to another is null. The French Civil Code contains a further provision under which the possessor of movables which are not lost or stolen is considered as the owner and may pass a valid title to a purchaser.³ This doctrine of *la possession vaut titre* was not incorporated into the Louisiana Civil Code and has been rejected by the Louisiana courts in cases where its application has been urged.⁴ The Louisiana Civil Code provides that movables which are not lost or stolen may be acquired by the prescription of three years⁵ when possessed by just title⁶ and in good faith.⁷ All movables may be acquired by the bad faith prescription of ten years.⁸ Although an owner can recover lost or stolen movables before they have been acquired by ten years bad faith prescription,⁹ one who purchases the lost or stolen movables at public auction or from one in the habit of selling such things is entitled to reimbursement of the purchase price¹⁰ after he has possessed the movable for three years.¹¹ To afford addi-

1. FRENCH CIVIL CODE art. 1599.

2. LA. CIVIL CODE art. 2452 (1870).

3. FRENCH CIVIL CODE art. 2279.

4. *Holton v. Hubbard*, 49 La. Ann. 715, 22 So. 338 (1897); *Holloway v. Ingersoll Co.*, 133 So. 819 (La. App. 1931).

5. LA. CIVIL CODE art. 3506 (1870).

6. *Id.* arts. 3483-3486.

7. *Id.* art. 3451.

8. *Id.* art. 3509.

9. *Davis v. Hampton*, 4 Mart. (N.S.) 288 (La. 1826).

10. LA. CIVIL CODE art. 3507 (1870).

11. *Security Sales Co. v. Blackwell*, 167 La. 667, 120 So. 45 (1928).

tional protection to the good faith purchaser of movable property, the Louisiana courts adopted the common law bona fide purchaser doctrine.¹² Under this doctrine, a purchaser in good faith for value acquires a valid title to a movable if his vendor has a voidable title.¹³ One holds by a voidable title,¹⁴ if he acquired the movable through fraud¹⁵ or other vice of consent,¹⁶ but a thief or finder has no title and can convey none.¹⁷ Despite the incorporation of the bona fide purchaser doctrine into Louisiana jurisprudence, the good faith purchaser was largely deprived of the protection in one recent Louisiana case which applied the statutory definition of theft¹⁸ in a civil suit to determine the character of possession which is obtained when a person acquires a movable by fraud.¹⁹ Under the broad scope of this statute, movables obtained through fraud are deemed to be stolen, and hence a transferee from the defrauder could not obtain a valid title.²⁰

The instant case repudiates the application of the statutory definition of theft in a civil suit and thus removes the obstacle to the full utilization of the bona fide purchaser doctrine in Louisiana.

12. *Thomas v. Mead*, 8 Mart.(N.S.) 341 (La. 1829).

13. *Wilson v. Commercial Finance Co.*, 239 N.C. 349, 79 S.E.2d 908 (1954); *Handley Motor Co. v. Wood*, 238 N.C. 468, 78 S.E.2d 391 (1953).

14. *Owens v. Cocroft*, 14 Ga. App. 322, 80 S.E. 906 (1914); *Gross, Kelly & Co. v. Bibo*, 19 N.M. 495, 145 Pac. 480 (1914).

15. *Baehr v. Clark*, 83 Iowa 313, 49 N.W. 840 (1891). In determining whether one who obtains a movable by fraud receives a voidable title or receives no title at all, the common law draws a distinction between a face to face transaction and a transaction by which the fraud is perpetrated by mail. 3 CORBIN, *CONTRACTS* § 602 (1951). In the face to face transaction, the defrauder obtains a voidable title (*Edmunds v. Merchants' Despatch Transp. Co.*, 135 Mass. 283 (1883)), whereas in the transaction conducted by mail, the defrauder obtains no title. *Smith v. Merchants & Traders' Bank*, 6 La. Ann. 610 (1851). The explanation given for this doctrine is that in the face to face situation the owner intends to transfer title to the individual with whom he is dealing, although there is a mistake as to the name, credit, and character of the person perpetrating the fraud. In the mail transaction, however, the owner intends to transfer title to the type of person with whom he thinks he is dealing, and not to the defrauder. 3 CORBIN, *CONTRACTS* § 602 (1951).

16. In cases containing vices of consent, the former owner may attack the sale and recover the movable if it has not been transferred to a good faith third party. *Richmond v. Mississippi Mills*, 52 Ark. 30, 11 S.W. 960 (1889). See *Cardone v. Consolidated Edison Co.*, 89 N.Y.S.2d 845 (Mun. Ct. 1949), where the vice of consent was error; *Callendar Savings Bank v. Loos*, 142 Iowa 1, 120 N.W. 317 (1909), where the vice of consent was duress.

17. *Alexander v. Busch*, 66 Okla. 17, 166 Pac. 900 (1917).

18. LA. R.S. 14:67 (1950): "Theft is the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential . . ."

19. *Port Finance Co. v. Ber*, 45 So.2d 404 (La. App. 1950).

20. *Packard Florida Motors v. Malone*, 208 La. 1058, 24 So.2d 75 (1945).

The draftsmen of the Civil Code of 1808 clearly intended to reject the French doctrine of *la possession vaut titre*.²¹ It might be argued that the draftsmen intended the prescription of three years to be the sole measure of protection afforded the good faith purchaser. However, while it is clear that this prescriptive period applies to the case where the good faith purchaser acquires the movable from one who has no title, it may be questioned whether this provision is intended to apply to the case where the good faith purchaser acquires the movable from a vendor who has a voidable title. Article 1881, which provides that contracts made through error, fraud, or other vice of consent are not null, but are voidable by the parties, has been interpreted to mean that a good faith third party purchaser is protected where his vendor has a voidable title.²² The question might be raised whether to this extent the Louisiana Civil Code is consistent with the common law bona fide purchaser doctrine. However this may be, it is clear today that the common law bona fide purchaser doctrine is well entrenched in Louisiana law.

T. Wilson Landry

TORTS — ESCAPING PRISONERS — DUTY OF STATE TO THIRD PERSONS

In the first of two recent cases¹ a fifteen-year-old inmate had escaped from a state reformatory. Following his escape, he stole an automobile which he negligently drove onto a public sidewalk, injuring plaintiff. Plaintiff charged the state with negligence in allowing the escape; but defendant's exception of no cause of action was sustained by the district court. On appeal, *held*, affirmed. The institution's duty to restrain a convicted criminal is not based on the purpose of protecting the general public from all harms that might be inflicted by an escaping prisoner, and the injury received was not one against which the state had a duty to protect. The court bolstered its opinion by finding that the acts of defendant in permitting the escape were not the proximate cause of plaintiff's injury. *Green v. State*, 91 So.2d 153 (La. App. 1956).

21. This intention is evidenced by the fact that the draftsmen adopted the French Civil Code articles which immediately precede and follow the French article establishing this doctrine (Article 2279), but omitted the latter article.

22. *Gonsoulin v. Sparrow*, 150 La. 103, 90 So. 528 (1921), a case involving immovable property.

1. In both these cases the state allowed itself to be sued pursuant to LA. CONST. art. III, § 35.