

Forgery and fraud. A forged deed is void. The grantor whose signature is forged to a deed prevails over all persons, including subsequent bona fide purchasers from the grantee who do not know the deed is forged.

On the other hand, most courts hold that a deed procured by fraud is voidable by the grantor in an action against the grantee, but a subsequent bona fide purchaser from the grantee who is unaware of the fraud prevails over the grantor. The grantor, having introduced the deed into the stream of commerce, made it possible for a subsequent innocent purchaser to suffer loss. As between two innocent persons, one of whom must suffer by the act of the fraudulent third party, the law generally places the loss on the person who could have prevented the loss to the other. *McCoy v. Love*, 382 So. 2d 647 (Fla. 1979), illustrates this. In the case, one B.G. Russell sought to buy certain mineral interests from Mary Elliott, “a totally illiterate 87-year-old widow.” Mrs. Elliott agreed to sell Russell the mineral rights in 2 of 15 acres that she owned, but, unknown to her, the deed prepared by Russell and that Mrs. Elliott signed by her mark conveyed to him a much larger interest. Russell recorded his deed and promptly conveyed his interest to Love, who recorded. Oil was then found under the land. The court held that a deed procured by fraud, unlike a forged deed, is effectual to pass title to a bona fide purchaser. It remanded the case to determine if Love was a bona fide purchaser. If so, Love would prevail.

Determining the line between forgery and fraud is not always easy. See *Sheffield v. Andrews*, 679 So. 2d 1052 (Ala. 1996) (holding that a signature procured by deceiving the grantor into signing the instrument in ignorance of its true character is considered forged; \$1 million punitive damages assessed); see also *Delsas ex rel. Delsas v. Centex Home Equity Co., LLC*, 186 P.3d 141 (Colo. App. 2008) (distinguishing between fraud in factum and fraud in the inducement).