

the mere moral wrong of repudiating a contract actually entered into," but not in writing. *Browne St. Frauds*, ss. 437, 439; 2 *Sto. Eq. Jur.*, ss. 768, 757; *Montacute v. Maxwell*, 1 P. Wms. 618; *Whitchurch v. Bevis*, 2 *Brown Ch.* 567, 569 n.

*G. C. Yeaton*, for the defendants. The plaintiffs, by varying the form of their action, cannot alter the intrinsic nature of the case. *Add. Torts* 726; *Ross v. Terry*, 63 N. Y. 614; *Nestel v. Lightstone*, 77 N. Y. 96; *Sparman v. Keim*, 83 N. Y. 245; *Wright v. Geer*, 6 Vt. 151; *Vaill v. Strong*, 10 Vt. 457; *Mann v. Birchard*, 40 Vt. 326; *McDermott v. M. Co.*, 38 N. J. Law 53; *Martin v. Hand*, 11 R. I. 306; *Ill. C. R. R. v. Phelps*, 4 *Bradw.* 238; *Und. Torts* 102.

DOE, C. J. The amendment may be allowed if justice requires it (*Merrill v. Perkins*, 59 N. H. 343, *Elsner v. Hughes*, 60 N. H. 469); and the question of justice, so far as it is a question of fact, is determinable at the trial term. *Garvin v. Legery*, 61 N. H. 153. It does not appear that an amendment will be useful. Whatever the form of action, the question will arise at a new trial whether there is evidence of any other wrong than a breach of contract on which no action can be maintained.

*Case discharged.*

CLARK, J., did not sit: the others concurred.

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SHERRY v. ROCHESTER.

In a notice given by a traveller to a town of an injury caused by a defective highway, the day of the injury is a sufficient description of the time, in the absence of evidence that a specification of the hour was necessary.

CASE, for injuries received by a traveller on a highway. Verdict for the plaintiff. In the notice given to the town (*G. L.*, c. 75, s. 7), the plaintiff stated that the injuries were received February 20, 1881. The defendants excepted to the ruling that the time was sufficiently stated.

*Worcester & Gafney*, for the defendants.

*Copeland & Edgerly*, for the plaintiff.

DOE, C. J. It is not found as a fact that a more specific statement of the time was necessary, and no error of law appears. *Donnelly v. Fall River*, 132 *Mass.* 299.

*Judgment on the verdict.*

BLODGETT J., did not sit: the others concurred.