PRACTICE IN CHANCERY—*Continued.*

case of his death ; and in the latter case it has been decided that an infant may sue as if he were of age. *Ib.*

31. Though an infant himself cannot call his guardian to an account whilst the relation subsists, but must wait until he attains age, yet a third person may do so, during the minority, for the benefit of the infant, of whose interest the law is especially careful. *Ib.*

32. Prior to the act of 1835, ch. 380, the general rule was, that a creditor before he could pursue property, fraudulently conveyed, must have first obtained judgment with respect to realty, and a judgment and *fieri facias* where personal property was to be reached, yet there are some exceptions to the rule. *Ib.*

33. The case of a guardian suing in behalf of his wards, who is the surety on the bond given by the former guardian, and, therefore, cannot himself maintain an action at law on the bond, might possibly be regarded as constituting such an execution to the general rule. *Ib.*

34. But the act of 1835, ch. 380, sec. 2, expressly exempts creditors from the obligation to obtain judgments before they can proceed in equity to vacate fraudulent conveyances. *Ib.*

35. Parol proof cannot be offered to change or contradict the terms of a deed, or contract in writing, on the ground of fraud, surprise or mistake, unless appropriate allegations are contained in the bill. *Hertle* vs. *McDonald*, 128.

36. Nine persons were elected trustees of a church in accordance with the act of 1802, ch. 111. A bill was filed in the name of the corporation against five of these trustees in their individual capacities. Before answering this bill the defendants filed a petition contesting the authority of the solicitor who filed it, upon the ground that a minority only of the board of trustees of the corporation authorized it to be filed, and for this reason prayed that the bill might be dismissed. HELD—

That, notwithstanding the apparent anomaly of a corporation in its artificial capacity, suing a majority of the individuals composing it in their natural capacity, such a state of things may very properly occur. In this case the three members authorizing the suit, would, by the charter, form a majority of a quorum for the transaction of business, and at a meeting thus held, the present proceedings might have been ordered. *Bethel Church* vs. *Carmack*, 143.

37. The bill might have been filed in conformity with the charter, and it would, therefore, be improper to dismiss it upon this summary proceeding, before answer, without evidence, and merely upon allegations proceeding from the defendants themselves. *Ib.*

38. A party will not be allowed to prosecute the same claim in two courts at the same time, recovering one portion of it at law, and another in equity. *Hall & Gill* vs. *Clagett*, 151.

29. Upon a motion to dissolve, the defendant can only rely upon so much of his answer as is responsive to the bill, and matter in avoidance cannot be allowed to have any effect. *Drury* vs. *Roberts*, 157.