

in cases of the sale of goods and in Prize Court proceedings.

(C)
Re Sale
of Goods

In executed contracts of sale the property in the goods passes from the seller to the buyer. The goods can be described as "goods sold and delivered". Where the property passes but the possession merely is retained the goods can be said to be "bargained and sold". The seller is entitled in either case to sue for the *price*. Where however the property in the goods has not passed, and the contract is *executory*, the seller has only got an agreement to sell. This may occur because at the time of the agreement the goods have yet to be produced, or are not yet in a fit condition for delivery, or the price is to be paid only upon delivery of the goods, or any like reason.

General
principles

A recent war case illustrates the importance of the point under discussion. [*Duncan Fox & Co. v. Schremppft & Bonke*, 1914, 31 T.L.R. 66, 491 C.A; 1915, 3 K.B. 355.]

Liverpool merchants contracted with each other to sell and buy some barrels of honey, the payment to be in cash in exchange for shipping documents on presentation of the same. Before war the sellers shipped the goods on a German steamer and obtained a German bill of lading. War broke out and the Proclamation of the 5th August 1914 was issued, warning the public against trading with the enemy. This Proclamation had the effect of dissolving all executory contracts, and indeed rendered the performance of the

Passing
of the
property