

No. 13972

# Supreme Court of Illinois

Butts

---

vs.

Huntley

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~~Huntly vs Butts~~ In the Supreme Court Dec Term 1837  
Butts vs Huntly

This is an action of assumpsit before a justice of the peace on a contract under seal for building a mill. Brought by appeal to Circuit Court. Evidence that Huntly party performed the agreement and that on account of Butts non performance he was hindered from full performance.

It is contended by the plff here that as the terms of the agreement were not performed covenant and not assumpsit was the proper action & that the justice had no jurisdiction.

12el N.P. 64 & note 2 Starkie New ed. 55 & following

1 Peters - -

Kepts argu<sup>t</sup> - 1 Chitty 118 2 Corryon 600 84-85 -  
2 Starkie 30 - Wendell's Dig 44

July  
\$ 64.62  
Sept. 17 of  
Anna's Ch.

8  $\frac{275}{61}$   
57.

A. H. D. Butts } Appeal from Adams

Joseph H. Monthly } This was an action of  
Assumpsit <sup>originally before a Justice of the Peace</sup> commenced by  
Monthly against Butts for work & labour  
On the trial <sup>in the Circuit Court</sup> of the cause, it appeared  
from the testimony that the parties  
entered into a ~~written~~ agreement & under  
deal that Monthly should do the  
millwright work to a saw mill  
by the 20<sup>th</sup> April 1836 - & that Butts  
should furnish the materials - It  
was further <sup>proved</sup> that Monthly & his hands  
worked at the Mill for 12 days, such  
& would have completed the Mill  
by the day stipulated, but that Butts  
did not furnish the Mill river &  
other materials & so prevented Mr  
Monthly from finishing the Mill  
The action was brought to recover  
the value of the work done -  
After the testimony of the ~~Def~~ below  
was concluded the ~~Def~~ moved the  
Court to instruct the jury to find for  
the ~~Def~~ as in case of non sedit.  
Which <sup>instruction</sup> ~~the Court below~~  
refused to give - This refusal of the  
Court is assigned for error -

It is well contended on the agreement  
that as some work was done under  
the ~~particular~~ contract, that covenant  
& Assumpsit was the proper form  
of action - This position would have  
been correct had Monthly sought

to recover the full sum stipulated to be paid upon <sup>the</sup> completion of the Mill; but ~~by~~ <sup>by</sup> ~~the~~ bringing an action of assumpsit, the ~~Plt~~ could only recover the value of the work done. The law is well settled that where a written contract exists to perform a particular piece of work, & the workman performs part & is prevented from finishing it, by the other party, that the mechanic, may treat the contract as rescinded, & recover the value of his labour. The Circuit Court, consequently, decided correctly in overruling the Motion to sustain the paper in case of non suit. Judgment affirmed with costs.

Butts }  
 or }  
 Beatty }

Attorney at Law  
 Brownington Vermont  
 C. Williams, Secy  
 Davis & Hornum.

Filed Dec 25  
 1857

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