Case note

ENTORES LTD *V.* MILES FAR EAST CORPORATION [1955] 2 QB 327(CA)

Parties to the Case

Miles Far East Corporation are an American corporation with agents all over the world, including a Dutch Company in Amsterdam. (Appellants)

Entores Ltd are a company registered and resident in England, with an office in London. (Respondents)

Procedural History

There was a breach of contract by the appellant. In the county court the respondents ordered to serve notice of the writ in an action for damages for breach of contract on the ground that the contract was made in England and therefore fell within the terms of R.S.C.,ord. 11,r 1 (e),(i). Miles Far East Corporation appealed to the Court of Appeal. It was an interlocutory appeal for the discharge of the order dated Dec. 17 1954 which gave liberty to the plaintiffs to serve the notice of a writ.

chaMaterial Facts

The English Company received a telex offer from the Dutch company.

Telex, like a telephone is the form of the instantaneous communication. Each Company had a teleprinter machine in its office; and each has a teletex number like a telephone number. For the moment one party type out the message, the other party ought to be receiving it on to the paper.

There were several Telex communications but the most important is when Entores Ltd made a counter offer to the Dutch company. The acceptance was received by telex machine in two days time.

?Question of Law

Does the postal rule apply to instantaneous communications?

There was a question of jurisdiction in relation to the place where the contract was made. If the contract was in Holland would the service of writ have been out of jurisdiction by term or by implication was it to be governed by English law?

Appellants' Argument

chaThe defendants argued that the contract was not made in England but was made in Holland.

The appellants applied for the Order 11 to be discharged and the subsequent proceedings to be set aside. ccccccccccccccc

The appellants carry on arguing that as far as a contract made by correspondence is concerned the offer made by post is accepted when an acceptance is put in the post. Moreover, the contract is made at the place where that act was performed. In the case of *Adam v. Lindsell* (1818)[1] where an offer is capable of being accepted by post, the time of acceptance is generally the time at which the acceptance is posted. *T*he same principal applies to *Dunlop v. Higgins* (1848)[2] where it was decided that the posting of a letter

[1] 1B &Ald.681
[2])1 H.L.C 381

accepting an offer constitutes a binding contract. In re Imperial Land Co. of Marseilles[3], British and American Telegraph Co v. Colson[4],do them

In Household Fire Insurance Co. v. Grant[5] was held that acceptance was complete when the letter of allotment was posted and it was irrelevant that it never arrived.

Lord Herchell L.C in Henthorn v. Fraser[6] said the acceptance is complete when it is posted. The same rule has been applied to telegrams in cases of Henkel v. Pape[7], Cowan v. O'Connor[8] and Bruner v.Moore[9].

An offer cannot be accepted after it has been rejected [Hyde v. Wrench (1840) 3 Beav. 334.] or revoked, [Watson v. Davies, *ante*.] and knowledge of the revocation has been communicated to the offeree. [Henthorn v. Fraser [1892] 2 Ch. 27.]

Where an offer is capable of being accepted by post, the time of acceptance is generally the time at which the acceptance is posted. [Adams v. Lindsell (1818) 1 B. & Ald. 681.] This is so even though the posted acceptance never arrives at its destination. [Household Fire and Carriage Insurance Co. v. Grant (1879) 4 Ex. D. 216.] This rule does not apply to the revocation of an offer, which must be actually communicated to the offeree. [Henthorn v. Fraser [1892] 2 Ch. 27.] Furthermore, the rule may be negatived by express words. So where an option was required to be exercised "by notice" it was held that a notice meant something which came to the attention of the person to whom it was addressed, so that the "posting rule" did not apply. [Holwell Securities v. Hughes [1974] 1 W.L.R. 155.] The "posting rule" does not apply to instantaneous communications between the parties, *e.g.* telex, [Entores v. Miles Far East Corporation [1955] 2 Q.B. 327.] or, presumably, facsimile transmission.

Decision of the Court

Appeal to the House of Lords dismissed

Reasons for the decision

Lord Denning in his judgment had distinguished the postal rule and instantaneous communications.

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[3] (1872)L.R.7Ch.587
[4] (1871)L.R.6Exch.108
[5] (1879)4Ex.D.216
[6] (1892)2Ch.27,32; 8 T.L.B. 459
[7] (1870)L.R. 6Exch. 7.
[8] (1888)20 Q.B.D. 640
[9] (1904)1Ch.305; 20T.L.R. 125

Firstly, he had introduced oral communication. If A shouts an offer to B across a river or a courtyard but A does not hear B's reply because of any reason then at that stage there is no contract. But if B wishes to make a contract he must shout back his acceptance so that A can hear what he says not until A has B's answer that A is bound.

Secondly, an offeror makes a contract by the telephone and for any reason the offeror cannot hear an offeree's acceptance. Then obviously there is no contract. If an offeree wishes to make a contract he must call again to make sure that an offeror heard his acceptance.

Finally, he introduced two offices: one office was in London and another was in Manchester. A clerk in London taps out an offer which is directly recorded on a teleprinter in a Manchester office and a clerk at that end taped an acceptance. If for any reason the offeror did not get an acceptance, hence there is no contract. However, if the offeree taps out the message again and the offeror receives it then there is a contract.

Overall Lord Birkett and Lord Parker have agreed with the decision above.

PUT JUDGEMENTS

Rules of Law

The rule about instantaneous communications between the parties is different from the rule about the post. The contract is only complete when the acceptance is received by the offeror, and the contract is made at the place where the acceptance is received.

Obiter Dictum

Lord Denning went on beyond the point being necessary to be settled in his decision**.** He said that it is very important that the countries of the world should have the

same rule'.In most European countries instantaneous communications are considered in the same way. They apply to contracts by post as well as instantaneous communications. Even thought, in the United States of America the instantaneous communication are treated as postal communications there is no difference between English and American Law: see American restatement S.64, in the case of the contract of the telephone, it has been held in America that the contract is made at the place where the acceptance is spoken, therefore dealing with such a contract the same principal as that applicable in the case of a letter to telegram.

Lord Parker made a number of general comments in his judgment which could be seen as *obiter dictum:*

'The requirement as to actual notification of the acceptance is for the benefit of the offeror, he may waive it and agree to substitution for that requirement of some other conduct by the acceptor. He may do so expressly, as in the advertisement cases, by intimating that he is content with the performance of a condition. Again, he may do so impliedly by indicating a contemplated method of acceptance, for example, by postal telegram. In such a case he does not expressly dispense with actual notification, but he is held to have done so impliedly on grounds of expediency'.