

CARLILL V CARBOLIC SMOKE BALL COMPANY

[IN THE COURT OF APPEAL.]

[1893] 1 Q B 256

7 December 1892

CATCHWORDS:

Contract - Offer by Advertisement - Performance of Condition in Advertisement - Notification of Acceptance of Offer - Wager - Insurance - 8 & 9 Vict. c. 109 - 14 Geo. 3, c. 48, s. 2.

HEADNOTE:

The defendants, the proprietors of a medical preparation called "The Carbolic Smoke Ball," issued an advertisement in which they offered to pay 100l. to any person who contracted the influenza after having used one of their smoke balls in a specified manner and for a specified period. The plaintiff on the faith of the advertisement bought one of the balls, and used it in the manner and for the period specified, but nevertheless contracted the influenza:-

Held, affirming the decision of Hawkins, J., that the above facts established a contract by the defendants to pay the plaintiff 100l. in the event which had happened; that such contract was neither a contract by way of wagering within 8 & 9 Vict. c. 109, nor a policy within 14 Geo. 3, c. 48, s. 2; and that the plaintiff was entitled to recover.

INTRODUCTION:

APPEAL from a decision of Hawkins, J.

The defendants, who were the proprietors and vendors of a medical preparation called "The Carbolic Smoke Ball," inserted in the Pall Mall Gazette of November 13, 1891, and in other newspapers, the following advertisement: "100l. reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the increasing epidemic influenza, colds, or any disease caused by taking cold, after having used the ball three times daily for two weeks according to the printed directions supplied with each ball. 1000l. is deposited with the Alliance Bank, Regent Street, shewing our sincerity in the matter.

"During the last epidemic of influenza many thousand carbolic smoke balls were sold as preventives against this disease, and in no ascertained case was the disease contracted by those using the carbolic smoke ball.

"One carbolic smoke ball will last a family several months, making it the cheapest remedy in the world at the price, 10s., post free. The ball can be refilled at a cost of 5s. Address, Carbolic Smoke Ball Company, 27, Princes Street, Hanover Square, London."

The plaintiff, a lady, on the faith of this advertisement, bought one of the balls at a chemist's, and used it as directed, three times a day, from November 20, 1891, to January 17, 1892, when she was attacked by influenza. Hawkins, J., held that she was entitled to recover the 100l. The defendants appealed.

[...]

JUDGMENTBY-1: LINDLEY, L.J

[...]

Then it is contended that it is not binding. In the first place, it is said that it is not made with anybody in particular. Now that point is common to the words of this advertisement and to the words of all other advertisements offering rewards. They are offers to anybody who performs the conditions named in the advertisement, and anybody who does perform the condition accepts the offer. In point of law this advertisement is an offer to pay 100l. to anybody who will perform these conditions, and the performance of the conditions is the acceptance of the offer. That rests upon a string of authorities, the earliest of which is *Williams v. Carwardine* (1), which has been followed by many other decisions upon advertisements offering rewards.

[...]

JUDGMENTBY-2: BOWEN, L.J

[...]

It was also said that the contract is made with all the world - that is, with everybody; and that you cannot contract with everybody. It is not a contract made with all the world. There is the fallacy of the argument. It is an offer made to all the world; and why should not an offer be made to all the world which is to ripen into a contract with anybody who comes forward and performs the condition? It is an offer to become liable to any one who, before it is retracted, performs the condition, and, although the offer is made to the world, the contract is made with that limited portion of

the public who come forward and perform the condition on the faith of the advertisement. It is not like cases in which you offer to negotiate, or you issue advertisements that you have got a stock of books to sell, or houses to let, in which case there is no offer to be bound by any contract. Such advertisements are offers to negotiate - offers to receive offers - offers to chaffer, as, I think, some learned judge in one of the cases has said. If this is an offer to be bound, then it is a contract the moment the person fulfils the condition.

That seems to me to be sense, and it is also the ground on which all these advertisement cases have been decided during the century; and it cannot be put better than in Willes, J.'s, judgment in *Spencer v. Harding*. "In the advertisement cases," he says, "there never was any doubt that the advertisement amounted to a promise to pay the money to the person who first gave information. The difficulty suggested was that it was a contract with all the world. But that, of course, was soon overruled. It was an offer to become liable to any person who before the offer should be retracted should happen to be the person to fulfil the contract, of which the advertisement was an offer or tender. That is not the sort of difficulty which presents itself here. If the circular had gone on, 'and we undertake to sell to the highest bidder,' the reward cases would have applied, and there would have been a good contract in respect of the persons." As soon as the highest bidder presented himself, says Willes, J., the person who was to hold the vinculum juris on the other side of the contract was ascertained, and it became settled.

Then it was said that there was no notification of the acceptance of the contract. One cannot doubt that, as an ordinary rule of law, an acceptance of an offer made ought to be notified to the person who makes the offer, in order that the two minds may come together. Unless this is done the two minds may be apart, and there is not that consensus which is necessary according to the English law - I say nothing about the laws of other countries - to make a contract. But there is this clear gloss to be made upon that doctrine, that as notification of acceptance is required for the benefit of the person who makes the offer, the person who makes the offer may dispense with notice to himself if he thinks it desirable to do so, and I suppose there can be no doubt that where a person in an offer made by him to another person, expressly or impliedly intimates a particular mode of acceptance as sufficient to make the bargain binding, it is only necessary for the other person to whom such offer is made to follow the indicated method of acceptance; and if the person making the offer, expressly or impliedly intimates in his offer that it will be sufficient to act on the proposal without communicating acceptance of it to himself, performance of the condition is a sufficient acceptance without notification.

That seems to me to be the principle which lies at the bottom of the acceptance cases, of which two instances are the well-known judgment of Mellish, L.J., in *Harris's Case*, and the very instructive judgment of Lord Blackburn in *Brogden v. Metropolitan Ry. Co.*, in which he appears to me to take exactly the line I have indicated.

Now, if that is the law, how are we to find out whether the person who makes the offer does intimate that notification of acceptance will not be necessary in order to constitute a binding bargain? In many cases you look to the offer itself. In many cases you extract from the character of the transaction that notification is not required, and in the advertisement cases it seems to me to follow as an inference to be drawn from the transaction itself that a person is not to notify his acceptance of the offer before he performs the condition, but that if he performs the condition notification is dispensed with. It seems to me that from the point of view of common sense no other idea could be entertained. If I advertise to the world that my dog is lost, and that anybody who brings the dog to a particular place will be paid some money, are all the police or other persons whose business it is to find lost dogs to be expected to sit down and write me a note saying that they have accepted my proposal? Why, of course, they at once look after the dog, and as soon as they find the dog they have performed the condition. The essence of the transaction is that the dog should be found, and it is not necessary under such circumstances, as it seems to me, that in order to make the contract binding there should be any notification of acceptance. It follows from the nature of the thing that the performance of the condition is sufficient acceptance without the notification of it, and a person who makes an offer in an advertisement of that kind makes an offer which must be read by the light of that common sense reflection. He does, therefore, in his offer impliedly indicate that he does not require notification of the acceptance of the offer.

[...]

JUDGMENTBY-3: A. L. SMITH, L.J

[...]

It was then said there was no person named in the advertisement with whom any contract was made. That, I suppose, has taken place in every case in which actions on advertisements have been maintained, from the time of *Williams v. Carwardine* (1), and before that, down to the present day. I have nothing to add to what has been said on that subject, except that a person becomes a *persona designata* and able to sue, when he performs the conditions mentioned in the advertisement.

[...]

THE ILLUSTRATED LONDON NEWS

CARBOLIC SMOKE BALL

WILL POSITIVELY CURE

- | | | | | | |
|---|--|---|---|---|---|
| COUGHS
Cured in 1 week | CATARRH
Cured in 1 to 2 months | HOARSENESS
Cured in 11 hours | THROAT BRUISES
Cured in 1 to 2 days | INFLUENZA
Cured in 10 hours | GROUP
Cured in 10 minutes |
| COLD IN THE HEAD
Cured in 10 hours | ASTHMA
Subdued in 10 minutes | LOSS OF VOICE
Fully restored | SNORING
Cured in 1 week | HAY FEVER
Cured in every case | WHOOPING COUGH
Subdued in 10 days |
| COLD IN THE CHEST
Cured in 10 hours | BRONCHITIS
Cured in every case | SORE THROAT
Cured in 10 hours | BORN EYES
Cured in 1 week | HEADACHE
Cured in 10 minutes | RHEUMATISM
Cured in 10 minutes |

As all the Diseases mentioned above proceed from one cause, they can be Cured by this Remedy

£100 REWARD

WILL BE PAID BY THE
CARBOLIC SMOKE BALL CO.
to any Person who contracts the Increasing Epidemic.

INFLUENZA,

Cold, or any Disease caused by taking Cold, after having used the CARBOLIC SMOKE BALL according to the printed directions supplied with each Ball.

£1000 IS DEPOSITED

with the ALLIANCE BANK, Regent Street, showing our sincerity in the matter.

During the last epidemic of INFLUENZA many thousands CARBOLIC SMOKE BALLS were sold as a preventive against the disease, and in an unaccounted case was the disease recovered by those using the CARBOLIC SMOKE BALL.

THE CARBOLIC SMOKE BALL,

TESTIMONIALS.

The Duke of Devonshire writes: "I am much obliged by the Carbolic Smoke Ball which you have sent me, and which I find most efficacious."

Mr. FRANCIS BARRON, Esq., M.P., writes from Can. March 1, 1890: "Lady B. and my children have derived much benefit from the Carbolic Smoke Ball."

Lady B. writes from Can. October, 1890: "My children have derived much benefit from the Carbolic Smoke Ball in a cold, cough and a sore throat, and all have gone through in consequence of it to the Duke. Lady B. writes from the Carbolic Smoke Ball will have all the same in my children."

Lady B. writes from Can. October 1890: "The Carbolic Smoke Ball has given every satisfaction; the children in a very good condition."

Mr. FRANCIS BARRON writes: "The Duke the Carbolic Smoke Ball has done for a great deal of good."

WALTER J. BARRON writes: "Walter J. B. has found the Carbolic Smoke Ball very beneficial, and the only thing that would make me feel well in my throat when I was in a cold."

The Original of these Testimonials may be seen at our Operating Room, with hundreds of others.

One CARBOLIC SMOKE BALL will last a family several months, making it the cheapest remedy in the world at the price—10s. post free.

The CARBOLIC SMOKE BALL can be refilled, when so pty, at a cost of 6s. post free. Address:

CARBOLIC SMOKE BALL CO., 27, PRINCES ST., HAMOVER SQ., LONDON, W.

£100 REWARD

WILL BE PAID BY THE

CARBOLIC SMOKE BALL CO.

to any Person who contracts the Increasing Epidemic,

INFLUENZA,

Cold, or any Diseases caused by taking Cold, after having used the CARBOLIC SMOKE BALL according to the printed directions supplied with each Ball.

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