

MCQUESTON v. YOUNG.

A declaration, that the defendant was indebted to the plaintiff in the sum of \$75, for balance of account, according to account annexed to the writ, though such account annexed is merely, "To amount due on account, \$75," may be amended on terms.

MOTION, to amend the declaration in the plaintiff's writ.

The declaration alleged, that the defendant was indebted to the plaintiff, in the sum of \$75, for balance of account, according to the account annexed to the writ.

The account annexed, contained no specification of the items of debt and credit from which the balance resulted, but was in this form: "To amount due on account, \$75.

BELL, J. This is a loose and slovenly mode of declaring, only to be tolerated because of its frequent use. The plaintiff cannot proceed to trial without a specification or amendment; and upon a default, he can have no judgment without an actual assessment of damages, upon evidence laid before the court or a jury. The Court are not inclined to countenance this mode of declaring; and considering the necessity of an amendment or specification as the *fault* of the plaintiff, will permit no amendment to be made or specification to be filed, except upon terms designed to discourage the practice.

Leave to amend granted on terms.

FERSON v. MONROE.

If partners sell their stock in trade in order that the proceeds may be applied by the purchaser to pay the separate debt of one partner, instead of going to pay the partnership debts, the sale is void as to creditors of the firm; though the separate debt of the partner was contracted for money which was put by him into the business and capital of the firm.

TRESPASS, for taking and carrying away goods. The defendant, who was sheriff of the county, pleaded the general issue,