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**C. I. F. CONTRACTS—PASSAGE OF TITLE—
RISK OF LOSS**

***Obrecht v. Crawford et al.*¹**

Obrecht and Company, conducting a feed business in Baltimore, contracted to buy from Crawford, Keen and Co., feed exporters in South America, 500 Tons of Argentine Feed Flour, c. i. f. Baltimore, on irrevocable sight letter of credit to be opened at Buenos Aires. Seller was ready, willing, and able to perform, but the buyer, in violation of his contract, failed to open the letter of credit. The flour was perishable, and the seller resold it for the account of the buyer. The proceeds of the sale were less than the original contract price, and seller brought suit to recover the difference. Verdict and judgment were for the plaintiff, and defendant buyer appealed. *Held*: Affirmed.

The main question presented to the Court of Appeals was whether the jury were properly instructed as to the amount of recoverable damages. The Court, however, in reaching their decision, presented a clear statement of the law of passage of title and risk of loss, under a c. i. f. contract for the sale of goods. This note will be limited to a discussion of the latter points.

The letters "c. i. f." are abbreviations of the words, "cost, insurance and freight", and when used in connection with a contract for the sale of goods, signify that the

¹ 2 A. (2d) 1 (Md. 1938).

price quoted includes the cost of the goods, the cost of insurance thereon, and the freight charges to the place of destination.²

While the contract of sale, c. i. f. the point of destination, is of recent origin in American decisions, it has long been familiar to English Courts. The law in this country, however, has followed closely the line of English decisions, relying mainly on the leading cases of *Trequelles v. Sewell*,³ *Ireland v. Livingston*,⁴ and the leading modern authority of *Biddell Bros. v. Horst*.⁵

This type of contract has been loosely described as a sale of documents, rather than a sale of goods.⁶ Delivery to the purchaser and performance by the seller are considered complete when the seller delivers the goods to the carrier for transportation, and tenders the shipping documents, i. e. a bill of lading, invoice, and policy of insurance, to the buyer. As was said in the *Obrecht* case, citing *Biddell Bros. v. Horst*.⁷

“ . . . the meaning of a contract of sale under cost, freight, and insurance terms is so well settled that it is unnecessary to refer to authorities on the subject. A seller under a contract of sale containing such terms has firstly to ship at the port of shipment goods of the description contained in the contract; secondly to procure a contract of affreightment, under which the goods will be delivered at the destination contemplated by the contract; thirdly to arrange for an insurance upon the terms current in the trade which will be available for the benefit of the buyer; fourthly to make out an invoice as described by Blackburn, J. in *Ireland v. Livingston* ((1872) L. R. 5 H. L. 395) or in some similar form; and finally to tender these documents to the buyer so that he may know what freight he has to pay and obtain delivery of the goods, if they arrive or recover for their loss, if they are lost on the voyage. Such terms constitute an agreement that the delivery of the goods, provided they are in conformity

² 10 A. L. R. 710, and cases there cited; 55 C. J. 487.

³ 7 H. & N. 573 (1862).

⁴ L. R. 5 H. L. 395, 41 L. J. Q. B. N. S. 201, 27 L. T. N. S. 79 (1871).

⁵ A. C. 18, 81 L. J. K. B. N. S. 42, 105 L. T. N. S. 563, 28 T. L. R. 42 (1912).

⁶ *Arnold, Karberg and Co. v. Blythe, G. J. and Co.*, 1 K. B. 495, 7 B. R. C. 934 (1916).

⁷ *Supra*, n. 5.

with the contract, shall be delivery on board ship at the port of shipment. It follows that against tender of these documents, the bill of lading, invoice, and policy of insurance, which completes delivery in accordance with that agreement, the buyer must be ready and willing to pay the price."

Since performance by the seller is complete on delivery of the goods to the carrier for transportation, and tender of the shipping documents to the buyer, the logical place for the passage of title is at that point.⁸ The Maryland Court of Appeals in the instant case raises a presumption that title is intended to pass when the goods are shipped, which presumption may be rebutted by showing a different intent of the parties:

"So in the absence of a different intention to the contrary it may be assumed that the place of shipment is also the place of delivery, since from that point title would be in the buyer, and the shipment at his risk."

Whatever controversy has arisen as to the time of passage of title is largely due to the presence of inconsistent terms in the contract, i. e. payment by the seller of the freight to the point of destination, and insurance of the goods for the benefit of the buyer. The Sales Act provides:⁹

"Unless a different intention appears, the following are the rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer: . . . Rule 5. If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation, the property does not pass, until the goods have been delivered to the buyer or reached the place agreed upon."

Applying this rule to a c. i. f. contract, it would seem that the property interest in the goods is not to pass until delivery at the point of destination. However, it is now fairly well settled that the provision for insurance is a stronger indication of the intent of the parties that title should pass immediately upon shipment. The provision

⁸ Williston, Sales, 280, 280b; Benjamin, Sales, 851; 55 C. J. 487.

⁹ Uniform Sales Act. sec. 19 (5); Md. Code, Art. 83, Sec. 40.

that the seller is to pay freight may be explained as affecting only the price of the goods, while insurance provisions for the benefit of the buyer become meaningless unless the buyer has a property interest to insure.¹⁰

Since title passes at the point of shipment, the risk of loss during transit is held to fall on the buyer; and on tender of the shipping documents to the buyer, the seller is held to be entitled to the amount of the purchase price, even though the goods have been destroyed before reaching the place of destination, and the vendor knows of such destruction.¹¹ This works no hardship on the buyer, as the goods have been insured in his favor.

An earlier Maryland case, *Agri Mfg. Co. v. Atlantic Fertilizer Company*,¹² also involving a shipment c. i. f., was not mentioned by the court in the *Obrecht* case. In the *Agri* case, a carload of ground tankage was shipped "c. i. f. buyer's works" at Baltimore, Md. By the terms of an elaborately worded contract, the seller represented that the tankage would show a certain nitrogen content (to be determined by the use of several complicated tests), and in the event of a lesser nitrogen content than represented, the buyer was to have the right to refuse the goods. The Court held that this right of refusal on the part of the buyer showed that it was not intended that title should pass until the tests were made, and since the goods were destroyed by fire before an opportunity for a test could be had, the risk of loss remained on the seller.

The court gave little discussion to the c. i. f. terms in the contract, but treated them merely as an agreement by the seller to pay the freight to the place of destination, and gave no consideration to the insurance provision, saying:

"The term, "c. i. f. your works", as used in the agreement, is shown by the testimony to mean that the seller should pay the cost, including freight, incurred in the transportation. The material shipped and destroyed by the fire was appropriated by the seller to the contract, but as it was the duty of the seller, under the terms of the sale, to make delivery at the buyer's factory, and to pay the freight on the shipment, the

¹⁰ Vold, Sales, 217; *Smith Co. v. Marano*, 267 Pa. 107, 110 A. 94, 10 A. L. R. 697 (1920).

¹¹ *Manbre Saccharine Co. v. Corn Products Co.*, (1919) 1 K. B. 198, 88 L. J. K. B. N. S. 402, 120 L. T. N. S. 113, 35 T. L. R. 94.

¹² 129 Md. 42, 98 A. 365, Ann. Cas. 1918 D 396, (1916).

rule last quoted (Sales Act, sec. 19 (5))¹³ precludes any question as to the transfer of the title before the delivery at the designated place was accomplished."¹⁴

The language used in this decision thus seems directly *contra* to that of the *Obrecht* case. It is submitted, however, that the language is much broader than was necessary for the decision of the case. The real basis for the court's conclusion was, that there was an absolute right of *refusal* given, if the nitrogen content of the goods was below a certain percentage. This right of refusal was held to be a conclusive indication that title was not to pass to the buyer until the opportunity for making the test was afforded.¹⁵

In the normal c. i. f. contract, such as appeared in the *Obrecht* case, the insurance provision prevails over the term providing for the payment of freight, in showing the intent of the parties that title should pass immediately on delivery of goods to the carrier. In the *Agri* case, however, the insertion in the contract of a right of refusal after certain tests, added another factor to show that the intent of the parties was to have title remain in the seller until such tests were made.

Maryland, then, is probably in line with the great weight of authority in holding that where goods are shipped c. i. f., title passes immediately on delivery of the goods to the carrier for transportation to the buyer and the tender of the shipping documents to the buyer, subject to the limitation that the insertion of additional terms might show an intent to have title pass at a different time and place.¹⁶

¹³ *Supra* circa n. 9.

¹⁴ *Supra* n. 12, 129 Md. 42, 47.

¹⁵ *Ibid* 129 Md. 42, 48, 51.

¹⁶ For further discussion of c. i. f. contracts, see 20 A. L. R. 1236; 11 A. L. R. 663; 10 A. L. R. 701; L. R. A. 1918B, 823; 4 L. R. A. 660; 55 C. J. 487; 23 R. C. L. 1335; Ann. Cas. 1914C, 217; Williston, Sales, Secs. 280-280j; Benjamin, Sales, 811, 851; Vold, Sales, 216 et seq.; Waite, Sales, 277; (1922) 32 Yale L. J. 711; (1920) 30 Yale L. J. 90; (1921) 34 Harvard L. R. 741, 750 et seq.; (1919) 6 Va. L. R. 229; (1921) 21 Col. L. R. 724; (1922) 22 Col. L. R. 601.