

CHAPTER XII

PASSING OF PROPERTY

I

ANTE-BELLUM CONTRACTS AND SHIPMENTS

Sec. 349. Preliminary Observations. The question which the Prize Courts were most frequently called upon to decide in connection with the liability of goods to condemnation was whether the ownership had legally passed to the claimant at the time of capture. The determination of the question frequently involved an interpretation of particular kinds of contracts employed in maritime transactions such as those containing f.o.b. (free on board) and c.i.f. (carriage, insurance, freight) clauses, clauses containing the words "documents against acceptance," "no arrival, no sale," etc.; whether the sellers intended to reserve the right of disposal of the goods (*jus disponendi*); the legal import of bills of lading; who had the ownership in the case of shipments to or by enemy branch houses or selling agencies in neutral territory; the effect of the domicile of the claimant in neutral territory; and whether the rights of mortgagees, pledgees and lien holders of enemy goods were rights of property. The determination of these questions was often admittedly very difficult in view of the complex and involved nature of the transactions. The decisions of the British Prize Courts were by far the most numerous and it was they which discussed with the greatest fullness the questions of law involved and which laid down in the clearest terms the principles upon which the decisions were reached.

Sec. 350. Distinction Between Ante-Bellum and Post-Bellum Transactions. The British Prize Courts, in particular, attached great importance to the distinction between contracts and shipments made in good faith prior to the outbreak of war, especially when war was not yet anticipated by the parties, and those made after the outbreak of war or at a time when war