

SCHNERTZEL v. PURCELL.

{1 Cranch, C. C. 246.}¹

Circuit Court, District of Columbia. July Term, 1805.

CONTINUANCE—NATURE OF ACTION CHANGED
BY AMENDMENT—PLEADING—ISSUE.

1. If by an amendment, the nature of the action be changed, it is to be considered as a new cause, and may be continued, although at the fifth term after its commencement.
2. A cause is not regularly for trial, unless it has been put at issue at a preceding term.

This was the sixth term since the action was instituted. The plaintiff, at last term, had leave to amend, by changing his action from debt to case, and laid a rule on the defendant to plead by the plea-day.

Mr. Key, for defendant, now pleads non assumpsit, and moves for a continuance, the cause not having been at issue at the last term.

THE COURT. If a cause has not been put to issue at a preceding term, it is not regularly for trial, unless it be the fifth court since its commencement, in which case it must, by act of assembly, be disposed of, and cannot be continued. But in this case of a material amendment by the plaintiff, it must be considered as a new cause at the last term, and the issue not being made up, the defendant is entitled to a continuance.

¹ [Reported by Hon. William Cranch, Chief Judge.]