

PRACTICE IN CHANCERY.—*Continued.*

- tween the final report of the Auditor, made under the directions of the Court, and its ratification, though it is not matter of course, yet he will be allowed to do so under circumstances which would not entitle him to the privilege after the report has been ratified. *White vs. Okisko Company*, 214.
35. The general rule is not to open the account after final ratification, on the application of a creditor whose claim has been first suspended, and ultimately rejected, for want of proof to sustain it; yet there may be cases in which it would and ought to be relaxed. *Ib.*
36. Though it may be competent to vacate upon petition the enrolment of a decree alleged to have been obtained by surprise, yet the general law of the Court is the other way, that a decree, after enrolment, cannot be reheard upon petition; the remedy is by bill of review. *Stewart vs. Beard*, 227.
37. An order ratifying the Auditor's account, distributing the proceeds of sale under a creditor's bill, cannot be vacated by petition after enrolment, on the ground that the petitioning creditor was not aware that there would be a surplus, after paying the preferred claim of the complainant. *Ib.*
38. The amount of the proceeds to be allowed a tenant for life in his interest in the property sold, depends upon his age and state of health at the time of sale. *Gambriel vs. Gambriel*, 259.
39. It is not necessary, that the party who applies to this Court to order a demise under the 5th section of the Act of 1831, ch. 311, should be the tenant in possession: the tenant of any particular estate, of full age, whether in possession or not, may apply under that section. *Hitch vs. Davis*, 262.
40. But the Court is not at liberty to order a demise under that Act, unless it is made to appear affirmatively, that the interest and advantage of all parties would be promoted by it. *Ib.*
41. A testator devised land, *in trust*, for his daughter for life, remainder to his granddaughter, the complainant, for life, remainder to the lawful issue of such granddaughter, in fee, if any such be living at the time of her death; but if none, then remainder to his daughter, M. D., for life, remainder in fee to her son, S. B. D. Upon a bill by the complainant, under the Act of 1831, ch. 311, to have the land leased, it appearing by the proof that those who might be ultimately entitled in remainder would be injured by such lease, the bill was dismissed. *Ib.*
42. The Court cannot, under the general prayer, grant relief not warranted by the allegations of the bill; the relief under the general prayer must be consistent with the case made by the bill, and its extent and character depend upon the facts charged in the bill. *Hitch vs. Davis*, 266.
43. A bill charged an executor and trustee with, 1st, neglect to pay rents and profits; 2d, failure to invest a \$5,000 legacy; and 3d, refusal to deliver to complainant a certain note claimed by her as a gift from the testator. The relief prayed, was an account and payment of the legacy, and rents and profits, delivery up of the note, and if assets were not admitted, an account thereof, and their application, in due course of administration, and for general relief. HELD—
That under this bill, the defendant could not be charged as executor with the note, as assets for the payment of the legacies of the will,