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Contracts--Adams v. Lindsell Rule--Unjustified Significance Placed on Loss of Control

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suggests he may have worried about payment for his services. In a somewhat different case, but similar circumstances, it was held a question for the jury whether the doctor’s refusal to treat the patient who owed him money was legal justification for abandonment.\(^5\)

It is an accepted rule, that where evidence is so clear and convincing that reasonable minds could not differ in their conclusions, the question of the defendant’s guilt or innocence is for the court, not for the jury.\(^6\) In this case the court left to the jury the question whether or not the defendant’s conduct was a breach of his duty to the decedent. This decision was in accordance with an earlier decision of the court which held that a surgeon was not negligent as a matter of law in leaving the hospital while the patient was still in shock and obviously in critical condition following an operation.\(^7\)

There is no doubt but that the court was correct in reversing the directed verdict for the defendant. All the elements necessary in constituting malpractice through abandonment are evident in this case. Even though the court could not rule as a matter of law that the defendant was guilty of dereliction of his duty, the remanding of the case for another trial will afford ample opportunity for the jury to find for the plaintiff.

Scotty Baesler

**Contracts—Adams v. Lindsell Rule—Unjustified Significance Placed on Loss of Control.**—Appellants, as purchasers, executed a contract for the sale and purchase of certain property and mailed the contract to appellees. Appellees executed the contract and mailed it to appellants’ attorney. After mailing the contract, but prior to its receipt, appellees called appellants’ attorney and cancelled the contract. Appellants nevertheless recorded the contract upon its receipt. Appellees sought to have the appellants enjoined from making any claim under the recorded land purchase contract. Appellants counterclaimed, seeking specific performance. The lower court entered a summary decree for the appellees. Held: Reversed. Where an offer is by mail the letter of acceptance completes the contract the moment it is posted. *Morrison v. Thoelke*, 155 So. 2d 889 (Fla. 1963).

The principal case is not unusual because of any departure from well-established contract law, but because of the thorough discussion given the “Adams v. Lindsell Doctrine.” The arguments both for and

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\(^5\) Ricks v. Budge, 91 Utah 307, 64 P.2d 208 (1937).
\(^6\) Droppelman v. Willingham, 293 Ky. 614, 169 S.W.2d 811, 814 (1943).
\(^7\) Engle v. Clarke, 346 S.W.2d 13 (Ky. 1961).
against the doctrine are explored with clarity and conciseness. Especially commendable is the refutation of the “loss of control” argument advanced by many opponents of the rule in recent years. The purpose of this comment is to synthesize that refutation.

One of the basic principles in contract law is that acceptance does not take effect in bilateral contracts until the return promise is communicated. An exception to this rule was established in one of the first cases involving a contract by correspondence; where the offer is by mail the letter of acceptance completes the contract the moment it is posted. The case by which this exceptional doctrine is known was decided in 1818 and according to one authority, the doctrine has become so universally accepted in the law that criticism is academic.

Nevertheless, the water has been muddied by modern postal regulations which permit the sender to apply for a letter which he has put in the mail. When the letter is properly identified, the postmaster is required to return the letter to the sender, or to telegraph the office of the addressee, whose postmaster must return it to the mailing postmaster if delivery has not been made. Due to these changes in the postal regulations there is now authority that the sender has the power and the right to recover a letter before its delivery.

However, as the court pointed out in the principal case, the “loss of control” argument is valid only to the extent that loss of control is the significant element in the “Adams v. Lindsell Doctrine.”

Significantly, the factor of the offeree’s loss of control of his acceptance is not mentioned in Adams v. Lindsell, the origin of the rule. At that time the subjective theory of contracts wholly obtained and it was considered essential to the formation of a contract that “the minds of the parties meet” on the same proposal at the same time. Since this would be impossible in contracts by correspondence, the fiction was indulged that the offeror was to be deemed “mentally

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1 1 Williston, Contracts § 70 (3rd ed. 1957).
5 It has been erroneously stated by some courts and textwriters that the power to regain a mailed letter was originally granted by the postal regulations of 1913. However, even prior to the postal regulations of 1913 a right of withdrawing letters from the mail, similar to that now prevailing existed under the Postal Laws and Regulations of 1893 (§§ 487 and 1125) and 1902 (§§ 578 and 872) and, as construed by the Post Office Department, no substantial change was made with regard to such right by the regulations of 1913. 92 A.L.R. 1062 (1934).
7 Morrison v. Thoelke, 155 So. 2d 893, 897 (Fla. 1963).
repeating his offer every instant of the time the letter is traveling, and then the contract is completed by the acceptance, i.e., by the overt act of posting the letter of acceptance. No reference was made in American cases of loss of control until the 1830 case of Mactier's Adm'r v. Frith.

Thus, the element of loss of control was introduced, not as a primary legal requisite to the existence of a contract, but as a factual matter affecting the sufficiency of the manifestation of assent. Whereas Frith had made "loss of control" an operative fact, later courts tended to make this the operative fact of conclusive legal significance.

The unjustified significance placed on loss of control follows from two errors. The first error is failure to distinguish between relinquishment of control as a factual element of manifest intent, which it is, and as the legal predicate for completion of a contract, which it is not. The second error lies in confusing the power to recall mail with the right to repudiate acceptance. In short, the power to recall mail is a factor, among many others, which may be significant in determining when acceptance is effective, but the right to effectively withdraw and repudiate an acceptance must be dependent upon the initial determination of when that acceptance is effective and irrevocable.

From the foregoing it is clear that a change in postal regulations does not, ipso facto, alter or affect the validity of the rule in Adams v. Lindsell.

There is the premise in the "Adams v. Lindsell Doctrine" that there must be, both in practical and conceptual terms, a point in time when a contract is complete. The justification for the rule proceeds from this premise. According to Professor Corbin, expediency determines this point:

We can choose either rule; but we must choose one. We can put the risk on either party; but we must not leave it in doubt. The party not carrying the risk can then act promptly and with confidence in reliance on the contract; the person carrying the risk can insure against it if he so desires. The business community could no doubt adjust itself to either rule, but the rule throwing the risk on the offeror has the merit of closing the deal more quickly and enabling performance more promptly. It must be remembered that in the vast majority of cases the acceptance is neither lost nor delayed, and promptness of action is important to all of them.

In the words of the court, "ultimately then the weight given the reliance-expectation factors determine the view adopted as to the

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9 Ibid.
10 6 Wend. 103, 21 Am. Dec. 262 (1830).
12 Morrison v. Thoelke, 155 So. 2d 589, 901 (Fla. 1963).
13 1 Corbin, Contracts § 78 (1950).
deposited acceptance rule. Weighing the arguments with reference not to specific cases but to a rule of general application and recognizing the general and traditional acceptance of the rule as well as the modern changes in effective long-distance communication, it would seem that the balance tips whether heavily or near imperceptively, to continued adherence to the 'Rule in Adams v. Lindsell'.

James L. Avritt

Lien—Necessity of Filing Statement of Labor and Materials Furnished or To Be Furnished Before Deed Is Recorded by Purchaser.—The defendants and a building contractor signed a contract of sale on May 7, 1957, for the construction of a house on land then owned by the builder. Conveyance of title was to take place upon completion of construction, with defendants paying the balance of the purchase price at that time. The house was completed early in July and on July 8, 1957, the transaction was closed with conveyance by the builder and with complete payment by defendants. During the first week of October defendants contacted plaintiff, a plumbing contractor, and he proceeded to correct a substantial defect in the plumbing work he had done under contract with the builder. Plaintiff had not been paid by the builder for his original work. On December 11, 1957, plaintiff notified defendants of his intention to hold their property liable for his claim as required by Ky. Rev. Stat. 376.010(3) [Hereinafter referred to as KRS] and filed a statement of his lien claim in the county clerk's office as required by KRS 376.010(2). This was the first actual notice to defendants that plaintiff had not been paid.

In this action to enforce the lien the chancellor held that defendants, as equitable titleholders, had been "owners" of the property within the meaning of KRS 376.010(1) since May 7, 1957, and were not intervening bona fide purchasers for value and without notice. Therefore, he ruled that defendants were not entitled to protection under KRS 376.010(2); that the work done in October was the last work done under the plumbing contract; and that the notice given to defendants on December 11, 1957, complied with KRS 376.010(3). Accordingly, the chancellor sustained the lien. Held: Reversed. The Kentucky Court of Appeals held that when the balance of the purchase price was paid and the deed recorded on July 8, 1957, defendants became bona fide purchasers for value and without notice.