

No. 12751

Supreme Court of Illinois

Bosworth

vs.

Frankeberger

71641  7

20

Chas. Bowditch

vs

David Frankfurter

20

1240

1854

12751

David Frankenburg

Mathew Bassett

Writ fee
\$59 Juries 18 3/4
Debt 11 1/2
Juries 25
Debt 18 3/4
Jury 37 1/2
Jury 12 1/2
Court fees 25
Jury 6 1/2
156
Jury 150

Court fees
Jury 25
Jury 35
Jury 40
Jury 25
Jury 60
Jury 25
220

Witness fees 30
Bond 50

Be it remembered that on the
day of July A.D. 1853 the Defendant Mathew Bassett
Comes & files Transcript, and appeal Bond, and summons
in the words and figures following to-wit:

1853. Summons issued on the 7th day of June 1853
Returnable 13th day of June at 10 o'clock P.M.
Sum demanded \$1400 Costs due 37 1/2 June 9th personally
Served by reaching to the Defendant. By J. A. Fisher Constable
June 13 parties appeared and final issue.
Plaintiff claims for work done \$1400

June 13 venire issued at the Defendant's Request
Returnable on the 13th at 2 o'clock P.M. One Subpoena
issued on the part of the Plaintiff. The venire
returned by J. A. Fisher with the following pannel
of jurors viz. Ellis Fisher, John Miller, Edmund Miller,
Zachariah Ellis, Jacob Walters, & Charles Powell.

Who appeared and were sworn to try the Cause.
Levi Chilson and John Miller sworn as witnesses for
the Plaintiff. William Young sworn as witness for the
Defendant. All of said witnesses claimed fees. After
hearing the testimony the Court retired under the
Charge of J. A. Fisher Constable. The jurors returned
into Court and say that the jurors do find a bill against
the Defendant for paying Costs. It is therefore
Concluded the Plaintiff have and recover of the

Defendant said sum of ten dollars also the
cost of suit which is seven dollars and thirty six cents
Case appealed bond filed and approved by me the 2^d day
of July A.D. 1853. It hereby ^{certify} the above to be a correct
transcript of the proceedings had before me in the foregoing
entitled cause.

Solomon Sapp ^{clerk}

Copy of summons

State of Illinois Bureau County 3rd ss.

The people of the State
of Illinois to any Constable of said County. Greeting
You are hereby Commanded to Summon N. B. Wash
to appear before me at my Office in the Town of Center
on the 13 day of June 1853 at 10 o'clock P.M. to answer
the Complaint of David Frankelberger for a failure
to pay him a certain sum not exceeding One hundred
Dollars and hereof make due Return as the law directs
Given under my hand and Seal this 7th day of June
A.D. 1853.

Solomon Sapp (Seal)

Justice of the Peace

Please before the Hon^{ble} Edwin S. Leland Judge
of the Ninth Judicial Circuit, of the Circuit Court of the
State of Illinois, at the October Term of the said
Circuit Court in and for the County of Bureau
and State of Illinois, begun and held at the Court
House in Princeton in said County on Tuesday the
fourth day of October, in the Year of Our
Lord One thousand Eight hundred and fifty
Three

Edwin S. Leland

Judge

Edmund M. Fisher

Clerk

Amos A. Smith

Sheriff

David Frankelberger

10 appeal

Nathaniel Bosworth Now Comes the plaintiff by Randall
his attorney and Entered his motion for the dismissal of
the appeal herein, and the defendant Comes by Peter
his attorney & Entered his motion for leave to amend
the appeal bond in this Cause which motion is
allowed and said defendant has leave to file an
amended bond herein.

October 5th 1853

Now Comes the Defendant and
files his amended appeal Bond which is in the words
and figures following to wit.

Know all men by these presents that we
Nathaniel C. Bosworth and R. T. Templeton are held
and firmly Bound unto David Frankelberger in the
penal sum of fifty Dollars lawful money of the
United States for the payment of which well and
truly to be made, we bind ourselves our heirs
Executors and administrators jointly Severally and jointly
by these presents. This 5th day of October A.D. 1853.
The Condition of this Obligation is Such that
whereas David Frankelberger did on the 18th day
of June A.D. 1853 Recover a judgment against the
above named Nathaniel Bosworth for the sum
of fourteen Dollars Damages and Costs of Suit.
Taxes, at seven Dollars and thirty six Cents

from which Judgment the said Nathaniel Bosworth
Took an appeal to the Circuit Court of Bureau
County in the State of Illinois, and the said Circuit
Court at the October Term A.D. 1853, having decided
that the Bond executed Originally was insufficient
and for the purpose of perfecting the said Appeal
Bond this Bond is Executed. Now if The said
Nathaniel C. Bosworth Shall prosecute his appeal
with effect, and shall pay whatever judgment may
be rendered by the Court upon dismissal or trial of
said appeal Then this Obligation to be void & otherwise
to Remain in full force and virtue

approved by me at my office

This 5th Oct. 1853

Edward W. Fisher Att.

N. C. Bosworth Seal

R. J. Templeton Seal

October 18th 1853

Now Come the parties aforesaid by their
attorneys aforesaid and being ready for Trial the Court
orders that a jury be impanelled herein to try the
matters in Controversy between the said parties.
And a jury comes of Sincere good and Lawful men
to wit. George Spinks. Melrose Hoyt. Whicker How.
John Fisher. Lewis Anthony. Isaac Heaton. George Hester.
Thomas Larison. Perry C. Piper. Daniel Bryant.
Joseph A. Clark. George Clark. who are duly Sworn
and sworn well and truly to try this Cause, and a
true verdict Render according to the evidence

upon their Oaths say we of the Jury do find for
the Plaintiff and assess his Damages at the Sum of
Fourteen Dollars, and the Defendant unless his
motion herein for a new trial, which is Overruled
by the Court. It is therefore considered by the
Court that the Said Plaintiff have and Recover
of the Said Defendant the Said Sum of Fourteen
Dollars his Damages assessed by said Jury as aforesaid
together with all his Costs and Charges incidental
his Suit in this behalf expended; and that he have
Execution Therefor.

October 11th A.D. 1853

This day Came the Defendant by Peters his
attorney and files his bill of Exceptions herein in
the words and figures following To wit

Circuit Court Bureau County

11th Oct Term 1853

Harold Frankelberger

vs Appeal

Nathaniel Woodworth

Be it Remembered that the above
Cause which was brot on the following account to wit
Plaintiff Claims for work done & that came on to
be tried before the Court and a Jury at the October
Term A.D. 1853. of the Circuit Court of Bureau
County Illinois. The Plaintiff joined by one Lewis
Chesman that he as agent for the Defendant made
a Contract with the Plaintiff in January A.D. 1853

for a pair of Truck wheels belonging to the plaintiff which was then not entirely finished, that the Contract was. That the defendant was to give the plaintiff a certain Cook stone then in the possession of the defendant for the Truck wheels above in the possession of the plaintiff, that the Truck wheels was to be finished and be ready for the defendant in the course of two or three weeks when the plaintiff said he would want the stone. Defendants agent stated to him that the stone would be ready for him when the wheels were done. That nothing was said in the Contract about the delivery of the Stone, or of the Truck wheels, and defendants agent did not understand that the defendant was to deliver the Stone to the ~~defendant~~ Plaintiff nothing was said on the subject. That in two or three weeks afterwards defendant said agent called for the Truck wheels & received them, when the plaintiff asked defendants agent why he had not brought the Stone in his wagon. The agent replied it was too rough to bring it. The plaintiff requested defendants said agent to bring it over some time when he came that way. The agent replied that probably they would. which was all that was said at the time. The said witness said that the defendant had set out the said Stone for the plaintiff before he got the Truck wheels, and that it was always ready for him. It also appeared that the Stone was set out of doors by the defendant & remained

David Frankenberg
ats.

Nathaniel Basworth



Certified Copy
of Record

Filed May 6th 1854.
L. Iceland C.R.

for Some time exposed to the weather witnesses did not know that it was injured except by being rusted by exposure to the weather, when it was taken by the defendant to the plaintiff, but the plaintiff never called for it to his knowledge, that some time in May following the plaintiff came over to see the defendant and stated he would not have the stone now but would have the money, that defendant being about to change his residence took the stone to where said Frankberger lived but it would get broken as defendant said if it was left without any person to take care of it; that plaintiff refused to receive it and commenced this suit: Defendant admitted that the truck wheels was worth fourteen dollars which was all the testimony: Thereupon the Court on motion of the plaintiff instructed the jury that on the above state of facts the plaintiff was entitled to recover and that no demand was necessary for the stone but that it was the duty of the defendant to deliver the stone when he got the wheels and that as he did not do it within a reasonable time plaintiff was entitled to consider the special Contract rescinded, and to sue for the price of the wheels: to which findings and instructions the said defendant at the said times when they were made then and there assented: the jury under the instructions of the Court found a

Verdict for the plaintiff: The defendant entered
a motion for a new trial, which the Court
overruled to which the defendant then and
there excepted, and prayed the Court to sign
& seal this his bill of exceptions which is done
accordingly

E. S. Ireland (Seal)
Judge

State of Illinois }
Bureau County } Edward M. Fisher

Clerk of the Circuit Court
in and for said County in the State aforesaid
do hereby certify that the foregoing is a full
true and perfect transcript of the proceedings
had in said Court in the foregoing entitled cause
as on file and of Record in my office.



Given under my hand and the
Seal of said Court at Princeton
in said County this 3rd day of
May A.D. 1854

Edward M. Fisher
Clerk

Clubs fee

Copy Record 1/ folio 110

Copy & Seal 35

page 9

\$2.14

Bosworth as Frankenberg

1st The Court agreed in holding that it was Bosworth's duty to deliver the Store to Frankenberg at the time he received the wheels - because in contracts of sales and exchanges when the place of delivery is not stipulated. The place where the goods were at the time of making the contract is the place of delivery and there should be an express demand before suit brought. ^{as to this} If no place be designated by the contract the general rule is that the articles sold are to be delivered at the place where they were at the time of the sale. 2 Kent Comd 505 -

If ^{the} specific are at another place at the time of the sale, the place where they are at that time is generally to be taken as the place of delivery. 2 Greenleafs Ev Sec 609, ⁱⁿ a contract for the sale of goods they must be delivered where they were at the time of the sale. Story on Contracts Sec 807 - in a contract of sale if no place of delivery is agreed upon by the parties the articles sold must be delivered where they were at the time of the sale. Story on Contracts Sec 308

7 Baileys Sup Ct Rep 475 - the same rules of law are prescribed for regulating exchanges as sales. Chitty on Contracts (New Edition) 332. Willard on Sales, Sec 30

2 Black Com 446 - in a case where there was a bargain for and exchange of the colt of the plaintiff for the horse of the defendant, and the contract was confirmed by earnest money. it was held that plaintiff was bound to aver and prove a special demand for the horse before suit brought. nothing having been said about the delivery. 5 Dugford & East - 210 -

2 Even if it was the duty of the defendant to deliver the Store to plaintiff at the time he received the wheels, yet the delivery was waived by the plaintiff, by delivering the wheels to the defendant, and not insisting upon such delivery or even claiming it when the contract was consummated between the parties. Consequently the contract

Contract ~~was finally~~ ^{stood} without either time or place of delivery stipulated, in which cases demand ^{is always} necessary at the ^{time} ~~place~~ ^{of} ~~the~~ ^{residence} of the promisee, 12 Ills 72-
if the contract is to deliver goods generally and not at any named time a special request to deliver must be averred
2 Chitty Plead 270 notes. thus in an action for not delivering a horse sold by the defendant to the plaintiff the declaration should allege a special request to deliver
1 Chitty Plead 331 - 6 Cornyns Dig page 84, C 69 - where a person promises to pay money without any time being fixed it is payable on demand & the bringing of the suit is the demand. but a promise to pay in specific articles a demand is necessary before suit brought. Taylor & Cornwen on Law & Equity - Ref by Buttle (North Carolina) 93 - 13 Ills 690 - 20 Wendell 198 - 5 Comens Ref 514 - and even if it was the defendants duty to deliver the store at the plaintiffs residence yet as the time was not fixed a demand before suit brought was indispensable 2 Carters Ind Ref 224 even where the time is vague demand is necessary, as where the promisee agreed to call in a few days and deliver the articles 13 Wendell 287 -

3 Suit should have been brought ^{if} at all on the contract to deliver the store, and ^{not} for the price and value of the wheels & the measure of damages if plaintiff would have been entitled to recover, was the price and value of the store at the time it should have been delivered & not of the wheels, because 1st the property in the store passed to the plaintiff by his delivering the wheels for the store, when ^{the bargain} the bargain is once struck and nothing remains to be done except delivery, and then goods are not required to be weighed or measured or separated the property passes to the vendor although the price has not been paid 5 Denio 379 where there was a bargain for an exchange of two negro children who were slaves, but as they were of tender years they were

suffered to remain with their mothers & before the exchange
was made one of them died, it was held that the property
had passed by the contract though no exchange had ever
been effected 6 Dana 49.50 - So where there was a
contract to trade a colt of the plaintiff for the defendant's horse
it was held that the property had passed, though the exchange
had not been made 5 Durnford & East 216 -
2^d becomes even in cases of contracts of goods, should
to be paid for in other specific goods. the suit
must be brought upon the contract for the delivery of
these goods, although the property in them has not
passed to the plaintiff. See the able opinion delivered
by the Court in 12 New Hamp 390 - where the whole
subject is fully discussed. 1 Douglas 23 (English)
3 Eng & Law 78 & 1 New Black 287 - if goods are
to be paid for partly in money and partly in ^{other} goods
& the vendee delivers neither the money nor the goods,
the vendor must declare specially on the contract
Story on Sales Sec. 445. Chitty on Contracts 332 ante.

4 Even if the plaintiff had the right to rescind
the contract, he could have to demand the
return of the wheels before suit brought -
as he had delivered them voluntarily 3 Hill 308 -

5 The Plaintiff sued for "work done" and the
evidence wholly failed to sustain the account,

6 The law is that the debt had a reasonable
time to deliver the slave after demand made
(if he was bound to deliver, it at all), ^{12 Ill. 73} and the
Court stated the law incorrectly & had no right
to say that the debt had not delivered it in
a reasonable time. That was the proper province
of the Jury. Milton J Peters

12 Dec 72

5 Lib 298

2 Genl 602, 607, 609, 610

2 Hist 306, 317

4 Misc 317

Bosworth
as

Frankenberg

Brief of points & authorities
for Plegg in error

Milton S. Plegg

To the Supreme Court of the State of Illinois } Nathaniel Bosworth
June Term 1854 } David Frankenburgs
v. Error to Bureau
Co Circuit Court

The Clerk of the Supreme Court at
Ottawa, will please issue writ of error
and Revis facias in the above named
in this cause the plaintiff in error was the
defendant in the Court below

May 6th 1854
Milton T Peters
atty for Plff in error

Nathaniel Bosworth
 as Care to Bureau

David Frankenburg

Receipt for unit 20

Filed May 6. 1884.
 A. C. C. C. C.

Supreme Court at Ottawa
June Term 1854

Nathaniel Bosworth

David^{vs} Frankenger Error to Circuit Court
Barand Co

And the said Nathaniel Bosworth
(who was the defendant in the Court below) now
comes, and says that in the records
and proceedings aforesaid, there is
manifest error, in this to wit,

- 1st The Court erred in giving the Plaintiff
Frankenger's instructions to the Jury,
- 2^d In overruling defendants Bosworth's
motion for a new trial,
- 3 In instructing the Jury that on the state
of facts set out in bill of exceptions that
Frankenger was entitled to recover,
- 4th In instructing that Bosworth was bound to
deliver stove in a reasonable time & that he had not
- 5 and that a demand for the stove was unnecessary
- 6 The verdict and judgment was contrary to evidence
- 7 The verdict and judgment was in favor of
Frankenger when by the law, it should
have been in favor of the Plaintiff in error.
Wherefore the said Plaintiff in error prays
that the said judgment may be reversed
annulled and set aside & for nothing ^{held} ^{do}
Milton T. Peters.
atty for Plaintiff
in error

Supreme Court

Nathaniel Rosworth
vs. Error to Bureau

David Frankenberg

Assignment of Errors

Filed May 31. 1854.
S. Heland Clk.

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of Bureau Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of Bureau — county, before the Judge thereof, between

David Frankeberger

plaintiff, and

*Nathaniel Bosworth*defendant it is said manifest error hath intervened, to the injury of the aforesaid *Bosworth*

as we are inform-

ed by *his* complaint, and we being willing that error, should be corrected if any there be in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the *2^d Monday in June* — next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law;

WITNESS, the Hon. **SAMUEL H. TREAT**, Chief Justice
of our said Court, and the Seal thereof, at Ottawa, this *6^E* day of *May*
in the Year of Our Lord One Thousand Eight Hundred and Fifty-*four*.

L. Leland

Clerk of the Supreme Court.

Attestaniel Bosworth

^{as}
David Frankberger

Wits of evor

Filed May 6. 1884.
L. Iceland CLK.

Supreme Court, Third Grand Division,
of the June Term A.D. 1854, at Ottawa Ill.

Boworth }
v } Error to Bureau C₂
Frankberger } Points of Authorities of Deft in error.

Point 1st When the plaintiff delivers an article of property in fulfilment of a special contract, and the defendant does not fulfil on his part, a right of action in Indebitatus Assumpsit accrues to the plaintiff for the value of his goods so delivered.

Authorities { Goodrich v. Lafflin, 1 Pick 57 — Hill v. Green 4 Pick 114
Whipple v. Daw, 2 Mass. 415 — Felton v. Dickinson 10
Mass. 287 — 1 Sel. N. P. Whet. Ed. by Whart. 64, 65, 66, —
2 Kent's Com. 496, 497. — 14 Eng. C. L. Rep. 247 —

Point 2nd When an article of property is purchased, to be paid for in a specific article of property of easy transportation, and the time and place of payment be not agreed upon, — On the delivery of the article so purchased payment becomes due instantly at the residence, place of business, or other reasonable place designated by the vendor, (a demand being unnecessary,) and if legal excuse exist for ^{immediate} non payment, a reasonable time only can be claimed for such delivery.

Authorities { Rev. Stat, Ch 73. §§ 3, 12, 13. — Wood v. Dial 12 Ill. 72 —
Webster v. Enfield, 5 Gil. 2198 — Chit. Com. 623, 624, 629 —
2 Greenl. Ev. §§ 602, 607, 609, 610 — 2 Kent's Com. 506, 507 —
Goodwin v. Hallbrook, 4 Wend. 377 —

Dickey, Walla & Eastman
for Deft in Error

²⁰
Borworth

¹²
Frankberger

Deft Brief v

Sup. Court.

In Error

Filed July 10, 1854.
N. Keland Clk

Supreme Court - June Term 1854

Nathaniel Basworth }
vs } Error to the Circuit
David Frankberger } County Bureau County.

This was a suit instituted on the 7th day of June A.D. 1853 before a justice of the Peace of Bureau County, by the defendant in error against the plaintiff, and taken by appeal to the Circuit Court of said County, and tried at the Oct. Term 1853 of said court and judgment rendered in favor of the defendant in error upon which trial the plaintiff in error took the following bill of exceptions viz. "David Frankberger

vs

Appeal

Nathaniel Basworth

But remembered that the above error was brought on the following account to wit: "Plaintiff claims for work done \$14.00 earned on job to be tried before the court and a jury at the October Term A.D. 1853 of the Circuit Court of Bureau County Illinois. The plaintiff proved by one Lewis Childs, that he, as agent for the defendant made a contract with the plaintiff in January A.D. 1853 for a pair of trunks wheels belonging to the plaintiff, which were then not entirely finished. That the contract was that the defendant should give the plaintiff a certain coat of steel, then in the possession of the defendant, for the trunks wheels above then in the possession of the plaintiff. That the trunks wheels were to be finished and ready for the

- and and stated that would not have the
store now, but would have the money.

That defendant being about to change
his residence, took said store to where
Frankburger lived. but it would get bro-
ken, as defendant said, if it was left
without any person to take care of it.

That plaintiff refused to receive it, and
commenced this suit, defendant ad-
mitted that the truck wheels were worth
four hundred dollars - which was all the
testimony. Thereupon the Court on
motion of the plaintiff instructed the
jury, that on the above state of facts
the plaintiff was entitled to recover,
and that no demand was neces-
sary for the store; but that it was the
duty of the defendant, to deliver the
store where he got the wheels, and
that as he did not do so, within a
reasonable time plaintiff was en-
titled to consider the special contract
rescinded and to sue for the
value of the wheels. - to which rulings
and instructions the said defendant,
at the said times when they were
made, then and there accepted.

The jury under the instructions of
the court found a verdict for the
plaintiff. The entered his
motion for a new trial, which the
Court overruled, - to which the de-
fendant then and there accepted and
prayed the Court to sign & seal this
his bill of exceptions, which is

Done accordingly E. Ireland ~~Att~~
Judge & C.

It is assigned for error, that the court
erred in giving plaintiffs instructions
to the jury and in overruling the
motion for a new trial made by the
defendants in the Court below,
and in holding that the plaintiffs
were entitled to recover on the
above facts &c &c.

Supp now down-
E. Ireland to Bureau

Patheuil Roseworth

By
David H. H. H. H. H.

Supreme Court, Third Grand Division
of the Term Term A.D. 1854. at Ottawa Ill.

Bowworth }
v } Error to Bureau County
Frankberger } Points of Authorities & Def. in error.

Point 1st. When the plaintiff delivers an article of property in fulfilment of a special contract, and the defendant does not fulfil on his part, a right of action in Indebitatus Assumpsit accrues to the plaintiff for the value of his goods so delivered;

" 2nd. When an article of property is purchased, to be paid for in ~~an~~ a specific article of property of easy transportation, and the time and place of payment be not agreed upon. — On the delivery of the article so purchased, payment becomes due instantly at the residence, place of business, or other reasonable place designated by the vendor, (a demand being unnecessary,) and if legal excuse exist for ^{immediate} non-payment, a reasonable time only can be claimed for such delivery.

Authorities }
on 1st point } Goodrich v. Laffin 1 Pick. 57 — Hill v. Green 4 Pick. 114
Whipple v. Daw, 3 Map 415. — Felton v. Dickinson
10 Map 287 — 1 Sel. N. P. Wheat's Ed. by Whart. 64, 65, 66 —
2 Kent's Com. 496, 497. — 14 Eng. C. L. R. 247.

On 2nd point } Rev. Stat. Ch. 73 §§ 3, 12, 13 — Wood v. Dial, 12 Ill. 72 —
Webster v. Enfield & Gil. 298 — Brit. Com. 623, 625, 629 —
2 Greenl. Ev. §§ 602, 607, 609, 610 — 2 Kent's Com. 506, 507 —
Goodwin v. Holbrook 4 Wend. 377

Edw. Key Wallace & Eastman
for Def. in Error.

Barworth 20
v.
Frankburg
Deft's Brief
Sup Court
in Error
~

Filed July 10, 1854.
Leland Cks.

Bainworth

N.

1st When the plaintiff delivers an article of
Franklin } property in fulfillment of a special contract, &
the defendt. does not fulfil on his part, a right
of action in Indebitatus Assumpsit accrues to the
plaintiff for the value of his goods so
delivered. — (Authorities.) Goodrich v. Lafflin, 1 Pick.
57 — Hill v. Green, 4 Pick. 114 — Whipple v. Shaw,
2 Mass. 415 — Felton v. Dickinson, 10 Mass. 287
1 Sel. N. P. (Whe. by Whart.) 64, 65, 66. — 2 Kent. Com. 496, 497
— 14 Eng. 6. L. R. 247 (Partridge v. Burrell.)

23

When an article of property is purchased, to be paid for in a specific article of property of easy transportation, and the time and place of payment be not agreed upon, — on the delivery of the article so purchased payment becomes due instantly, at the residence, place of business, or other reasonable place designated by the vendor, (a demand being unnecessary,) and if legal excuse for non payment exist, a reasonable time only can be claimed for such delivery. — Rev. Stat. Ch 73 § 3, 12, 13.

(A cont. 43)
& last but one)

— Wood N. Dial 12 Ell. 72 — Webster N. Enfield 5 Gil 298 —
— Chit. Con. 523, 525, 529 — 2 Greenl. Ev. §§ 602, 607, 609, 610 —
— 2 Kent. Com. 506, 507 — Goodwin N. Hallbrook 4 Wend. 377 —

Boworth
N.
Franklin
Bridg

Supreme Court, Third Grand Division.
At Ottawa, Term Term A.D. 1854

Nathaniel Bowditch
vs.
David Frankberger } Error to Circuit Court
Bureau County;

And hereupon, afterwards, to wit, at the June Term aforesaid, of the said Supreme Court, The said David Frankberger, (plaintiff in the ^{cause} below,) comes into the Court here, and says, that there is no error either in the record and proceedings aforesaid, nor in the aforesaid instruction given for the plaintiff as aforesaid, nor in overruling the defendants, (Bowditch,) motion for a new trial, nor in giving the judgment aforesaid; and he prays that the aforesaid Supreme Court, now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed &c.

Dickey, Walling & Eastman
Attys for Def^t in Error

Supreme Court

N. Bouwmeester

N.

D. Grunkeberg

Kinden in Error.

Filed June 20. 1854.
Iselaire Clerk.

Kosworth
in

Franklin

Look for Riff in Emar

2 Kent 505 In Exchange of personal property
2 Gulf Co 609 the property must be delivered
Slav Contracts 830⁸⁵⁰⁷ let the place where they are at
7 Barb Supm R 475 the time of exchange
Clnt Contracts 332
Held on Sales 530
2 Blackstone 446

5 Term R 216 At any rate a demand for the
2 Chit pl³ 270 State before sent
1 " " 831
6 Com by 840@69

13 Ill 690 Our Stat only applies only to
R S written contracts
20 Min¹⁹⁸ A demand necessary
13 " 287
5 Comen 576

5 Denis 379 We should recover on the
6 Dana 49 Special Contract for the
5 Term R 216 value of the slave
12 Ark 390
23 Eng C 1878
1 Henry Black 287
Story on Sales 445
Chilly Cont 332

Dickey for Dyer in Error

This was a contract of purchase with an act of a particular mode of payt. & not an exchange of property

Eastman for Dyer in Error



Barnesworth

Franklin

STATE OF ILLINOIS, }

Supreme Court, }

ss.

The People of the State of Illinois,

To the Sheriff of the County of Bureau in Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of Bureau county, before the Judge thereof, between David Frankberger, plaintiff

and Nathaniel Rosworth

defendant, it is said that manifest error hath intervened, to the injury of the said Rosworth

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said David Frankberger

that he be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the 22^d Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said Frankberger notice, together with this writ.

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this sixth day of May, in the Year of Our Lord One Thousand Eight Hundred and Fifty-four.

A. Keland
Clerk of the Supreme Court.

Nathaniel Bowditch
 vs
 David Frankelberger

Sci. Ga.

To June Term 1854.

Shinnip's fees

1 Pension	—	50
6 miles travel		30
Ret — court		10
		90

Filed May 15. 1854.
 L. Seland Clk.

I serve the within by meeting in the
 presence and hearing of David Frankelberger
 May 12th 1854

Angus Smith Clerk
 By E. C. Frankelberger

Basworth is Frank Merleberger

The Court erred in holding that it was Basworth's duty to deliver the store to Frank Merleberger.
Because

1st In Sales and exchanges of property where the place of delivery is not stipulated the place where the goods were at the time is the place of delivery

3 Kent 675

2 Gravel. 20. Sec 609

Story on Contract 807 See 308

7 Barle Sup. & Reports 475

Chitty on Contracts (New Edition) 332

Williamson on Sales See 30

2 Blackstones Com 446.

2 A demand before suit was necessary no time or place for delivery having been agreed upon

5 Warrington & East 216

2 Chitty Plead. 270 notes

1 Chitty Plead. 331

6 Comyns Digest 84 C 69

13 Id. 690

20 Warr 198

5 Cow Rep 576

13 Warr 287

3^d

If the plaintiff could recover any thing it would not be the price of the wheels but damages on the contract for not delivering the store

5 Denio 379

6 Dana 49

5 Warrington & East 216

+ 12 N.H. 390

23 & C.L.R. 78

1 Henry Blackstone 287
Story on Sales 445
Chitty on Contracts 332 notes

Ptts should have demanded return of the wharves
before suit brought
3 Hills 308.

Even if defr should have delivered the store he
had a reasonable time to do so, the Court
should have left the question of reasonable
time to the Jury

4
Bancroft v. Johnson