

In the Institutes Lib. ii., Tit. 1, c. 33, it is laid down, "written characters although of gold accede to the paper or parchment on which they are written, just as whatever is built on, or sown in, the soil accedes to the soil. And therefore, if Titius has written a poem, a history, or an oration, on your paper or parchment, you, and not Titius, will be the owner of the written paper. But if you claim your books or parchments from Titius and refuse to defray the cost of the writing, then Titius can defend himself by an exception of *dolus malus*; that is, if it was *bonâ fide* that he obtained possession of the papers."

And in c. 34, it is further laid down, "If a person has painted on the tablet of another, some think that the tablet accedes to the picture, others that the picture, of whatever quality it may be, accedes to the tablet. It seems to us the better opinion, that the tablet should accede to the picture; for it is ridiculous that a painting of Apelles or Parrhasius should be but the accessory of a thoroughly worthless tablet. But if the owner of the tablet is in possession of the picture, the painter should he claim it from him, but refuse to pay the value of the tablet, may be repelled by an exception of *dolus malus*. If the painter is in possession of the picture, the law permits the owner of the tablet to bring a *utilis actio* against him; and in this case if the owner of the tablet does not pay the cost of the picture, he may also be repelled by an exception of *dolus malus*; that is, if the painter obtained possession *bonâ fide*. For it is clear that if the tablet has been stolen, whether by the painter or any one else, the owner of the tablet may bring an action of theft."

The concluding words of c. 34, we take it, must mean that in case of theft of the tablet the knowledge of the theft must be in some way imputable to the painter in order to deprive him of the position of a *bonâ fide* possessor. It can hardly be intended to include a theft of which he was entirely ignorant. Assuming this to be so, then, in the case under consideration, we may lay aside the question of theft of which C. was admittedly innocent, and the case seems clearly reduced to that of C. having in good faith got possession of A.'s canvas, and, believing it to be his own, painted the picture thereon.