The John H. Pearson

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Decided On : Apr-25-1887

Appeal No. : 121 U.S. 469

Appellant : The John H. Pearson

Judgement :

The John H. Pearson - 121 U.S. 469 (1887)
U.S. Supreme Court The John H. Pearson, 121 U.S. 469 (1887)

The John H. Pearson

Argued April 11-12, 1887

Decided April 25, 1887

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MASSACHUSETTS

SYLLABUS

A vessel was chartered to carry a cargo of oranges from Palermo to Boston. The words "captain engages himself to take the northern passage" were written into the printed blank. The cargo was badly damaged, and the charterers libeled the vessel to recover for the loss. The court below found that "northern passage" appeared from the proof to be a term of art, unintelligible without the aid of testimony, that the evidence concerning it was conflicting, and that it was immaterial to decide it, as the claimant was entitled to the least strict definition, and the actual course of the vessel came within that definition. *Held* that this was error; that if the term was a term of art, it should have been found by the court, and that if there was no passage known as "northern," the vessel was bound to take the one which would carry it in a northerly direction through the coolest waters into the coolest temperature, and the court should have ascertained from the proof what passages between Gibraltar and Boston vessels were accustomed to take, and should have determined which of them the contract permitted the vessel to choose.

This is an appeal in admiralty, and presents the following facts:

The barque *John H. Pearson* was chartered to carry a cargo, consisting mostly of oranges, for the libellants, from Palermo, Sicily, to Boston, Massachusetts. The charter party contained the words, "captain engages himself to take the northern passage," inserted at the instance of the libellants, for the benefit of the cargo, and written into the printed blank. The cargo was badly damaged on the voyage, and this suit was brought to recover for the loss. The controversy is as to whether the vessel, in going from Gibraltar to Boston, took "the northern passage."

The court has found that

"Shippers of fruit consider it of very great importance for the preservation of the cargo that it be kept in as cold a temperature as possible, short of the freezing

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point, and have been accustomed for many years to instruct masters to take a northerly course,"

and after setting forth other facts, stated as "conclusions of law" the following:

"1. The term 'northern passage' appears, in view of the testimony of merchants and seamen introduced on both sides, to be a term of art, and is, when taken by itself, without the aid of such testimony, unintelligible."

"The testimony introduced by the libellants tended to show that the phrase meant a passage from Gibraltar to the Great Banks, and thence direct to Boston, keeping as much to the north as possible during the entire passage; that anything between that and the southern passage was the middle passage."

"That introduced by the claimant tended to show that it meant anything north of latitudes 30 to 35 or 36, or of the southern passage, and that the middle passage was anything between the southern passage and the northern, as described by the respective witnesses. It was admitted that the southern passage was in the trade winds."

"2. Upon this testimony, the court, thinking that the true meaning of the term is very doubtful, does not consider it material, and does not undertake to decide whether a preponderance of the evidence favors one of the above definitions or another, and rules that the claimant is entitled to the least strict definition, and that, as the course of the barque comes within such definition, there is no deviation."

The libel was dismissed, and from a decree to that effect this appeal was taken. The opinion of the circuit court is reported in 14 F. 749.

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MR. CHIEF JUSTICE, after stating the case, delivered the opinion of the Court.

As the libellants deemed the agreement to "take the northern passage" of sufficient importance to have a printed form changed, so that it might be incorporated in express words into the charter party, and this "for the benefit of the cargo," which was perishable, it is evident that the words used had some meaning which indicated clearly to the minds of the contracting parties the direction the

vessel was to take on her way from Gibraltar to Boston. It is also evident from the fact that the vessel was bound to take the northern passage, that the parties understood there was more than one passage which vessels were in the habit of taking in making that voyage, according as their bills of lading or their charter parties required or the circumstances made desirable. It implies that there were one or more other passages which those engaged in the trade knew by other names or other

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descriptions. What "the northern passage," as used in this contract, means, therefore, is either a question of fact or a question of construction applicable to understood facts.

If it is, as the court below says it appears to be, a term of art which, taken by itself, without the aid of the testimony, is unintelligible, then its meaning in "the art" -- the trade -- is one of the material facts in the case on which the rights of the parties depend, and it should have been found and put into the findings of fact which the circuit court was required by law to make. The statement of the court, now in the record, implies that there is in fact some particular passage between Gibraltar and Boston which those engaged in that trade know as "the northern passage." If there is, then that is the passage the vessel was bound to take, and it was error in the court to decide that its determination, according to the preponderance of the evidence, was immaterial, for the choice of passages was matter of obligation, not of convenience merely.

If in point of fact there is no passage to which the name or description of "the northern" has been given in the trade, then the question becomes one of construction, as applied to the known facts of the business. The inquiry is not as to which passage would be the quickest, or even the best, or which another contract would require of another vessel, but which is "the northern passage" within the meaning of this contract. The evident purpose of the libellants was to keep the vessel as far as possible in the coolest of the passages that those engaged in the trade were accustomed to take, because it is found as a fact in the case that a

cool temperature is necessary to the preservation of the cargo, and that the coolest water is north of the Gulf Stream, owing to the fact that there is a cool current between it and the American coast moving in an opposite direction.

Under these circumstances, if the testimony failed to show that any particular passage had acquired in the trade the name of "the northern," it was error to rule that the vessel might voluntarily take any other of the known or accustomed passages than one which would carry it in a northerly

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direction through the coolest waters and into the coolest temperature. That this was the expectation of the parties is shown by the fact that the stipulation as to the passage was made "for the benefit of the cargo," the preservation of which required that it should be kept "in as cool a temperature as possible short of the freezing point." The court should have ascertained from the evidence what passages there were between Gibraltar and Boston which vessels were accustomed to take, and then determined which of them this vessel was allowed by its contract to choose as "the northern."

The decree is reversed, and the cause remanded for further proceedings in conformity with this opinion.