

Case No. 4,538. ESTILL ET AL. V. BLAKEMORE.
[Brunner, Col. Cas. 100;¹ 1 Overt. 273.]

Circuit Court, D. Tennessee.

June, 1808.

BREACH OF COVENANT IN CONVEYANCE—MEASURE OF DAMAGES.

In an action for breach of a covenant that lands conveyed are of a certain quality, the measure of damages is the value of the land at the time of the covenant broken or date of the deed.

Covenant that a tract of land should be of a certain quality, and to execute a deed, which had been done some time since, but the bond or covenant retained. The declaration for breach stated that the land was not of the value covenanted. The question with the court and jury was, whether the value of the land should be estimated at the time of the conveyance in this case, or covenant broken, or at the time of rendering the verdict.

MCNAIRY, District Judge, said he had understood the practice in the state was to assess the damages in such cases, according to the value at the time of the verdict; but he much doubted whether such practice was legal or not.

TODD, Circuit Justice. Cases have been decided in New York, Pennsylvania, Connecticut, and Virginia, contrary to the practice here, as stated. The practice here, therefore, is very doubtful, and I am strongly inclined to think it is not law.

M'NAIRY, District Judge. It would seem that we could not with propriety depart from the practice in the state without further argument.

THE COURT left the decision to the jury without any particular directions. The jury found a verdict for the plaintiff, and Grundy, for the defendant, moved for a new trial upon the ground of excessive damages.

SED PER GURIAM. The damages are not excessive, nor more, it is believed, than the value of the land, estimated at the time of the covenant broken, or date of the deed, and interest (Ex relatione, Mr. Grundy.)

NOTE [from 1 Overt. 273]. The practice of the state, as referred to in this case, is certainly repugnant to the authorities. Vide Act 1786, c. 4, § 5, Ird. 577; *Humphries v. Knight*, Cro. Car. 455; 4 Moore & P. 370; *Speake v. Speake*, 1 Vern. 217; *Berty v. Dorner* (per Holt, C. J.) 12 Mod. 526; *Staats v. Ten Eyck's Ex'rs*, 3 Caines, 111; *Bender v. Fromberger* (Sup. Ct. Pa., Jan 1807) 4 Dall. [4 U. S.] 436; *Lowther v. Com.*, 1 Hen. & M. 202; 1 Reeve, Eng. Law, 444, 447, 448; *Flureau v. Thornhill*, 2 W. Bl. 1078; *Kames*, Eq. 206–225; 21 Vin. tit. "Value;" *Cox v. Strode* (Ct. App. Ky., Fall term, 1810) [2 Bibb. 273].

¹ [Reported by Albert Brunner, Esq., and here reprinted by permission.]