

The FRANCES, BOYER, Master : KENNEDY's claim.

*Prize.—Question of fact.*

THIS was likewise a case of goods by the Frances, condemned in the Circuit Court of Rhode Island. They were claimed by Duncan Kennedy, an American citizen, who appealed to this court. The case was submitted to the court, without argument.

Saturday, March 12th, 1814. (Absent Livingston, J.), MARSHALL, Ch. J., delivered the opinion of the court, as follows :—Duncan Kennedy, surviving partner of the house of George Stayley & Co., merchants, of New York, \*359] claims eight boxes of merchandise, part of the cargo of the ship Frances, as his property. \*The invoice is headed—

“Glasgow, 8th July, 1812.

“Messrs. George Stayley & Co.

Receive from James Smith.”

A letter from James Smith to George Stayley & Co., in speaking of the goods, terms them “our goods,” and does not, in any manner, indicate that they are the goods of Stayley & Co. He concludes his letter with saying, “As it is to be hoped the trade will now open, I shall expect your instructions, saying what goods are best suited for the market.” The bill of lading is filled up with the name of George Stayley & Co., “on account and risk as per invoice.”

There are several letters from George Stayley, in Glasgow, to his father ; but none of them indicate an opinion, that the property of the goods was in George Stayley & Co. The sentence, condemning these goods, must be affirmed.

Sentence affirmed.

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The FRANCES, BOYER, Master : FRENCH's claim.

*Prize goods.—Change of property.*

An intention, clearly proved, of a consignor of goods, to vest the right of property in the consignee, is not sufficient to effect such a change of property, until the goods are received by the consignee, or some evidence is given of his agreement to take them on his own account ; until that time, the goods are at the risk of the shippers ; and if they are enemies, the goods, if captured, are good prize.

No difference, though the consignee were the agent of a third person, who had directed him to order the goods, unless it appears that he actually did order them.

THIS, like the former cases of the Frances, was an appeal from the United States Circuit Court for the Rhode Island district.

William French, the appellant, a citizen of the United States, claimed fourteen boxes of merchandise shipped on board the Frances, by James Auchincloss, of Paisley, in Scotland, to A. & J. Auchincloss, of New York, on their account and risk, with orders to remit the proceeds to the shipper \*360] for payment. The claimant \*alleged, that the goods had been previously ordered by him through A. & J. Auchincloss, to be imported on his account and risk.

Further proof was ordered by the court below, to consist of the original order for the merchandise, and all the letters and correspondence relating to