by one not of the jury. The court, therefore, not being able to discover that the case under consideration is at variance with the principles here laid down, are of opinion that the court below acted correctly in awarding a new trial on that affidavit, and the judgment must be affirmed. (a) (1)

Judgment affirmed.

JEHU SCOTT, Appellant, *v.* JOHN CROMWELL, Appellee.

APPEAL FROM MONROE.

Where the plaintiff amends in matters of form only, the defendant is not, for that reason, entitled to a continuance as a matter of course.

THE defendant in a court below, the appellant here demurred specially to the plaintiff's declaration, for informalities therein. The court sustained the demurrer, and gave plaintiff leave to amend, whereupon the defendant moved the court for a continuance, which motion the court overruled. To reverse this opinion, this appeal was taken.

Opinion of the Court. Where the plaintiff amends in mat-

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491. This, however, was held to apply only to civil cases. *Pate* v. *People*, 3 Gilm., 645. *Holliday* v. *The People*, 4 Gilm., 111. *Baxter* v. *The People*, 3 Gilm., 368. *Martin* v. *The People*, 13 Ills., 341. And there was no similar statute applicable to criminal trials until in 1857, when an act was passed, giving the same right to except for a refusal to grant a new trial in criminal as in civil cases. Laws of 1857, p. 103. Scates' Compl., p. 1216.

But the granting of a new trial even since the passage of the act making it error to refuse one has never been held a sufficient ground for an exception. *Cornelius* v. *Boucher*, post. *Hill* v. *Ward*, 2 Gilm., 292. *Brookbank* v. *Smith*, 2 Scam., 78.

(a) The refusal of the court to grant a new trial is not a matter for which a writ of error lies. *Barr* v. *Grats*, 4 Wheat., 213. 5 Cranch, 11 *ibid.* 187. 7 Wheat., 248.

The affidavits of jurors to impeach a verdict can not be received. *Dana* v. *Tucker*, 4 Johns., 487. *Forrester &c.* v. *Guard, Siddal, & Co.*, post.

(1) This, if not overruled, is very strongly doubted in the following cases. *Forester et al.* v. *Guard et al.*, post. *Browder* v. *Johnson, id.* *Smith* v. *Eames*, 3 Scam., 81. And we think it is now safe to say that the affidavit of a juror ought not to be admitted to show what transpired in the jury room, or by what process of reasoning they came to their conclusions.

But the affidavit of a juror, on a point entirely disconnected with his acts, or the motives for his conduct as a juror, as that he is not an alien, is not objectionable on the grounds on which it has been decided that a juror's testimony can not be received to impeach his verdict. *Guykowski* v. *The People*, 1 Scam., 482.

Affidavits of jurors can not be received to impeach their verdict, except in cases where a part of them swear they never consented to the verdict; but a verdict may be supported by such affidavits. *Smith* v. *Eames*, 3 Scam., 76. *Martin et al.* v. *Ehrenfels*, 24 Ills., 187.

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.