

Mississippi College Law Review

Volume 1 | Issue 1

Article 15

6-1-1978

The Good Faith Purchaser and the Superior Equities Doctrine - Allstate Insurance Company v. Estes

Steven Baker

Follow this and additional works at: <https://dc.law.mc.edu/lawreview>

Custom Citation

1 Miss. C. L. Rev. 55 (1978-1980)

This Case Note is brought to you for free and open access by MC Law Digital Commons. It has been accepted for inclusion in Mississippi College Law Review by an authorized editor of MC Law Digital Commons. For more information, please contact walter@mc.edu.

THE GOOD FAITH PURCHASER AND THE SUPERIOR EQUITIES DOCTRINE

Allstate Insurance Company v. Estes, 345 So. 2d 265 (Miss. 1977).

A new Chevrolet Sports Coupe was stolen from the lot of the Nimnicht Chevrolet Company of Jacksonville, Florida, in the early part of 1974. Thereafter Nimnicht Chevrolet called upon its insurer, Allstate Insurance Company, which paid the loss of the cost and insured value of the vehicle by delivering a check for \$4,613.05 to Nimnicht Chevrolet. On August 14, 1975, David L. Estes purchased this automobile in Jackson, Mississippi, from James E. Howard. Although Mr. Howard had no fixed place of business, he represented himself to be an automobile salesman and had a Mississippi dealer's license. Mr. Estes traded a 1970 Chevelle for the 1974 Sports Coupe and borrowed \$3,756.00 from Mississippi Bank and Trust Company of Jackson to pay off the First American Bank of Memphis, Tennessee, the lien holder of the Sports Coupe. Mr. Estes was furnished a Tennessee certificate of title and after the Mississippi Bank and Trust Company paid off the lien of the Memphis bank, the parties arranged for a Mississippi certificate of title, which Mr. Estes also obtained. Mr. Estes had no knowledge that the car he had purchased was stolen until January 16, 1975, when the Mississippi Highway Safety Patrol seized the vehicle and placed it in storage.

An investigation by the Mississippi Highway Patrol revealed that the car had been titled in Mississippi as a result of a Tennessee title. The automobile was titled in Tennessee due to an Alabama tag receipt. Since at that time Alabama was not a title state, Tennessee acknowledged the tag receipt as proof of ownership. Checking further, the Highway Patrol found that the tag receipt was obtained with a bill of sale which was a forgery from a car dealership in Montgomery, Alabama. The Highway Patrol concluded that after the car was stolen it was brought to Alabama, where the fraudulent bill of sale was procured, thereby allowing the thief to purchase a tag for the vehicle.

Immediately after the Mississippi Highway Patrol seized the automobile and put it in storage, Mr. Estes filed an action requesting an order directing that he be granted immediate possession of the car. When Mr. and Mrs. Estes executed a personal bond in the amount of \$5,000.00, the automobile was restored to them. The court allowed Allstate Insurance Company to file a petition to intervene upon notification that the automobile has been repossessed. Allstate made claim to the car since it had paid for the car, had valid title because of such payment, and was entitled to possession and ownership of the automobile.

The case was tried twice in the Circuit Court of the First Judicial District of Hinds County, the first trial ending in a mistrial when the jury was unable to agree on a verdict. In the second trial the jury, after considering the good faith equities as between Mr. Estes and Allstate Insurance Company, returned a verdict in favor of Mr. Estes. However, the Mississippi Supreme Court rejected the good faith equities approach of the jury and instead predicated its decision on the common law notion that a thief could not convey good title. Therefore title to the automobile remained in the insurance company, which obtained valid title by paying the Florida dealer's loss.

The supreme court examined the Mississippi Uniform Commercial Code section 75-2-403, which provides: "A purchaser of goods acquires all title which his transferor had or had power to transfer. . . . A person with voidable title has power to transfer a good title to a good faith purchaser for value."¹ The Mississippi Supreme Court determined that, irrespective of the number of transactions, this section mandates that a purchaser can take only those rights which his transferor has in the subject goods. Therefore a thief has neither title nor power to convey title. As a result, title remained in Allstate Insurance Company, and the circuit court order granting possession to Mr. Estes was declared erroneous.

Under the common law a transferor could pass only such title as he actually owned. A thief, therefore, could not pass good title under any circumstances. A purchaser obtaining a transfer in this manner was said to receive a void title. Thus the true owner could always recover his property. In 1958 the Mississippi Supreme Court laid down the following rule echoing the common law:

In pursuance of the general rule that a person cannot transfer a better title to a chattel than he himself has, one who has acquired possession of property by a crime such as theft cannot confer title by a sale even to a bona fide purchaser. Even innocent parties can acquire no title or lien from a tortious possessor. . . . The same defect of title will continue to exist in all subsequent sales by persons deriving title from a thief as a source.²

The severity of this common law principle with respect to innocent purchasers who had paid their money in absolute good faith induced some states such as New York to enact modifications of the common law rule so that the title owner who conveyed voidable title would not be empowered to rescind it against a bona fide purchaser for value.³ In short, the definition of what constituted a voidable title began to

¹U.C.C. § 2-403.

²Gurley v. Phoenix Ins. Co., 233 Miss. 58, 61, 101 So. 2d 101, 102 (1958), quoting 46 AM. JUR. Sales § 459.

³Atlas Auto Rental Corp. v. Weisberg, 54 Misc. 168, 281 N.Y.S. 2d 400 (1967).

undergo a gradual expansion, one which may not have yet terminated.

A void title is a nullity which cannot be confirmed or ratified, but "a person who has voidable title to goods subject to being avoided by his transferor, is able to transfer an indefeasible title to a good faith purchaser for value."⁴ "Reasoning that the rightful owner intended to pass title, even though this intention was fraudulently induced, the fraudulent buyer is said to get legal title and possession."⁵ Innocence would transform the defective title into a state of perfection.

The protected status of the good faith purchaser for value was further extended in many courts to invest circumstances where the title owner had not conveyed even a voidable title, "but had so clothed the transferor with apparent vestiges of authority and indicia of title that equitable principles of estoppel were invoked to preclude the title owner from asserting his title."⁶ This would cover such circumstances as "where the owner of an automobile or one having a security interest therein, permits another to have the motor vehicle's certificate of title, or any other document relied upon as evidencing title, with the result that a purchaser or subsequent encumbrancer is, or claims to be, misled as to the actual ownership of the vehicle."⁷ "The owner of personalty, or one having an interest therein, may, by clothing another with the apparent ownership or right of disposal, be estopped to assert his rights as against an innocent purchaser for value who, in dealing with the property, has relied upon such apparent ownership or authority."⁸

U.C.C. section 2-403 continued to extend the rights of a third person who has innocently bought property from a thief or from a person who has been entrusted with possession, even if not authorized to sell.⁹ Under U.C.C. section 2-401(2) title ordinarily passes when goods are delivered, unless otherwise explicitly agreed. Section 2-403 states that a voidable title is created when passage of title is made to depend upon the performance of some condition subsequent. Such a title can be transferred to a bona fide purchaser for value even if the transferor was deceived as to the identity of the purchaser, the delivery was in exchange for a check later dishonored, or the delivery was procured through a fraud and punishable as larcenous under the criminal law.¹⁰ Therefore what was previously uncertain has been made

³A R. DUSENBERG & L. KING, SALES AND BULK TRANSFERS UNDER THE UNIFORM COMMERCIAL CODE § 10.02 (1978); [hereinafter cited as DUSENBERG & KING]; see Sullivan v. Larson, 149 Neb. 97, 30 N.W. 2d 460 (1948) quoting, Rowley v. Bigelow, 29 Mass. (12 Pick.) 307 (1832).

⁴DUSENBERG AND KING § 10.02.

⁵54 Misc. 168, 281 N.Y.S. 2d 400, 403.

⁷Annot., 18 A.L.R.2d 813, 816 (1951).

⁸*Id.* at 816.

⁹54 Misc. 168, 281 N.Y.S.2d 400.

¹⁰U.C.C. § 2-403.

precise by section 2-403.¹¹ Subdivision two provides that the entrusting of goods to a person in the business of selling goods of that kind can validate a transfer to a buyer in the ordinary course of business; this is true, as is detailed in subdivision three, even if the procurement of the entrustment was larcenous.¹²

This gradual national expansion of the voidable title concept is indicative of the increased protection that society demands for the bona fide purchaser. The innocent transferee has for all practicable purposes attained a position where the courts can feel reasonably secure in allocating risks between him and the true owner, especially where neither party has been guilty of any culpable wrongdoing.¹³ "The U.C.C. represents substantial progress in the long journey toward the attainment of a merchantile or commercial theory regarding goods, documents, and instruments; and the inclusion of U.C.C. section 2-403 granting a measure of negotiability to goods in a commercial setting has been the most dramatic step forward."¹⁴

The dramatic step forward of U.C.C. § 2-403 represents a retreat from the common law notion expressed in the maxim *Nemo dat quod non habet*, that a person cannot give a better title to property than he himself possesses. While U.C.C. § 2-403 arguably replaces that void versus voidable title distinction and the doctrine of estoppel with more workable tests, the section has been criticized as unclear and for not going far enough.¹⁵

Thus where a transferor has failed to comply with a condition subsequent but nevertheless has conveyed the title to a bona fide purchaser, the transferor under section 2-403(1) has conveyed a good title. Section 2-403(2) similarly allows one who has been entrusted with the owner's property to convey such property to a bona fide purchaser, provided that the transferor has represented himself as a merchant who deals in the property. In either instance the transferor has been labeled a "thief" or "rogue" by various courts and commentators.

Consequently the question arises whether U.C.C. section 2-403 ap-

¹¹3 A. SQUILLANTE & J. FONSUS, WILLISTON ON SALES § 23-13 (4th ed. 1974) (hereinafter cited as WILLISTON ON SALES).

¹²U.C.C. § 2-403.

¹³R. SPEIDEL, R. SUMMERS, & J. WHITE, COMMERCIAL AND CONSUMER LAW (2d ed. 1974) 1204 [hereinafter cited as SPEIDEL, SUMMERS, & WHITE]; see, e.g., Schrier v. Home Indem. Co., 273 A.2d 248 (D.C. 1971); Johnny Dell, Inc. v. New York State Police, 84 Misc. 2d 360, 375 N.Y.S.2d 545 (1975); Barry Industries v. Aetna Cas. & Sur. Co., 302 A.2d 61 (D.C. 1973); Commercial Credit Corp. v. Pottmeyer, 176 Ohio St. 1, 197 N.E.2d 343 (1964).

¹⁴SPEIDEL, SUMMERS, & WHITE, *supra* note 13, at 1204.

¹⁵*Id.*; see note, *The Good Faith Purchaser of Goods and "Entrusting" to a Merchant Under the Uniform Commercial Code* § 2-403, 38 IND. L. REV. 675 (1963); see also Swartz, *The Bona Purchaser Revisited: A Comparative Inquiry*, 42 B.U.L. REV. 403 (1962).

plies to the thief who steals an automobile outright and subsequently has the automobile transferred to a bona fide purchaser. If the answer is no, as a number of courts have held,¹⁶ the question then arises as to where must the court draw the line in recognizing a voidable title in the possession of a "thief." Perhaps a more important question is whether section 2-403 points the way for the court to expand protection for the bona fide purchaser who receives title to property that is stolen outright.

The extensive enactment of certificate of title legislation has made the problem of applying U.C.C. section 2-403 to motor vehicles even more arduous. The U.C.C. generally acknowledges transfer of title to goods and does not prohibit specific state legislation controlling the transfer of title.¹⁷ Most states have statutes providing for the issuance of certificates of title or ownership to motor vehicles and these statutes "have played a part in contests involving the classic dispute between the rights of an owner and those of a good faith purchaser."¹⁸ Certificate of title laws have had a substantial impact because they have required that at the time of a sale of a motor vehicle, a certificate must be transferred to validate the transaction. "These vary from state to state and the judicial interpretations of similar provisions are not necessarily uniform."¹⁹

The legal history connected with certificate of titles to motor vehicles is well known:

At the outset travel by automobile was slow, and the system of filing and recording chattel mortgages on an automobile was simple and effective. [A]s time progressed...the automobile industry has become an immense commercial enterprise. The opportunities for fraud are quite obvious, for as a rule from the time it is first bought until it is junked an automobile changes hands many times. To meet this situation and to afford better protection to lien holders and innocent purchasers, a majority of the States have certificate of title acts in some form.... The legislatures of the states on the whole seem to be conscious that legislation of this kind is necessary to properly deal with the problems resulting from the sale and resale of automobiles.²⁰

Generally the certificate of title is similar to the Torrens system in that the central recordation of encumbrances and changes of title appear

¹⁶ See, e.g., *Walker v. Johnson*, 354 So. 2d 792 (Miss. 1978); *Litchfield v. Dueitt*, 245 So. 2d 190 (Miss. 1971); *Schrier v. Home Indem. Co.*, 273 A.2d 248 (D.C. 1971); *Linwood Harvestore, Inc. v. Cannon*, 427 Pa. 434, 235 A.2d 377 (1967).

¹⁷ WILLISTON ON SALES, *supra* note 11, at § 23-11.

¹⁸ DUSENBERG & KING, *supra* note 4, § 10.05; see Lusk, *Effect of Registration and Certificate of Title Acts on the Ownership of Motor Vehicles*, 21 and IND. BUS. STUDIES 8 (1941).

¹⁹ 2 R. ANDERSON, ANDERSON ON THE UNIFORM COMMERCIAL CODE § 2-401:9 (2d ed. 1970) [hereinafter cited as 2 R. ANDERSON].

²⁰ *Bank of Atlanta v. Fretz*, 148 Tex. 551, 226 S.W.2d 843, 847 (1950).

on a single instrument.²¹ When an automobile is sold, the certificate is given to the buyer, who sends it to a state agency which notes the change in ownership and issues a new certificate to the buyer, resulting in a complete record of changes in title.²²

Where the statute sets up a regular system of title registration, similar to the Torrens system of registering realty titles, and stipulates an exclusive procedure for the transfer of title and recordation of liens or encumbrances on the title certificate, it is generally held that an innocent purchaser for value, relying upon the possession of such a certificate showing no encumbrances will be protected against the claims of a chattel mortgagee, conditional vendor, or other holder of a security interest.²³

The effect of a motor vehicle certificate of title statute such as section 63-21-9 of the Mississippi Code²⁴ makes it impossible to validate a transfer of title to a buyer if the title certificate is not transferred. Although the U.C.C. does not displace such a statute under U.C.C. section 1-103, the U.C.C. is pertinent authority for other questions relating to the sale of a motor vehicle.²⁵

When a thief fraudulently procures a certificate of title and sells the car to a bona fide purchaser for value, the question arises whether the buyer receives a greater protection since he relied on the certificate of title or whether he loses the car under U.C.C. section 2-401 or 2-403 to the true owner. If the thief has stolen the car outright, then he apparently has failed to qualify under the voidable title-condition subsequent or entrustment provisions of U.C.C. section 2-403. Therefore he must rely upon the certificate of title to win over the true owner. His success may depend on whether the particular certificate of title act preempts the Code.

"Under most statutes, the certificate of title is evidence of ownership; of greater or less persuasiveness, so that an innocent purchaser for value, taking possession in reliance upon a certificate apparently valid, is in many instances protected."²⁶ Section 63-21-9 requires all vehicles to have a certificate of title. The contents of the certificate as detailed in section 63-21-9 must include the date issued, name of the party, address, and the names of the two prior lienholders, if any. The certificate of title issued by the comptroller is prima facie evidence of the facts appearing on it.

The transfer of title to automobiles is governed by the various states' motor vehicle title transfer acts. Under the U.C.C. it is im-

²¹ *The Impact of Automobile Certificate of Title Laws on Ownership and Encumbrance*, 36 MINN. L. REV. 77 (1951).

²² *Id.*

²³ Annot., 18 A.L.R.2d 813 (1951).

²⁴ MISS. CODE ANN. (1972).

²⁵ 2 R. ANDERSON, *supra* note 19, at § 2-401:9.

²⁶ *Id.*

material that no certificate of title has been transferred as may be required by local law; for the U.C.C. does not make the delivery of title certificate an essential element in the transfer of title.²⁷ The U.C.C. makes no distinction in the transfer of title between an automobile and any other kind of goods. "[I]n the absence of a local statute declaring the sale of an automobile void when a title certificate is not delivered, title to an automobile passes upon delivery in harmony with U.C.C. section 2-401."²⁸

Despite the fact that Mr. Estes' certificate of title was prima facie evidence of his ownership of the automobile in the instant case, the Mississippi Supreme Court reversed the circuit court's holding that Mr. Estes be vested with title, immediate ownership, possession, and control of the vehicle, and held that since a thief cannot convey a good title, title to the automobile remained with Allstate Insurance Company, which obtained valid title by paying the Florida dealer's loss. However, on virtually the same set of facts a contrary result was reached by another court in *Schrier v. Home Indemnity Company*.²⁹

In the *Schrier* case, a 1967 Cadillac sedan was stolen on June 14 of that year from a car rental agency by some unknown person. Eventually it came into the hands of a Maryland dealer and was purchased by Schrier in June 1967. It was delivered to him in Washington, D.C., by a representative of the Maryland dealer who signed a bill of sale and promised to procure a Maryland certificate of title for him. The car at the time bore Maryland dealer tags. About a month later the car was seized by the D. C. Metropolitan Police as stolen property. Schrier regained possession of the vehicle from the police on a replevin action and was granted certificate of title from the Department of Motor Vehicles of the District of Columbia since it was held that he had a right to the ownership to the car. Meanwhile Home Indemnity had paid its insured the value of the automobile at the time of the theft. The insurer then brought an action against the subsequent purchaser to recover the automobile or its value.

Although the District of Columbia Court of Appeals recognized that "a possessor of stolen goods, no matter how innocently acquired, can never convey a good title," it held that the insurer's right to recover would depend upon the finding by the trial court concerning relative equities of the parties, taking into consideration whether the insurer was dilatory to the actual prejudice of the purchaser in making its claims or whether the purchaser acted so negligently in purchasing the automobile without conclusive proof of title that its equities were inferior to those of the insurer.³⁰ The court further found in *Schrier*

²⁷ *Id.*

²⁸ *Id.*

²⁹ 273 A.2d 248 (D.C. 1971).

³⁰ *Id.* at 250.

that where "neither party is guilty of wrongdoing or culpable negligence, the party invoking subrogation cannot recover unless its equities are greater than those of its adversary."³¹

Subrogation is an equitable right which often supports the principle of indemnity, since the insurance company (Allstate Insurance Company in the present case) upon paying the insured (Nimnicht Chevrolet Company) steps into the insured's shoes and tries to assert claims of that insured against some other person (David L. Estes) for the loss for which it has paid.³² No general rule can be established which will provide a test for the application of subrogation in all cases.³³ Whether or not the remedy is applicable depends on the particular facts and circumstances of each case as it arises.³⁴ However "the doctrine as now applied is broad enough to include every instance in which one person, not acting voluntarily, pays a debt or discharges an obligation for which another is primarily liable, and which in equity and in good conscience should have been discharged by the latter...."³⁵ "[T]he doctrine of subrogation...is a remedy which is highly favored. The courts are inclined rather to extend than to restrict the principle."³⁶

Various maxims of equity have come into play when subrogation is sought, such as he who comes into equity must do equity. To be entitled to legal subrogation a "person" must act fairly and equitably and be free from fault.³⁷ "[C]ulpable negligence may prevent one from being afforded the equitable relief of subrogation."³⁸ Subrogation is also defeated by countervailing equities and will not be enforced to the prejudice of equal or higher rights of others.³⁹

This superior equity rule, as announced in the *Schrier* case, is distinctly applicable to the facts in the instant case since it is undisputed that the party invoking subrogation, Allstate Insurance Company, was not guilty of any wrongdoing or culpable negligence. The loss suffered by Allstate Insurance Company was \$4,613.05 as opposed to the loss to Mr. Estes of the automobile plus a debt to the Mississippi Bank and Trust Company which totaled \$4,617.00. The general thrust of the U.C.C., its title provisions, and case law reveals

³¹ *Id.* at 251. This same court reaffirmed the principle of superior equities in *Barry Indus. Inc. v. Aetna Cas. & Sur. Co.*, 302 A.2d 61 (D.C. 1975).

³² SPEIDEL, SUMMERS, & WHITE, *supra* at 869.

³³ *Hay v. Crawford*, 159 Kan. 723, 158 P.2d 463, 468 (1945).

³⁴ *Id.*

³⁵ *Nat'l Sur. Corp. v. Edwards House Col.*, 191 Miss. 884, 4 So. 2d 340, 341 (1941).

³⁶ *Schmid v. First Camden Nat'l Bank & Trust Co.*, 130 N. J. Eq. 254, 22 A.2d 246, 253 (1941).

³⁷ *Luikart v. Buck*, 131 Neb. 866, 270 N.W. 495, 496 (1936).

³⁸ *Castleman Constr. Co. v. Pennington*, 22 Tenn. 82, 432 S.W.2d 669, 676 (1968).

³⁹ *Norfolk & Dedham Fire Ins. Co. v. Aetna Cas. & Sur. Co.*, 132 Vt. 341, 318 A.2d 659, 662 (1974).

that when the problem of achieving a fair risk allocation between the true owner and bona fide purchaser occurs in the light of a commercial transaction, the trend in the law is to offer increased protection for the purchaser.⁴⁰ "Though proceeding on the basis that ownership rights should be secure, courts have favored the security of commercial transactions at least where the owner himself has exhibited carelessness or done other acts which allowed the fraudulent party to appear as the owner to the good faith buyer."⁴¹ In the instant case *Nimnicht Chevrolet* exhibited carelessness by negligently leaving keys in the automobile, thus allowing the vehicle to be stolen. When neither party is guilty of wrongdoing or culpable negligence, as is the situation in the present case between Allstate Insurance Company and Mr. Estes, the party invoking subrogation cannot recover unless its equities are greater than those of its adversary under the Superior Equities doctrine.

In *Allstate Insurance Company v. Estes*, a used automobile was purchased at a used car price from an individual licensed to sell cars. Under the circumstances the transaction was of such a character that a purchaser would not ordinarily have reason to suspect an infirmity of title. Mr. Estes was a good faith purchaser for value in the sense that he paid a substantial amount of money to a merchant whose business was such that Mr. Estes, as a customer, would ordinarily have no reason to suspect any infirmity of title. When one obtains a bill of sale with the valid signature of a grantor, a certificate of title from the State of Tennessee, a discharge of a lien by a Mississippi bank on a Tennessee bank which had a prior lien on the car, and a certificate of title from the State of Mississippi, it is difficult to imagine what more a good faith purchaser for value has to do when buying an automobile in order to obtain good title. And certainly under section 2-403(2) it was reasonable that Mr. Estes, having been informed that Mr. Howard was a merchant in the business of selling "goods of that kind" received good title to the automobile. Mr. Estes cannot be charged with the business knowledge of the purchasers in *Atlas Auto Rental v. Weisberg*⁴² and *Barry Industries v. Aetna Casualty and Surety Co.*⁴³ In those cases the business experiences of the purchasers demanded that they should have been put on guard as to the possible invalidity of the certificates of title they eventually received. In its latest decision in this area,⁴⁴ the Mississippi Supreme Court also charged the purchaser with similar responsibility.

Mr. Estes was simply an innocent consumer attempting to pur-

⁴⁰Gilmore, *The Commercial Doctrine of Good Faith Purchase*, 63 YALE L.J. 1056 (1954).

⁴¹DUSENBERG AND KING, *supra* § 10.02(3).

⁴²54 Misc. 168, 281 N.Y.S.2d 400.

⁴³302 A.2d 61.

⁴⁴Walker v. Johnson, 354 So. 2d 792.

chase a car he liked from a man who represented himself as a Mississippi dealer. The cases show that purchasers like Mr. Estes can just as innocently buy stolen cars or ones with forged certificates of title from established dealers.⁴⁵

In such a situation the doctrine of Superior Equities mandates that a jury must consider the equities between the parties and decide which party had the greater equities, as the jury did in the circuit court when it found for the appellee, Mr. Estes. For this reason the Mississippi Supreme Court erred in not upholding the Superior Equities doctrine.

The common law position concerning title was to protect the equities of ownership. This concept worked well when the market place was local or regional; but since today's market place is national in scope, the market demands that the purchaser be protected. In order to facilitate commercial transactions and to achieve a fair risk allocation between true owners and bona fide purchasers, the U.C.C. offers increased protection for the purchaser.⁴⁶

For instance, in *Linwood Harvestore, Inc. v. Cannon*⁴⁷ farmers who purchased silos from an individual whose contract was to transport the silos were held to be purchasers under U.C.C. section 2-403's entrustment provision.⁴⁸ In the first case⁴⁹ of this nature in this state the court held that a transferor who had paid the balance of the owner's note conveyed voidable title under section 2-403(2).⁵⁰ In the former case the transferor is labeled a thief, whereas in the latter case the court softens the label with some "twilight zone" semantics. In either case, the true owner wants what he believes is his property. This situation becomes even more ridiculous when the attempt is made to differentiate between the entrustment "thief" and the outright thief. To say that a voidable title exists where the transferor procures property through larcenous fraud and, in turn, say that a voidable title can not exist when the same thief steals the property outright is to walk a very thin, invisible line.

This line is made even more "invisible" where the auto, as in the instant case, has apparently gone through several subsequent holders

⁴⁵ See, e.g., 354 So. 2d 792; 375 N.Y.S.2d 545; 302 A.2d 61; 273 A.2d 248.

⁴⁶ The law in the European economic community also renders increased protection for the good faith purchaser. The French Civil Code art. 2279 as well as German law (§ 935) ordinarily protects the bona fide acquirer. Under Italian law the bona fide purchaser will in all cases receive good title, while Portugal and most of the South American countries offer unrestricted recovery for the bona fide purchaser for value. See Swartz, *The Bona Fide Purchaser Revisited: A Comparative Inquiry*, 42 B.U.L. REV. 403 (1962). Even in England under the common law, a good faith purchaser in the market overt could obtain good title from a thief. See WILLISTON ON SALES, *supra* note 11, at § 23-12.

⁴⁷ 427 Pa. 434, 235 A.2d 377 (1967).

⁴⁸ *Id.* at 380.

⁴⁹ *Litchfield v. Dueitt*, 245 So. 2d 190 (Miss. 1971).

⁵⁰ *Id.* at 191.

before it reaches the bona fide purchaser. It would seem that at this point the purchaser receives a voidable title. In *Commercial Credit Corporation v. Pottmeyer*,⁵¹ the Ohio Supreme Court acknowledged the wisdom of statutes which provide for protection of a bona fide purchaser, even when the goods are stolen from the true owner.⁵² *Johnny Dell, Inc. v. New York*⁵³ contains strong dicta to the effect that even under section 2-403(2) a purchaser who is a dealer in goods of that kind and who buys from another purchaser who has obtained the goods from a thief could, as a dealer in the goods, transfer voidable title to a bona fide purchaser for value.⁵⁴ Also by way of dicta, the Mississippi Supreme Court in its most recent decision in this area⁵⁵ implied that if the purchaser of a stolen auto had acquired a certificate of title at the time of purchase his claim to being an innocent purchaser for value would have carried more weight.⁵⁶

Thus there is throughout many of these decisions the uncertainty of what is encompassed by a voidable transaction. It seems then that U.C.C. 2-403 has not resolved the controversy. If anything its language as construed in some of the decisions apparently foreshadows a continued broadening of the concept.

Certainly the fact that the true owner in the instant case has been reimbursed for his loss by one whose business is to cover such losses further strengthens the proposition that the title of the purchaser should be prima facie evidence of its authority.

Consequently, as the jury fairly surmised, the decision in this case must turn on which of two innocent parties shall suffer for the fraud of a third. At this point it is extremely difficult to construe the facts otherwise. Considering the greater equities displayed by Mr. Estes and the fact that a transferor who obtains possession of goods from a true owner by acts which may constitute larcenous fraud or theft nevertheless has the power to transfer good title to a good faith purchaser for value under U.C.C. section 2-403, it becomes evident that the supreme court erred in not entitling Mr. Estes to keep possession of his automobile. U.C.C. section 2-403 protects a good faith purchaser from the inflexible common law rule that a thief cannot pass title to stolen goods by extending the rights of a third person who has innocently bought from a thief. As Professor Gilmore stated:

The only legal certainty is the certainty of legal change. But if we keep our categories broad and flexible, we can, as lawyers, do a good deal to see that change which will come in any case is helped into being, is in-

⁵¹ 197 N.E.2d 343.

⁵² *Id.* at 349.

⁵³ 375 N.Y.S.2d 545.

⁵⁴ *Id.*

⁵⁵ 354 So. 2d 792.

⁵⁶ *Id.* at 794.

tegrated into the body of the law as part of an ordered pattern and not left to come lurching and banging destructively into the vulnerable framework of a too rigidly conceived structure of doctrine, principles and rules.³⁷

If the law is to respond to the needs of commerce, it must favor the bona fide purchaser and the doctrine of Superior Equities.

Steven Baker

³⁷ Gilmore, *supra* note 40, at 1121.