

Wood Vs. Roach

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Court : US Supreme Court

Decided On : 1792

Appeal No. : 2 U.S. 180

Appellant : Wood

Respondent : Roach

Judgement :

WOOD v. ROACH - 2 U.S. 180 (1792)

U.S. Supreme Court WOOD v. ROACH, 2 U.S. 180 (1792)

2 U.S. 180 (Dall.)

Wood

v.

Roach

Supreme Court of Pennsylvania

September Term, 1792

This was a Scieri Facias against the defendant, as garnishee of twenty-one hogsheads of flax-seed, the property of James Elliot. The defence was, that the defendant being a captain of a ship, had received the flax-seed, and signed a bill of lading, engaging to deliver the flax- seed to a consignee in Europe. To prove

this Moylan offered a bill of lading not signed, but annexed to an affidavit by Roach, setting forth that it was a copy of one signed, and delivered to the consignee, before the attachment was laid. The evidence was objected to: And by

M'Kean, Chief Justice:

This is not the best evidence; and, therefore, it cannot be admitted.

Bradford, Justice:

The paper offered in evidence is not a bill of lading; but it is offered as a copy, and to prove that a bill of lading, of the same tenor and date, was executed. If the instrument itself were produced, proof of the signature would be

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prima facie evidence that it was given when it bears date; but when the instrument does not appear, it cannot be supplied by the oath of the defendant. The evidence was accordingly rejected.

Other proof of the bill of lading being received, together with evidence that part of the goods was shipped, and part not; and some, though doubtful, evidence, that the consignment was in favor of a bona fide creditor, and intended as a remittance to him.

Moylan, for the defendant, argued, 1st. That the bill of lading transferred the property to the consignee. 1 Term. Rep. 205. 9. He to whom bills of lading are first delivered has the legal property; and an indorsement is sufficient to transfer it. It was so ruled in this Court, before the revolution, in the case of Morris versus ; where Kearney and Gilbert, shipped goods consigned to a merchant, in London, and as soon as the bills of lading were filled up, Morris attached them as the property of the consignee, and the attachment was sustained, though the goods had not been paid for by the consignee. Notice is not necessary, and when a consignment is in satisfaction of a debt, it passes the property even before

agreement. All the cases go upon the goodness of the consideration. So is 4 Burr. 2238. 1 Stra. 165.

2nd. The goods were liable for the freight, and could not be attached without tender of the freight, and indemnity to the captain. A demand of this indemnity was formally made upon the sheriff, by the captain. The lading is liable for the freight, nor is it liable to be attached. Beaux. Lex. Mer. 112. Although the vessel does not sail, yet freight is due if it be detained by the freighter's fault. Moll. B. II. Ch. 4 s. 9. Ibid. Ch. 3 s. 19. 2 Eq. Cas. Ab. 98. p. 1. In equity, freight is recoverable, though the goods be not on board. 3 Bac. 598. A pawn or pledge cannot be taken in execution; and all the cases consider the goods laden as pawned for the freight: 2 Bac. 352.

For the plaintiff, Serjeant and Todd contended, that no freight was due till the vessel breaks ground. Beaux. 110. Mol. B. II. Ch. 8. s. 3. Those authorities mention 'breaking ground,' as essential. But, at all events, this ought to have been pleaded; or might be settled now. Laws Corp. 245. The bills of lading did not pass the property absolutely; and the goods might be stopped in transitu. 2 Term. Rep. 63. 70. 3 Term. 119. 783. Esp. 327. 1 Atk. 245. Until goods are on board, the consignment cannot take effect.

Shippen, Justice. [*](#)

The facts which the Jury must decide, are-1st. Whether a bill of lading was signed as the defendants

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contend. 2nd. Whether the goods were consigned for the use of the consignee, or consignor. 3rd. Whether a real debt was due from the consignor to the consignee. These being determined, the law is clear, that a consignor can stop the goods in transitu only in two cases, 1st. Where he has received no consideration; And, 2nd. Where the consignee is insolvent. If the goods were not vested in the consignee, the defence, arising from the demand of freight and indemnification, is not

sustained. The captain has received his freight in Ireland, and received an indemnification from the consignee. He might have pleaded this; and as he has not done so, the matter is left open to equitable considerations. The freight, in strictness, is due when the goods are laden and bills signed. This is a rule founded on mercantile principles, and the inconveniences of the opposite doctrine. The cause, therefore, in the opinion of the Court, depends principally, upon this fact, whether, at the time of the attachment, the property of the goods was vested in the consignor, or consignee.

Verdict for the plaintiff. Footnotes

[[Footnote *](#)] The Chief Justice, being absent.

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