13FED.CAS.—4

Case No. 7,043.

INGLE v. COLLARD.

{1 Cranch, C. C. 152.}[1]

Circuit Court, District of Columbia. Dec. Term, 1803.

PLEADING AT LAW—VARIANCE—VERDICT.

A verdict does not cure a variance between the covenant alleged in the declaration and that produced on oyer.

Verdict at last term for plaintiff. {Case No. 7,042.}

Mr. Mason, for defendant, moved in arrest of judgment; that the breach set forth in the declaration is not a breach of the covenant produced upon oyer. Collard was only bound to refund in case the money which Ingle had paid before the date of the agreement, and the money paid by Ingle afterward to the workmen employed by White, and the money paid by Ingle for materials delivered, should amount to more than the whole house should be valued at by George Blagden. But the breach alleged is, that Ingle had paid to White more money than he was entitled to receive for materials and workmanship, without saying any thing of the money advanced before the agreement, which the defendant had not refunded.

J. B. Key, for plaintiff, contra. Ingle avers a general performance of his part. The breach is well alleged in substance. The plea follows the breach, and the issue is correctly joined. A general assignment of a breach of a general covenant is sufficient Esp. Dig. N. P. 298.

Mr. Mason in reply. The breach assigned must be clearly of a matter within the covenant Esp. Dig. N. P. 299.

Judgment arrested. See Rushton v. Aspinall, 2 Doug. 683.

[1] {Reported by Hon. William Cranch, Chief Judge.}