

The St. Jose Indiano

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Court : US Supreme Court

Decided On : 1816

Appeal No. : 14 U.S. 208

Appellant : The St. Jose Indiano

Judgement :

The St. Jose Indiano - 14 U.S. 208 (1816)

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The St. Jose Indiano

14 U.S. (1 Wheat.) 208

APPEAL TO THE CIRCUIT COURT FOR

THE DISTRICT OF MASSACHUSETTS

SYLLABUS

Goods were shipped by D. B. & Co. in the enemy's country on board a neutral ship bound to a neutral port, which was captured and brought in for adjudication. The invoice was headed "consigned to Messrs. D.B. & F., by order and for account of J. L." In a letter accompanying the invoice from the shippers to the consignees, they say

"For Mr. J. L. we open an account in our books here, and debit him, &c.;, but find his order for goods will far exceed the amount of these shipments; therefore, we consign the whole to you, that you may come to a proper understanding with him."

Held that the goods were, during their transit, the property and at the risk of the enemy shippers, and therefore subject to condemnation as prize.

In general, the rules of the prize court as to the vesting of property are the same with those of the common law, by which the thing sold, after the completion of the contract, is properly at the risk of the purchaser.

It is competent for an agent abroad who purchases in pursuance of orders to vest the property in the principal immediately on the purchase. This is the case when he purchases exclusively on the credit of his principal or makes an absolute appropriation and designation of the property for his principal.

The ship *St. Jose Indiano*, bound from Liverpool to Rio de Janeiro, was captured and sent into the United States, as prize of war in the summer of 1814. The ship and most of the cargo were condemned as British property in the circuit court, and there was no appeal by any of the claimants except in behalf of Mr. J. Lizaur, of Rio de Janeiro. The right of Mr. J. Lizaur to have restitution of property belonging to him at the time of capture was not contested by the captors, but it was contended that the property in question, when captured, was at the risk of the shippers, Messrs. Dyson, Brothers & Co. of Liverpool. The bill of

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lading did not specify any order or account and risk. The invoice was headed "consigned to Messrs. Dyson, Brothers & Finnie, by order and for account of J. Lizaur." In a letter accompanying the bill of lading and invoice of 4 May, 1814, from Dyson, Brothers & Co. to Dyson, Brothers & Finnie, they say

"For Mr. Lizaur we open an account in our books here and debit him, &c.; We cannot yet ascertain the proceeds of his hides, &c.;, but find his order for goods will far exceed the amount of these shipments; therefore we consign the whole to

you, that you may come to a proper understanding with him."

The house of Dyson, Brothers & Co., of Liverpool and of Dyson, Brothers & Finnie, of Rio, consist of the same persons; goods claimed in behalf of the latter house were condemned on the ground that both firms represented the same parties in interest, and from this decision there was no appeal.

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STORY, J., delivered the opinion of the Court, and after stating the facts proceeded as follows:

The single question presented on these facts is in whom the property was vested at the time of its transit; if in Mr. Lizaur, then it is to be restored; if in the shippers, then it is to be condemned. It is contended in behalf of the claimant that the goods having been purchased by the order and partly with the funds of Mr. Lizaur, the property vested in him immediately by the purchase, and the contract being executed by the sale, no delivery was necessary to perfect the legal title; that nothing was reserved to the shippers but a mere right of stoppage *in transitu*, and that if they had been burnt before the shipment or lost during the voyage, the loss must have fallen on Mr. Lizaur.

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The doctrine as to the right of stoppage *in transitu* cannot apply to this case. That right exists in the single case of insolvency, and presupposes not only that the property has passed to the consignee, but that the possession is in a third person in the transit to the consignee. It cannot, therefore, touch a case where the actual or constructive possession still remains in the shipper or his exclusive agents. In general, the rules of the prize court as to the vesting of property are the same with those of the common law, by which the thing sold, after the completion of the contract, is properly at the risk of the purchaser. But the question still recurs when is the contract executed? It is certainly competent for an agent abroad who purchases in pursuance of orders to vest the property in his principal immediately

on the purchase. This is the case when he purchases exclusively on the credit of his principal or makes an absolute appropriation and

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designation of the property for his principal. But where a merchant abroad, in pursuance of orders, either sells his own goods or purchases goods on his own credit (and thereby, in reality, becomes the owner), no property in the goods vests in his correspondent until he has done some notorious act to divest himself of his title or has parted with the possession by an actual and unconditional delivery for the use of such correspondent. Until that time, he has in legal contemplation the exclusive property as well as possession, and it is not a wrongful act in him to convert them to any use which he pleases. He is at liberty to contract upon any new engagements or substitute any new conditions in relation to the shipment. These principles have been frequently recognized in prize causes heretofore decided in this Court. In the present case, the delivery to the master was not for the use of Mr. Lizaur, but for the consignees, a house composed of the same persons

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as the shippers and acting as their agents. They therefore retained the constructive possession as well as right of property in the shippers, and it is apparent from the letter that the shippers meant to reserve to themselves and to their agents, in relation to the shipment, all those powers which ownership gives over property. It is material also in this view that all the papers respecting the shipment were addressed to their own house or to a house acting as their agents, and the claimants could have no knowledge or control of the shipment unless by the consent of the consignees under future arrangements to be dictated by them. In this view, this case cannot be distinguished from that of Messrs. Kimmell & Alvers, and it steers wide of the distinction upon which Messrs. Wilkins' claim was sustained. The authorities also cited at the argument by the captors are exceedingly strong to the same effect. *The Aurora* approaches very near to the present case. There, the shipment, by the express agreement of the parties, was

in reality, going for the use and by the order of the purchaser, but consigned to other persons, who were to deliver them if they were satisfied for the payment. And Sir William Scott there quotes a case as having been lately decided where goods sent by a merchant in Holland, to A., a person in America, by order and for account of B., with directions not to deliver them unless satisfaction should be given for the payment, were condemned as the property of the Dutch shippers.

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On the whole, the Court is unanimously of opinion that the goods included in this shipment were, during their transit, the property, and at the risk of the shippers, and therefore subject to condemnation. The claim of Mr. Lizaaur must therefore, be rejected.

Sentence affirmed with costs.

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