ters of form only, the defendant is not, for that reason, and as a matter of course, entitled to a continuance. He has however, the right to plead *de novo*. The judgment of the court below must be affirmed. (1)

Judgment affirmed.

JAMES S. BEAUMONT, Appellant, *v.* ——— YANTZ, Appellee.

APPEAL FROM MONROE.

A declaration in an action of trespass for taking and conveying away "four horses, the property of the plaintiff," is sufficiently certain and descriptive of the property taken.

THIS was an action of trespass *de bonis asportatis*, brought by Yantz against Beaumont in the court below, for taking and conveying away "four horses, the property, goods and chattels of the plaintiff, of the value of three hundred dollars." The defendant demurred to the declaration, and assigned as causes of demurrer, 1. That the horses were not described with sufficient particularity; and 2. That the value of each horse should have been stated in the declaration. The demurrer was overruled, and an appeal taken to this court.

Opinion of the Court. The cases cited by the appellant's counsel, do not apply to this case. It is not necessary that each horse should be particularly described. Mentioning the

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(1.) The doctrine is well settled that an amendment of a mere formal matter will not entitle a party to a continuance, while an amendment in substance will work a continuance without cause being shown therefor by the opposite party. *Rountree* v. *Stuart*, post. *Covell et al.* v. *Marks*, 1 Scam., 525. *Russell et al.* v. *Martin*, 2 Scam., 493. *Webb* v. *Lasater*, 4 Scam., 548. *Ills. Marine & Fire Insurance Co.* v. *Marseilles Manufacturing Co.*, 1 Gilm., 236. *Hanks* v. *Lands*, 3 Gilm., 227. *O. & M. R. R. Co.* v. *Palmer et al.*, 18 Ills., 22.

Courts may allow amendments on the trial, if not against positive rules, to secure the ends of justice, if the opposite party is not thereby taken by surprise; if so, a continuance may be allowed. *Miller* v. *Metzger*, 16 Ills., 390.

It is not error to permit clerical errors to be amended on trial. *Hargrave* v. *Penrod*, post.

Since the foregoing note was prepared, a decision of the Supreme Court has been published in which they use the following language. "By the uniform rule of practice, the court has no power to permit an amendment of the declaration, in a matter of substance, without granting a continuance if desired by the defendant; nor has the court any power, after verdict, to permit amendments of substance, except upon terms of the payment of costs, setting aside the verdict, and granting a new trial. Where such amendment is made, it becomes essentially a new declaration, which the party has a right to prepare to defend." *Brown et al.* v. *Smith et al.*, 24 Ills., 196.

number of horses, and an allegation that they were the property of the plaintiff, is sufficient. There is no precedent to be found in the books, in which the property is precisely described, as to its shape, color, &c. A recovery in this action could well be pleaded in bar of a suit, for four black geldings, unless the plaintiff should new-assign, and show them to be other and different ones, from those for which this suit is brought.

As to the second objection, it is sufficient that the aggregate value of all the horses be set forth in the declaration. The judgment of the court below is affirmed. (1)

Judgment affirmed.

JAMES MASON, Plaintiff in Error, *v.* N. BUCKMASTER, ASSIGNEE OF P. MASON, Defendant in Error.

ERROR TO MADISON.

It is not required to make *profert* of writings not under seal.
The statute makes it necessary for plaintiff to give oyer of all writings as the maker is bound to deny their execution under oath.
In a case on an assigned note between maker and assignee, a consideration need not be averred.

THIS was an action of assumpsit brought by Buckmaster, on a promissory note executed by James Mason to Paris Mason, and by him assigned to Buckmaster. Two objections were made by defendant in the court below, to the plaintiff's declaration: 1. That there was no *profert* made of the note declared on; and 2. There was no consideration averred or stated. The court overruled these objections and gave judgment for the plaintiff, to reverse which, the defendant sued out a writ of error, and assigned the same objections as grounds of error.

Opinion of the Court. It is necessary by the common law, to make *profert* of writings under seal, so as to place them in the power of the court, to give the opposite party oyer if required, and to let the court see if the deed is fair and honest on view. From the statute, it is necessary for the party to have oyer of writings not under seal, on which suit is brought, as he is bound to deny the execution of them, under the plea

(1.) In trespass for taking and carrying away a quantity of poultry of several descriptions, it is not necessary to state how many there were of each description, the collective value of the whole being stated. *Donaghe* v. *Roudeboush*, 4 Munf., 251.