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Contracts--Acceptance by Mail--When Effective

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Recent Decisions

CONTRACTS — ACCEPTANCE BY MAIL — WHEN EFFECTIVE

In 1818, the English case of *Adams v. Lindsell*[1] held that where an offer had been made by letter and the acceptance was made in the same manner, the contract was consummated the moment the offeree mailed the letter of acceptance. This rule has been almost universally accepted in this country.[2]

The Federal Court of Claims, however, in a recent case,[3] adopted a different view. Defendant, the federal government, desiring to purchase bolts, invited bids. Plaintiff submitted a bid by mail. Later, plaintiff discovered that it had made an error in computing the bid. Plaintiff immediately telephoned and then wired defendant in an effort to withdraw the bid. On the same day, (whether before or after notification of plaintiff's withdrawal is not shown[4]) defendant mailed a letter accepting plaintiff's offer. Plaintiff complied with the terms of the offer and then brought this action to recover the actual loss sustained by being forced to comply with a contract to which he was not really bound. The court, by a bare majority, took the position that a contract is not consummated until the letter of acceptance is *received* by the addressee and that therefore the plaintiff was not bound. The court based its decision on the United States Postal Regulations.[5] The majority reasoned that since the sender of a letter does not lose control of it the moment it is deposited in the mail, but retains control of it until it is delivered to the addressee, the latter should not be bound until the letter is actually received. The court pointed out that we are living in a time radically different from that when *Adams v. Lindsell* was decided. Indeed, that case was established before the telegraph was even invented. The court felt that legal practices should change to suit changed conditions. The case thus raises the issue of whether the postal regulation referred to has the effect of altering the well-established rule of *Adams v. Lindsell.*

Courts which have followed the rule have justified it on various grounds. Some courts have said that the mailing of the letter is an overt act mani-

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[1] 1 B. and Ald. 681 (1818).

[2] GRISMORE, CONTRACTS § 48 (1947); 9 Ohio Jur. § 36 (1930); 1 WILLISTON, CONTRACTS § 81 (1936); Dickey v. Hurd, 33 F.2d 415 (1st Cir. 1929), cert. denied in 280 U.S. 601 (1929).

[3] Rhode Island Tool Co. v. United States, 128 F. Supp. 417 (Ct. Cl. 1955).

[4] Obviously, the court decided the case on the assumption that the acceptance was mailed *before* the withdrawal was received. Otherwise, there would be no problem.

[5] 39 C.F.R. 42.22, 42.23 (1949 Ed.) provides that after mail matter has been deposited in a post office it can be withdrawn by the sender, by making application to the postmaster at the office of mailing. When application has been made in due form, the postmaster shall telegraph a request to the postmaster at the office of address for the return of such matter to his office.

festing agreement by the offeree to consummate a contract.[6] This view has been criticized[7] as logically unsound under the theory of mutual assent because it cannot be said that assent has been manifested to the offeror by a letter which he has not yet seen. Other courts[8] have justified the rule by saying that when the offeror uses the mail to communicate his offer he makes the post office his agent with authority to receive his acceptance. In effect, then, he authorizes the offeree to accept the offer by mail. This view too has been criticized[9] on the ground that the post office is in fact neither an agent nor a servant of the sender because it is not subject to his control. The post office is, rather, an independent contractor and has merely undertaken to deliver the messages. It is in no way authorized by the offeror to represent him in business transactions.

In spite of these criticisms, the rule of *Adams v. Lindsell* has been quite generally adopted in this country.[10]

Nevertheless, the rule announced in the instant case is not novel. It had been adopted previously in several jurisdictions.[11] Courts have pointed out that since the letter of acceptance, when put into the mail, is not beyond the control of the sender, the acceptance is not completed by the act of mailing the letter, whether or not it is, in fact, withdrawn.[12] Proponents of the minority view have also argued that inasmuch as the offeree can, by virtue of the postal regulations, recover the letter, the post office is *his* agent.[13] Significantly, however, most of the cases adhering to the rule of the principal case have been of a single type, viz., cases involving payment or delivery of negotiable instruments.[14]

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[6] Patrick v. Bowman, 149 U.S. 411 (1893); Tayloe v. Merchants' Fire Insurance Co., 9 How. 390 (U.S. 1850); Berwald Stewart Co. v. Mitchell, 37 Ohio App. 121, 174 N.E. 148 (1930).

[7] GRISMORE, CONTRACTS § 48 (1947).

[8] Dickey v. Hurd (1st Cir. 1929) 33 F.2d 415 (1929); Household Fire & Carriage Accident Insurance Co., Ltd., v. Grant, (1879) 4 Ex. D. 216; Lucas v. Western Union Telegraph Co., 109 N.W. 191, 6 L.R.A. (N.S.) 1016 (1906).

[9] GRISMORE, CONTRACTS § 48 (1947); MECHEM, AGENCY § 41 (2d Ed. 1914); Henthorn v. Fraser 2 Ch. 27 (1892).

[10] Note 2 *supra.*

[11] Chapman v. Mills & Gibb, 241 Fed. 715 (S.D.N.Y. 1917); Dick v. United States, 82 F. Supp. 326 (Ct. Cl. 1949); Guardian Nat. Back v. Huntington County State Bank, 206 Ind. 185, 187 N.E. 388 (1933); Buehler v. Galt, 35 Ill. App. 225 (1889); Traders' Nat. Bank v. First Nat. Bank, 142 Tenn. 229, 217 S.W. 977 (1920); Ex Parte Cote, 9 Ch. App. 27 (1873).

[12] 9 A.L.R. 386 (1920); 92 A.L.R. 1056 (1934).

[13] Traders' Nat. Bank v. First Nat. Bank, 142 Tenn. 229, 217 S.W. 977 (1919).

[14] Chapman v. Mills & Gibb, 241 Fed. 715 (S.D.N.Y. 1917); Guardian Nat. Bank v. Huntington County State Bank, 206 Ind. 185, 187 N.E. 388 (1933); Buehler v. Galt, 35 Ill. App. 225 (1889); Traders' Nat. Bank v. First Nat. Bank, 142 Tenn. 229, 217 S.W. 977 (1919); Ex Parte Cote, 9 Ch. App. 27 (1873).