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CARLILL V CARBOLIC SMOKE BALL CO., (1893) 1 QB 256

Sohail Kales

1. FACTS

The Carbolic smoke ball was a medical product consisting of a rubber ball with an attached tube allowing to inhale carbolic acid vapor. It was claimed that it prevents influenza and other respiratory illnesses.

Carbolic smoke ball company was the owner and seller of the product. They advertised the product in various newspapers and Pall Mall Gazette of November 13, 1891. The advertisement promised to pay £100 to any person who after using the ball contracts the epidemic influenza, colds or any disease which caused by exposure to cold. It also mentioned that ball has to be used for two weeks, thrice daily. The directions as to how to use the ball were given in printed form with the ball. The advertisement highlighted that company had deposited £1000 with the Alliance Bank to demonstrate the sincerity.

Relying on the advertisement, Louisa Carlill bought a ball from a chemist. She used it as it was directed for roughly two months from November 20, 1891, to January 17, 1892. However, she contracted the flu on 17 January.

Consequently, Carlill sued for breach of contract, at the Queen's Bench, and argued that the company should pay the promised £100. Justice Hawkins held in her favour and awarded her £100. The defendants subsequently appealed the decision to the Court of appeal.

ISSUES

1. Whether there was intended promise or, a mere puff.

2. Whether a binding contract arose, and whether notification of acceptance was required.
3. Whether the terms of the advertisement were too vague to be enforceable.
4. Whether a valid consideration moved from the plaintiff.

2. ARGUMENTS

2.1 DEFENDANTS

- The defendants argued that there is no binding contract between the parties. Because to become entitled for reward, the plaintiff should catch influenza, an event beyond her control. Alternatively, even if a contract existed, it amounted to a wagering agreement as liability depends on an uncontrollable event, making the agreement void.
- The defendants further submitted that the advertisement is in the nature of puff rather than an offer.
- It was also argued that the advertisement is too vague to form a contract. Because no time limit was specified people could claim if they catch influenza even decade after using the product. Moreover, no means to prove usage of product were mentioned due to which any person who had influenza can claim they used the product. The Vagueness of the language indicates that no legal promise was ever intended.
- They contended that a condition must be fulfilled for a contract to form, plaintiff neither performed any overt act nor communicated the intention to accept the offer, it being generally required to form a contract, thus no binding agreement arose.
- It was contended that no consideration had moved from plaintiff. Defendants argued that there was no consideration because using the smoke ball did not necessarily benefit the company. They pointed out that, under the terms of the advertisement, even a person who stole the smoke ball could use it and claim the £100 reward. Since such a person's use would confer no benefit on the defendants, mere use of the smoke ball could not amount to consideration. In support of the argument they relied on the principal laid down by Lord Blackburn in *Brogden v. Metropolitan Ry. Co.*, contending that solely based on advertisement, even a thief who stole the ball could claim the reward.

2.2 PLAINTIFF

- The plaintiff argued that the advertisement was a valid offer. It was addressed to all the public, i.e., an offer made to anyone who fulfils the conditions. Accordingly, the plaintiff accepted the offer by using the ball and subsequently contracted influenza.
- In response to the argument that communication of acceptance is necessary, plaintiff replied relying on Lord Blackburn's laid principal in *Brogden v. Metropolitan Ry. Co.*, which shows mere act is an acceptance.
- As to the contention that too uncertain and vague promise applies to a person who stole the ball, the plaintiff submitted that the advertisement should properly be interpreted as applying only to persons who had lawfully acquired and used the ball. Finally, responding to the argument that there was no restriction on time, they submitted that there may be several possible constructions of the term, out of which the true view can be that a two week use will make the user safe for a reasonable time.

JUDGEMENT & RATIONALE

Judgement was delivered by three judges and unanimously the appeal was dismissed.

1. LINDLEY, L.J.

Lindley L.J. held that the defendant are bound to perform their promise.

His Lordship rejected the argument that advertisement was a mere puff, observing the passage in the advertisement that £1,000 had been deposited with the bank demonstrated company's intention to be legally bound.

He held that advertisement was an offer to anybody who performs the conditions. Performance of those conditions constituted acceptance of the offer. Although acceptance generally requires communication, this case fell within the exception to that rule. There was a continuing offer, never been revoked and language and nature of transaction shows that defendants expected and required only performance of the conditions.

On the question of uncertainty, Lindley L.J. rejected the contention that language is vague particularly with respect to time. He observed that advertisement fixes no time, but it does not mean any time. There are three possible constructions, out of which he preferred that the reward is payable if user contracts any of the mentioned diseases within a reasonable time after using the smoke ball.

As for consideration, he rejected the argument that promise was nudum pactum. He reasoned that defendants obtained a benefit as widespread use of their remedy will make public to have confidence in the product and hence promote sales. His Lordship also observed that a person who acted upon the advertisement put himself to inconvenience at the request of the defendants. Which alone was sufficient to constitute consideration.

2. BOWEN, L.J.

Bowen L.J. likewise concluded that the company intended to pay the reward, it was not mere puff. The genuineness of the promise is clearly demonstrated by company's act of depositing says £1000 with the bank.

Regarding acceptance, His Lordship acknowledged the general rule that acceptance ought to be communicated. However, where offeror intimates the other party expressly or impliedly prescribes performance of the condition as specific mode of acceptance, performance alone is sufficient.

As for defendant's argument that the promise was nudum pactum, Bowen L.J. reject it. He held that inconvenience sustained by one party at the request of the other is a consideration. Therefore, there was consideration because plaintiff took trouble of using the ball. On the other hand, the defendant received a benefit from the user, because use of ball promotes their business, thus second consideration.

3. A.L. SMITH, L.J.

A.L. Smith L.J. concurred that the advertisement was an offer intended to be acted upon and when conditions performed, constitute a promise.

He rejected the argument that promise was too wide as there is no time limit. His lordship identified three possible interpretations, first is catching epidemic during epidemic, second catching epidemic when you are using the ball and finally, catching influenza within a reasonable time after expiration of two weeks. In any case there is sufficient limit of time, so contract is not vague.

As for notice of acceptance, His Lordship held that no such clause was present in the advertisement. This case is one of those where performance of the condition is an acceptance of the offer.

Finally, His Lordship found that two considerations. First, the inconvenience plaintiff suffered from using the ball and second is the money gain to the defendants.

RATIO DECIDENDI

The Court held that an advertisement may constitute a binding unilateral offer to the world at with a clear intention to create legal relations. Such an offer can be accepted by the performance of the conditions, without any requirement of communication of acceptance. The Court further held that suffering inconvenience even from using a product for two weeks can constitute consideration and conferring a commercial benefit is a valid consideration too.

ANALYSIS AND CONCLUSION

The decision in *Carlill v. Carbolic Smoke Ball Co.* is a landmark in contract law because it clarifies the principles which govern unilateral contracts. It establishes that an advertisement may constitute a binding offer where there is an intention to create legal relations, also that acceptance may occur through performance without communication of acceptance. The decision further establishes that consideration may consist of both, inconvenience or detriment to the promisee and benefit to the promisor. These principles have provide certainty in the law of contract and continue to guide courts in determining the enforceability of unilateral promises. Consequently, the case remains one of the leading authorities on offer, acceptance, and consideration in common law.