

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C.

In the Matter of the Claim of :

A. DAIGGER & COMPANY, INC.
159 West Kinzie Street,
Chicago, Illinois

:
: Docket No. Y-1593

: Decision No. 878
:
:

Under the Yugoslav Claims Agreement
of 1948 and the International Claims
Settlement Act of 1949

FINAL DECISION

Thirty days, or such extended time as may have been granted by the Commission, having elapsed since the Claimant(s) herein and the Government of Yugoslavia were notified of the Proposed Decision of the Commission on the above Claim, and no objections thereto or notice of intention to file brief or request for hearing having been filed, or, if filed, no further evidence or other representations having been offered pursuant to the opportunity duly afforded therefor, such Proposed Decision is hereby adopted as the Commission's final decision on this Claim.

Done at Washington, D. C.

AUG 23 1954

INTERNATIONAL CLAIMS COMMISSION OF THE UNITED STATES
DEPARTMENT OF STATE
Washington, D. C.

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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$6,283 by A. Daigger & Company, Inc., which was allegedly incorporated under the laws of the State of Illinois on September 29, 1905. According to an Affidavit of the Chairman of the Board of the said Corporation, more than 20% of the outstanding securities were owned directly by nationals of the United States at the time of the occurrences set forth in the Statement of Claim.

The claim is predicated upon the fact that the claimant forwarded, on February 10, 1941, chemicals valued at \$6,283 to New York, New York, for shipment to Farmabion Biokemijski Laboratories, Zagreb, Yugoslavia via Istanbul, Turkey on the S. S. "Bosiljka," a ship of Yugoslav registry. On or about March 18, 1941, the steamer "Bosiljka" cleared the port of New York with these chemicals aboard, bound for Istanbul. However, the steamer was directed to return to New York because, in the meantime, Yugoslavia was invaded by the Axis powers. The Government of Yugoslavia in exile requisitioned the entire cargo of the S.S. "Bosiljka", while it was on the high seas and directed it to return to the port of New York.

The Government of Yugoslavia, in its report dated June 25, 1953, states that the cargo of the S.S. "Bosiljka", including the merchandise involved in this claim, was sold by the Yugoslav Emigrant Government as perishable cargo subject to decay. The proceeds from the sale were

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deposited with the Irving Trust Company of New York. After the war these proceeds were transferred to Yugoslavia and deposited in Court. An amount of 170,701.50 dinars was set aside for the firm "Farmabion" of Zagreb. However, the owner of "Farmabion", one Dr. Milan Farkas, could not be found and on May 15, 1950, the Court transferred the deposit to the Government of Yugoslavia, pursuant to the existing regulations. That Government also stated that "Farmabion" has not been taken by the Government of Yugoslavia.

The evidence submitted with the Statement of Claim shows that the merchandise was delivered to the S.S. "Bosiljka" on or about February 26, 1941 for shipment to the vendee. It is a settled rule that title to merchandise sold passes at the time when delivery is made to a common carrier, if the circumstances do not show a different intent of the parties. The merchandise was sold f.a.s. (free alongside ship) New York. That it was the intention of the parties that title passed at the time of the sale is evidenced by the copy of the Invoice dated February 10, 1941 applicable to this transaction which shows "Terms Cash" and also of a statement by the claimant that ". . . when the ocean Bill of Lading was issued claimant mailed it to the consignee with a request for payment." That the Government of Yugoslavia was also of the opinion that title had passed to the vendee is evidenced by the following statement in a letter of February 5, 1942 to the claimant from the firm of Chadbourne, Hunt, Jaeckel & Brown, attorneys for the Government of Yugoslavia:

"The Royal Yugoslav Government requisitioned the Bosiljka and all of its cargo last spring. This action was taken in order to conserve the assets of nationals of Yugoslavia from the hands of the Axis forces."

Since 1743 in Snee v. Prescott (1 Atk. 245, 248) the Anglo-American rule has been: "If goods are delivered to a carrier or hoyman to be delivered to A and the goods are lost by the carrier or hoyman, the consignee can only bring the action, which shows the property to be in

"him, and it is the same where goods are delivered to a master of a vessel." In R. P. Andrews & Co. v. United States, 41 Ct. Cl. 48 (1905) affirmed in 207 U.S. 229, the rule was stated as follows: "Where the vendor, pursuant to the terms of the contract and to the vendee's orders, delivered goods on a designated vessel and prepaid the freight, and nothing more remained to be done by him, the title passed . . ." In a recent decision it was stated: "Under sales contracts providing either for delivery f.o.b. (free on board) or c.i.f. (cost, insurance, freight prepaid) title to goods passes from seller to buyer on delivery of goods to carrier . . ." (Commissioner of Internal Revenue v. East Coast Oil Co., 85 F.2d 322, certiorari denied 299 U.S. 608).

We therefore conclude that claimant had no title to the goods when they were requisitioned by the Government of Yugoslavia. Consequently, claimant had no right nor interest in and with respect to the property, and its claim is not an eligible one under the Yugoslav Claims Agreement of 1948 (Article 1).

For the foregoing reasons, the claim is denied.

Dated at Washington, D. C.

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