

the court to order a dissolution upon the establishment of the jurisdictional minimums, without such consideration, appears to negative the aspect of discretion so strongly indorsed by both decisions. Secondly, the omission of the term "irreparable injury" with regard to shareholder deadlock cannot be read to mean that benefit to shareholders is not to be considered, since the two terms are not synonymous.

The Oregon decision seems to be the more satisfactory interpretation while at the same time offering a method of resolving the dispute.¹³ In the language of the court, "The common law rule was thought to be an insufficient safeguard of the rights of the half owner of a corporation who happened to be out of power . . . any statutory rule which provided for liquidation as a matter of law would insufficiently safeguard the rights of the half owner who happened to be in power."¹⁴ Finally, keeping in mind the basic aversion of courts to the granting of a corporate dissolution absent a permissive statute, and the effect of such dissolution on a going business,¹⁵ an interpretation which calls for more than the bare statutory minimum to confer equity jurisdiction supplies the judicial and practical approach so often lacking in a strict interpretation of a legislative enactment.¹⁶

AARON K. BIKOFSKY

Currency—Negotiable Instruments Law—Recovery of Funds from Transferee of Thief.—*Crawford v. Altex Construction Service Inc.*¹—Plaintiff brought an action under Art. 2139 of the Louisiana Civil Code² to recover that portion of a sum of money stolen from him and turned over by the thief to the defendant in payment of a debt.³ The First City Court of New Orleans dismissed for want of a cause of action. The Court of Appeals reversed. HELD: An owner has a right to recover stolen money even from a good faith holder by virtue of Art. 2139, which article has not been superseded either by the Negotiable Instruments Law⁴ or the Federal power over currency.⁵

¹³ "... denial of relief at the present time may well lead to a fairer buy-sell agreement than the remedy of enforced liquidation . . ." 348 P.2d at 22.

¹⁴ 348 P.2d at 16.

¹⁵ "It is well settled that at common law and in the federal jurisdiction a corporation which has been dissolved is as if it did not exist . . ." *Oklahoma Gas Co. v. Oklahoma*, 273 U.S. 257 (1927).

¹⁶ For an excellent discussion of this subject see Carlos L. Israels, *The Sacred Cow of Corporate Existence—Problems of Deadlock and Dissolution*, 19 U. Chi. L. Rev. 778-93 (1952).

¹ 120 So. 2d 845 (La. 1960).

² La. Rev. Civ. Code, Chap. 5, Art. 2139.

"If money, or other stolen property be given in payment, the payment is not good, and the owner may recover the amount paid."

³ The amount involved was part of \$20,000 stolen from a cedar chest in plaintiff's home by a woman with whom he had been living.

⁴ La. Rev. Stat. § 7 (1904).

⁵ U.S. Const. Art. I § 8, cl. 5.

Section 196 of the NIL provides that in any case not specifically covered by the act the rules of the law merchant shall govern.⁶ One of the basic concepts of the law merchant has been that money is freely exchangeable with the consequence that an owner has no cause of action against a good faith taker of stolen funds.⁷ The question whether § 196 imposes the law merchant as ruling law in Louisiana, or whether the section is to be regarded merely as additional or supplemental advice for the guidance of the court has been discussed heretofore⁸ and the conclusion reached that not only is the law merchant now ruling law⁹ but that it had been the law of Louisiana prior to the adoption of the NIL.¹⁰ It would therefore appear that Art. 2139 was abrogated by the passage of the NIL.¹¹

That the NIL deals with negotiable instruments and not currency should not cause a different result to be reached.¹² As the court says, money is the reason for which commercial instruments issue.¹³ The basic concepts of the negotiability of instruments are based upon and measured by the "full" negotiability of money.¹⁴ Yet it is the anomalous result of this case that stolen funds can be recovered from a good faith taker from a thief while a negotiable instrument under the NIL is not so recoverable.¹⁵ Hence, in

⁶ La. Rev. Stat. § 7:195.

⁷ *Miller v. Race*, 1 Burrow 452, 457, 97 Eng. Rep. 398 (K.B. 1758):

"The true reason (why money cannot be followed into the hands of an innocent taker for value) is upon account of the currency of it: it cannot be recovered after it has passed in currency. It shall never be followed into the hands of a bona fide who took it in the course of currency, and in the way of his business."

Note: There is a notable lack of cases on this point since the 19th century.

⁸ McCloskey, *The Constitutionality of Section 196 of the Louisiana Negotiable Instruments Law*, 8 Tul. L. Rev. 127 (1933-1934). There are no reported cases in Louisiana construing this section.

⁹ *Id.* at 130:

"Likewise it may be argued that the term 'law merchant' in section 196 is not used in its generally accepted sense, and that the effect of this statute is not to adopt the law merchant as generally designated by the use of the term, but merely to direct the judge to have recourse to it as received usage The fact that Louisiana adopted the NIL in its entirety, however, would indicate that no difference in the meaning of the term in the Louisiana acts was intended. Furthermore, as pointed out above, the use of the words 'rule' and 'govern' would defeat any argument that section 196 was intended as merely directory."

¹⁰ *Id.* at 131.

¹¹ An earlier Louisiana case, decided after the adoption of the NIL was based on this mercantile-common law concept. The court distinguished this case to its satisfaction. *First Nat. Bank v. Givert & Clay*, 123 La. 845, 49 So. 593 (1909).

¹² The NIL does not attempt to regulate money and Article 3 of the UCC expressly excludes it. UCC § 3-103 & Comment.

¹³ *Crawford v. Altex Construction Service Inc.*, *supra* note 1, at 852.

¹⁴ *Merchants Loan & Trust Co. v. Lamson*, 90 Ill. App. 18, 19 (1899); *Stiller v. Rogers*, 69 Cal. App. 2d Supp. 805, 159 P.2d 457 (1947); *Britton, Bills and Notes*, § 1 & 2, p. 1-14 (1943).

¹⁵ A bearer instrument negotiated to a holder in due course would not be subject to the claim of theft by its former owner. NIL §§ 57, 58, 9, 30, 52. UCC §§ 3-305, 8-202, 8-301; 3-201, 3-207, 3-306; 2-305; 3-202, 8-309; 3-302, 3-304, 8-301, 8-302.

effect money is less negotiable than an instrument whose negotiability is subject to certain equities and defenses never available as against transferees of currency.

While it was not considered by the court to what extent Art. 2139 permits the tracing and recovery of "other property" stolen from the owner, it would seem that a negotiable instrument under the article could be recovered from a holder in due course transferee of a thief. Such obviously would be directly contrary to the result reached under the NIL. The holding in the instant case would also apparently permit the interpretation that funds may be recaptured in the hands of a subsequent transferee no matter how remote from the thief, as long as the money could be traced. This result is completely contrary to well established legal principles.¹⁶

In addition to the chaotic consequences of the case considered from the viewpoint of Negotiable Instruments Law, great difficulties are present insofar as it concerns the status of the federal currency, a matter exclusively within the control of the federal government.¹⁷ That the states are powerless to enact legislation limiting the exchangeability of currency is so fundamental as to require no comment.¹⁸

It should be noted that the decision in the instant case appears incompatible with one decided by the Supreme Court of New York wherein it was held that a good faith purchaser of foreign money received good title from a thief which could not be successfully attacked by the bank from which the funds had been stolen.¹⁹

The case is presently on appeal to the Supreme Court of Louisiana.²⁰

EDWARD A. ROSTER

¹⁶ *Miller v. Race*, supra, note 7. It is to be observed that the court in the instant case makes the distinction that the statute does not purport to give a cause of action for the very same bills which were stolen, but the amount thereof (*Crawford v. Altex Construction Service, Inc.*, supra note 1, at 851). Such a distinction does not change the effect of the statute which is to place a premium on the tracing of money.

¹⁷ 48 Stat. 113 (1933), 31 U.S.C. § 462 (1958); *Legal Tender Cases*, 79 U.S. 457, 545 (1870); *Norman v. Baltimore & O. R.R. Co.*, 294 U.S. 240 (1934).

¹⁸ Congress has even declared that notes of national banks are to be considered as money. 41 Stat. 387 (1920), 12 U.S.C. 109 (1958). As such the national banks are immune from such attempted state control "as would either frustrate the purpose of the national economy or impair the efficiency of national banks to discharge their statutory duties."

R. S. § 5133, 12 U.S.C. § 21 (1958); *Starr v. O'Connor*, 118 F.2d 548, 551 (6th Cir. 1941); See also, *Oliphant, The Theory of Money in The Law of Commercial Instruments*, 29 Yale L.J. 606, 617 (1920).

¹⁹ *Brown v. Perrera*, 176 N.Y. Supp. 182, 182 App. Div. 922 (1918).

²⁰ Petition for Certiorari and Review submitted to La. Sup. Ct. June 1960, No. 21,244.