

CORRESPONDENCE.

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HARVEY v. FACEY (1893), A. C. 552.

A REJOINDER TO MR. MACLEOD.

Editor Canadian Bar Review:

Sir,—Like the Maine farmer who admired the pluck but damned the discretion of his little bull that challenged the locomotive, I admire rather the courage than the wisdom of Mr. MacLeod¹ who rushes to the support of a decision, the defence of which has been abandoned by Sir Frederick Pollock. Mr. MacLeod has probably discovered a misstatement of fact in the "doggerel," which I quoted, but the variance is entirely immaterial. What possible difference can it make whether Harvey was the spokesman for the Mayor and Council or the rival bidder for the property? In either case Facey knew that he was desirous of purchasing and sent him a quotation of price which could have "only one meaning for sensible men." I enclose a letter² from an unknown correspondent which is interesting because of its humour, but to my mind valueless as an argument. If Facey was fastidious as to the person to whom he would sell his property he was not obliged to send Harvey a telegram which he must have known would be interpreted as an offer.

B. RUSSELL.

¹ See *ante*, p. 694.

² EDITOR'S NOTE:—The following is a copy of the letter to which Judge Russell here refers:—

The Association of the Bar
of the City of New York,
42 West 44th Street. Aug. 24th.

Dear Sir,—

In the discussion of *Harvey v. Facey* in the Canadian Bar Review a distinction is made between "Lowest price for B. H. P. is £900" and "Yes, my lowest price is £900." Should the distinction not be that there was an utter absence of expression of willingness to sell to the person making the inquiry? for assuredly whilst a person might be wanting to sell when it comes to landed property he might be fastidious as to the personality of the intending purchaser. The distinction quoted at page 401 may however be founded on the ancient Jamaican maxim, "Yes, we have no bananas."

Yours truly,

The Honourable
Mr. Justice Russell.