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Case Comment: Silence is Not Golden in Contracts: A Jurisprudential Reflection on *Felthouse v Bindley*

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INTRODUCTION

Contract Law is based on the ideology of “agreement”, but what is an agreement? When one party considers the other party’s silence to be assent, under such circumstances, may a contract be formed? Such types of queries are always a concern in creating a Valid Contract. The essence of any Contract is an agreement enforceable by Law; to constitute an agreement, it should be coupled with an offer, acceptance, and consideration. Further, if it is coupled with Enforceability by law, then it constitutes a Contract, rather, the essence of a valid contract. The process of offer and acceptance is fundamental and at the very core of establishing a valid agreement. The process is fundamental yet complex, with numerous complexities. One such complexity is whether mere silence by an offeree can be considered an acceptance, thereby creating contractual or legal obligations and relationships. *Felthouse v Bindley* [1862]¹ is one of the leading English Judicial pronouncements on this particular complexity, which establishes that silence does not constitute acceptance unless it is communicated effectively. This decision has

¹ *Felthouse v Bindley* [1862] EWHC CP J35

set a crucial benchmark impacting the formation of contractual relationships. It is not only limited to the extent of developing English Jurisprudence, but inspirations, ideas, doctrines and principles are drawn from it and are implemented for developing the domain of Indian Contract Law principles.

FACTS OF THE CASE

Mr. Paul Felthouse, Plaintiff, a builder from London, desired to purchase a horse from his nephew, John Felthouse, a farmer selling his farming stock. In December 1860, they discussed the sale of a horse, but while the uncle believed he had bought the horse for £30, the nephew priced it at 30 guineas (£31.50). On 1 January 1861, the nephew wrote a letter clarifying that his price was fixed as 30 guineas and he didn't compromise for less. In response to this letter, on 2 January 1861, the uncle acknowledged this situation and made an offer to split the difference at £30.15s, stating that if he heard no more, he would consider the horse under his possession at the said price. The nephew did not reply to this letter, although he intended to sell the horse to his uncle. On 25 February 1861, during an auction conducted by Mr. Bindley, Defendant, in Tamworth, although receiving instructions from the nephew not to sell the horse as it was meant for his uncle, Bindley mistakenly included the horse in the auction and sold it for £33. Post-sale, on 26 February, Defendant wrote a letter to the Plaintiff apologising for selling the horse, and on 27 February, the nephew also wrote a letter expressing regret and stating he had given appropriate instructions regarding not selling the horse; he offered another horse temporarily. Eventually, Plaintiff sued Defendant for conversion, claiming ownership of the horse based on the earlier communication with his nephew.

ISSUES RAISED

1. Whether an offeror can consider an offeree's silence as acceptance to form a binding contract.
2. Whether a contract can be formed without the offeree communicating acceptance to the offeror, even if they intended to accept.

ARGUMENTS FROM BOTH SIDES

Plaintiff (Mr. Paul Felthouse): Mr. Paul Felthouse contended that there was sufficient written evidence to establish that a contract existed between him and his nephew, which also

fulfilled all the requirements under the Statute of Frauds. He had believed that he and his nephew had come to a consensus on buying the horse as early as December 1860, though there was a minor discrepancy regarding the exact pricing of the horse. He argued that he had offered to buy the horse for £30 15 shillings and informed his nephew that if he didn't hear back regarding this, he would consider the horse as his. He maintained that even though the nephew didn't reply to him directly before the auction, his silence and conduct amounted to assent to the offer. Plaintiff argued that the conduct of the nephew, such as regarding the horse as sold to him and informing the auctioneer to pause the sale, constituted the nephew's attempt to sell the horse to the Plaintiff. In a letter written Post-auction, dated 27 February 1861, which expressed regret and was admissible as evidence of agreeing to sell the horse before writing it, and if read with Plaintiff's earlier offer letter, it depicted that there was an existence of a contractual relationship between them. He also maintained that his nephew did not have to reply in writing immediately to show agreement, as a memorandum satisfying the Statute of Frauds could be created at any time before initiating legal action.

Defendant (Mr. Bindley, Auctioneer): On the other hand, Mr. Bindley submitted that no sufficient title or possession of the horse was vested in the plaintiff at the time of the alleged conversion, which occurred on the day of the auction, that is, 25 February 1861. He argued that there was no binding contract between the Plaintiff and his nephew for the sale of the horse at the time of the auction. The Defendant maintained that the plaintiff did not have an insurable interest in the horse on the date of the auction, which he would have possessed if a valid contract existed. He also contended that the nephew's letter of 27 February 1861 was inadmissible evidence against him and even it was admissible, it being written Post-sale could not retrospectively transfer the ownership to the Plaintiff, which was argued that an *ex post facto* admission by a third party should not alter the legal positions of the parties involved in the sale as of that date. Finally, the Defendant argued that there was no sufficient memorandum in writing, no transfer of ownership, and no payment to satisfy the Statute of Frauds before the auction took place.

JUDGMENT AND RATIONALE

The Court of Common Pleas held that the Plaintiff, Mr. Felthouse, could not maintain an action against the auctioneer, Mr. Bindley, for conversion of the horse, and judgment was in favour of the Defendant.

The court emphasised the principle that silence does not amount to acceptance. In the words of Willes J. who stated that the the uncle had “*no right to impose upon the nephew a sale of his horse for £30 15s. unless he chose to comply with the condition of writing to repudiate the offer,*” which clarified that an offeror cannot unilaterally impose silence as acceptance and that the burden of communicating acceptance lies with the offeree.

The court further held that no valid contract was formed between the uncle and his nephew before the date of the auction. Although the nephew may have, “in his mind,” intended his uncle to have the horse at the offered price, he “had not communicated such an intention to his uncle, or done anything to bind himself.” Keating J. agreed, stating, “*A proposal had been made, but there had before that day been no acceptance binding the nephew.*”

As a consequence, possession did not transfer to Mr. Felthouse, and the auctioneer could not be held liable for conversion. The court noted that the nephew’s letter of 27 February 1861, written Post-auction, was insufficient to retrospectively confer ownership upon the plaintiff. Willes J. explained that, even assuming a prior oral bargain, “an acceptance expressed after *an intervening dealing with the property by a third party would not have a relation back to affect that third party.*”²

ANALYSIS OF THE JUDGMENT

Principle Established: The established principle in *Felthouse v Bindley*³ is that silence does not amount to acceptance, and an offeror cannot obligate contractual relationships unilaterally⁴. The Plaintiff’s statement, “*If I hear no more about him, I consider the horse mine at 30l.15s.,*” was void without the assent communicated by his nephew.⁵ In the words of Byle J., “*an offeror*

² *Ibid*

³ *Ibid*

⁴ Rajesh Kapoor, *Avtar Singh’s Law of Contract and Specific Relief* (13th edn, EBC 2022) 29-30

⁵ *Felthouse v Bindley* [1862] EWHC CP J35

is not bound to reject an offer to avoid liability."⁶ Accordingly, acceptance must be communicated clearly, maintaining consent and contractual clarity.⁷

Strengths: It strengthens contract law by ensuring individual sovereignty and precluding offerors from imposing contractual obligations on their side by presuming that the offeree's silence would amount to acceptance. This protects individuals from unknowingly being bound to contractual obligations without their explicit consent. Furthermore, it prevents offerors from taking unfair advantage by persuading offerees to decline an offer; it ensures that legitimate mutual consent is apparent, thereby preventing unforeseen legal relations.

CRITICISMS

While it has its strengths, it has weaknesses due to its dogmatic formalism. The rule does not consider the realities of the world of commerce, where conduct is often considered to be an assent, especially in contemporary business relationships. Herein, the nephew had a motive to sell the horse, informing the auctioneer to retain it before the sale, still the court disregarded these actions on the grounds of a lack of clear communication. This severity neglects applicable repercussions and intrinsic motivations that, if logically deduced, could substantiate agreements in commercial scenarios. Besides, the decision emerges as unjust to the plaintiff, who logically deemed his ownership of the horse based on his nephew's conduct but was left without legal rights. The case also fails to deem reliance to one's detriment, as no remedy was considered despite the plaintiff potentially acting on his belief of ownership.

INDIAN LAW PERSPECTIVE

The principle established in this case⁸ is followed in India, acceptance is defined as "*when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted,*"⁹ which means there must be an explicit act or communication; mere silence or mental intent is insufficient. Acceptance is complete against the proposer or offeror when it is put in a course of transmission, for instance, post, telegraph, email or any appropriate medium of

⁶ *Ibid*

⁷ A L C, 'When Silence Gives Consent' (1920) 29(4) Yale Law Journal 441 <<https://www.jstor.org/stable/787351>> accessed 12 June 2025

⁸ *Felthouse v Bindley* [1862] EWHC CP J35

⁹ The Indian Contract Act 1872, s 2(b)

communication and against the acceptor or offeree when it reaches the proposer or offeror.¹⁰ Acceptance by performance is valid only with knowledge of the offer and intention to accept the offer.¹¹

In *Bhagwandas Goverdhandas Kedia v Girdharilal Parshottamdas & Co.*,¹² the court held that for telephonic contracts, acceptance is complete only when received by the offeror. Similarly, in *Lalman Shukla v Gauri Datt*,¹³ the Supreme Court of India held that knowledge of the offer is essential as the servant could not claim the reward without knowing it existed. Hence, Indian Law necessitates communicated acceptance, which is consistent with this case.¹⁴

CONTEMPORARY RELEVANCE

This case¹⁵ remains significant even today, especially for digital contracts, which require clear electronic communication.¹⁶ Click-wrap agreements directly affirm this by demanding active assent, whereas browse-wrap agreements remain disputed without explicit notice. In *Trimex International FZE Ltd. v Vedanta Aluminium Ltd*,¹⁷ Trimex conferred with Vedanta over email for supplying coal, where they agreed upon all the terms without signing an official contract. Vedanta later declined performance, stating that no firm agreement prevailed. The Supreme Court of India held that a valid contract was formed and existed.

Based on the email correspondence, in which the required terms were agreed upon and the intention was explicit. This case¹⁸ depicts that electronic correspondence can amount to acceptance under Indian Law, which strengthens this principle further.

CONCLUSION

The Landmark Case of *Felthouse v Bindley*¹⁹ establishes a pivotal principle that mere silence does not constitute acceptance to form a valid contract. The reasoning behind instituting such a

¹⁰ The Indian Contract Act 1872, s 4

¹¹ The Indian Contract Act 1872, s 8

¹² *Bhagwandas Goverdhandas Kedia v Girdharilal Parshottamdas & Co* AIR 1966 SC 543

¹³ *Lalman Shukla v Gauri Datt* [1913] 11 All LJ 489

¹⁴ *Felthouse v Bindley* [1862] EWHC CP J35

¹⁵ *Ibid*

¹⁶ Information Technology Act 2000, s 10A

¹⁷ *Trimex International FZE Ltd v Vedanta Aluminium Ltd* [2010] 3 SCC 1

¹⁸ *Ibid*

¹⁹ *Felthouse v Bindley* [1862] EWHC CP J35

principle is to protect parties from being compelled to contracts for which they have not expressly given their assent, which ensures that contracts are formed only through clear and affirmative acceptance and their communication, making its way to contributing to legal clarity and foreseeability in contractual dealings. As the saying goes, “Every Coin has two sides,” although having its strengths, it is accompanied by weaknesses like rigid formalism and a lack of practicality in commercial dealings. Still, it persists to validate the equity, justice, impartiality, neutrality, integrity and the self-initiated nature of agreements in contemporary contract law. Eventually, true and free consent is at the heart of any enforceable agreement, augmenting the very essence upon which contract law relies.