

## **HARVEY V. FACEY**

**COURT:** Judgement 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

**CITATION:** (1893) AC 552

**DELIVERED ON:** 29<sup>th</sup> July 1893

**BENCH:** The Lord Chancellor, Lord Watson, Lord Hobhouse, Lord Macnaghten, Lord Morris, Lord Shand.

**[Delivered by Lord Morris]**

**LAW APPLIED:** Offer, acceptance and invitation to treat (offer) in contract law

The Indian Contract Act, 1872

1. Section 2(a) - “When one person signifies to another his willingness to do or to abstain from doing anything, with view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.” Hence, proposal is synonymous to offer.
2. Section 2(b) - “When the person to whom the proposal has been made signifies his assent thereto, the offer is said to be accepted. Thus the proposal when accepted becomes a promise.”
3. Once the acceptance is communicated it cannot be revoked or withdrawn.
4. An Invitation to treat (offer) - An invitation to treat is a concept in contract law. It refers to an invitation for a party to make an offer enter into contractual negotiations.

## **INTRODUCTION:**

Harvey v. Facey<sup>1</sup> is an important case in Contract Law. It is an example where the quotation of the price was held not to be an offer. Its importance is that it defined the difference between an offer and supply of information. In this case the Privy Council held that the indication of lowest acceptable price does not constitute an offer to sell, rather it can be considered as an invitation to treat i.e. to enter into any negotiation.

The defendants in this case were the owners of a plot of land, Bumper Hall Pen. The Plaintiffs being interested in purchasing the land so they sent a telegram to the defendants, "Will you sell us Bumper Hall Pen"? Telegraph lowest price." The defendants back the plaintiffs telegraph, telegraphed that lowest price for Bumper Hall Pen, £900. So the plaintiffs sent another telegram to the defendants that, we agree to buy Bumper Hall Pen for £ 900 asked by you and please send us your title deeds."

But the defendants refused to sell that land. So, in a suit the plaintiffs contended that the second telegram from the defendants quoting lowest price was an offer and the same had been accepted by the plaintiffs, and the contract was completed. But on the other hand, the defendants contended that quoting the price was not an offer which could be accepted. The Judicial Committee if the Privy Council held that the exchange of the above stated telegrams had not resulted in a contract. And it was observed that the first telegram had asked two questions, one regarding willingness to sell and another regarding the lowest price. In reply of the telegram only the lowest price was quoted and this quoting of the price was not an offer to sell. The third telegram from the plaintiffs saying that they agree to buy the land and it was only an offer and not the acceptance of an offer. As the offer was not accepted so there was no contract binding between the two parties.

## **FACTS OF THE CASE:**

In this case the appellants, Mr Harvey was professing a partnership business in Kingston, Jamaica and it appeared that some negotiations resolved between the Council of Kingston, Mayor and the respondent Mr. L. M. Facey regarding the sale of latter's property. It was contended that on the 6th of October 1893 the respondent proffered to sell his land for a sum of £900. The offer of that was discussed by the Council at the meeting. On the next day, the

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<sup>1</sup> (1893) AC 552

appellant dispatched a telegraph to the respondent while the respondent was travelling through train. The 1st telegraph was "Will you sell us Bumper Hall Pen? Telegraph Lowest cash-price paid;"

After reading the telegraph, on the same day the respondent, replied:

"Lowest Price for "Bumper Hall Pen £900" (Telegraph 2)

And on the very next day, the appellant again telegraph that

"We agree to buy the 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."(Telegraph 3)

Mr. Facey received the telegraph 3 but he did not reply to that. And later he refused to sell the property for not promising to sell the land. Displeased from it the plaintiff knocked to the doors of Law through Justice Curran and the Justice dismissed the case with costs in favour of the respondents. He dismissed the case affirming that the agreement in question failed to divulge a proper Contract of sale.

The appellants, aggrieved by the order of Justice Curran, moved to the Appeals Court. The Appeals Court overruled the pronouncement rendered by Justice Curran and proclaimed that the existence of a binding contract in the case at hand. And Appeals Court asserted the respondent's incompetency to sell the said property and adjured the latter to pay a damage of 40 shillings to the former for the breach of contract.

But, the lust of for property forced the appellant to obtain leave from the Supreme Court to appeal to her Majesty in Council, and later, procuring special leave from her Majesty in Council to appeal against a point not included in the leave granted by the Supreme Court.

### **ISSUES RAISED:**

The major issues raised from this case are,

1. Was there an explicit offer from Facey to Harvey to sell the land for £ 900?
2. Was the telegram advising the lowest price an offer capable of acceptance?
3. Is there is a valid contract concluded?

**ANSWERS TO THE ISSUES –**

1. No, there was not an explicit offer from Facey to Harvey to sell the land. An proposal or offer cannot be implied by writing, it can only be sound and concrete. So that the appellant cannot imply that Facey made an offer when he, as matter of fact, did not make an offer. A mere statement of the minimum selling price is only an invitation to treat not an offer.
2. No, the telegram was only an invitation to treat, not a valid offer because it only advised the lowest price of the land, and did not explain any other information. So the telegram could not create any legal obligation. Harvey's telegraph "accepting" the £900 was instead an offer which Facey could either reject or accept. Here he rejected that so there was no contract created.
3. There was no contract concluded between Harvey and Facey because Facey had not directly answered the first question asked by Harvey as to whether they would sell the property or not and only stating the lowest price was merely responding to a request for information which do not constitutes a offer. So without and offer the question of acceptance would not arise and without offer and acceptance a valid contract can not be resolved.

**RULE APPLIED:**

This landmark case laid down the foundation of the concept "invitation to offer", where a person barely pondering upon the notion accepting the offer or not. Simply, we can say that when a person has not intimated his final desire to accept an offer, it is an invitation to offer. This clearly express that it is only mere promulgation of information on the terms on which the person may be willing to negotiate soon. Lack of consensus ad idem between the two parties is the primary reason for which this is not a complete offer.

As for example, the act for displaying cosmetics is only an invitation to offer by the shopkeepers to their customers. If a customer shows her willingness to buy any cosmetic product then she will approach to the shopkeeper and make an offer to him to buy that desired product at the price. This may or may not be accepted by the shopkeeper.

Thus, invitation to offer merely invites the people of to make an offer to the acceptor and the ultimate say remains with the acceptor to form the invitation to offer to a valid contract or not.

Thus, the acceptance to the offer here made by the customer in the said example will only amount to offer, which may or may not be accepted by the shopkeeper and if the offer accepted by the shopkeeper it will be a valid contract, implying the owner, who quotes the price of a certain property, is always the acceptor. Applying the aforesaid to the present case, it was the appellant who had made an offer to the acceptor for buying the land, which was unanswered and remained unaccepted though only the lowest price of the property was quoted when it was enquired. Beside this the respondent's intention to form a valid contract is absent here and therefore, absence of a valid offer implies failure to form a valid contract, clearly ruining the sole ambition of the appellants to grab the property.

Thus invitation to offer is not a valid offer which was settled through the medium of this case and succored resolving divers' cases in years to come and is illuminated below –

1. **[CARLIL V. CARBOLIC SMOKE BALL]<sup>2</sup>**

In this case the Court of Appeal stressed that the wordings of an advertisement only depict the legal intention to enter into a valid contract for compensation if their product failed to maintain its promise. Thus, it is not inviting people to an offer but is making an offer to the public at large.

2. **[PHARMACEUTICAL SOCIETY V. BOOTS]<sup>3</sup>**

This case it was held by the Honourable Court of Appeal that the goods displayed in a shop, inside or through its window is an invitation to offer only. And when the customers choose the good they desire and approach to the shopkeeper, making him an offer to buy the same.

3. **[PARTRIDGE V. CRITTENDEN]<sup>4</sup>**

Here the appellant placed an advertisement in a magazine "Bramble finch cocks and hens, 25 shillings each". He was charged with offering for sale of a wild bird, contrary to statute, but the High Court said that he must be acquitted. The advertisement was an invitation to treat, not an offer to sell; with limited stock the advertiser could not reasonably intend to be bound to sell to all those who might accept. If the advertiser

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<sup>2</sup> (1893) 1 QB 256 CA

<sup>3</sup> (1953) 1 QB 401 [1951 P. No. 1413]

<sup>4</sup> (1968) 2 All ER 421, HC QBD

indicated that he was willing to sell only the first person accepting, there would be no such problem.

There are few of the many cases where the decision of the case at hand helped in reaching a suitable conclusion, thereby swiftly securing justice to the needy.

### **ANALYSIS OF JUDGMENT:**

**JUDGMENT-** The honourable Judges Bench reviewed the total matter of this case and upholding the Justice Curran's verdict the Lordships held that the Telegraph 1 asks the respondent this willingness to sell the land and what is the lowest price if that land. But the respondent answered only the second part, and his willingness to sell the property was absent in the telegraph and therefore it cannot be expected to be binding upon him. Here the Court asserted that through the telegraph 3 the reply from the appellants of cannot be considered an acceptance to the offer to sell them the land. So the respondent acceptance cannot be granted as a valid contract and actually no acceptance through any form was conveyed by respondent. The Lordships were of the opinion that even if the appellants were to contend the presence of an implied offer to buy the land, only quotation of lowest price of the land by the respondent does not satisfy the requisites of implied contract to sell.

**ANALYSIS -** In simple words this verdict held that no valid contract was formed due to lack of proper proposal / valid offer. This obvious draws our attention to the concept of valid offer as per Section 2(a) of The Indian Contract Act, 1872, which properly stated that to constitute a valid offer the following Conditions must be fulfilled –

1. The offer must show an obvious intention on the part of the offeror to be bound by it i.e., the offer must signify to the offeree his willingness to do or to abstain from doing something. Thus is X jokingly offers Y Rs. 50 for his typewriter and Y, knowing that Z is not serious, says, "I accept Z's proposal does not constitute an offer.
2. The offeror must make the offer with a view to obtaining the assent of the offeree to such act or abstinence.
3. The offer must be definite, certain and concrete.
4. The offer must be properly communicated to the acceptor (offeree).
5. It must be made with the intention of creating a legal relationship.

Hence, all these requisites must be fulfilled to consider a valid offer. And in this case the owners of the property have every right including the right to sell the property. So however, the respondent furnished no offer regarding the sell of his property and the appellant wrongfully assumed that for quoting the lowest price when enquired and tendered to sell the property. At last it is proved that the mere quotation of price is not an offer but merely an invitation to offer, which I have already discussed.

### **CONCLUSION:**

An offer is an expression of willingness to be legally bound on certain terms, without further negotiation. A valid and concluded contract requires a proposal and an acceptance of the proposal. And to make a contract binding it is necessary that the proposal must be accepted and also the acceptance of the proposal must be notified to the proposer. A mere statement contains no implied acceptance to hold. This is because a legally enforceable agreement requires certainty to hold.

Here, in this case invitation to offer is an abstract concept which was realized clearly and expressly and this concept is improvising over the period of time. Now, I must say that the principle of invitation to offer is clearly distinguishable from an offer and it has played a crucial role to understand the nature of an offer.



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