[334] HYDE *v.* WRENCH. *Dec.* 8, 1840.

[S. C. 4 Jur. 1106. See *Stevenson* v. *M'Lean*, 1880, 5 Q. B. D. 350.]

The Defendant on the 6th of June offered in writing to sell his farm for £1000; but the Plaintiff offered £950, which the Defendant on the 27th of June, after consideration, refused to accept. On the 29th the Plaintiff, by letter agreed to give £1000, but there appeared to be no assent on the part of the Defendant, though there had been no withdrawal of the first offer. Held, that there was no binding contract within the Statute of Frauds.

This case came on upon general demurrer to a bill for specific performance, which stated to the effect following:—

[335] The Defendant being desirous of disposing of an estate, offered, by his agent, to sell it to the Plaintiff for £1200, which the Plaintiff, by his agent, declined; and on the 6th of June the Defendant wrote to his agent as follows:—"I have to notice the refusal of your friend to give me £1200 for my farm; I will only make one more offer, which I shall not alter from; that is, £1000 lodged in the bank until Michaelmas, when the title shall be made clear of expenses, land tax, &c. I expect a reply by return, as I have another application." This letter was forwarded to the Plaintiff's agent, who immediately called on the Defendant; and, previously to accepting the offer, offered to give the Defendant £950 for the purchase of the farm, but the Defendant wished to have a few days to consider.

On the 11th of June the Defendant wrote to the Plaintiff's agent 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 endeavour to conclude the prospective purchase of my farm; I assure you I am not treating with any other person about said purchase."

The Defendant afterwards promised he would give an answer about accepting the £950 for the purchase on the 26th of June; and on the 27th he wrote to the Plaintiff's agent, stating he was sorry he could not feel disposed to accept his offer for his farm at Luddenham at present.

This letter being received on the 29th of June, the Plaintiff's agent on that day wrote to the Defendant 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 **[336]** 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."

The bill stated, that the Defendant "returned a verbal answer to the last-mentioned letter, to the effect, he would see his solicitor thereon;" and it charged that the Defendant's offer for sale had not been withdrawn previous to its acceptance.

To this bill, filed by the alleged purchaser for a specific performance, the Defendant filed a general demurrer.

Mr. Kindersley and Mr. Keene, in support of the demurrer. To constitute a valid agreement there must be a simple acceptance of the terms proposed. *Holland* v. *Eyre* (2 Sim. & St. 194). The Plaintiff, instead of accepting the alleged proposal for sale for £1000 on 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 concurrence of the Defendant, revive the Defendant's original proposal.

Mr. Pemberton and Mr. Freeling, *contrà*. So long as the offer of the Defendant subsisted, it was competent to the Plaintiff to accept it; the bill charges that the

Defendant's offer had not been withdrawn previous to its acceptance by the Plaintiff; there, therefore, exists a valid subsisting contract. *Kennedy* v. *Lee* (3 Mer. 454), *Johnson* v. *King* (2 Bing. 270), were cited.

[337] THE MASTER OF THE ROLLS [Lord Langdale]. Under the circumstances stated 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.