

LOUISA CARLILL V. THE CARBOLIC SMOKE BALL COMPANY

((1892) EWCA Civil 1)

((1893) 1 QB 256)

BENCH – Court of Appeal

JUDGE-Lindley LJ, Bowen LJ, AL Smith LJ

DATE- 8th December 1892

FACTS

(1) The company made a product called “Smoke Ball”. It claimed to be a cure to influenza and many other diseases, in the context 1889-1890: Flu pandemic which is estimated to have killed 1 million people. The smoke ball is filled with Carbolic acid i.e. Phenol. The tube is supposed to be inserted in one of your nostrils and the bottom part of the rubber ball was to be pressed. The gas enters your respiratory tract and flushes out all the viruses.

(2) The Company published advertisements in the Pall Mall Gazette and other newspapers on November 13, 1891, claiming that it would pay £100 to anyone who got sick with influenza after using its product according to the instructions set out in the advertisement-

“£100 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. £1000 is deposited with the Alliance Bank, Regent Street, showing 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.”



Source of photo en.wikipedia.org

(3) The plaintiff (Louisa Carlill) believing in the accuracy of the statement made in the advertisement with respect to efficacy of the smoke ball in cases of influenza, purchased one packet and used it thrice every day from mid-November, 1891 until 17th Jan, 1892, at which latter date she had an attack of influenza. Thereupon, her husband wrote a letter for her to the defendants, stating what had happened, and asking for £100 as promised in the advertisement.

(4) They refused and this action was brought in court before J. Hawkins. Arguments were heard on both the sides and finally the verdict was given in favour of Mrs. Carlill.

ISSUE

The main issues that arise are as follows:

- How does one interpret vague term?
- Was the ad a “mere puff”?
- Does performance of the condition advertised in newspaper constitute acceptance of an offer?
- Was there any consideration made?

ANALYSIS

The court observes no action will lie upon this contract because it is a policy. One need to only look at the advertisement to dismiss that suggestion. Earlier, J. Hawkins came to the conclusion that nobody ever dreamt of a bet, and that the transaction had nothing in common with a bet. The court agreed with him.

The court was dealing with a situation of an express promise to pay 100£ in certain events. The language of the advertisement clearly states – “100£ reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the influenza after having used the ball three times daily for two weeks according to the printed directions supplied with each ball.”

The court finds out that advertisement was not a “mere puff” as had been alleged by the defendant (Carbolic smoke ball co.). Ipso facto £1000 was deposited with Alliance Bank, Regent Street. The deposit is called in aid by the advertisers as proof of their sincerity in the matter. The advertisement definitely means seriousness and bank deposits show their intentions.

The advertisement was an offer to the world. It was contended that it is not binding. It was said that it was not made with anybody in particular. In point of law the advertisement was an offer to pay £100 to anybody who will perform these conditions, and the performance of the conditions is the acceptance of the offer.

Communication of acceptance is not necessary for a contract when people’s conduct manifests an intention to contract. Unquestionably, as a general proposition, when an offer is made, it is necessary in order to make a binding contract, not only that it should be accepted, but that the acceptance should be communicated but in cases of this kind, it is apprehended that they are an exception to the rule that the communication of the acceptance need not precede the performance. This offer is a continuing offer. It was never revoked, and if notice of acceptance is required, then the person who makes the offer gets the notice of acceptance contemporaneously with his notice of the performance of the condition before his offer is revoked.

In the issue of consideration the court observes that the advertisers, a use of the smoke balls by the public, if they can get the public to have confidence enough to use them, will react and

produce a sale which is directly beneficial to them, the defendants. Therefore, it appears that out of this transaction emerges an advantage to them which is enough to constitute a consideration. The person who puts himself/ herself in an inconvenient, if not detrimental to his health, while inhaling potent fumes of carbolic gas? So therefore there is ample consideration to this.

The court said that there is no time limit fixed for catching influenza, and it cannot seriously be meant to promise to pay money to a person who catches influenza at any time after the inhaling of the smoke ball. There is also great vagueness in the limitation of the persons with whom the contract was intended to be made. But this document was intended to be issued to the public and to be read by public and the effect of this advertisement was to attract people and make them use it, which would amount to more sales, thus more profit. Based on this intention to promote the distribution of the smoke balls and to increase its usage, the advertisement was accepted as a contract addressing public at large but limited to those people who are using it either for prevention or treatment of influenza and other mentioned diseases.

On the point of reasonable time the respected judge came to a conclusion that the protection warranted by the contract was to last during the epidemic i.e. 1889-90 Flu epidemic. If so, it was during this epidemic that the plaintiff contracted this disease. So the contract holds.

CONCLUSION

The appeal was dismissed unanimously by all the three judges and Mrs. Carlill finally received compensation of £100. The court held that the advertisement was a general offer to the whole world. Anyone following the conditions mention in the advertisement constitute a valid acceptance. Merely buying or using the carbolic smoke ball medicine is a valid consideration and money deposit in the bank shows the legal intention of the company to form a valid contract