

As matter of fact, it is obvious that a statement of fact alleged to be made on the 5th of April cannot be covered by the admission of another and a different fact on the previous 5th of March.

As matter of law, inasmuch as the plaintiff seeks to reverse the Court below by reason of matters which were not truthfully before it, the defendant claims the protection of the rules of Court in that behalf, by which it will be seen that after demurrer a plaintiff shall not be permitted to amend his bill, except upon express leave of the Court, upon cause shown.\*

\* The following rules originally formed part of what are known as Lord Lyndhurst's rules. In 1842, they were substantially adopted by the Supreme Court of the United States, and, in 1844, by the Supreme Court of Pennsylvania for itself and the Courts of Common Pleas throughout the State, and in 1865 they were revised.

The following are the rules as to amendments:—

"The plaintiff shall be at liberty, as a matter of course, to amend his bill in any matters whatsoever, before answer, plea or demurrer to the bill, but he shall, without delay, give the defendant notice of such amendment, and all rules taken by the plaintiff in the case shall be suspended until such notice is given.

"After an answer or plea or demurrer is put in, and before replication, the plaintiff may, upon motion or petition, without notice, obtain an order from any law judge of the Court to amend his bill within twenty days thereafter. But after the replication filed, the plaintiff shall not be permitted to withdraw it and to amend his bill, except *upon an order* of a law judge of the Court, *upon motion* or petition, *after due notice* to the other party, and *upon proof* by affidavit that the same is not made for the purpose of vexation or delay, or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the bill, and upon the plaintiffs submitting to such other terms as may be imposed by the judge for speeding the cause.

"If the plaintiff, so obtaining any order to amend his bill after answer or plea or demurrer, or after replication, shall not file his amendments, or amended bill, as the case may require, in the prothonotary's office, and serve a copy on the counsel of all other parties to the cause, who appear by counsel *within the time appointed* for making such amendments, he shall be considered to have abandoned the same, and the cause shall proceed as if no application for any amendment has been made."

Equity Rules, rule X., § 49, 50.

