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Contracts--Acceptance of an Offer in Which the Time Limitation is Ambiguous

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essential to business in general, it would appear that a statute like the one in *Bradford v. Hargis* might be upheld on the principles of those cases permitting legislative regulation, in emergencies, of businesses which are not otherwise so "affected with a public interest" as to permit legislative regulation.[13] This proposition, if capably enough urged to the Supreme Court would probably even be acceptable to those members constituting the majority in *Ribnik v. McBride.*[14]

—HENRY P. SNYDER.

CONTRACTS—ACCEPTANCE OF AN OFFER IN WHICH THE TIME LIMITATION IS AMBIGUOUS.—Cline, the owner of a tract of land, wrote a letter dated January 29, 1929 to Caldwell, the owner of another tract, offering to exchange his lands plus $6,000 for those of Caldwell. The letter was sent from Valls Creek, West Virginia, to Caldwell at Peterstown, West Virginia; Caldwell should have received it on either the 29th or 30th, but did not actually receive it until February 2. The letter, among other things, stated: "*i* will give you 8 days to either *except* or reject this offer"; "I am prepared within 8 days to make you same deeds"; and, further, "*i* will not *spent* any more money on this deal and after 8 days it will not be for sale for 90 days." Caldwell wired an acceptance on February 8, which reached Cline on the 9th. In the meantime, and after the expiration of what he considered to be the eight day period, Cline had given an option on the land to a third party, under which option the land was sold.[1]

Caldwell, claiming that his acceptance created a binding contract, brought action to obtain specific performance thereof. The Circuit Court sustained Cline's demurrer to the bill and dismissed the action. Upon appeal therefrom, the West Virginia Supreme Court of Appeals, in *Caldwell v. Cline,*[2] reversed the decree, rein-

[13] *Supra* n. 12.

[14] Mr. Justice Sutherland, speaking for the Court in Tyson & Bro., United Theatre Ticket Offices v. Banton, 273 U. S. 418, 47 S. Ct. 426, at 430 (1926), recognizes the validity of such legislation, citing and approving cases.

[1] This fact does not appear in the reported case, but was stated in defendant's answer in the Circuit Court, which was left out of the record by agreement of counsel; and also in defendant's petition for rehearing; nor was it denied, plaintiff having failed to allege in the bill of complaint that defendant was the then owner of the premises.

[2] 156 S. E. 55 (W. Va. 1931).

stated the bill, remanded the case, and later denied defendant's petition for rehearing.

In its opinion the court stated that any uncertainty in the offer related to when the offer became complete, and *not to the duration of the offer*; and held that an offer is not made until it is received by the offeree.[3]

Without questioning the correctness of this principle of law seized upon and set down by the Court, or the authorities cited to sustain it, it is submitted that the Court has approached the problem from the wrong angle.

It is manifest, from Cline's three repetitions of an eight-day limitation in his letter that he sought to limit the time within which Caldwell might accept.[4] The problem, then, certainly seems one of interpreting the effect of the attempted limitation, of determining when the offer would expire.

There are three possible interpretations of the language used by the offeror: (1) that the offeree was to be given eight days from the date of the letter in which to accept; (2) that he had eight days from the date the letter should have been received in the ordinary course of mail; (3) that he had eight days from the date it was actually received.

Without considering this problem at all, the Court simply stated: " . . . the acceptance having been received by Cline *within the specified time limit,* the result was . . . a contract."[5] Such language, it seems clear, necessitates the inference that the Court accepted the third possibility outlined above as the only interpretation applicable to the situation, despite, and without consideration of, the authority cited by counsel for the defendant to sustain his contention that the offer was limited to acceptance within eight days from the date of the letter containing it.[6] Nor did the Court

[3] Italics ours. This statement appears in the third paragraph of the case as reported in the advance sheet, and is made despite the fact that both counsel for the appellant and counsel for the appellee devoted a great deal of space in their briefs to argument on the time limitation.

[4] See the statement of facts. The third clause quoted from Cline's letter is a strong point in support of defendant's contention.

[5] Italics our. See the sixth paragraph of the opinion as reported in the advance sheet.

[6] See: C. J. 583; 39 Cyc. 1326; Goldsmith v. Guild, 10 Allen (Mass.) 239 (18665); Kishi v. Humble Oil Co., 261 S. W. 228 (Tex. 1924); Hannah v. Wahlberg, 128 Cal. 407, 60 Pac. 1035 (1900); Morrell v. Studd (1913) 2 Ch. 648; which are cited in appellee's brief, and are in point.

[7] In our search we have been unable to find any authority sustaining the rule which the Court has here assumed. Having assumed, also, that the acceptance was within the specified time, the Court merely cited authority to the effect that there was then an enforceable contract. It is also here sub-

cite any authority for the proposition evidently accepted.[7]

The difficulty of reasonable enforcement of the rule thus necessarily implied becomes manifest when one considers that the letter might have been temporarily mislaid in transit, and perhaps not have been delivered for eight months. *Quaere*: would the offeree have eight days from the receipt of the offer after the expiration of eight months in which to accept, despite the date upon the letter and its obvious limitation?[8] And, if not, just where would the line be drawn?

—SIDNEY J. KWASS.

EVIDENCE—JURY TRIAL RULES OF EVIDENCE AS APPLICABLE TO ADMINISTRATIVE TRIBUNALS.—In the case of *Machala v. State Compensation Commissioner*, the question involved was what caused the employee's death.[1] The evidence relied upon consisted chiefly of statements of the deceased, clearly hearsay testimony. In addition to this, there was competent legal evidence regarding some vital surrounding circumstances. The court, in allowing the claim, held that under our statute, an award may not be based entirely upon hearsay, which would be inadmissible by jury-trial rules, but that such evidence may be considered in connection with competent and sufficient corroborating evidence.[2]

This decision appears to be an adoption of the New York "*residuum rule*," that is, the rule that the administrative tribunal

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mitted that the brief of appellant led the Court into the erroneous assumption noted, as that brief, in citing authority for its contention that the limitation period ran from the date the letter was received, cited cases dealing with acceptance, and with the proposition that an offer is not made until it reaches the offeree, two entirely different propositions. See: 13 C. J. 300; 6 R. C. L. 600; Lucas v. Western Union Co., 131 Iowa 669, 109 N. W. 191, 6 L. R. A. (N. S.) 1018 (1906); and Campbell v. Beard, 57 W. Va. 501, 50 S. E. 747 (1905); which are cited by appellant's counsel, and are not in point.

The court also seems to place great reliance on Adams v. Lindsell, 1 B. & Ald. 681 (1818), an English case dealing with the mode of acceptance of an offer, rather than with a time limitation contained in an offer, the latter being the true issue in the case under discussion.

[8] To hold that the offeree would have eight days from that time would be against the present rule. See: 1 WILLISTON, CONTRACTS (1920) 112, § 63; and § 51 of the American Law Institutes' Restatement of the Law of Contracts; which are to the effect that if the offer is delayed, even if through the fault of the offeror, and the offeree knows or has reason to know of the delay, the period of acceptance is not thereby extended. See also WILLISTON, *op. cit.* §§ 50 and 53.

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[1] 155 S. E. 169 (W. Va. 1930); see also 108 W. Va. 391.

[2] W. VA. REV. CODE (1931), c. 23, art. 1, § 15.