If a plaintiff can ignore these rules, and file any amendment, without notice and without leave, the day before the opinion is delivered, he can do so while the opinion is actually being delivered.

Yet it is actually claimed in the ninth assignment of error (record, page 13) that the Court erred in not deciding that as the bill *and amendment* distinctly averred that the testator's works were atheistical, "*and as the demurrer admitted to be true the matters of fact there alleged*," the trust for publishing these works was invalid.

If the averment were material, it would doubtless be allowed even by this Court, upon cause shown, and the rights of the defendants would be protected by a proper order. But this is very different from interjecting the statement without leave or notice, and then seeking to reverse the Court below for not treating it as an admitted fact.

On the argument of the cause, something was said verbally to the effect that the testator's works were atheistical, and a few sentences were read from one of them, to which the defendants answered :—

1. The books were not before the Court; the bill did not refer to them, and on demurrer, the Court could not go beyond the bill. (It was doubtless to meet this argument that the device of amending the bill was adopted.)

2. That if a plaintiff relies on matter that is atheistical, unsound or otherwise unlawful, he should distinctly charge the illegality specifically and put it in issue, so that the defendant may know what he has to meet.

Tried by this rule, the amendment, even if well filed, must fail, as it deals only in widest generalities.