BUTLER *vs.* OWEN, USE &C.

The words "true and correct transcript," are equivalent to a "full and complete transcript," in the certificate of a record by the clerk of a court. Where a judge, who certifies that the attestation of the clerk is in due form, describes himself as *judge of the court*, it is sufficient under the act of Congress, without saying that he is *"the judge," "sole judge," &c.*

The record of a judgment for debt or damages certain "and all the costs," not admissible in evidence, where the plaintiff declares upon a judgment for debt or damages certain, and all costs, with an averment as to the amount of costs, and a verification by the record. In such case the verification should not be as to the costs.

Writ of Error to the Circuit Court of Pulaski County.

DEBT, upon transcript of a judgment, brought by Owen, use of

Kitchen, against Butler, and determined in the Pulaski circuit court in Dec. 1845, before CLENDENIN, judge. The facts appear in the opinion of this court.

RINGO & TRAPNALL, for the plaintiff. The plaintiff insists that the transcript of the record of the county court of Mobile county ought not to have been read in evidence, 1st, Because the clerk's certificate in no wise states that the writing offered is a *full* or *complete* transcript of the record in the case: or that it contains a *true and complete* transcript thereof: without which or some statement of equal force the law does not regard the writing as containing or being a complete transcript of the record: And 2d, Because the record in no way shows that the individual who certifies that Drury Thompson was clerk &c, was at the time of his making such certification either "the judge, i. e. sole judge," "the chief justice," or "the presiding magistrate" of the county court of Mobile county, in the state of Alabama; without which fact being proven either by express statement in the certificate itself, or by other competent testimony, it is well settled that the paper purporting to be a transcript of the record of said court, was not, under the constitution of the United States and act of Congress passed May 26, 1790, competent testimony to establish the existence of the judgment mentioned in the declaration. *Stephenson vs. Barrister,* 3 *Bibb* 369. *Huckxey vs. Williams,* 6 *Yerg. Rep.* 340. *Smith vs. Blagge.* 1 *John. cases,* 238. *Craig vs. Brown,* 1 *Peters C. C. R.* 352.

The declaration is upon a recovery well described in every particular except as to the costs of suit, which are alleged to have been "nine dollars and seven cents, whereof the said David Butler was convicted, as by the record appears;" when in fact the transcript produced and read on the trial shows a judgment for $208.37 damages "together with his costs by him about his suit in that behalf expended," leaving the sum to be subsequently ascertained. There was adduced on the trial no legal proof showing the amount of the costs to be $9.07 as stated in the declaration; and in this particular the *allegata* and *probata* vary: for this vari-

ance the paper purporting to be a transcript of the record ought to have been excluded when offered as testimony under the issues joined: said allegations being descriptive of a record the law requires a perfect agreement between them and the proof of them. 1 *Chitty's Pl.* 340, 341, 342, 343, 350, 351, *note* 1. *Brooks vs. Remiss,* 8 *John R.* 455. 3 *Starkie* 1587, 1588. In the case before the court the variance consists in the allegation that the sum adjudged for costs is $9.07 and that this appears by the record, when in fact the transcript of the record produced shows nothing as to the sum of the costs adjudged.

The certificate of the clerk "that the sum of $9.07 cents has been paid to me by plaintiff's attorney for costs which have accrued in the cause," is not competent proof to establish amount of costs.

WATKINS & CURRAN, contra.

CONWAY B, J. Owen for the use of Kitchen sued Butler in the court below on an alleged judgment of a court in Alabama. Butler plead *nul tiel record.* Issue was joined, and Owen offered as evidence a paper purporting to be a transcript of the record of the case in the Alabama court. Butler objected to its being read and alleged want of proper authentication, and a variance between the judgment in the transcript and that described in the declaration. The court overruled these objections, admitted the transcript and gave judgment against Butler. He excepted and has brought the case here on writ of error.

The constitution of the United States declares that full faith and credit shall be given in each State to the records and judicial proceedings of every other State, and authorizes Congress to prescribe the manner in which such records and proceedings shall be proved. In pursuance of this authority Congress on the 26th of May 1794, enacted "That the records and judicial proceedings of the court of any State shall be proved or admitted in any other court within the United States by the attestation of the clerk and the seal of the court annexed (if there be a seal) together with a certi-

ficate of the judge, chief justice or presiding magistrate (as the case may be) that the attestation is in due form." In this case the clerk has certified at the bottom of the transcript "that the foregoing three pages contain a true and correct transcript of the record of the proceedings in this cause as the same remains of record in my office." Though the clerk does not say in words, he has given a full or complete transcript, yet the language he employs certainly implies that he has done so. "A true and correct transcript of the record of the proceedings in this cause as the same remain of record in my office" assuredly imports a complete transcript. A true copy imports an entire copy. *Edmiston vs. Schevartz,* 13 *Serg. & Rawle* 131. A transcript of the record of a case *ex vi termini,* means a transcript of the whole. *Voris vs. Smith,* 13 *Serg. & Rawle* 334. *Peck vs. Sale,* 3 *Miller's Law Rep.* 320, 323-4.

The other objection to the authentication goes to the judge's certificate. It is insisted it does not sufficiently appear that he was the judge or sole judge of the court. The certificate is "I John A. Cuthbert, judge of the county court of Mobile county, do hereby certify &c. Given under my hand and seal &c. John A. Cuthbert, J. C. C. M. C. [L. S.]." It doubtless must appear that the certificate was given by the judge of the court in which the judgment was rendered, but we do not deem as requisite, the expressions *sole judge* or *the judge.* We can perceive no reason for so strict a construction of the law. If the language used fully satisfies the mind that the certificate was made by the judge of the court from whose records the transcript has been taken it surely should be considered sufficient. As far as the terms of the certificate are prescribed by the law, it is probably necessary that they should be employed; but farther than this we do not conceive a literal compliance at all essential. It is certainly not necessary to arrive at the pure ends of justice. We are therefore of opinion that the transcript was sufficiently authenticated. But as to the alleged variance it is a well settled rule that descriptive allegations must be strictly and literally proved as laid. 1 *T. R.* 656. 9 *East* 161-163. *Brown vs. Jacobs,* 2 *Espn. N. O. C.* 726. *R. vs.*

Taylor, 1 *Camp.* 404. *R. vs. Leefe,* 2 *Camp.* 141. *Woodford vs. Ashley,* 2 *Camp.* 193. *Caldwell vs. Bell & Graham,* 3 *Ark. R.* 422. *Cheadle vs. Riddle, same vol.* 483. The party therefore declaring on a record must show at the trial of the issue on a plea of *nul tiel record,* such record as he has described in his declaration. Did the plaintiff below comply with the requisition of this rule? He thus described his cause of action. "For that whereas at a county court of the State of Alabama, begun and held in and for the county of Mobile on the 13th day of February, A. D. 1843, the said James Owen for the use of William Kitchen by the consideration and judgment of said county court on said 13th day of February A. D. 1843, recovered against said David Butler the sum of $208.37 cents for his damages together with his costs by him about his suit in that behalf expended, which costs amount to a large sum of money, to wit: The sum of nine dollars and seven cents whereof the said David Butler was convicted as by the record and proceedings thereof remaining in said county court in and for Mobile county in the State of Alabama aforesaid more fully appears." It will be perceived that he describes a record showing not only a judgment for $208.37 cents damages and costs, but also the amount of the costs *in numero.* The judgment in the transcript is in these words: "It is considered by the court that the plaintiff recover against the defendant the sum of two hundred and eight dollars 37-100 dollars for his damages together with his costs by him about his suit in this behalf expended." It does not appear from the record therefore that the costs amounted to nine dollars and seven cents whereof the said David Butler was convicted, nor does it appear that any specific sum was adjudged against him for costs: nor indeed does the record show that the amount of costs has been ascertained by any means known to the law. There is clearly then a misdescription in this particular and a material variance between the judgment described in the declaration and that contained in the transcript read on the trial. The circuit court therefore erred in admitting the transcript as evidence and in giving judgment in favor of the plaintiff below.

The judgment is therefore reversed and the cause remanded with instructions to permit the parties to amend their pleadings if they ask leave to do so.