

binding, unless indeed, it can be regarded as a mere finding of fact which would perhaps leave it open to a jury of business men, in a similar case, to find in accordance with the obvious intentions of the parties. It seems, however, to be regarded by Sir William Anson as a decision on a point of law* and it was probably so intended. As such it has already begun to work mischievous results.

A case comes from British Columbia,† not yet fully reported in which the defendant telegraphed, "Propose to go in from Alert Bay over to west coast of island, hunt elk; guarantee one month's engagement at least from arrival here, give earliest date you could arrive here. Paget recommends. State terms, wire reply." Plaintiff telegraphed, "Five dollars per day and expenses," whereupon, defendant telegraphed, "All right; please start on Friday." This was held, on the authority of *Harvey v. Facey* to be no contract. Perhaps it was not, and perhaps the fuller report of the case will shew why it was not a contract. But it would seem under the facts as stated, that when the plaintiff, without saying anything about the "earliest date at which he could arrive," wired his terms, "Five dollars a day and expenses," he was offering to go as soon thereafter as was reasonable under the circumstances in contemplation of both parties. It may be an arguable question whether "all right" was an acceptance of that offer, the request to start on Friday having reference to the performance and not the formation of the contract, or whether the latter words were not a statement of the condition on which the defendant was willing to accept, which would require the assent of the other party to conclude a contract. This, however, is not the point of the decision. The ruling is that under *Harvey v. Facey* the telegram of the plaintiff was not an offer to go at "five dollars a day and expenses," but merely a quotation of terms.

Thus it is that the Books of the Privy Council, as the prayer-book says of the Apocryphal Scriptures, are read "for example

* Anson on Contracts, 10th Ed., p. 51.

† *Little v. Hanbury*, 44 Canada Law Journal, 760.