

HILLSBOROUGH,

DECEMBER TERM, A. D. 1853.

HAYNES *v.* FLANDERS.

The defendant bargained with the plaintiff for a coat, to be made from materials to be selected by the defendant, and when it was made, it was to be sent to him. The plaintiff warranted it to fit, and if it did not, the defendant was to return it. The defendant returned it with the words on the wrapper: "Not so good as bought." *Held*, that the words referred as well to the fit of the coat, as to the materials of which it was made.

ASSUMPSIT, for a coat sold, &c.

The defendant bargained with the plaintiff for a coat to be made from materials selected by the defendant, and when made, to be sent to him. The plaintiff warranted the coat to fit, and if it did not the defendant might return it.

The coat was accordingly made and forwarded to the defendant. It was returned to the plaintiff, with these words on the wrapper inclosing it: "Not so good as bought."

On the trial, the defendant introduced evidence to prove that the coat was not made from the materials selected. Also, evidence showing that the coat when received by him was tried and did not fit.

The plaintiff requested the court to instruct the jury that the words on the wrapper referred only to the materials of the coat. But the court declined to so instruct, and submitted to the jury to determine, from the evidence, whether they had reference to the materials only, or to the fit of the coat also.

Haynes v. Flanders.

A verdict being returned for the defendant, the plaintiff moved that the same be set aside and a new trial granted, on account of error in the proceeding of the court.

Norris & Perlins, for the plaintiff.

Morrison & Fitch, for the defendant.

GILCHRIST, C. J. The plaintiff contracted to make a coat for the defendant, of certain materials, and warranted it should fit him. The words on the wrapper are to be construed in relation to the subject matter. If the materials were defective, or if the coat did not fit him, it was not so good as he had bought, for he bought, or contracted to buy, a coat that would fit him. The words, of themselves, are as applicable to one of these conditions as to the other, and the ruling of the court was correct, that the jury were to determine whether the words referred to the materials only, or to the fit of the coat also.

Judgment on the verdict.