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(1818) 106 ER 250

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

5th June 1818

B e f o r e :

Lord Ellenborough

Between:

Adams & Others

v.

Lindsell & Others

Action for non-delivery of wool according to agreement. At the trial at the last Lent Assizes for the county of Worcester, before Burrough J. it appeared that the defendants, who were dealers in wool, at St. Ives, in the county of Huntingdon, had, on Tuesday the 2d of September 1817, written the following letter to the plaintiffs, who were woollen manufacturers residing in Bromsgrove, Worcestershire: "We now offer you eight hundred tods of wether fleeces, of a good fair quality of our country wool, at 35s. 6d. per tod, to be delivered at Leicester, and to be paid for by two months' bill in two months, and to be weighed up by your agent within fourteen days, receiving your answer in course of post."

This letter was misdirected by the defendants, to Bromsgrove, Leicestershire, in consequence of which it was not received by the plaintiffs in Worcestershire till 7 p.m. on Friday, September 5th. On that evening the plaintiffs wrote an answer, agreeing to accept the wool on the terms proposed. The course of the post between St. Ives and Bromsgrove is through London, and consequently this answer was not received by the defendants till Tuesday, September 9th. On the Monday September 8th, the defendants not having, as they expected,

received an answer on Sunday September 7th, (which in case their letter had not been misdirected, would have been in the usual course of the post,) sold the wool in question to another person. Under these circumstances, the learned Judge held, that the delay having been occasioned by the neglect of the defendants, the jury must take it, that the answer did come back in due course of post; and that then the defendants were liable for the loss that had been sustained: and the plaintiffs accordingly recovered a verdict.

Jervis having in Easter term obtained a rule nisi for a new trial, on the ground that there was no binding contract between the parties, Dauncey, Puller, and Richardson, shewed cause. They contended, that at the moment of the acceptance of the offer of the defendants by the plaintiffs, the former became bound. And that was on the Friday evening, when there had been no change of circumstances. They were then stopped by the Court, who called upon Jervis and Campbell in support of the rule. They relied on *Payne* **v**. *Cave*[1], and more particularly on *Cooke* **v**. *Oxley*[2]. In that case, Oxley, who had proposed to sell goods to Cooke, and given him a certain time at his request, to determine whether he would buy them or not, was held not liable to the performance of the contract, even though Cooke, within the specified time, had determined to buy them, and given Oxley notice to that effect. So here the defendants who have proposed by letter to sell this wool, are not to be held liable, even though it be now admitted that the answer did not come back in due course of post. Till the plaintiffs' answer was actually received, there could be no binding contract between the parties; and before then, the defendants had retracted their offer, by selling the wool to other persons.

But the Court said, that if that were so, no contract could ever be completed by the post. For if the defendants were not bound by their offer when accepted by the plaintiffs till the answer was received, then the plaintiffs ought not to be bound till after they had received the notification that the defendants had received their answer and assented to it. And so it might go on ad infinitum. The defendants must be considered in law as making, during every instant of the time their letter was travelling, the same identical offer to the plaintiffs; and then the contract is completed by the acceptance of it by the latter. Then as to the delay in notifying the acceptance, that arises entirely from the mistake of the defendants, and it therefore must be taken as against them, that the plaintiffs' answer was received in course of post.

Rule discharged.

Note 1 3 T. R. 148. [Back] Note 2 Ibid. 653. [Back]