PRACTICE IN CHANCERY—*Continued.*

23. When funds are in this court for distribution among creditors, and the Auditor reports that certain claims have not been proved, or objections for want of proof are made to their allowance by parties interested, the case is again referred to the Auditor, with directions to state a final account, from which all claims, not then sufficiently proved, are to be excluded, and leave is given to supply the proof upon such terms, as to notices, as may be deemed reasonable. Upon the coming in of the report of the Auditor, made pursuant to this order, and after the usual time given for filing exceptions, the report may be submitted for ratification, and when ratified, all parties are concluded and the litigation terminated. *Ib.*

24. This is the general rule, but there may be cases in which it would and ought to be relaxed, when the party seeking relief can show himself free from blame or negligence. *Ib.*

25. Trustees under a deed, one of the trusts of which was, that after satisfying the purposes of the deed, viz. the payment of the debts of the grantor, the residue of the property should be held for the use of the grantor, were appointed his trustees under the insolvent laws, and acting in this double capacity, transferred certain stocks belonging to the grantor (the complainant) to the defendant. All his debts having been paid and the trustees directed by a decree of this court to convey to him all the property they had not disposed of in performance of their duty as trustees in insolvency: it was HELD—

That the complainant was entitled to maintain a bill in equity for the recovery of the stock from the defendant, upon the ground, that the transfer had been improperly obtained, and that the trustees were not necessary parties to such suit. *Williams* vs. *Savage Manufacturing Company*, 306.

26. A party being elected to examine witnesses upon their *voir dire*, is precluded from resorting to any other mode to show their interest in the event of the suit. *Ib.*

27. The legal presumption, when the three years from the date of the decree have elapsed, is, that it has been executed or satisfied, and the appropriate remedy is, to revive it by bill of revivor. *Franklin* vs. *Franklin*, 342.

28. The appearance of the defendants to the bill, and their submitting to answer it, would be a waiver of any objection to the jurisdiction of the court. *Brooks* vs. *Delaplaine*, 351.

29. Where a party sets up an agreement in his bill, involved under the statute of frauds, and the defendant, by his answer, denies the agreement, it is not, perhaps, necessary for him to insist upon the statute as above, but the complainant, at the hearing, must establish the agreement by written evidence. *Small* vs. *Owings*, 363.

30. If the defendant admits, in his answer, the parol agreement, without insisting on the statute, the court will decree a specific performance, upon the ground, that the defendant has thereby renounced the benefit of the statute. *Ib.*