The other contributors to the *Encyclopédie*, have submitted to it, and have recognized the right of control of the editor, by their approval of the modifications made by him in their articles.

The decree below is reversed.

ABSTRACTS OF RECENT AMERICAN CASES.

South Carolina Court of Appeals, May sittings, 1855.

The following is an abstract of some of the decisions of the Court of Appeals in Equity:

Church of the Advent vs. *Farrow and wife:* Appeal from a decree of Chancellor Johnston, at Spartanburg. Opinion delivered by Wardlaw, Chancellor.

A subscription was drawn for contributions, in money, to erect the church. I. H. subscribed "*fifty dollars, and the lot to build on.*" No lot was laid off, nor were any steps taken in building during his life. At his death, part of his land fell to his daughter, Mrs. Farrow. The bill was to compel her and her husband to convey an acre, at a particular locality on this tract as a site for the church. HELD, that the writing was defective, under the statute of frauds, in not identifying by description, either the extent, or location of the premises intended to be given; and that the defect could not be cured by parol proof. *Decree affirmed.*

Boulware vs. *Witherspoon:* Appeal from a decree of Chancellor Johnston, at Lancaster. Opinion delivered by Johnston, Chancellor.

Contest between creditors of one Rains, for the application of a fund, in Court, to their respective demands, existing in the form of executions. The Bank of the State held the oldest executions, and claimed priority of right; and it depended on the amount still due on those executions, whether any portion, or what portion, of the fund should go to the other contesting creditors.

Among the executions of the Bank against Rains, were some against him as endorser for one Goin. The Bank, holding correlative executions against Goin for the same debts, caused Goin's land in this State to be sold by the Sheriff, and credited the proceeds on the executions against him; and also entered credit, *pro tanto*, on the executions against Rains as endorser. The Bank afterwards followed Goin to Florida, whither he

had carried his personal property, and compromised their claims with him for the balance due by him. HELD, that this compromise did not invalidate the right of the Bank to retain the money they had previously received from the sale of Goin's land, nor did it entitle the contesting creditors to have that money transferred to the credit of the Bank's execution against Rains (for debts due in his own right,) so as to diminish the amount on them.

At the sale of Goin's land the Bank purchased through an agent. It was alleged that at the sale, the agent had held out promises that if the Bank became the purchaser it would allow Goin or his creditors, the benefit of any re-sale it might make. It did make a re-sale at a considerable advance. HELD, that the right to enforce this agreement, or to treat the transaction as a fraud, was concluded by Goin's subsequent compromise; and the creditors of Rains, his creditor, were not competent to complain. Such a circuity of remedy is not consistent with the practical administration of justice. HELD, further, that the evidence of the agreement was too vague.

Anterior to the 1st of January, 1849, Rains placed in the Sheriff's hands about $3,000, and took his loose receipt to apply the money to executions in his hands against said Rains. On that day (1st January, 1849) there was found, exclusive of the proceeds of Goin's land, a credit endorsed on the executions against Rains for a sum exceeding that for which the Sheriff had receipted; and there was no proof of any other money having been paid in by Rains. HELD, that in the absence of such proof, it was a justifiable presumption that the money receipted for entered into this posterior credit. If the contesting creditors would have this latter money entered as an additional credit, the burden was on them to show an amount received by the Sheriff from other sources, sufficient to account for the credit he had entered, without resorting to the sum covered by the receipt. *Decree affirmed*, Wardlaw, Ch. *dubitante*.

Bivingsville Man. Co. vs. *Bivings*: Appeal from decree of Chancellor Johnston, at Spartanburg. Opinion delivered by Johnston, Chancellor.

Complainants had employed the defendant as their agent, and after several years' service, came to a settlement with him, gave their note for the balance due him on account, and discharged him. Afterwards, suspecting that there were mistakes against them in the settlement, they brought their bill for a fresh accounting, but specified no errors in the account that had taken place. On the account being gone over, it was found that the inaccuracy of the settlement was against the *defendant*. HELD, that he was entitled to a decree for the additional balance thus established.

In excepting to the Commissioner's report, the complainants pointed out no specific errors. HELD, that the exceptions were defective. It is the function of an exception to designate the very point where an error exists in the report so as to enable the Court to put its finger on it and correct it, by a judgment confined exactly to that point.

When an opportunity to except is presented and the party, while excepting, omits some grounds which he might have taken, or excepts insufficiently, his privilege is waived and lost; and he cannot, at a future stage of the suit, avert the consequences of his neglect by putting in additional exceptions.

The bill in this case was filed in 1844, but the complainants had not prosecuted the accounting to a result before 1853. At the sittings in that year a report was made which set forth a balance against them. One of their counsel, who had attended the reference, was then dead. Omitting to move for a re-opening of the reference on account of his decease, they put in exceptions to the report. An order was made, at their instance giving them time to complete and argue the exceptions before the Commissioner. After they had done so, and their exceptions were over-ruled by the Commissioner, they moved, in 1854, to set the report aside, and for leave to investigate the account *de novo*; alleging that the death of their counsel had deprived them of a proper knowledge of the matters reported. HELD, that parties undertaking to allege mistakes or errors in their bill, must be presumed to know where the errors exist, and are bound to make good their charges; and (possessing this knowledge,) the death of their counsel is not sufficient reason for a new investigation. HELD also, that having omitted to move for a re-investigation when the report came up in 1853; but, instead, having moved for leave to complete and argue their exceptions, their right to make such a motion in 1854 was lost. HELD, further, that in a case depending for ten years, in which there was, at the outset, no designation of errors in the bill; when the complainants had so long neglected to bring an accounting intended for their benefit to a result; and when, after so great a lapse of time, they professed to remain in the same state of ignorance respecting the true state of the account as when they began their suit, there was no reason for delaying the final judgment at their instance. Delays are not to be encouraged; when voluntary, they are censurable. *Decree affirmed.*

McKorkle vs. *Black*: Appeal from Chancellor Dargan, at Marion. Opinion by Dargan, Chancellor.

Devise of land to two or more persons, to be equally divided among