

SUYDAM ET AL. V. ALDRICH.

[3 McLean, 383.]¹

Circuit Court, D. Illinois.

June Term, 1844.

PLEADING AT LAW—VARIANCE WITH
PROOF—RECORDS.

Any variance between the judgment described in the declaration from that of the record will exclude the record from being received as evidence.

[This was an action by Suydam, Sage & Co. against Aldrich.]

Butterfield & Beaumont, for plaintiffs.

Logan & Little, for defendant.

MCLEAN, Circuit Justice. This action is brought against the defendant for an escape. The declaration stated the judgment, under the execution on which the escape was charged, as having been obtained by the plaintiffs against Elijah Doolittle for \$5,590. The record of the judgment introduced as evidence showed that the judgment was entered for \$5,522.83 and costs, entered the 8th of December, 1838. The record was objected to as evidence, on the ground that it varies from the judgment described in the declaration. This variance is fatal. A judgment to be used in evidence, as the foundation of the action, must be described with entire accuracy. It being a matter of record, there is no reason why the true statement of the amount should not be made. The record of the judgment cannot be read in evidence.

¹ [Reported by Hon. John McLean, Circuit Justice.]