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insignificant fact differences to make a distinction. The decision in the principal case is in direct conflict with the *North Dakota* case,¹² but the Commission simply said "to the extent that *North Dakota* may be inconsistent with the action we take here, we believe it was erroneously decided."¹³ This is a direct departure from the *judicial* precedent established in that case.

The F.P.C. failed to recognize in the principal case the decisions of the courts and followed its own ideas as to what its jurisdiction should be. The court of appeals properly reversed. If F.P.C. jurisdiction is to be expanded, it should be done by Congressional action and not by its own decree.

W. Charles Tegeler

CONTRACTS: THE DEPOSITED ACCEPTANCE RULE

The rule that once an acceptance is deposited in the mail a contract is formed¹ was recently adopted by the Supreme Court of Florida in *Morrison v. Thoele*, 155 So.2d 889 (Fla. 1963).

This case concerned a contract for the sale of real estate, mailed to defendant by plaintiff. After execution of the contract, it was placed in the mails addressed to the plaintiff. Prior to the arrival of the contract, the defendant called the plaintiff and repudiated it. The plaintiff demanded performance, and upon refusal, brought suit.

The Florida court, following the English rule of *Adams v. Lindsell*² held that the parties were bound when the acceptance was mailed. The plaintiffs depended on *Adams v. Lindsell*, claiming that an acceptance was binding upon mailing; the defendants relied upon the cases of *Dick v. United States*³ and *Rhode Island Tool Co. v. United States*⁴ claiming that an acceptance does not create a contract until its receipt by the offeror. After a lengthy discussion of the authorities, the court was more impressed by commercial necessities, than by legal niceties. This was within the spirit of *Adams v. Lindsell* which stated: "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 ad

¹² *North Dakota v. FPC*, 247 F.2d 173 (8th Cir. 1957).

¹³ *Lo-Vaca Gathering Company & Houston Pipe Line Co.*, 26 F.P.C. 606, 615 (1961).

¹ Granted statutory recognition by the Oklahoma legislature in 15 OKLA. STAT. § 69 (1961): "Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer . . ."

² 1 Barn. & Ald. 681, 106 Eng. Rep. 250 (K.B. 1818).

³ 113 Ct.Cl. 94, 82 F.Supp. 326 (1949).

⁴ 130 Ct.Cl. 698, 128 F.Supp. 417 (1955).

infinitum."⁵ The only discussion of legal theory in *Adams v. Lindsell* was when the court stated that a mailed offer was "continuing" and the offeror was deemed to be making an offer the entire time it was traveling, and a meeting of the minds could be found upon the posting of the acceptance.⁶

*Mactier's Adm'r v. Frith*⁷ was the first case in this country to consider the deposited acceptance rule, and it imported the rule of *Adams v. Lindsell* to the American common-law. This court, however, in discussing the rule, made the statement that a letter written, but remaining in the possession of the writer would not be acceptance. Thus, the issue of control over the letter of acceptance was introduced into litigation of this problem, and, as the *Morrison* court points out, "Whereas *Mactier's Adm'r v. Frith*, supra, had made 'loss of control' an operative fact, later courts tended to make this the operative fact of conclusive legal significance."⁸ This control theory noted in the *Mactier's* case was not adhered to by the United States Supreme Court when it handed down its ruling in the second American case to consider the problem, *Taylor v. Merchants Fire Ins. Co.*⁹ The reasoning the Supreme Court in that case closely followed that of *Adams v. Lindsell*.

In *Household Fire & Carriage Acc. Ins. Co. v. Grant*,¹⁰ an English Court of Appeals case, Lord Justice Thesiger approved of the reasoning in the American *Taylor* case by stating: "In practice a contract complete upon the acceptance of an offer being posted, but liable to put an end to by an accident in the post, would be more mischievous than a contract only binding upon the parties to it upon the acceptance actually reaching the offerer, and I can see no principle of law from which such an anomalous contract can be deduced."¹¹ Thus, we again find a court speaking in terms of a commercial necessity, but the Lord Justice went further: "It is impossible in transactions which pass between the parties at a distance, and have to be carried on through the medium of correspondence, to adjust conflicting rights between innocent parties, so as to make the consequences of mistake on the part of a mutual agent equally upon the shoulders of both."¹² By speaking in terms of agency, we again find a court introducing the matter of control over the letter of acceptance. This language was interpreted as meaning that the one choosing the method of communication should

⁵ 1 Barn. & Ald. 681, 106 Eng. Rep. 250, (K.B. 1818). Because of the court's preoccupation with commercial necessities and practicalities, the rule of *Adams v. Lindsell* has come to be known as a "businessman's rule." 1 CORBIN, CONTRACTS § 78 (1963 ed.). But see note, 59 YALE L.J. 374, 376 (1950).

⁶ 1 Barn. & Ald. 681, 682, 106 Eng. Rep. 250, 251 (K.B. 1818).

⁷ 6 Wend. 103, 21 Am. Dec. 262 (N.Y. 1830).

⁸ 155 So.2d 889, 900 (Fla. 1963).

⁹ 50 U.S. (9 How.) 187 (1850).

¹⁰ 4 Ex.D. 216 (Ct. App. 1879).

¹¹ *Id.* at 223.

¹² *Ibid.*

bear the loss occasioned by the acts of a mutual agent.¹³

The side-issue of control became the operative factor in the rulings of two recent cases, the effect of which were to overrule the universality of the deposited acceptance maxim. *Dick v. United States*¹⁴ and *Rhode Island Tool Co. v. United States*¹⁵ discussed the fact that previously, when a letter was posted it was beyond the control of the sender, and became the property of the addressee. But the court placed great weight upon the fact that post office regulations now made it possible for a sender to retrieve his letter if it could be intercepted prior to delivery,¹⁶ thereby making the post office the agent of the sender up to the time of actual delivery. It was, therefore, reasoned that the acceptance is not final until it actually reached its destination.

The Florida court in the *Morrison* case rejects these decisions¹⁷ placing emphasis upon the "loss of control" by the sender, and attempts a return to the basic principles of *Adams v. Lindsell* by fixing an arbitrary point when the contract is entered into. The court states that the cases which attempted to provide additional justification for the deposited acceptance rule, by introducing the issue of control, had served only to confuse and weaken the essential validity of the rule because of the commercial necessities demanded in this situation. It was hinted that on purely legal grounds the deposited acceptance rule cannot be upheld. Included in the opinion is a quotation from *Williston on Contracts*¹⁸ and his discussion of the deposited acceptance rule: ". . . The court failed to consider that since the proposed contract was bilateral, as is almost invariably any contract by mail, the so-called acceptance must also have become effective as a promise to the offeror in order to create a contract . . ." While effectively refuting every other argument, the Florida court does not deal with the contention made by Williston, possibly because it did not wish to fall into the same trap as other courts which have previously considered the problem, by attempting to provide further justification for the rule.

Williston's argument can be summed up thusly: the acceptance is a counter promise, and as such must be communicated to be binding. To be sure this is a valid argument, but acceptance does not necessarily mean receipted notice by the offeror; acceptance

¹³ *Morrison v. Thoeke*, 155 So.2d 889, 901 (Fla. 1963).

¹⁴ 113 Ct.Cl. 94, 82 F.Supp. 326 (1949).

¹⁵ 130 Ct.Cl. 698, 128 F.Supp. 417 (1955).

¹⁶ The court cited 39 CFR 10.09, 10.10 (1939): "(c) On receipt of a request for the return of any article of mail matter the postmaster or railway postal clerk to whom such request is addressed shall return such matter in a penalty envelope, to the mailing postmaster, who shall deliver it to the sender upon payment of all expenses and the regular rate of postage on the matter returned. . . ."

¹⁷ *Dick v. United States*, 113 Ct.Cl. 94, 82 F.Supp. 376 (1949); *Rhode Island Tool Co. v. United States* 130 Ct.Cl. 698, 128 F.Supp. 417 (1955).

¹⁸ 1 WILLISTON, CONTRACTS § 81 (3rd ed. 1957).

is the manifested intent of both parties that the law should presume and annex to their mutual acts the obligation of contract. The offeror manifests his intent when he makes his offer, and the manifested intent of the offeree by acceptance, shows that he is also desirous that the arrangement in the offer ripen into contract.¹⁹ But this manifested intent does not require that there be receipted notice to the other party that the agreement is reached. Were this notice necessary, then the only way a contract could be effectuated would be by face-to-face dealing.²⁰ The manifested intent will be found in the acts of the parties, and the manifested intent of the offeree that he accepts the offer, can be found in the physical act of mailing his acceptance.

A contract, therefore, may arise without notice of acceptance to the offeror. This acceptance or attempted acceptance notice, if it does not reach the offeror, must be accepted by the means and methods authorized by the offeror. If the offer does not state how it is to be accepted, the method by which the offer was communicated is the presumed authorized method of acceptance. If the offeree does not utilize the authorized method of acceptance it is not effective to create a binding contract, until or unless it is received by the offeror, or unless it is received by the offeror within the time that an acceptance sent by the authorized method would have been received.²¹ Thus, an acceptance by telegraph to an offer sent by mail requires no notice that the acceptance has been received or accepted by the offeror.²²

The deposited acceptance rule has arisen because of commercial necessities and usages, and while harsh at times, it is the best solution that many courts have arrived at for this problem. In the light of the case of *Morrison v. Thielke*, an offer should specify how an acceptance should be made, and when it will create a binding contract between the parties.²³ A wider use of this procedure would relieve the courts of the unwanted burden of deciding this type of contract case upon arbitrary commercial necessity.

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¹⁹ See RESTATEMENT, CONTRACTS §§ 22, 52 (1932).

²⁰ See Ashley, *Formation of Contract Inter Absentes*, 2 COLUM. L.R. 1 (1902).

²¹ See RESTATEMENT, CONTRACTS § 66 (1932).

²² However, the offeree in communicating his acceptance runs the risk of having the telegraph company misdirect his acceptance. The issue of the agency of the transmitter became important in an Iowa case when an offer was sent by mail, and the acceptance by telegraph which was misdirected. The court held that the offeree had made the telegraph company his agent, therefore, the acceptance wasn't complete until it had been received by the offeror. *Lucas v. Western Union Telegraph Co.*, 109 N.W. 191, 131 Iowa 669. See RESTATEMENT, CONTRACTS, § 67 (1932).

²³ See RESTATEMENT, CONTRACTS § 61 (1932) and 15 OKLA. STAT. § 69 (1961).