

THE RULE IN BOLTON v. LAMBERT

In 1889, the English Court of Appeal held in *Bolton Partners v. Lambert*, 41 Ch.D. 295, that an unauthorized acceptance by an assumed agent in the name of the person to whom an offer was made prevented the offeror from withdrawing. This much discussed decision was perhaps the most striking application of the well recognized fiction in agency law that "subsequent ratification is equivalent to prior authority".¹ Ratification "was dragged back as it were and made equipollent to a prior command."²

Lord Justice Fry in the third edition of his work on "*Specific Performance*" was moved to state that this was a "remarkable" case raising "some difficulties, both practical and legal". He said:³

It seems to follow from it that the intervention of a mere stranger may prevent a person who has made an offer from withdrawing that offer until it be seen whether the person to whom it is made will ratify it or not, and consequently places that person in the difficult position of neither having a contract nor a right to withdraw an offer.

In 1900 the Privy Council in *Fleming v. Bank of New Zealand*, [1900] A.C. at p. 587, also found it incumbent upon them to say per Lord Lindley (one of the judges in *Bolton's Case*), although it was unnecessary for the decision of the case before them, that "the decision referred to (*Bolton v. Lambert*) presents difficulties, and their Lordships reserve their liberty to reconsider it if on some future occasion it should become necessary to do so." It is interesting to note that although forty years have elapsed since that dictum, the decision in *Bolton v. Lambert* has yet to be expressly overruled either by the House of Lords

¹ "Omnis rati habitio retrotrahitur et mandato aequiparatur." Coke's Litt. 207a. Bracton used 'comparatur' instead of 'aequiparatur'. For the history of this doctrine of ratification and its possible growth from the law relating to the liability for possession of stolen goods, see Holmes, O.W., Jr., *History of Agency*, Anglo-American Legal Essays, 1909, Vol. III, pp. 368-414. See also Lord Lindley in *Keighley, Marted & Co. v. Durant*, [1901] A.C. 240, at p. 262. "The mere statement of the general nature of what is meant by ratification shows that it rests on a fiction. Where a man acts with an authority conferred upon him, no fiction is introduced; but where a man acts without authority and an authority is imputed to him a fiction is introduced, and care must be taken not to treat this fiction as fact . . . Historically, that doctrine is no doubt derived from the Roman law; but it has been extended and developed in this country conformably to our own legal principles and to meet our own commercial necessities."

² Lopes L.J. in *Bolton v. Lambert*, at p. 310, approving language of Baron Martin in *Brook v. Hook*, L.R. 6 Ex. 89.

³ FRY, SPECIFIC PERFORMANCE, Add. Note A.

or the Privy Council, or in any of the appellate courts of Canada. The American courts, however, seem generally to hold that a withdrawal before ratification is valid.⁴

The purpose of this article is not so much to reopen the controversy which raged over the question both in England and America almost 50 years ago, but to examine the manner in which the courts of England and Canada have dealt with the problem of the right to revoke before ratification in the surprisingly few reported cases in which they were faced with *Bolton v. Lambert*.

It will be recalled that the case of *Bolton v. Lambert* was an action brought by Bolton Partners against Lambert to enforce specifically an agreement to take a lease of certain premises. The sequence of events was as follows: (1) On December 8, 1886, the defendant Lambert wrote to one Scratchley, a director of the plaintiff company, offering to take a lease of the property. (2) On December 13, Scratchley submitted the defendant's offer to a "works committee" of the company, which without authority to bind the company approved the acceptance of the offer and instructed Scratchley to write accordingly. (3) On December 14, Scratchley wrote to the defendant accepting his offer in the name of the company. (4) On December 17, the company's solicitor sent Lambert a draft agreement containing stipulations not mentioned in the defendant's offer. (5) The defendant objected to these and finally on January 13, 1887, withdrew his offer on the ground of misrepresentation. (6) On January 23, (after the issuance of a writ for specific performance by the company) the company's board of directors confirmed Scratchley's letter of acceptance and the action of the "works committee".

At the trial, Kekewich J. decreed specific performance on the ground that there was no misrepresentation and that the defendant's purported withdrawal was ineffective as against a ratification by the plaintiff of the unauthorized acts done on its behalf. The Court of Appeal (Cotton, Lindley and Lopes L.JJ.) dismissed the appeal on the ground that subsequent ratification was equivalent to a prior authority. According to Cotton L.J. and Lopes L.J., the "proper view" was that the acceptance by Scratchley did constitute a contract "subject to"

⁴ See MECHEM, LAW OF AGENCY, Vol. 1, p. 522; STREET, FOUNDATIONS OF LEGAL LIABILITY, Vol. II, pp. 487-490; Wambaugh, *A Problem as to Ratification*, 9 H.L.R. 60; Mechem, *A Question as to Ratification*, 24 Amer. L.R. 580; Sondley, *An Effect of Ratification*, 25 Amer. L.R. 74. Also note in 5 L.Q.R. 441; RESTATEMENT OF LAW OF AGENCY (Amer. L. Inst.) Vol. 1, p. 213.

it being shown that Scratchley had authority to bind the company, and that since if Scratchley had acted under a precedent authority the withdrawal of the offer by the defendant would have been inoperative, it was equally inoperative where the company had "ratified and adopted the contract of the agent".

Bolton v. Lambert Followed and Applied

Within two months of *Bolton v. Lambert*, the Court of Appeal was confronted with a somewhat similar problem in *In re Portuguese Consolidated Copper Mines, Limited (Ex parte Steele)*.⁵ One Steele, having applied for shares in the defendant company, the allotment was made by two directors who by the articles did not form a quorum. After notice of "allotment", Steele gave notice that he withdrew his offer, but at a subsequent meeting three directors met and purported to confirm the former allotments. In the lower court, North J. held that the two directors had no power to appoint themselves a quorum, and that the allotment of shares to Steele was invalid, and it could not be ratified after Steele had withdrawn his application for shares. The Court of Appeal (Lord Esher M.R., Cotton L.J., Fry L.J.) found it unnecessary to deal specifically with Mr. Justice North's view for they held that assuming that every other point be taken in favour of the company, the allotment was invalid because the second meeting was also irregular for want of notice to all the directors.

Next year, however, litigation was begun against the company by two other applicants for shares, Badman and Bosanquet.⁶ Badman had sent a cheque for the money due on application, but afterwards, stopping the cheque at the bankers, sent a letter to the company saying that he wished to be relieved of the shares, without expressly repudiating on the ground that the allotment was bad. Bosanquet, the second applicant, paid the money payable on application, but as to that payable on allotment, he did so under protest. After the decision in *Steele's Case* on March 15, 1889, Bosanquet wrote to the secretary claiming a return of his money, and asking that his case be governed by that decision. However, on January 16, 1889, a properly constituted meeting of the directors had already confirmed the previous allotments. Mr. Justice North, again trying the case in the lower court, held

⁵ (1889), 42 Ch.D. 160.

⁶ *In re Port. Cons. Copper Ltd. (Ex parte Badman, Ex parte Bosanquet)* (1890), 45 Ch.D. 16.

that though in his view the facts were that the applications in both cases were revoked before the ratification by the directors, he could not distinguish the case from *Bolton v. Lambert*. He, therefore, held that the ratification was valid, but protested : (p. 21)

It comes to this, that if an offer is made to a person who professes to be the agent for a principal, but who has not authority to accept it, the person making the offer will be in a worse position as regards withdrawing it than if it had been made to the principal; and the acceptance of the unauthorized agent in the meantime will bind the purchaser to his principal, but will not in any way bind the principal to the purchaser.

The Court of Appeal (Cotton, Lindley, and Bowen L.JJ.) dismissed the appeal on the authority of the previous case of *Bolton v. Lambert*. In doing so, however, they introduced a salutary modification⁷ of that decision by stating that the ratification had come within a reasonable time having regard to all the circumstances.

In between these two Portuguese Copper cases there came a striking illustration of the significance of *Bolton v. Lambert*.⁸ On April 27, 1898, one Vilmar sold in the name of his principal 3,000 quarters of wheat to the defendants. Vilmar sold this in the principal's name with the fraudulent intention of selling for his own account and for his own benefit, the buyers having refused to deal with him personally for financial reasons. At the beginning of June, 1898, the wheat market fell, and the defendants, suspecting that Vilmar had made the contracts on his own behalf, refused to carry them out. Thereupon, the principal at Vilmar's request, purported to ratify the sale by Vilmar. Channel J. held that, as decided by *Bolton v. Lambert*, the principal could validly ratify and adopt the contracts, and that he could do so notwithstanding the previous repudiation of these contracts by the buyers.⁹

*Bolton v. Lambert Distinguished on Ground of Acceptance
Being Subject to Ratification*

The rule that where an agent accepts an offer subject to ratification by the principal, the offer may be withdrawn at

⁷ To be discussed later.

⁸ *In re Tiedmann*, [1899] 2 Q.B. 66.

⁹ Apparently Channel J. felt that ratification must have been made within a reasonable time, but thought that in this case the time for ratification was not too late. See p. 70. See also *Molineaux v. The London & Manchester Insurance Ltd.*, [1902] 2 K.B. 589, where *Bosanquet's Case* was applied.

any time before ratification, was early suggested by Lord Justice Fry as an exception to *Bolton v. Lambert*. In *The Managers of the Metropolitan Asylum Board v. Kingham and Sons* (1890), 6 T.L.R. 217 at p. 218, he said: "Supposing a person tendering says, 'I will not be bound by an acceptance of any unauthorized person, it must be accepted by the principal', such a condition would be perfectly valid."

In 1925, the Appellate Court of Ontario applied this doctrine. In *Goodison v. Doyle*¹⁰ the defendant had signed a document purported to be an agreement between the plaintiff company and himself for the sale from the company to him and the purchase by him of a machine, upon the terms of the purported agreement, "which is to be approved by the said company with or without notice to the purchaser". The signature was obtained by the agent of the company, but he did not sign the purported agreement on behalf of the company as he had no authority to do so, and as the purported agreement stated that it should not bind the company until accepted at the head-office. Before such acceptance, the defendant wrote to the company treating the document as an offer on his part and cancelling the offer. The trial judge had held that the rule in *Bolton v. Lambert* had prevented the defendant from withdrawing his offer as the acceptance by the plaintiffs operated as a ratification of a contract entered into by the agent and the defendant. Masten J.A. correctly pointed out that since the alleged agreement expressly provided that it shall not bind the plaintiff company until accepted by its head-office, the result was that in effect the document was merely an offer which, not being under seal, could be revoked at any time. He said :

The distinction between this case and *Bolton Partners v. Lambert* is that in that case Scratchley assumed to agree on behalf of and in the name of the company to sell its lands. There was an agreement in form which was afterwards duly ratified. Here there never was anything purporting to be an agreement by or on behalf of the plaintiff company until a date subsequent to the withdrawal by the defendant of his offer.

How far-reaching this rule is can be seen in a more recent English case in which the question came up directly. In *Watson v. Davies*, [1931] 1 Ch. 455, an offer to sell certain property accepted by a majority of the members of the board of a charity, subject to ratification in a later meeting of the

¹⁰ (1925), 57 O.L.R. 300.

board, was held capable of being withdrawn at any time before such ratification.

*Bolton v. Lambert Distinguished on the Ground
of Invalid Mode of Ratification*

In *Mayor, Alderman, Citizens of Oxford v. Crow*, [1893] 3 Ch. 535, a lessee of buildings belonging to the plaintiffs, a municipal corporation, offered to surrender his lease and to erect a new building on the site if the city would grant him a new lease for 75 years. This offer was made on the 13th of May, 1892, and addressed to the chairman of the Public Improvements Committee which had not been appointed under the seal of the corporation. It was held that the purported contract was invalid, it not being under the seal of the corporation, or signed on their behalf or ratified under seal. It follows from this case that since a contract which must be made under seal must be ratified by an instrument under seal, an offeror can withdraw until that is done.

Romer J. based his decision on the older case of *Mayor, Aldermen, Citizens of Kidderminster v. Hardwick* (1873), 9 Ex. 13, where the facts were in essence similar except that a repudiation came before ratification was attempted by resolution.¹¹

Probable Extension of the Rule in Walter v. James

It is now generally recognized that the case of *Walter v. James*, 6 Ex. 124, decided in the Exchequer Court in 1871, stands for the proposition that before ratification an assumed agent and the third party may undo what they had purported to do before.¹² This salutary exception to the general rule has been held by Street to be based on the idea that that which can bind can unbind.¹³ In our survey, it is interesting to note that *Bolton v. Lambert* was the first reported decision to attribute to *Walter v. James* a general cancellation power on the part of the third party and the alleged agent, although there were some indications in *Walter v. James* itself that the judges

¹¹ The *Kiddermaster Case* is cited also for the proposition that the ratification of a contract does not give the person who ratifies it a right of action in respect of any breach thereof committed before the time of ratification, as two of the three judges of the court of appeal based their decision on this alternative ground. See 1 Halsbury, p. 239. This is probably a good exception to *Bolton v. Lambert*.

¹² See 5 L.Q.R. 441; 5 Col. L.R. 454.

¹³ STREET, *op. cit.*, Vol. II, p. 488.

might have intended to limit the application of the case to the payment of debts.¹⁴ So in *Bolton's Case* Cotton L.J. distinguished the earlier case on the ground that "there was an agreement between the assumed agent of the defendant and the plaintiff to cancel what had been done before any ratification by the defendant" (p. 307).

This admission by Cotton L.J. that they did not purport to overrule the earlier case and that the rule therein enunciated applied generally to all transactions and was not limited to the payment of debts, preserved for the future an important exception to the rule in *Bolton v. Lambert* itself, namely, that a repudiation or revocation to an assumed agent by the third party would be effective if the former consents to cancel the acceptance before an attempted ratification by the principal.

It has been suggested that the two cases cannot be reconciled because *Bolton v. Lambert* was merely a case of *Walter v. James* with acceptance substituted for payment.¹⁵ This would of course be a short way of resolving the difficulty, but with respect to the fiction of relation back, the bilateral cancellation in *Walter v. James* is easier to explain on principle than that of a purported right of the third party to end the transaction by unilateral action.¹⁶ If it be recognized that *Walter v. James* is an avowed exception to the general doctrine of ratification for practical reasons, it would seem that the question is not whether the two cases can be reconciled with respect to the logic of the doctrine of relation back, but whether it would not have been politic in *Bolton v. Lambert* to recognize another exception for similar reasons. The plea would of course be: if an exception is made if the third party and the alleged agent undo their previous transaction, why can there not be the same result when the third party revokes his offer to the alleged agent or principal, and what if there is a revocation to an agent who admits he has no authority?

¹⁴ So Baron Martin in *Walter v. James* laid down the rule as follows: "When a payment is not made by way of gift for the benefit of the debtor, but by an agent who had not the debtor's authority to pay, it is competent for the creditor and the person paying to rescind the transaction at any time before the debtor had affirmed the payment, and repay the money, and thereupon the payment is at an end, and the debtor is again responsible."

¹⁵ 5 L.Q.R. 441.

¹⁶ Under the fiction of "Identification" of agent and principal it may be said that cancellation by the agent was cancellation by the principal. Moreover, under the rule that the principal must ratify all the acts of the agent, it might be argued that if the principal purported to ratify the agent's acts, it would include the cancellation.

Extension of the Rule of Ratification within a Certain Time

In *Dibbins v. Dibbins*, [1896] 2 Ch. 348, articles of partnership provided that on the death of either partner, the survivor should have the option of purchasing the deceased partner's share by giving notice in writing of his intention to do so within three months from the death. The surviving partner was of unsound mind but notice of his intention was given on his behalf by his solicitor within the three months. An order was subsequently made under the Lunacy Acts authorizing a notice to be given on his behalf and a second notice was given, but after the three months had expired. Chitty J. treated the case as one of an attempted ratification of an agent's unauthorized notice but held that as the option to purchase had not been exercised within the time limited, there was no notice capable of being ratified after the expiration of the three months. In effect he ruled that an unauthorized agent's exercise of an option to purchase cannot be ratified by the principal at a time beyond that fixed for the option.

The judge supported his decision by reasoning analogous to other decisions in which time prevented a valid ratification, such as the payment of fines within a certain time (*Lord Audeley's Case*, Cro. Eliz. 561), and the end of the transit in stoppage in transitu cases (*Bird v. Brown*, 4 Ex. 786). But it is to be noted that those cases were all outside the sphere of contract law. Great reliance was placed on the early case of *Holland v. King*, 6 C.B. 327, where an option conferred on the executor or administrator of a deceased partner succeeding to his share in the business, on notice being given within a time named. The widow of one of the partners gave notice within the time, but she was not then his legal representative and did not become so until after the time had expired. It was held that a subsequent ratification was invalid as the option was not exercised within the fixed time. The *Dibbins Case* seems to be an extension of *Holland v. King* in that in the latter case there seemed to have been no proof that the widow acted as agent of the executor or administrator.¹⁷ Also it has been stated that different considerations of the rule of relation back apply in the case of executors and administrators and in that of principal and agent.¹⁸

Bolton v. Lambert was urged in the *Dibbins Case* in support of the contention that if ratified the solicitor's act was validated

¹⁷ *Keighley, Maxted & Co. v. Durant*, [1901] A.C. 240.

¹⁸ *Foster v. Bates*, (1843), 12 M. & W. 226.

as from the time of the first notice. Chitty J. distinguished the case on the ground that in the earlier case there was no time limited within which ratification was required. He further said that "ratification having been made within a reasonable time, the Court of Appeal thought that the doctrine of relating back was properly applicable". It would seem to follow that if in *Bolton's* case the offer had been one for a certain time an attempted ratification after that time would have been ineffective.¹⁹

*Ratification Within a Reasonable Time as a Qualification
to Bolton v. Lambert*

It is somewhat surprising that the question of a reasonable time for ratification was not mentioned in *Bolton v. Lambert*, however much the question may have been in the mind of the court.²⁰ In fact a scrutiny of the opinions of the three judges of the Court of Appeal would seem to show that all judges felt that subject to ratification there was a complete and binding contract from the time of the acceptance by the agent in accordance with the general rule of relation back, with the result that its logical application would leave no room for a consideration of reasonable time. So, it was there said :

When and as soon as authority was given to Scratchley to bind the company the authority was thrown back to the time when the act was done by Scratchley, and prevented the defendant from withdrawing his, because it was then no longer an offer, but a binding contract. (Per Cotton L.J. at p. 308.)

I can find no authority in the books to warrant the contention that an offer made and in fact accepted by a principal through an agent or otherwise, can be withdrawn. (Per Lindley L.J. at p. 309.). . . the same effect to the contract made by Scratchley as it would have had if Scratchley had been clothed with a precedent authority to make it. (Per Lopes, L.J. at p. 309.)

An illustration of the now recognized rule of reasonable time for ratification is furnished by *Metropolitan Asylum Board v. Kingham* (1890), 6 T.L.R. 217, a decision by Lord Justice Fry in the Queen's Bench. In an action for a breach of contract to supply eggs, the sequence of events was as follows : (1) At the beginning of September, 1888, the plaintiff the

¹⁹ In *Reynolds v. Atherton* (1921), 125 L.T.R. 690 at p. 698, Younger L.J. said: "And whether or not the doctrine of ratification (in *Bolton v. Lambert*) will in the House of Lords survive the criticism of Lord Justice Fry upon it in his book on Specific Performance, the doctrine of that case has not been yet extended to any ratification given after the date limited for acceptance."

²⁰ See North J. in *Ex patre Bosanquet*, 45 Ch.D. at p. 22.

manager of the Metropolitan Asylum Board advertised for the supply of various foods. (2) On September 18th, the defendants sent in a tender for the supply of eggs at a certain price from the 30th of September, 1888, to the 30th of March, 1889. (3) On September 22nd, the Board held a meeting and passed a resolution that the defendants' tender should be accepted, but the required seal of the corporation was not affixed to the acceptance. On the same day the plaintiff's clerk wrote informing the defendants that their offer had been accepted. (4) On September 24th, the defendants withdrew their tender on the ground that they had made a mistake of price in drawing up the tender. (5) On October 6th, by a meeting of the plaintiff company, the acceptance was ratified and seal affixed. Fry L.J. held that the plaintiffs could not rely on *Bolton v. Lambert* for "if the ratification is to bind, it must be made within a reasonable time after acceptance by an unauthorized person" (p. 218). He further held that that reasonable time can in any case never extend after the time at which the contract is to commence.

In *Ex parte Bosanquet, supra*, the question of reasonable time was raised in the Court of Appeal and accepted by all the judges as a factor to be considered in all these cases. Cotton L.J. and Lindley L.J. approved of this practical limitation to the doctrine of relation back without citing reasons—concluding no doubt correctly that it was only fair and reasonable that the principal should not have more than a reasonable time in which to ratify. Lord Justice Bowen, however, apparently had some difficulty in squaring this limitation with the logic of the fiction of relation back as stated by *Bolton's Case*. If, as had been pressed before him, the act of the unauthorized agent was a contract subject only to proof being shown, then ratification would really become an election not to avoid the contract, so that there is no reason in logic why such proof should come within a reasonable time. Lord Justice Bowen therefore stated that he thought "ratification is not an election not to avoid the contract—because original contract, from my point of view there was none, they not having been authorized agents to make it—but an election to confirm the act which professed originally to be done by the authority of the company, although it was not; and as it is an election it must take place within a reasonable time, and the standard of reasonableness depends on the circumstances of each case".²¹

²¹ Cf. FRY, SPECIFIC PERFORMANCE, Add. Note A., p. 735: "It is apprehended, therefore, that the real meaning of the learned judges (in *Bolton v. Lambert*) was that the contract would be avoided if it were not shown

Lord Justice Bowen felt that no authority was needed to make it clear that a ratification must come within a reasonable time and referred to *Ex parte Bailey*, 3 Ch.D. 592 at p. 595, which, however, merely held that an offer to buy shares made to a promoter of a company could be accepted by the company by allotment but that such allotment must be within a reasonable time.

As to the question when the reasonable time should start to run, Lord Justice Bowen gave a short answer: "Mere time is nothing except with reference to the circumstances" (p. 35). The criterion was of course a sensible one of what is reasonable under the circumstances. The question being for what reasonable time an offer can be held to be open, he said, "Prima facie, of course, an offer made is a continuing offer until such time as is indicated either by the parties, or by some good reason, for closing with it or refusing it. It is a question of fact in each case what the reasonable limit is." Lord Justice Bowen also alluded to the fact that an important consideration might be that of third party interests arising in the meantime. This would naturally leave much leeway for enlarging the exception to *Bolton v. Lambert*.²² There was also the suggestion that this criterion of reasonableness might cover all the recognized exceptions to the doctrine of relation back, such as for example the payment of fines within a certain period. (*Lord Audeley's Case, supra*). If this be so, then this new qualification of reasonableness would probably take within its scope both old and new limitations placed on the doctrine of relation back.²³

But there is some evidence in the judgment of *Bosanquet's* case itself that this added modification to *Bolton's* case must be taken with some caution.²⁴ In *Bosanquet's* case itself the

within a reasonable time that Scratchley's act had been ratified. So that the contract was contingent upon a subsequent expression of will of one of the contracting parties, and existed as a contract before that will was exercised or expressed."

²² See for example *Gloucester Municipal Election Petition*, [1901] 2 K.B. 683, in which Channel J. in stating that the doctrine of *Bolton v. Lambert* did not apply where the rights of third parties arose prior to the ratification, held that an election candidate's contract with the municipal corporation which contract was purported to be released by a committee not properly authorized, could not be considered as released at the date of nomination where the attempted ratification by the Council came after the date of the nomination, because the interests of the electors and other nominees would be effected.

²³ See for example *Grover v. Matthews*, [1910] 2 K.B. 401, where Hamilton J. held that there could be no valid ratification of a fire insurance contract after knowledge of loss of fire, thereby refusing to follow the rule to the contrary in marine insurance. See also *Keighley v. Durant, supra*.

²⁴ See also *In re Tiedmann, supra*; and see also note in 12 Col. L.R., p. 455 for the view that "mere lapse of time should not relieve the third

unauthorized allotment of the company's shares was on the 24th of October. The purported ratification of the allotment took place not later than January 16th of the next year. During that time the parties had acted in the faith that there was an allotment, and although there had been controversy between them, there was no repudiation by the applicants. It would seem therefore that the fact that both parties had carried on negotiations in the belief that they were bound was an important factor. The case was distinguished from "the case of an offer, and silence following upon the offer for some time".²⁵

However, both Cotton L.J. and Bowen L.J. introduced an important element to be weighed in considering the question of reasonableness, that is, the question whether there was such an alteration in the state of the company in October and in January "so as to make it inequitable to ratify the previous unauthorized contract" (per Cotton L.J. p. 30). Lord Justice Bowen also said: (p. 36)

We have not the materials from which we can safely come to the conclusion that there had been such an alteration in the prospects of the company as rendered it unfair that that which had been assumed to be, in the first instance, good between the parties should be made good by a subsequent adoption or election on the 24th of December (with respect to Badman).

Moreover, all the judges alluded to the fact that there had been "no repudiation in the meantime", in supporting their conclusion that ratification came within a reasonable time. Thus, Lindley L.J. said: "He (Badman) never repudiated his contract at all." With respect to Bosanquet, he said: "His letter in reply to the letter of allotment was not a repudiation but merely a complaint—what I will venture to call a growl—it was not much more." This of course raises the query whether a repudiation on the grounds of the invalidity of the allotment would have been conclusively in favour of the applicants. If so, this would be a very real exception to *Bolton v. Lambert* for the defendant in that parent case withdrew his offer not on the ground of lack of authority in *Scratchley*, but on the ground of misrepresentation.²⁶ In any case, it is probably safe to say that a repudiation on the ground of absence of authority in the agent would be a weighty factor in determining the

party, since he does not, as in the case of an offer, intend that his assent should continue only for a reasonable period".

²⁵ P. 35, per Lord Justice Bowen.

²⁶ See however *In re Tiedmann, supra*.

question of reasonable time for ratification. Since the standard of reasonableness is a question of fact, this new approach of course provides a useful escape from the rigours of the rule in *Bolton v. Lambert* as originally known. What is perhaps more difficult to reconcile is this: "If the third party has indicated his unwillingness to abide by the transaction entered into with the principal through the unauthorized agent, is it not then beyond a reasonable time for ratification?"²⁷

This survey of English and Canadian decisions dealing with *Bolton v. Lambert* has illustrated the constant inter-play in English law between the mystical authority of legal fictions and the recognition of business expediency. To borrow Holmes' description of the law of agency, the judicial experience of the rule in Bolton's case would seem to show that, at least in this branch of the law of relation back, the course has been "the resultant of a conflict at every point between logic and good sense—the one striving to work fiction out to consistent results, the other restraining and at last overcoming that effort when the results become too manifestly unjust".²⁸

GEORGE T. TAMAKI.

Dalhousie Law School.

²⁷ Carried thus far, the exception bids fair to eat up the rule itself. But *cf.* Wambaugh, *supra*, who believes that the third party's consent should be considered as continuing until withdrawn.

²⁸ Holmes, *op. cit.*, Vol. III, p. 369.