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Contracts - Offer and Acceptance - Effect of Post Office Regulations on *Adams v. Lindsell* Doctrine

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CONTRACTS—OFFER AND ACCEPTANCE—EFFECT OF POST OFFICE REGULATIONS ON *Adams v. Lindsell* DOCTRINE—Plaintiff, a bidder on a government contract, attempted to withdraw its bid upon discovering that it had made a mistake in its calculations. The revocation arrived at the government's office the same day the acceptance of the bid was mailed. The government's invitation to bid provided that "the successful bidder will *receive* Notice of Award . . . and such Award will *thereupon* constitute a binding contract. . . ."[1] Upon the government's refusal to recognize the revocation, the plaintiff brought suit to recover losses resulting from performance at the bid price. *Held,* there was no binding contract. Since the post office regulations[2] permit withdrawal of mail by the sender any time before delivery, an acceptance by mail is not final until the letter reaches its destination. Thus the revocation was effective, as it arrived at the government office before the bidder received the acceptance. *Rhode Island Tool Co. v. United States,* (Ct. Cl. 1955) 128 F. Supp. 417.

It has been a recognized doctrine since *Adams v. Lindsell*[3] that where the parties are at a distance from one another and an offer is sent by mail, the contract will be consummated when the acceptance is posted.[4] Accordingly, a bid could be effectively revoked only if the withdrawal notice

1 Principal case at 418. Italics the court's.

2 39 C.F.R. 42.22, 42.23 (1949).

3 1 B. & Ald. 681, 106 Eng. Rep. 250 (1818).

4 Henthorn v. Fraser, [1892] 2 Ch. 27; Barnebey v. Barron G. Collier, Inc., (8th Cir. 1933) 65 F. (2d) 864; 1 CONTRACTS RESTATEMENT §§64, 66 (1932).

arrived before the acceptance was mailed.[5] The decision in the principal case upsets these two well established rules on the basis of postal regulations which have been in effect in substantially their present form since 1889.[6] Once before this same court employed the postal regulations to repudiate *Adams v. Lindsell* in a case of an overtaking revocation of an acceptance.[7] There has been, it is true, considerable criticism of the mechanical test of *Adams v. Lindsell*.[8] However, the court overlooked the principal policy reason for the doctrine in common law countries. These countries have encountered difficulties in making "firm" offers irrevocable. In some civil law countries a manifested intent of the offeror that the offer be irrevocable for a stated period is given full effect so that the offeree can act during that period without risk of revocation.[9] At common law it has been thought impossible to achieve this result without a seal or consideration.[10] So the *Adams v. Lindsell* doctrine, by forming a contract on the posting of the acceptance, permits immediate reliance by the offeree without fear of a subsequent revocation of the offer arriving before the acceptance is received by the offeror.[11] This shifting of the reliance risk to the offeror is justifiable since he initiated the transaction. Pennsylvania and New York have enacted statutes which provide for irrevocable offers, when requested, for a reasonable or set period of time, without need of consideration.[12] If the remainder of the states eventually follow this lead, the *Adams v. Lindsell* doctrine could be readily dispensed with, but until that time its utility continues.

In both *Dick v. United States*[13] and the principal case, the court's decision seems to have been motivated by a desire to relieve the supplier because of his unilateral mistake. Without this element it is very doubtful that the court would have been so eager to relieve the supplier and to find that no contract resulted. If, for example, a shift in market values had made the proposed contract less profitable to the offeror, the reasons for permitting revocation would not have been so strong. The result reached in the principal case might have been rested on either of two other grounds. First, it is clear, even in jurisdictions that follow *Adams*

5 Anderson v. Stewart, 149 Neb. 660, 32 N.W. (2d) 140 (1948); Geary v. The Great Atlantic & Pacific Tea Co., 366 Ill. 625, 10 N.E. (2d) 350 (1937).

6 See 9 A.L.R. 386 (1920); 92 A.L.R. 1062 (1934). The court in the principal case attempted to create the impression that these regulations only recently provided a basis for a change of the doctrine. For a critical discussion on the validity of judicial application of the postal regulations, see 34 CORN. L. Q. 632 (1949).

7 Dick v. United States, (Ct. Cl. 1949) 82 F. Supp. 326.

8 See, e.g., Nussbaum, "Comparative Aspects of the Anglo-American Offer and Acceptance Doctrine," 36 COL. L. REV. 920 (1936).

9 Ibid.

10 Dickinson v. Dodds, 2 Ch. D. 463 (1876). On the effect of a seal, see 1 CORBIN, CONTRACTS §252 (1950). As to whether mailing is sufficient part performance to hold the offer open, see 25 IND. L. REV. 202 (1949).

11 See 17 UNIV. CHI. L. REV. 375 (1949).

12 Pa. Stat. Ann. (Purdon, 1953) tit. 12a, §2-205; 40 N.Y. Consol. Laws (McKinney, 1949) tit. 40, §33.5.

13 Note 7 supra.

v. Lindsell, that the offer can provide that the acceptance will not be final until received.[14] The government's invitation to bid in the principal case indicates that this may well have been intended.[15] Secondly, even if the *Adams v. Lindsell* doctrine were applied to the case, relief might have been granted on the basis of mistake. Usually rescission of a contract will not be decreed for a unilateral mistake.[16] However, according to a leading commentator, a more liberal view will permit relief when the mistake is substantial and when, as in this case, the acceptor has not relied to his detriment before notice of the mistake.[17] Since these long-established postal regulations have not led other courts to repudiate *Adams v. Lindsell,* it seems unlikely that the principal case will start a general trend in this direction.

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[14] Spratt v. Paramount Pictures, 178 Misc. 682, 35 N.Y.S. (2d) 815 (1942); Clifford-Bell Petroleum Co. v. Banker's Petroleum and Refining Co., (Tex. Civ. App. 1926) 286 S.W. 564.

[15] The court only mentioned this in passing as supporting its interpretation of the effect of postal regulations. Certainly the wording of the invitation to bid does not leave the draftman's intent free from doubt.

[16] 3 CORBIN, CONTRACTS §609 (1950).

[17] Ibid.