

No. 2885

Supreme Court of Illinois

**James Woods.**

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vs.

**David Dial, use of John Williams.**

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(379)  7

At a Circuit Court began and holden  
at the Court House in the town of Mt.  
Vernon in and for the County of Jef-  
ferson and State of Illinois, being one  
of the Counties Composing the 3<sup>d</sup> Judicial  
Circuit before the Honorable William  
A. Deming Judge thereof to wit:—  
On Monday the nineteenth day  
of August, A. D. one thousand  
eight hundred and fifty.

Be it remembered that on the 23<sup>d</sup> day of August  
the fifth day of the said term the following  
proceedings were had.

Friday Morning 23<sup>d</sup> day of  
August, A. D. 1850

Present the Hon William A Deming  
Judge &c—

David Dial for use	}	} appeal from Justice of the Peace
of John Williams		
vs. James Woods		

And now on this day came the  
parties herein by their attorneys and issue being  
joined let a Jury Come and thereupon came the  
Jurors of the Jury to wit: Floyd Duncan, James  
Ross, Jesse Green, John W. Lee, Jesse Tanner, Anthony  
Waite, Charles W. Allen, James Jones, Orlan Conner,  
John Martin, David Stewart and Washington Quinn  
who being selected tried and sworn, will  
and truly to try the issue joined between  
the parties and having heard the evidence and  
argument of Counsel upon their Oathes do say  
that they find a verdict for forty dollars

in favor of the said Plaintiff and against the  
said defendant

Therefore it is considered  
by the said Court that the said Plaintiff  
recovers of the said defendant the sum  
of forty dollars together with costs  
in this behalf expended.

Whereupon the said defendant  
dissents enters his motion for a new trial  
when the Court not being sufficiently  
advised took time to consider

Said trial for use }  
James<sup>vs.</sup> Woods } Saturday Morning the 24<sup>th</sup>  
day of August, A.D. 1858

And now on this day  
came again the said parties by their  
Attorneys when the being sufficiently  
advised in the premises refuses to grant  
the motion of the said defendant for  
a new trial. Whereupon the said  
defendant excepts to the opinion of  
the said Court asks a bill of excep-  
tions that he may appeal to the  
Supreme Court. Whereupon it is  
allowed which are as follows

James Wood.  
ads  
David Dial for  
the use of John Williams

} Appeal  
} August Term of the  
} Supreme Court  
} A.D. 1849

It is Remembred that on the trial  
of the above styled cause the Plaintiff  
introduced Martin S. Leasey who upon his  
Oath stated that he was present when  
Plaintiff and Defendant were trading  
in relation to an improvement on  
Congress Land, that Defendant  
offered to give the Plaintiff \$40.00  
in trade for the improvement if the  
said Plaintiff would give him  
possession then of then of the place - or  
\$40.00 in trade and Plaintiff held  
possession of the place a year, The Plaintiff  
agreed to take the \$40.00 in trade and remain  
on the place the year, Witness further stated  
that said Dial was owing witness and  
was about going away and that  
Defendant came to his house and  
told witness if he would get an  
Order on him Defendant he would  
pay it, that witness got the Order  
of said Dial and Defendant said  
Witness word that he would not pay  
it, Dial kept the possession until  
Spring and then went off of the  
improvement and said Defendant  
told Witness that he had laid a  
Land Warrant on a part of said  
improvement, Nathan Carson  
was then called by Plaintiff

and on his oath stated that he was at  
Martin S. Casey's house and Defendant  
came there and told M. S. Casey if  
he would get an order from Deab he  
would pay him,

This was all the testimony  
in this cause, whereupon the left asked  
the Court to instruct the Jury as follows

1<sup>st</sup> That where a Contract is made for the delivery of trade or  
property and no time is fixed for the delivery it is due on demand - and if they  
believe from the evidence that no time was fixed by the parties in this case it is  
necessary, for the Plaintiff to prove, to entitle him to recover, that he  
demanded the property or trade - and if they believe from the evidence  
that no demand was made they will find for the defendant.

2<sup>nd</sup> That to entitle Plaintiff to recover money on a  
Contract for trade - he must not only show that he  
has fulfilled the Contract on his part but that de-  
fendant has failed to deliver the trade at the time  
and place required by the terms of the Contract  
and if they believe that Plaintiff has failed to  
prove these facts they will find for defendant.

The Court gave the first and refused  
the two latter instructions to which the  
left by his counsel then and there  
excepted. The Jury found verdict for  
Plaintiff for \$40 = Whereupon defendant  
moved the Court for a new trial for  
the reasons that the verdict was against  
law and evidence, and because  
the Court refused to give the two last

instructions, which motion for a new trial  
the Court overruled, to which decision  
overruling said motion the defendant  
by his Counsel then and there excepted  
and prays the Honorable J. A. Denning  
Residing Judge of said Court to sign,  
seal and allow this his bill of  
Exceptions, which is done accordingly.  
J. A. Denning *clerk*

It is agreed by the Counsel for the  
Plff and Defendant, that the foregoing  
Bill of Exceptions is correct.

W. B. Bates & C. H. King  
Counsel for Plff  
W. B. Bates & C. H. King  
Counsel for Deft

State of Illinois  
County of Jefferson

I, John Milbank, Clerk of the Circuit  
Court in and for the County of Jefferson and  
State aforesaid that the above and foregoing  
is true Copy of the proceedings had in the  
above entitled Cause wherein David  
Dial for the use of John Milbank was plaintiff  
and James Wood, were defendant.

In Witness Whereof John Milbank,  
Clerk and the Judicial Seal  
of said Office at Mt Vernon  
the 4th day of November  
A. D. 1858

John Milbank, Clerk  
By F. D. Preston, D.C.

J. Woods v D. Dial use &c } Supreme Court November Term 1850.

Plaintiff Woods by Seates & Mungate his counsel comes and says that in the record & proceedings and in the rendition of judgement there is manifest error - & assigns & sets down  
First The court erred in refusing the instructions asked by plaintiff  
Second The court erred in refusing a new trial - and  
Third The court erred in rendering judgement for Dial and against Woods  
for which error & others apparent upon the record he prays that the judgement may be reversed &c & he restored to the law with his

James Woods

v.

Dial and  
use &c

Appeal from

Jefferson C.

1839

costs &c Seates & Mungate  
for plaintiff.  
In mutual erratum  
These for Sept

Prepared

E. P.

2885

August Allen  
Jefferson Circuit Court  
A. C. B. W.

James E. Woods

vs

D. Dial use &c pro Williams

Bill of Exceptions





Nathan Cannon was then called by plaintiff  
and on his oath stated that he was at Martin & Casey  
house, and defendant come there, and told  
me & Casey if he would get an order from Deak  
he would pay him.

This was all the testimony  
in this cause whereupon Deft asked the Court to  
instruct the jury as follows (here insert instructions  
No 1 & 2 & 3) - The Court gave the first & refused  
the two latter instructions to which the Deft  
by his Counsel then and there excepted -

The jury found verdict for plaintiff  
for \$40 - whereupon defendant moved the  
Court for a new trial for the reasons that  
the verdict is against law and evidence  
and because the Court refused to give  
the two last instructions - which motion  
for a new trial the Court overruled to  
which succeeded overruling said motion  
the defendant by his Counsel then & there  
excepted, and prays the Honorable Mr  
Denning presiding Judge of said Court  
to sign and allow this his bill of exceptions  
which is done accordingly.

W A Denning

Deak

It is agreed by the Counsel for the plaintiff and  
defendant that the foregoing bill of exceptions  
is correct

Bruce & Cary Counsel for plaintiff

WBS Carter & R H Whiggin  
Counsel for defendant

Term of the  
Honor Court  
1850

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James Woods  
etc.

Diol in journal

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Bill of Exception

17

1850

2885

211  
211  
211

53.66  
65.00  
21.34

Know all men by these presents that  
we James Wood Jr & Jodde & Mr Wood  
are held and firmly bound unto David Dial  
for the use of John Williams in the several  
sum of One hundred Dollars lawful money  
&c for the payment of which sum well and truly  
to be made & done we bind our selfs & our  
administrators and assigns jointly severally  
& firmly by these presents as witness our  
hands & seals this 15<sup>th</sup> day of September  
A.D. 1857

The Conditions of the above bond  
is such, that whereas at the August term of the  
Jefferson Circuit Court 1857, the said David Dial  
for the use of John Williams recovered a judgment  
against the said James Wood on appeal  
for the sum of forty Dollars and costs of  
suit, from which judgment the said James  
Wood has taken an appeal to the Supreme Court  
to be ~~held~~ <sup>commenced & holden</sup> at Mount Vernon, on the 11<sup>th</sup> day of  
November next, now if the said James Wood  
shall prosecute his said appeal with effect  
and pay whatever judgment may be rendered  
against him in said Supreme Court then this  
obligation is to be void otherwise to be  
& remain in full force & virtue in  
law,

his  
James Wood Dial  
mark  
or Jodde Dial  
or Wood Dial

17

1850

James Woods

Per

David Deal

for use of Mrs

Williams -

Bond

1850

Filed the 15<sup>th</sup>

day September 1850

John McBanck

CLK

James Woods  
v

Error to Jefferson

David Deal for use of  
John Williams

CLERK'S FEES.

November  
1850

Filing Record,		25
Docketing cause,		12 1/2
Issuing and filing Subpoena,		50
Issuing and filing Writ of Error,		50
Filing Papers,		20
Furnishing Briefs,	1	80
Entering 3 orders,		60
Entering 2 motions,		40
Entering app. of Palintiff and Attorney,		20
Entering app. of Defendant and Attorney,		20
Making cost bill and copy.		37 1/2
Cut of record opinion of Court	1	80
Copy of opinion	1	80
Certificate & seal		50
Stipa - 25 Doc 10 Staff. 210		45
	\$ 10	70

SHERIFF'S FEES.

Serving and returning  
Mileage

A true copy from the Fee Book in my office.

Amey D. Weston  
Clerk of the Supreme Court.

Supreme Court

2885

James Woods

v.

Dand Dial for  
use of John Williams

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Jifa

\$ 10.70

Nov 1850

STATE OF ILLINOIS, }  
SUPREME COURT. } SS.

THE PEOPLE OF THE STATE OF ILLINOIS,  
To the Sheriff of the County of *Jefferson* GREETING:

We command you that of the goods and chattels, lands and tenements of *John Williams*  
*in your County*

you cause to be made the sum of

Dollars and

Cents damages, and

the sum of

*ten*

Dollars and

*seventy*

Cents

costs in the said Supreme Court, which

*James Woods*

lately recovered against

*him*

before the Justices of our said Supreme Court, as appears

to us of record, and make return hereof in ninety days.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of the

Supreme Court, and the seal thereof at Mount

Vernon, this *22* day

of *May* in the

year of our Lord, one thousand eight hundred

and *fifty two*

*Pinney D. Preston*

~~P. D. PRESTON~~, Clerk of the Supreme Court.



Supreme Court

James Woods

v

Dand Deal for  
use of John Williams

Cost \$ 10.70

2885