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CONTRACTS BY TELEGRAPH.

HARVEY v. FACEY.*

The head note in the above case, (an appeal to the Privy Council from the Supreme Court of Jamaica,) gives this summary:— 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, it was 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.

Ever since the above decision I have been waiting for Sir Frederick Pollock or Sir William Anson, my masters in the law of Contracts, either to say that it was wrong, or else to explain it away as a mere finding of fact on the evidence in the particular case. But I have been waiting in vain. In the meantime I have submitted the question, without prejudice, to pretty nearly every class that has gone through Dalhousie Law School, and I have not yet found a class that did not, by an overwhelming majority, condemn the decision. I think I may therefore be bold enough to ask whether this may not be one of the cases in which the wisdom of the Privy Council does not even attain to the standard of the Apocryphal Scriptures wittily attributed to it by Sir Frederick Pollock in his essay on Commercial Law.† It certainly is not, in this case, "good for example of life and instruction of manners." If any man in ordinary business were to act

* 1893, A.C. 552.

† Essays on Jurisprudence and Ethics, p. 69.