WILSON v. ROBERTSON.

Case No. 17,830.

{Brun. Col. Cas. 109;[1] 1 Overt. 464.}

Circuit Court, D. Tennessee. 1809.

CONTRACT TO CONVET LAND—DAMAGES FOR BREACH.

The measure of damages in an action for breach of a covenant to convey lands, the title to which was not in the defendant, is the value of the lands at the time of judgment.

The defendant had given an obligation to make Clark a deed in fee simple, to six hundred and forty acres of land, his choice out of two thousand acres on the waters of Stone's river, to join some corner of the tract. The bond was given about twenty years ago, and the title was to be made so soon as grants should issue. It did not appear that the defendant had any such land on the waters of Stone's river. The only question was as to the measure of damages: whether it should be the value of the land at the time the bond was given, when grants were obtained, or at this time. The jury found a special verdict. That neither at the time of the contract, when grants issued, nor at any time since, has the defendant had such land as the bond calls for. That such land at the time the bond was given, and when grants should have issued, was worth, with the interest thereupon, $340, and at this time $1040.

Overton, for defendant, said he was prepared with authorities to show that judgment ought to pass for the lesser sum. The special verdict does not find fraud, and the court cannot presume it See 3 Johns. 281; 1 Johns. 551; 1 Caines, 379; 7 Johns. 605. If fraud had been found by the verdict it would not be contended that the larger sum ought not to be the measure of damages.

PER CURIAM. The jury have found that the defendant had not the land he contracted to convey; in contemplation of law it was therefore a fraud. If the defendant had such land as he has attempted to prove (though he had not a legal title to it), if he offered to show land, to which he was entitled by contract for locating, by showing this he may perhaps have relief in equity; but, it having been found by the jury that he had no title, there must be judgment for the value of the land as it was estimated at this time. See 2 Hayw. 334, 336 366; {Simms v. Slacum} 3 Cranch {7 U. S.} 300; 1 Johns. 223; 2 Burrows, 1110; Bull. N. P. 132; 2 Call, 95; 3 Caines, 221; 4 Mass. 109; Hardin, 41; Add. 23; {State of New York v. State of Connecticut} 4 Dall. {4 U. S.} 5; {Williamson v. Kincaid} Id. 20; 3 Call, 326.

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