Overview | **[1893] AC 552**, | 62 LJPC 127, | 1 R 428, | 42 WR 129, | 69 LT 504, | 9 TLR 612

HARVEY AND ANOTHER PLAINTIFFS; AND FACEY AND OTHERS DEFENDANTS. ON APPEAL FROM THE SUPREME COURT OF JAMAICA. [1893] A.C. 552

[PRIVY COUNCIL.]

THE LORD CHANCELLOR, LORD WATSON, LORD HOBHOUSE, LORD MACNAGHTEN, LORD MORRIS and LORD SHAND.

1893 July 4, 29.

Contract — Negotiation by Telegram — Incompleteness — Acceptance of offer not proved.

Where the appellants telegraphed, "Will you sell us B. H. P? Telegraph lowest cash price," and the respondent telegraphed in reply, "Lowest price for B. H. P. £900," and then the appellants telegraphed, "We agree to buy B. H. P. for £900 asked by you. Please send us your title-deed in order that we may get early possession," but received no reply:-

Held, that there was no contract. The final telegram was not the acceptance of an offer to sell, for none had been made. It was itself an offer to buy, the acceptance to which must be expressed and could not be implied.

APPEAL from a decree of the Supreme Court (June 18, 1892) setting aside a decree of Curran, J. (February 8, 1892), which dismissed the suit, which was one for specific performance of an alleged contract in writing.

The facts are stated in the judgment of their Lordships.

The respondents, Facey and his wife, denied the contract, and pleaded sect. 4 of the Statute of Frauds.

The question decided in appeal was whether the three telegrams set out in the pleadings constituted a binding agreement of sale and purchase.

The way in which the appeal came before their Lordships was, that on the 5th of July, 1892, the Supreme Court gave leave to appeal against so much of the decree as was based on L. M. Facey's want of authority to sell. On the 15th of March, 1893, special leave was granted by Her Majesty to appeal in respect of the damages awarded, but at the same time liberty was given to the respondents to contest the contract.

Sir Horace Davey, Q.C., and ***F. Safford***, contended that they did, being in themselves a memorandum of contract sufficient to satisfy the statute. Facey's telegraphic form contained his signature, and he had authority to make it; and the telegram received by the appellants, which contained the names of the sender and receiver written by the telegraph clerk in the ordinary course of his business, constituted a sufficient signature within the meaning of the statute. Assuming the telegrams and telegraphic forms to be sufficient to satisfy the statute, they contended that the Court of Appeal was right in holding that they proved a binding agreement. As regards the power of L. M. Facey to sell, the property had been purchased with his money, and the wife was mere trustee for the husband, who had always acted as owner and had power to bind his wife's interest (if any), or at least to bind his own. They contended that so much of the decree as declared the telegrams constituted a binding contract should be affirmed, and that it should be held that the Mayor and Council of Kingston bought subject to the said contract in its entirety, or so far as it was enforceable.

Farwell, Q.C., and ***Stewart Smith***, for the respondents, in pursuance of leave reserved, contended that the judgment of Curran, J., should be restored, and the judgment of the Appeal Court discharged. Apart from the question of L. M. Facey's authority to sell, the claim under the circumstances to specific performance, and the effect of the Statute of Frauds, the initial difficulty in the case was that the telegrams on the face of them did not disclose a completed contract.

F. Safford, replied.

[1893 July 29.] The judgment of their Lordships was delivered by

The appellants instituted an action against the respondents to obtain specific performance of an agreement alleged to have been entered into by the respondent Larchin M. Facey for the sale of a property named Bumper Hall Pen. The respondent L. M. Facey was alleged to have had power and authority to

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bind his wife the respondent Adelaide Facey in selling the property. The appellants also sought an injunction against the Mayor and Council of Kingston to restrain them from taking a conveyance of the property from L. M. Facey.

The case came on for hearing before Mr. Justice Curran who dismissed the action with costs, on the ground that the agreement alleged by the appellants did not disclose a concluded contract for the sale and purchase of the property. The Court of Appeal reversed the judgment of Curran, J., and declared that a binding agreement for the sale and purchase of the property had been proved as between the appellants and the respondent L. M. Facey, but that the appellants had failed to establish that the said L. M. Facey had power to sell the said property without the concurrence of his wife the said Adelaide Facey, or that she had authorized him to enter into the agreement relied on by the appellants, and that the agreement could not therefore be specifically performed, and the Court ordered that the appellants should have forty shillings for

damages against L. M. Facey in respect of the breach of the agreement, with costs in both Courts against L. M. Facey in respect of the breach of the agreement.

The appellants obtained leave from the Supreme Court to appeal to Her Majesty in Council, and afterwards obtained special leave from Her Majesty in Council to appeal in respect of a point not included in the leave granted by the Supreme Court, but the Order in Council provided that the respondents should be at liberty at the hearing, without special leave to contest the contract alleged in the pleadings and affirmed by the Court of Appeal.

The appellants are solicitors carrying on business in partnership at Kingston, and it appears that in the beginning of October, 1891, negotiations took place between the respondent L. M. Facey and the Mayor and Council of Kingston for the sale of the property in question, that Facey had offered to sell it to them for the sum of £900, that the offer was discussed by the council at their meeting on the 6th of October, 1891, and the consideration of its acceptance deferred; that on the 7th of October, 1891, L. M. Facey was travelling in the train from Kingston to Porus, and that the appellants caused a telegram to

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be sent after him from Kingston addressed to him "on the train for Porus," in the following words: "Will you sell us Bumper Hall Pen? Telegraph lowest cash price - answer paid;" that on the same day L. M. Facey replied by telegram to the appellants in the following words: "Lowest price for Bumper Hall Pen £900"; that on the same day the appellants replied to the last-mentioned telegram by a telegram addressed to L. M. Facey "on train at Porus" in the words following: "We agree to buy Bumper Hall Pen for the sum of nine hundred pounds asked by you. Please send us your title deed in order that we may get early possession." The above telegrams were duly received by the appellants and by L. M. Facey. In the view their Lordships take of this case it becomes unnecessary to consider several of the defences put forward on the part of the respondents, as their Lordships concur in the judgment of Mr. Justice Curran that there was no concluded contract between the appellants and L. M. Facey to be collected from the aforesaid telegrams. The first telegram asks two questions. The first question is as to the willingness of L. M. Facey to sell to the appellants; the second question asks the lowest price, and the word "Telegraph" is in its collocation addressed to that second question only. L. M. Facey replied to the second question only, and gives his lowest price. The third telegram from the appellants treats the answer of L. M. Facey stating his lowest price as an unconditional offer to sell to them at the price named. Their Lordships cannot treat the telegram from L. M. Facey as binding him in any respect, except to the extent it does by its terms, viz., the lowest price. Everything else is left open, and the reply telegram from the appellants cannot be treated as an acceptance of an offer to sell to them; it is an offer that required to be accepted by L. M. Facey. The contract could only be completed if L. M. Facey had accepted the appellant's last telegram. It has been contended for the appellants that L. M. Facey's telegram should be read as saying "yes" to the first question put in the appellants' telegram, but there is nothing to support that contention. L. M. Facey's telegram gives a precise answer to a precise question, viz., the price. The contract must appear by the telegrams, whereas the appellants are obliged to contend

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that an acceptance of the first question is to be implied. Their Lordships are of opinion that the

mere statement of the lowest price at which the vendor would sell contains no implied contract to sell at that price to the persons making the inquiry. Their Lordships will therefore humbly advise Her Majesty that the judgment of the Supreme Court should be reversed and the judgment of Curran, J., restored. The appellants must pay to the respondents the costs of the appeal to the Supreme Court and of this appeal.

Solicitors for appellants: *Tippetts & Son*.

Solicitors for respondents: *Worthington, Evans & Son*.

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