

Cows and Contracts

Theodore C. Sherwood v. Hiram Walker et al. (1887)
66 Mich. 568

Sherwood v. Walker is a case involving the sale of a cow from Hiram Walker to Theodore Sherwood. At the time that the contract for sale was formed, Walker believed the cow to be barren, or unable to breed, a quality that would drastically reduce the selling price of a cow. Walker agreed to sell the cow, named Rose, to Sherwood for \$80.

Upon weighing the cow, George Graham discovered that it was pregnant and advised Walker not to deliver the cow to Sherwood. But the contract had already been agreed to by both parties, so Sherwood filed for a writ of replevin to force Walker to deliver the cow. The writ was approved by a Justice's court and upheld by the Wayne County Circuit Court. Walker appealed to the Michigan Supreme Court.

In a majority opinion supported by three of the four justices, Justice Morse ruled that there were grounds for rescinding the contract, reversing the previous judgment and granting a new trial to the defendants. He found that the circuit court erred in ruling that it was immaterial whether the cow was pregnant. Morse believed that the contract could be rescinded because there was a difference in material fact between the cow mentioned in the contract and the actual cow. One, thought to be barren, was worth only \$80, while the other, the actual cow that could breed, was worth between \$750 and \$1,000. Justice Champlin and Chief Justice Campbell agreed that the case should be sent back to court because there were, in fact, grounds for rescinding the contract.

In his dissenting opinion, Justice Sherwood supported the plaintiff of the same name, believing that the two previous courts were correct in their rulings. Sherwood did not think that the difference between a barren cow and a breeder was a difference in substance, but only one of quality. He offered the analogy of a racing horse whose owner could only get it to run a mile in three minutes. If the horse was sold, and then trained to run a two-minute mile by its new owner, the previous owner could not rescind the contract on the ground that the horse's value may have increased from \$300 to \$20,000. Because it was the same horse that was sold, the material facts of the contract were not changed, and to Sherwood this logic could be applied to the case at hand as well.

As Justice Morse acknowledges, this case is a "close question" that requires a line be drawn between the substance and the quality of the thing sold. The case comes down to the material difference between a barren cow sold for meat, and a fertile cow sold for breeding. The purpose of each is quite distinct. Unlike the racing horse, whose speed increase did not require a change in the horse's purpose but only its quality, the two types of cow are different commodities with different purposes. Because the error was made in the instructions to the jury, a new trial was granted.