

Hyde v. Wrench

INTRODUCTION

“When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal” – Section 2(a) of the Indian Contract Act, 1872.

“When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.” -Section 2(b) of the Indian Contract Act, 1870.

Acceptance of an offer should be absolute and unqualified for the acceptance to be legally enforceable as provided by Section 7 of the Indian Contract Act which states: *“In order to convert a proposal into a promise, the acceptance must be absolute and unqualified.”*¹ In case of departure from the terms of the offer, counter offer come into being, dissolving the original offer made by the offeror to the offeree. Counter proposals arise when the offeree fails to have compliance with all the terms of the original offer and thus the original offer is rejected. For example, “A” wants to sell one subject and sends a letter to “b” quoting the consideration to be of Rs.80/-. “B” rejects the offer and offers “A” to buy his subject for Rs. 50/-. Such an offer is known as counter offer. In cases where counter offers are made the offeror remain no longer to be bound by the terms of the contract.

Sir Jenkins CJ in the case of *Haji Mohd. Haji Jiva v E. Spinner*² said: *“Unless there is an absolute and unqualified acceptance, the stage of negotiations has not yet passed, and no legal obligation is imposed.”*³

The case of *Hyde v. Wrench*⁴, which we are going to discuss in this assignment is a landmark case in contract laws history. It deals with the question of specific performance of the original offer in case where the original offer was rejected by proposing a counter offer. Specific performance is a relief provided by the court to the plaintiff in cases where there is breach of

¹ Sec.7, Indian Contract Act, 1872

² ILR (1900) 24 Bom 510

³ *Ibid*

⁴ (1840) 49 ER 132

contract by the defendant and place an obligation upon the defendant to perform the contract according to its terms and stipulations. This case put an end to all the controversies and issues related to counter-offers and their relation with the original offers.

FACTS

The facts of the case go like this, that Wrench, the defendant being desirous to dispose off his estate of Luddenham, offered to sell it to Hyde, the Plaintiff for £1200 via his agent, but the Plaintiff declined the offer through his agent. So, the Defendant made one more offer on 6th June, 1840 to the Plaintiff for selling the estate for £1000 and stated that he won't be altering this offer and if £1000 aren't lodged in the bank by Michaelmas, up to when the estate would be free from all taxes, expenses etc. then he would be considering the another application. However, once again the plaintiff rejected the offer made by the defendant and offered to give £950. In furtherance of this counter offer the defendant sought few days to consider it. He wrote to the plaintiff as follows: *"I have written to my tenant for an answer to certain enquiries and, the instant I receive his reply, will communicate with you and endeavor to conclude the prospective purchase of my farm, I assure you I am not treating with any other person about said purchase."*⁵ After few days on 27th June, the defendant wrote to the plaintiff that he won't dispose off his estate to the defendant as he wasn't willing to sell the farm at such a low price and then the plaintiff agreed to buy the estate for £1000. The plaintiff wrote as follows: *"I beg to acknowledge the receipt of your letter of the 27th instant, informing me that you are not disposed to accept the sum of £950 for your farm at Luddenham. This being the case, I at once agree to the terms on which you offered the farm, viz., £1000 through your tenant Mr. Kent by your letter of the 6th instant. I shall be obliged by your instructing your solicitor to communicate with me without delay, as to the title, for the reason which I mentioned to you."*⁶

But Wrench refused to sell the farm to Hyde. So, the plaintiff filed a suit against the defendant alleging him for the specific performance of the contract, as according to the plaintiff defendant's offer for sale wasn't withdrawn before its acceptance as defendant had in response to the last letter of the plaintiff said that *he would see his solicitor thereon.*

⁵ *Ibid*

⁶ *Supra* note 4

Thereupon, the defendant filed a general demurrer in response to the suit filed by the plaintiff alleging specific performance of the contract.

ISSUE RAISED

The issue which was raised in this case was whether the defendant was bound to perform the original offer even though once the plaintiff has made a counter proposal in furtherance of the original offer.

- Whether the defendant is obligatory to perform the original or original offer gets terminated in cases of counter proposals?
- Whether the defendant i.e., Wrench has committed breach of contract by refusing to sell the form to Hyde (Plaintiff)?
- Whether there existed a valid contract between Hyde and Wrench?

RULE

It is the settled principle of law that an acceptance to be legally enforceable it must be absolute and unqualified. In cases where changes are made in the terms and conditions of the original offer, that brings the original offer to an end. In simple language, in case where the offeror presents an offer to the offeree can either accept the offer or can he negotiate, it is his sole discretion. Where the offeree accepts the offer without any negotiations or unequivocally, then there arises an agreement which is legally binding upon the parties. But in case where the offeree tries to negotiate either the price or any other terms of the offer, in that case it kills the initial offer and the offeree cannot turn back to it and accept it. And hence, the offeror remains no longer bound to perform the original offer.

In the case of *Holland v. Eyre*⁷, the proposal was to buy a lease for ninety-seven years from Holland, which he was to have on Burton. Holland accepted the offer and agreed to grant lease to Eyre on the same terms on which he held lease from Burton. It was held that as the offer of Eyre was to take an assignment of the lease and acceptance was made only to granting a lease, Eyre would not be bound.

⁷ (1840) 49 ER 132

In the case of *Kennedy v. Lee*, it was held by the court that in cases where the terms of a proposal are left to be settled afterwards, in that cases no contract arise.

Further, in the case of *Tinn v. Hoffman & Co.*⁸, where the defendant offered to sell to the plaintiff 800 tons of iron at 69 sh. per ton. Unaware of the offer, plaintiff also wrote to the defendant to buy 800tons of iron at 69 sh. per ton. In this case, the court held that there exists no contract between the plaintiff and defendant for the basic requirement of a contract is the communication of the offer and acceptance, and in this case, there was not any communication of the offer.

Moreover, in the case of *Haji Mohd Haji Jiva v E. Spinner*⁹, where before accepting the original offer the plaintiff altered certain terms of the original offer which the defendant refused to accept. So, subsequently, the plaintiff agreed to accept the original offer but the defendant refused. So, the plaintiff sued the defendant for the breach of contract. **Sir Jenkins CJ** said, *“Unless there is an absolute and unqualified acceptance, the stage of negotiations has not yet passed, and no legal obligation is imposed.”*¹⁰

In addition to this, in the case of *Badrilal v. Municipal Council of Indore*¹¹, the Supreme Court held that in cases where the plaintiff accepts the original offer of the defendant after the defendant denies to accept the counter- proposal, there lies or exists no obligations of any sort between the two parties.

APPLICATION

After considering the arguments produced on the behalf of both the parties the court gave its decision. Mr. Kindersely and Mr. Keene on the behalf of the defendant contented that the acceptance must be unequivocal in order to constitute a valid contract. There must be an absolute and qualified acceptance. The contented as follows: *“to constitute a valid agreement there must be a simple acceptance of the terms proposed. The Plaintiff, instead of accepting the alleged proposal for sale for £1000on the 6th of June rejected it and made a counter proposal; this put an end to the Defendant’s offer and left the proposal of the Plaintiff alone under discussion; that has never been accepted and the Plaintiff could not, without the*

⁸ (1873) 29 LT 271

⁹ *Supra* note 2

¹⁰ *Ibid*

¹¹ (1973) 2 SCC 388

concurrence of the Defendant, revive the Defendant's original proposal."¹² Whereas Mr. Pemberton and Mr. Freeling appearing on the behalf of plaintiff contested that as the defendant's offer was not withdrawn before its acceptance by the plaintiff, therefore the plaintiff was competent to accept the defendant's offer as long as it existed and was not taken aback by the defendant. According to them as long as an offer is not taken back it is open for the appellant to accept it.

Lord Langdale held: *"Under the circumstances in this bill, I think there exists no valid binding contract between the parties for the purchase of the property. The Defendant offered to sell it for £1000 and if that had been at once unconditionally accepted, there would undoubtedly have been a perfect binding contract; instead of that, the Plaintiff made an offer of his own, to purchase the property for £950 and he thereby rejected the offer previously made by the Defendant. I think that it was not afterwards competent for him to revive the proposal of the Defendant, by tendering an acceptance of it; and that, therefore, there exists no obligation of any sort between the parties; the demurrer must be allowed."*¹³

Therefore, the claims made by the plaintiff were dismissed by the court and the case was ruled in the favor of the defendant. It was held that there was not any binding contract between Hyde and Wrench and hence the defendant wasn't obligated to perform the contract.

CONCLUSION

Thus, it can be concluded that counter offer kills, supersedes or destroy the original offer. For an acceptance to be legally enforceable and a contract to arise the acceptance must be unconditional i.e., absolute and qualified. A counter offer is just like a new offer. The parties are not bound to accept the offer. If we analyze the above discussed case, we would see that the original offer existed till when Hyde did not decline the offer and presented a counter proposal. As soon as Hyde offered £950, he cancelled the £1000 offer and he could not go back and accept that. Court also observed as there was no acceptance, the contract didn't arise. Moreover, Lord Langdale ruled that counter-offer cancels, destroys or kills the original offer.

The ruling of this case has been used as a precedent in many later came cases. In the case of *U.P. Rajkiya Nirman Nigam Ltd v. Indure Pvt Ltd*¹⁴, it was held that there exists no contract

¹² *Supra* note 4

¹³ *Supra* note 4

¹⁴ AIR 1996 SC 1373

nor do there is *consensus ad idem* to material terms whenever a counter proposal is made. Moreover, in the case of *DS Construction Ltd v. Rites Ltd.*¹⁵, it was held that in cases where counter proposals are made and the offer is not accepted to its entirety, it would be assumed to be refused on the part of the appellant.

Thus, it can be said that the verdict passed in the case of *Hyde v. Wrench*¹⁶, is still considered as good judgement in law and is therefore still applicable. This case is one of the leading cases in subject of contracts and has a major place in the history.



JudicateMe

¹⁵ AIR 2006 Del 98

¹⁶ *Supra* note 4