

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Harvey and another v. Facey and others, from the Supreme Court of Judicature of Jamaica, delivered 29th July 1893.

Present :

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

[*Delivered by Lord Morris.*]

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 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 Mr. Justice Curran, 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 authorised 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*l.*, 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 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 $\text{\textit{l}}$.”; 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 Appellants' 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 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 Mr. Justice Curran restored. The Appellants must pay to the Respondents the costs of the appeal to the Supreme Court and of this appeal.
