
MIRROR IMAGE OR MIRAGE? A CRITICAL READING OF HYDE V WRENCH (1840)

Tushit Trijal, National Law School of India University, Bengaluru

1. Title and Citation of the case:

Hyde v Wrench (1840) 49 ER 132.

2. Facts of the case:

The defendant, Wrench, was interested in selling an estate. He initially offered to sell the farm to the Plaintiff, Hyde, for £1200 through his agent. The said offer was rejected by the plaintiff. As a result, On June 6, 1840, the defendant made what is termed as his “only” and “final” offer of £1000 for his farm along with specific conditions regarding the procedure of such a deposit. Further, the plaintiff made a counter-offer to purchase the estate at £950 to the defendant, who rejected the same on June 27, 1840. The plaintiff wrote back on June 29, 1840, stating that since the £950 offer was rejected, he now "at once" agreed to the original terms of £1000 as offered in the letter of June 6. The plaintiff requested the defendant to instruct his solicitor to communicate regarding the title without delay. The defendant did not agree to the sale at £1000 now and no formal acceptance was ever given. Consequently, the plaintiff filed a bill in the Court of Chancery, seeking specific performance of the contract.

3. Issue Raised:

Whether a party who has rejected the initial offer by making a counter-offer can subsequently accept the original offer to create a binding contract?

4. Decision & Reasoning of the Court:

The court held that there was no valid contract between the parties, and the defendant's demurrer was allowed.

The court supported its decision through the reasoning that when the plaintiff offered £950

instead of the original request of £1000, he “thereby rejected the initial offer made by the defendant.” The court found that the counter-offer had put an end to the defendant’s original offer, and thereby the original offer was no longer valid for the plaintiff to revive that proposal by later tendering an acceptance of the £1000 price. The court also mentioned that though the defendant had not formally withdrawn the £1000 offer, there was no “assent” from the Defendant to the Plaintiff’s final attempt to accept the original terms.

5. Legal Principles / Doctrinal Significance:

Development of Novel Principles:

Firstly, the Court through this case developed the principle of mirror image, which prescribes that the acceptance to any promise must be clear and unequivocal, just like the offer.¹ For a contract to be formed, the acceptance must “mirror” the offer exactly. Any deviation, however small, is not an acceptance but a counter-offer. *Secondly*, the court also established another foundational principle of contract law relating to the same matter of counter-offers, that a counter-offer operates as a rejection to the original offer, thereby extinguishing the same. A counter-offer does not just “pause” the original offer, but “kills it”. Once rejected, the original offer cannot be unilaterally revived by the offeree.

The basic requirement of such principles is that there must not be any modification or conditions to an acceptance, and if there is any, the original offer loses its force and the contract is then formed by the mutual reciprocal discussion on terms and conditions of the contract. These principles are grounded in the need for mutual assent, often described as a “meeting of minds”, which is essential for formation of a binding contract.² The decision in *Hyde v Wrench* also aligns with the broader framework of contract law, which requires an offer, acceptance, consideration, and intent to create legal relations for a contract to be enforceable.³

Applicability in Indian Context & Current Legal Position and Development:

The Indian Contracts Act, 1872 deeply resonates with such a principle when it also lays down the requirement for a valid acceptance.⁴ The section clarifies that an acceptance must be

¹Ewan McKendrick, *Contract Law* (1st edn, Macmillan Law Masters 1997) 26.

²Alastair Adams, *Law for Business Students* (10th edn, Pearson 2017).

³Ewan McKendrick, *Contract Law: Text, Cases, and Materials* (9th edn, Oxford University Press 2019).

⁴Indian Contract Act 1872, s 7.

absolute, unqualified, and be expressed explicitly or impliedly, unless as specific in the proposal.

The decision in this case was cited as a precedent in a number of subsequent decisions. In the matter of *U.P. Rajkiya Nirman Nigam Ltd v. Indure Pvt Ltd*,⁵ it was determined that when a counter proposal is made, there is no contract and no consensus ad idem on material conditions. Furthermore, in the case of *DS Construction Ltd v. Rites Ltd*,⁶ It was determined that when counter-offers are offered and the offer is not accepted in its entirety, the appellant's refusal is presumed. In the matter of *Vinayak Builders and Developers v. State of Maharashtra*,⁷ the even exact phrase "Mirror Image Rule" was cited for the first time in Indian jurisprudence.

6. Critical Analysis and Reflection:

In my independent opinion, I find that though the case of *Hyde v Wrench* has established seminal principles of contract law, the decision is not without its fair share of limitations.

The significance of *Hyde v Wrench* lies in its establishment of a clear rule regarding the effect of counter-offers. This precedent provides certainty in contractual negotiations, as parties can rely on the understanding that a counter-offer terminates the original offer.⁸ Such a certainty is valuable in commercial contracts, where precise terms and conditions are critical to performance of the contract. The rule provides legal certainty, allowing both parties to know exactly when a binding contract has been formed and on what specific terms.

However, the principle faces significant criticism for being outdated in context of modern contractual negotiations and relations.

A) The rule is considered to be overly rigid, especially in modern contractual dealings where multiple rounds of continuous back and forth negotiations take place before the finalization of the terms of the contract.⁹ In such scenarios, resting every counter-offer as a rejection could severely impact good faith negotiations.

Scenario: A supplier offers to sell a product at \$50 each for 1000 units, which is accepted by

⁵*U.P. Rajkiya Nirman Nigam Ltd v Indure Pvt Ltd* (1996) 2 SCC 667.

⁶*D S Construction Ltd v RITES Ltd* (2008) 1 SCC 364.

⁷*Vinayak Builders and Developers v State of Maharashtra* (2016) 1 SCC 546 (SC).

⁸Edwin Peel, *Treitel on the Law of Contract* (15th edn, Sweet & Maxwell 2020).

⁹Ewan McKendrick, *Contract Law: Text, Cases, and Materials* (9th edn, Oxford University Press 2019).

the buyer. The buyer asks for an extension of the delivery date by two days. Going by the principle established in *Hyde v Wrench*, this minor adjustment in the terms of the contract makes the acceptance non-absolute and thereby the acceptance is not valid. This provides an opportunity to the supplier to use such an adjustment as an excuse to put forth newer rates (say now \$70 each) and gain financial advantage.

B) The scope of what constitutes a counter-arguments was also not made clear through the reasoning of the court in this case. Lord Langdale's judgement offers little guidance on borderline cases, such as when a response could be classified as a counter-offer or a mere inquiry.

An attempt was made by the court in the case of *Stevenson v McLean*¹⁰ to provide some clarity on this aspect of the matter. The case related to the fact scenario where the defendant offered to sell iron to the plaintiff stating that the order would remain open till Monday. The plaintiff replied on Monday asking merely a logistical question, to which the defendant sold the iron to a third party. The matter was brought to the court, and was decided in favour of the plaintiff. The court held that a request for information or clarification regarding the terms of an offer does not constitute a rejection or counter-offer. Therefore, the original offer remains open. Unlike in *Hyde v Wrench*, where the party made a firm new proposal (£950), here the Plaintiff was simply asking if the defendant would consider different terms while keeping the original offer in mind.

This case narrows down the scope of counter-offers provided in *Hyde v Wrench*, and puts some light on what kind of contractual clarifications would fall outside the ambit of the principles established by *Hyde v Wrench*.

Scenario: The illustration below shows the difference between Counter-Offer and mere inquiry as understood from co-joint reading of both the cases.

Illustration	Counter-offer (<i>Hyde v Wrench</i>)	Mere Inquiry (<i>Stevenson v McLean</i>)

¹⁰*Stevenson v McLean* (1880) 5 QBD 346.

An art dealer contacts a collector to sell a painting for Rs. 1 lakh.	The collector responds that he would buy the painting for Rs. 90,000.	The collector responds that the dealer will take two installments for the painting, or is it all cash.
---	---	--

C) The modern legal approaches have moved towards a more flexible standard that considers parties' overall conduct and correspondence to determine if the contract exists, even with some variation in terms. This is directly in contrast to the "*Last Shot*" theory where the final form sent without objection before performance dictates the terms of the contract. In this theory, weight is given to the last document exchanged rather than overall consensus of the parties. The theory may not align with the original consensus of the parties.

Lord Denning also illustrated the same in the case of *Butler Machine Tool v Ex-Cell-O*,¹¹ where he opined that :

"In many cases our traditional analysis of offer, counter-offer, rejection, and so forth is out of date... The better way is to look at all the documents passing between the parties and glean from them, or from the conduct of the parties, whether they have reached agreement on all material points."

The Indian Supreme Court in the matter of *Bhagwati Prasad Pawan Kumar v. Union of India*,¹² where the court had used Section 8¹³ to bypass the strictness of acceptance under Indian Contracts Act, 1872.

7. Conclusion:

The *Hyde v Wrench* case was a significant turning point in the contracts law jurisprudence where the court dealt with the question of counter-offers, its impact on the original offer and the prerequisites to a valid acceptance. In doing so, it ruled that counter-offers "*kill*" the original offer. Similar principles were also imbibed into the Indian Contracts Act, 1872. The courts have with time, have also narrowed down the scope of applicability of the principles of this

¹¹*Butler Machine Tool Co Ltd v Ex-Cell-O Corporation (England) Ltd* [1979] 1 WLR 401 (CA).

¹²*Bhagwati Prasad Pawan Kumar v Union of India* (2006) 5 SCC 311.

¹³Indian Contract Act 1872, s 8.

case. This has been done to keep the contractual jurisprudence updated with modern commercial contractual practices.

BIBLIOGRAPHY:

CASES

1. *U P Rajkiya Nirman Nigam Ltd v Indure Pvt Ltd* (1996) 2 SCC 667.
2. *D S Construction Ltd v RITES Ltd* (2008) 1 SCC 364.
3. *Vinayak Builders and Developers v State of Maharashtra* (2016) 1 SCC 546 (SC).
4. *Bhagwati Prasad Pawan Kumar v Union of India* (2006) 5 SCC 311.
5. *Stevenson v McLean* (1880) 5 QBD 346.
6. *Butler Machine Tool Co Ltd v Ex-Cell-O Corporation (England) Ltd* [1979] 1 WLR 401 (CA).

LEGISLATION:

1. Indian Contract Act 1872.

BOOKS

1. Ewan McKendrick, *Contract Law: Text, Cases, and Materials* (9th edn, Oxford University Press 2019).
2. Alastair Adams, *Law for Business Students* (10th edn, Pearson 2017).
3. Edwin Peel, *Treitel on the Law of Contract* (15th edn, Sweet & Maxwell 2020).