FELTHOUSE vs. BINDLEY

Court of Common Pleas (1862)

142 ER 1037, [1862] EWHC CP J35

Introduction:

Felthouse v Bindley [1862] EWHC CP J35 142 ER 1037, is a landmark case in Contract law which states that one cannot impose an obligation on another to reject one's offer or "silence cannot amount to acceptance". This case was later reconsidered because the facts showed that the acceptance was communicated by the conduct.

Facts:

Paul Felthouse was a builder who lived in London. He wanted to buy a horse from his nephew called John Felthouse. Uncle offered to buy a horse from nephew by stating in his written statement that "if I hear no more about him, I consider the horse mine at £30 15s." The nephew, John did not reply to him and was busy at his farm in Tamworth however he asked his auctioneer, William Bindley to reserve the horse i.e. not to sell the horse. But by mistake, the horse was sold by auctioneer and fetched more money than the uncle offered. Auctioneer soon realized his mistake and hence wrote to the uncle apologizing for the error committed. He also stated in his writing that "Instructions were given me to reserve the horse ...". Later nephew also wrote to his uncle stating that he was annoyed by the negligence shown by the auctioneer as he already told him that the horse was sold. He further also stated that he will try to recover the horse from the buyer. Auctioneer was sued for the tort of conversion i.e. to use someone else's property inconsistently with their rights. But to show that the horse belonged to Mr. Paul Felthouse he had to prove that it was a valid contract. Whereas Bindley argued that the nephew never communicated his acceptance to the offer of buying the horse made by the uncle.

Issue:

This case calls into question whether or not a valid contract existed between Plaintiff, Paul Felthouse and defendant William Bindley. Additionally this case raises the question of whether silence or a failure to reject an offer amount to acceptance.

Rule:

Acceptance must be communicated and it cannot be imposed due to silence of one of the parties.

Analysis:

It was ruled that one cannot impose an obligation on another to reject one's offer by the court. It is clear, therefore, that the nephew in his own mind intended his uncle to have the horse at

the price which he (the uncle) had named, £30 and 15s, but he had not communicated such his intention to his uncle, or done anything to bind himself. Nothing, therefore, had been done to vest the property in the horse in the plaintiff down to the 25th of February, when the horse was sold by the defendant. It appears to me that, independently of the subsequent letters, there had been no bargain to pass the property in the horse to the plaintiff, and therefore that he had no right to complain of the sale.

The court observed that nothing had been done at the time of the auction to imply that the property had changed hands to the uncle, and the nephew had given no acceptance. Therefore, with no acceptance or implied acceptance through actions, the property remained that of the nephew at the time of the auction, and the uncle has no case against the auctioneer for selling goods that were not owned by the nephew. If the nephew wanted to enter into the contract he must have given clear indication of his acceptance, which he had failed to do.

The general rule is that acceptance is not effective until it is communicated to the offeror. Such a statement is, however, too broad and the true rule of law is discoverable by reflection upon what is 'wrong' with saying that silence cannot amount to acceptance. It was argued that it is inconsistent with the view of a contract as a voluntarily assumed obligation to allow one party to 'force' a contract upon a party that that party does not want at the time of contracting. If a lecturer and author was able to say to his contract class that he will assume that all his audience want to buy a copy of his book unless they say not in the next five seconds it is perhaps obvious that she should not be able to rely upon those five seconds silence as evidence of acceptance of an offer to sell a copy of her book.

The rule (i.e. that silence cannot constitute acceptance) should extend only as far as the policy that justifies it (i.e. that the law should not allow an offeror to force a contract on an unwilling offeree). So qualified the proper rule becomes: silence will not constitute acceptance when to so hold would involve forcing a contract on an unwilling party. On the part of the defendant it was submitted that the letter of the 27th of February, 1861, was not admissible in evidence. The learned judge, however, overruled the objection. It was then submitted that the property in the horse was not vested in the plaintiff at the time of the sale by the defendant.

A verdict was found for the plaintiff, damages 33l., leave being reserved to the defendant to move to enter a nonsuit, if the court should be of opinion that the objection was well founded. Dowdeswell, in Michaelmas Term last, accordingly obtained a rule nisi, on the grounds that "sufficient title or possession of the horse, to maintain the action, was not vested in the plaintiff at the time of the wrong; that the letter of John Felthouse of the 27th of February, 1861, was not admissible in evidence against the defendant: that, if it was admissible, being after the sale of the horse by the defendant, it did not confer title on the plaintiff; and that there was at the time of the wrong no sufficient memorandum in writing, or possession of the horse, or payment, to satisfy the statute of frauds. A statement that if nothing further was heard then a contract would be made was not sufficient to be the positive act required for acceptance. The court decided that this was just another offer that the seller could accept or reject and was not an acceptance, as acceptance required positive conduct.

Willes J delivered the lead judgment, he stated:

“I am of opinion that the rule to enter a nonsuit should be made absolute. The horse in question had belonged to the plaintiff's nephew, John Felthouse. In December, 1860, a conversation took place between the plaintiff and his nephew relative to the purchase of the horse by the former. The uncle seems to have thought that he had on that occasion bought the horse for £30, the nephew said that he had sold it for 30 guineas, but there was clearly no complete bargain at that time.” On the 1st of January, 1861, the nephew writes,

"I saw my father on Saturday. He told me that you considered you had bought the horse for £30. If so, you are labouring under a mistake, for 30 guineas was the price I put upon him, and you never heard me say less. When you said you would have him, I considered you were aware of the price."

To this the uncle replies on the following day,

"Your price, I admit, was 30 guineas. I offered £30.; never offered more: and you said the horse was mine. However, as there may be a mistake about him, I will split the difference. If I hear no more about him, I consider the horse mine at £30 and 15s."

It was observed by the court that there was no complete bargain and it is also clear that the uncle had no right to impose upon the nephew a sale of his horse for £30 and 15s unless he chose to comply with the condition of writing to repudiate the offer. The nephew might, no doubt, have bound his uncle to the bargain by writing to him: the uncle might also have retracted his offer at any time before acceptance. It stood an open offer: and so things remained until the 25th of February, when the nephew was about to sell his farming stock by auction. The horse in question being catalogued with the rest of the stock, the auctioneer (the defendant) was told that it was already sold.

It is clear, therefore, that the nephew in his own mind intended his uncle to have the horse at the price which he (the uncle) had named, £30 and 15s.: but he had not communicated such his intention to his uncle, or done anything to bind himself. Nothing, therefore, had been done to vest the property in the horse in the plaintiff down to the 25th of February, when the horse was sold by the defendant. It appears to me that, independently of the subsequent letters, there had been no bargain to pass the property in tshe horse to the plaintiff, and therefore that he had no right to complain of the sale. Then, what is the effect of the subsequent correspondence? The letter of the auctioneer amounts to nothing.

The more important letter is that of the nephew, of the 27th of February, which is relied on as shewing that he intended to accept and did accept the terms offered by his uncle's letter of the 2nd of January. That letter, however, may be treated either as an acceptance then for the first time made by him, or as a memorandum of a bargain complete before the 25th of February, sufficient within the statute of frauds. It seems to me that the former is the more likely construction: and, if so, it is clear that the plaintiff cannot recover. But, assuming that there had been a complete parol bargain before the 25th of February, and that the letter of the 27th was a mere expression of the terms of that prior bargain, and not a bargain then for the first time

concluded, it would be directly contrary to the decision of the court of Exchequer in **Stockdale v. Dunlop** to hold that that acceptance had relation back to the previous offer so as to bind third persons in respect of a dealing with the property by them in the interim. In that case, Messrs. H. & Co., being the owners of two ships, called the " Antelope" and the "Maria," trading to the coast of Africa, and which were then expected to arrive in Liverpool with cargoes of palm-oil, agreed verbally to sell the plaintiffs two hundred tons of oil,- one hundred tons to arrive by the "Antelope," and one hundred tons by the "Maria." The "Antelope" did afterwards arrive with one hundred -tons of oil on board, which were delivered by H. & Co. to the plaintiffs. The "Maria," having fifty tons of oil on board, was lost by perils of the sea. The plaintiffs having insured the oil on board the "Maria," together with their expected profits thereon, it was held that they had no insurable interest, as the contract they had entered into with H. & Co., being verbal only, was incapable of being enforced.

Justice Byles and Justice Keating both agreed with Justice Willes. Justice Keating further mentioned that "as between the uncle and the auctioneer, the only question we have to consider is whether the horse was the property of the plaintiff at the time of the sale on the 25th of February. It seems to me that nothing had been done at that time to pass the property out of the nephew and vest it in the plaintiff. A proposal had been made, but there had before that day been no acceptance binding the nephew."

The decision was supported by 3 grounds:

1. Silence is ambiguous and difficult to infer the intention to accept.

2. Acceptance must be communicated so that we may know when a contract binds both parties.

3. Prevents an offeror from exploiting an offeree's inertia by making him contractually liable unless he takes the trouble to reject the offer expressly.

The decision in has been criticized because the nephew was not an unwilling offeree, needing to be protected by the rule that mere silence is not consent. Furthermore, he had indicated that he accepted the plaintiff's offer by telling the defendant not to sell the horse. However, the case has not been overruled.

Conclusion:

It was held that there was no contract for the horse between the complainant and his nephew. There had not been an acceptance of the offer; silence did not amount to acceptance and an obligation cannot be imposed by another. Any acceptance of an offer must be communicated clearly.