RAFFLES v. WICHELHAUS (1864)

COURT OF THE EXCHEQUER

2 Hurl. & C. 906

Declaration. 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, guaranteed 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 17.25 d. per pound, within a certain time then agreed upon after the arrival of said goods in England. Averments: that the said goods did arrive by said ship from Bombay to England, to wit, at Liverpool, and the plaintiff was then and there ready and willing and offered to deliver that said goods to the defendants, etc. Breach: that the defendants refused to accept the said goods or pay the plaintiff for them. Plea. That the said ship mentioned in the said agreement was meant and intended by the defendant 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, and joinder therin. Milward, 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 to be 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 a wharehouse A., that is satisfied by the delivery of goods of the same description in wharehouse B.] In that case there would be goods in both wharehouses; 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 different contract 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 Spain or France, where there are two estates of the same name.] The defendant has no right to contradict, by parole evidence, a written contract good upon the face of it. He does not impute mispepresentation or fraud, but only says he fancied the ship a different one. Intention is of no avail, unless stated at the time of contract. [Pollock, C.B. One vessel sailed in October, the other in December.] The time of sailing is no part of the contract.

Mellish (Cohen with him), 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 item, and therefore no binding contract. He was then stopped by the Court.

Per Curiam. Judgment for the defendants.