

PRACTICE IN CHANCERY—*Continued.*

claim would be allowed, and the fund was still under the control of the court, it was HELD—

- That he should be allowed to prove his claim and receive his proportion of the dividends. *Abbott vs. Steam Packet Co.*, 310.
37. It is the duty of this court if suitors are misled by its agents, however innocently, to repair the injury if it can be done without prejudice to the ascertained rights of others. *Ib.*
  38. A defendant to a creditor's bill, though he does not in his answer distinctly allege himself to be a creditor, and though he asks in his answer, to be dismissed with costs, may still after decree come in upon the fund as a creditor. *Gibbs vs. Cunningham*, 322.
  39. As a general rule, if the infirmity of the plaintiff's case appears upon the face of his bill, the defendant may rely upon it at the hearing, no matter how imperfect, or what the character of his answer may be, and it is only with respect to some defences given by statute that a different rule prevails. *Ib.*
  40. Proof taken under an *ex parte* commission cannot be read against defendants who answered an original bill, though they failed to answer a bill of revivor in the same case and an interlocutory decree was passed against them for such default. *Kerr vs. Martin*, 342.
  41. The process of *subpena scire facias* is the proper and appropriate proceeding to revive a decree which has abated by death, or where a female complainant has married, or the decree has become dormant by lapse of time. *Matthews vs. Merrick*, 364.
  42. The fact that complainant has parted with his title to the land since the filing of the answer, cannot be brought forward by the defendant by a supplemental answer; the proper mode is to file a bill in the nature of a supplemental bill, which is in the nature of a plea, *puis d'rien continuance*, at common law. *Pue vs. Pue*, 386.
  43. Where a claim against the personal estate is disputed by the administrator, and the Orphans Court allow a reduced amount, and both parties acquiesce, the claimant cannot as against the proceeds of the real estate, claim more than was allowed against the personal estate. *Shepherd vs. Bevans*, 408.
  44. A final order upon a petition asking the defendant to bring money into court for the purpose of investment, cannot be passed without notice to, or hearing of, the opposite party who has answered the petition, and objected to the application. *Brooks vs. Dent*, 473.
  45. A decree to account against an executor or administrator, either separately for the suing creditor, or specially on behalf of himself, and all other creditors is a decree for the benefit of all the creditors, and in the nature of a judgment for all. *Ib.*
  46. From the date of a decree to account upon a creditor's bill against an administrator or executor, and on a due disclosure of assets, an injunction will be granted on the motion of either party to stay all proceedings of any of the creditors at law. *Ib.*