

8777

No. _____

Supreme Court of Illinois

Wood

vs.

Dial

71641  7

James Wood

vs

Jacob Dial and

November Term Supreme Court

1850

On trial of an appeal in the Circuit Court Dial introduced M. S. Casey who stated that he was present when Wood offered \$40 for a certain improvement on Congrap land if Dial would give ^{immediate} possession and \$45, if possession was not delivered for one year back or either sum to be paid in trade. Dial agreed to take the latter offer & keep the possession for one year Dial owed Witney & was going away & Wood came to Witney's house & told him if he would get an order on him he would pay it - he got the order & Wood sent Witney word he would not pay it. Dial kept possession of the improvement until Spring & then went off of it. Wood told Witney he had entered land a land warrant on a part of it. He also introduced A. Corwin - was at M. S. Casey's house & Wood came there & told Casey if he would get an order from Dial on him he would pay him. This was all the evidence. At the instance of the plaintiff Wood the Court refused to instruct the jury. "That when a contract is made for the delivery of trade or property, and no

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 plff to prove to satisfy
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 " & also " That to entitle plff
to recover money on a contract for trade
he must not only show that he has fulfilled
the contract on his part, but that defendant
has failed to deliver the trade at the time and
place required by the terms of the contract
and if they believe that the plff has failed
to prove these facts, they will find for
defendant "

Wood moved for a new
trial which was over ruled & referred to

Plff assigns for error

First In refusing the instructions

Second In refusing a new trial

Third In returning of judgment

for Debt for the use of one and

Brief of Points

To establish a cause of action in this case
I will must show a compliance with the 4 plffs
or implied terms of contract to be performed
on his part - and as per time, other than a year
for delivery of possession of the improvement &

at the year end or that he had
demanded the trade & it was refused

The proof shows a failure
on Dials part to comply with the Contract
for instead of ~~completing~~ ~~delivering~~ delivering
possession to Wood - or giving notice of his
readiness to do so - he abandoned the property
and went off - leaving it to be occupied
by the first that would take it - and wood
was compelled to enter a part of it to get
it

The Court refused to explain the law
to the jury by instructing them as a ~~rule~~
tooth as regards changing a trade into a
Cash debt - and the performance of the contract
on the part of plff

When the finding is against the
to right of testimony or is not warranted by the
proof as in this case, the Court should
Grant a new trial

Wood
by
Deal

8977