

Case No. 7,203. JAMIESON ET AL. V. ALEXANDER.
[1 Cranch, C. C. 6.]¹

Circuit Court, District of Columbia.

April Term, 1801.

EVIDENCE—VARIANCE—ALLEGATA AND PROBATA.

Although the contract offered in evidence vary from that stated in the special count, the receipt for the purchase-money at the bottom of the contract is evidence on the money counts.

Assumpsit on a special promise to deliver flour, and for money had and received.

Mr. Faw, for defendant [Amos Alexander] objected to the contract produced, because it varied from that declared on,—one being a promise to deliver on demand, and the other in one week. 1 Esp. 140.

Mr. Simms, for plaintiffs [Jamieson & Anderson] admitted the variance to be fatal as to the first count, but contended that the receipt at the bottom of the contract for the whole purchase-money was good evidence on the count for money had and received; to which THE COURT assented.

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