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Personal Property

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PERSONAL PROPERTY

While there were no world-shaking developments in the field of personal property reported in 1962, several cases of interest were decided.

THIEVES

Thieves played a relatively major role in two interesting personal property cases reported in 1962. In *Schmeller Aluminum Foundry Co. v. Cohen*¹ the defendants, dealers in scrap metal, had purchased broken core plates from an individual who had been tried and convicted of grand larceny for the stealing of the aluminum core plates belonging to the plaintiff. The court of appeals held that the plaintiff had neither the burden of identifying the thief, nor showing that the defendants acted in bad faith. It was enough to show that the defendants had received property taken by theft from its owner to prove the conversion, and the innocence of the converter in taking possession was immaterial. In short, a thief cannot pass any title, and the receipt of possession from a thief is, in itself, a conversion.

In another case,² setting forth the same principle, the Supreme Court of Ohio stated that, notwithstanding the Ohio Certificate of Title Act, and notwithstanding an apparently proper certificate of title, a thief cannot convey a valid title to a stolen motor vehicle.

CHATTEL MORTGAGES

In *Hileman v. Harter Bank & Trust Co.*³ Hileman had purchased a washer and had executed and delivered to the seller a promissory note and a chattel mortgage on the washer. To expedite a possible repossession, the mortgage provided that in the case of default, the mortgagee could break into any premises where the chattel may be found and take possession. The seller assigned the note and the mortgage to the bank, and subsequently, Hileman defaulted on his payments. In Hileman's absence, the bank's employees removed the screen and entered Hileman's dwelling through a window and unlocked the door from the inside. Hileman returned and caught them in his home. With gun in hand, he ordered them to leave. They did. Hileman returned the washer to the bank and filed suit for trespassing. The supreme court, commenting on the dearth of authority in this state, and the divergence of opinion in other states, held that such a clause in a chattel mortgage permitting the

1. 183 N.E.2d 621 (Ohio Ct. App. 1962).

2. *Atlantic Finance Co. v. Fisher*, 173 Ohio St. 387, 183 N.E.2d 135 (1962).

3. 174 Ohio St. 95 (1962).