

court—and whether in a creditor's suit any decree can be made without previous proof of his debt.—*Ib.*

34. In a creditor's bill against the devisees of a debtor, it is not indispensable that the heir-at-law should be a party.—Fenny v. Priestman, 133.

35. Upon a creditor's bill, a receiver of the rents and profits of the testator's real estate will not be granted where the plaintiff does not allege in his bill, and clearly prove, the insufficiency of the personal estate to pay the debts, and does not pray by his bill for the application of the realty or the rents and profits thereof, to that object.—Sanders v. Christie, 137.

#### DEMURRER.

36. A former decision on a point of practice—that defendants before the orders of May, 1850, had in this country, as in England, twelve days only after appearance to demur—was followed, though, if *res integra*, a majority of the present court might have decided the point differently.—Farish v. Martyn, 300.

37. A demurrer filed after twelve days was therefore ordered to be taken off the files for irregularity, with costs. (ESTEN, V. C. *dissentiente*).—*Ib.*

#### DISMISSING BILL.

38. Under the 12th order of this court, the plaintiff is bound to file a replication within one week from the date of entering into the undertaking to speed, whether a commission to examine witnesses shall be required by him or not.—McNab v. Gwynne, 151.

39. Where one of the defendants in a suit had answered, and the time for replying had expired, a motion was then made to dismiss the bill as against him for

want of prosecution, but it appearing that such defendant was president of an incorporated company, whose answer had not yet been filed, the motion was refused with costs.—Rees v. Jacques, 352.

#### ENROLLING DECREES.

40. It is not necessary to petition to enrol decrees, after any lapse of time.—Anonymous, 168.

#### EVIDENCE.

41. Upon a bill against three partners by a person who claimed to be a co-partner, and proved admissions made by two of the three to that effect; no relief could be granted against the two, excluding the third.—Carfrae v. Vanbuskirk, 539.

42. Where the evidence was not sufficiently clear to entitle the plaintiff to a decree, though it was such as rendered his equity probable, the court gave him the option of an issue or to have his bill dismissed without costs.—*Ib.*

#### EXAMINATION

*Of a defendant as a witness.*

43. *Held, per Cur.*—(BLAKE, C. *dissentiente*)—that where a plaintiff examines a defendant, whose interest in the suit is such that a decree for the plaintiff must necessarily operate for the benefit of such defendant, such examination does not disentitle the plaintiff to relief against the other defendants.—McLellan v. Maitland, 268.

#### EXECUTORS.

44. A general charge in a bill, that the defendant, an executrix and trustee, is committing waste on the testator's property, without specifying any *act* of waste, is not sufficient to sustain an injunction or a receiver.—Sanders v. Christie, 137.

#### FORECLOSURE.

45. Where a bill prays a foreclosure, and some of the parties