

Raffles v. Wichelhaus

2 Hurl. & C. 906 (Court of Exchequer 1864)

[Editorial Note: What follows is not an opinion written by a judge. Rather, it is a report of the pleadings in the case, a report of the colloquy between the lawyers and judges during oral argument, and a report of the judgment - - all prepared by an official court observer. It is from this tradition of an observer reporting about a case that we derive our current "Reporters" that contain opinions written by the court rather than the reports of observers.]

Declaration [Analagous to the modern day complaint]. -- For that it was agreed between the plaintiff and the defendants, to wit, at Liverpool, that the plaintiff should sell to the defendants, and the defendants buy of the plaintiff, certain goods, to wit, 125 bales of Surat cotton, guarantied middling fair merchant's Dhollorah, to arrive ex "Peerless" from Bombay; and that the cotton should be taken from the quay, and that the defendants would pay the plaintiff for the same at a certain rate, to wit, at the rate of 17¼d. per pound, within a certain time then agreed upon after the arrival of the said goods in England. -- Averments; that the said goods did arrive by the [said ship](#) from Bombay in England, to wit, Liverpool, and the plaintiff was then and there ready and willing and offered to deliver the said goods to the defendants, &c. Breach: that the defendants refused to accept the said goods or pay the plaintiff for them.

Plea [Analagous to the modern day answer].--- That the said ship mentioned in the said agreement was meant and intended by the defendants to be the ship called the "Peerless," which sailed from Bombay, to wit, in October; and that the plaintiff was not ready and willing and did not offer to deliver to the defendants any bales of cotton which arrived by the last-mentioned ship, but instead thereof was only ready and willing and offered to deliver to the defendants 125 bales of Surat cotton which arrived by another and different ship, which was also called the "Peerless," and which sailed from Bombay, to wit, in December.

Demurrer [to the answer], and joinder therein.

Milward, [barrister representing the plaintiff] in support of the demurrer.--- The contract was for the sale of a number of bales of cotton of a particular description, which the plaintiff was ready to deliver. It is immaterial by what ship the cotton was to arrive, so that it was a ship called the "Peerless." The words "to arrive ex 'Peerless,'" only mean that if the vessel is lost on the voyage, the contract is to be at an end. [Pollock C.B. -- It would be a question for the jury whether both parties meant the same ship called the "Peerless."] That would be so if the contract was for the sale of a ship called the "Peerless;" but it is for the sale of cotton on board a ship of that name. [Pollock, C.B. -- The defendant only bought that cotton which was to arrive by a particular ship. It may as well be said, that if there is a contract for the purchase of certain goods in warehouse A., that is satisfied by the delivery of goods of the same description in warehouse B.] In that case there would be goods in both warehouses; here it does not appear that the plaintiff had any goods on board the other "Peerless." [Martin, B.--- It is imposing on the

defendant a contract different from that which he entered into. Pollock, C.B.-- It is like a contract for the purchase of wine coming from a particular estate in France or Spain, where there are two estates of that name.] The defendant has no right to contradict by parol evidence a written contract good upon the face of it. He does not impute misrepresentation or fraud, but only says that he fancied the ship was a different one. Intention is of no avail, unless stated at the time of the contract. [Pollock, C.B. -- One vessel sailed in October and the other in December.] The time of sailing is no part of the contract.

Mellish (Cohen with him)[barristers representing the defendant], in support of the plea.--- There is nothing on the face of the contract to show that any particular ship called the "Peerless" was meant; but the moment it appears that two ships called the "Peerless" were about to sail from Bombay there is a latent ambiguity, and parol evidence may be given for the purpose of showing that the defendant meant one "Peerless" and the plaintiff another. That being so, there was no consensus ad idem [agreement on the same thing], and therefore no binding contract. He was then stopped by the Court.

Per Curiam. There must be judgement for the defendants.

Judgement for the defendants.

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