

right of payment against the buyers and only a *jus disponendi* as holders of a bill of lading not endorsed to them, they could not, he contended, be regarded as having a "general property" in the cargo and still less the risk.<sup>1</sup>

Sir Samuel Evans held, first, that since all the material parts of the business transaction in this case took place *bona fide* during peace the law to be applied in determining who were the owners at the time of capture was the "ordinary municipal law governing contracts for the sale and purchase of goods." In the second place, he held that in a case like this where the goods were contracted to be sold and were shipped during peace when war was not imminent and were captured afloat after war had supervened it was, he thought, a "cardinal principle" that they were not subject to condemnation unless under the contract the property in the goods had passed at the time of capture, to the enemy buyer. The element of risk was not the determining factor of ownership; it was rather the intention of the parties which was decisive. Finally, in the present case the sellers having reserved the *jus disponendi* over the goods, he held that the property remained in them and would have so remained until the shipping documents were tendered to be accepted by the buyers and the bill of exchange for the price was paid. The property had not therefore passed to the enemy buyers at the time of capture and accordingly the goods must be restored to the claimants.

**Sec. 352. The Same. Case of the "Parchim."** In the case of the *Parchim*,<sup>2</sup> a German firm of Hamburg and Valparaiso had in July, 1914, contracted to sell a Dutch company a cargo of nitrate which was shipped on a Russian vessel destined to a Dutch port. During the course of the voyage war broke out and the cargo was seized by the British (December 6). The bills of lading in triplicate were made out to the order of the Valparaiso branch of the German firm, were endorsed by it in blank and sent to the buyers. The latter deposited the full invoice price with the sellers' bankers about December 9, with instructions not to part with the money until the bills of lading arrived. The third set only arrived the latter part of January and they were not handed to the buyers against release of the deposited price until after that date. On these facts Sir Samuel Evans held that the sellers having reserved the right of disposal of the goods did not

<sup>1</sup> See also as to this *supra*, Secs. 330, 331.

<sup>2</sup> IV Lloyd 375; I Br. & Col. Pr. Cas. 579. See also Sec. 352, *supra*.