

the insolvency of the buyer. It is a right founded upon principles of equity and justice which relieves a seller from the obligation of delivering his goods to the insolvent debtor and thereby paying the insolvent debtor's debts with his goods. In order that the right may arise, there is, and must be, a completed sale between the seller and the buyer; but the subject matter of the sale, viz: the goods, must be in the way of delivery to the buyer, and must not have been actually delivered into his possession and control.

The history of the right of stoppage intransitu is interesting.

It can be stated, I think, with certainty, that the delivery of the goods by the seller to a carrier, even if that carrier is chosen by the buyer, and may be for the purposes of the carrying of the goods the agent of the buyer, that is not a delivery in law to the buyer would defeat the seller's right of stoppage in case of the buyer's insolvency. The delivery must not be to an agent for the purpose of carrying, but to an agent for the purpose of a final delivery of the goods, and then the possession of that agent is the possession of the buyer, his principal.

But apart entirely from the English jurisprudence upon the subject, we have the express enactment of our Code, in the articles 1496, 1497, 1492 and 1403.

Now, under art. 1497, if these goods had not been delivered, clearly and the seller, the intervenants, were not bound to deliver, no matter if the goods were sold for cash or on credit.

I am of opinion that there never was a delivery of these goods to the buyer, or to any one representing the buyer, and that the intervenants were well within their rights in opposing the attempt made by the plaintiff to obtain possession of or payment from these goods.