

Summary of  
Raffles v. Wichelhaus  
, 2 H. & C. 906, 159 Eng. Rep. 373 (Ex. 1864).

#### Facts

Raffles (P) contracted to sell 125 bales of Surat cotton to Wichelhaus (D). The goods were to be shipped from Bombay to Liverpool, England on the ship "Peerless". Neither party was aware that there were two ships names "Peerless" carrying cotton from Bombay to Liverpool, one arriving in October and the other in December.

Wichelhaus thought he had purchased the cotton arriving on the October ship, but Raffles sent his cotton on December ship. Wichelhaus refused to accept delivery of the cotton arriving on the December ship and Raffles brought this lawsuit for breach of contract.

#### Issues

1. If a latent ambiguity arises that shows that there had been no meeting of the minds, have the parties given mutual assent to contract?
2. Is parol evidence admissible to determine the meaning each party had assigned regarding a latent ambiguity?

#### Holding and Rule

1. No. If a latent ambiguity arises that shows that there had been no meeting of the minds, there is no mutual assent to contract.
2. Yes. Parol evidence is admissible to determine the meaning each party had assigned regarding a latent ambiguity.

#### Milward

Subjective intention is of no avail unless stated at the time of the contract. The words "to arrive ex Peerless" only means that if the vessel is lost on the voyage the contract is to be at an end. It would be a question for the jury as to whether both parties meant the same ship called Peerless. That would be so if the contract were for the sale of a ship called the Peerless but this is only for a sale of cotton aboard that ship.

#### Mellish

A latent ambiguity appeared when the contract did not specify which „Peerless“ was intended. There is nothing on the face of the contract to show that any particular ship called 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. Parol evidence will be admissible for determining the actual meaning that each party assigned to that ambiguity. From the evidence presented, each party attached a different meaning to that ambiguity. If different meanings were intended on a material term of a contract, there is no mutual assent and there is no contract.

Disposition  
Judgment for Wichelhaus.