

agreement of the parties, he and Scott were judicially constituted joint trustees, and as such, jointly liable for the whole amount of money received by them. The Court of Appeals appear rather to dissent from the idea, that the appointment could be regarded as a judicial one, and seemed more disposed to regard it as having been made by the parties themselves; but they say, viewing it in either light, Glenn should not be held responsible for the default of Scott, because the circumstances were such as to exonerate him from all blame in reference thereto. He had neither done nor omitted to do any thing which could, upon any just principle, render him liable. He had been guilty of no act of commission or omission, by which Scott had been in any degree facilitated, in wasting the estate.

But, say the court, though Glenn has done nothing of which the petitioners in that case, could, with justice, complain, were they altogether free from censure? that is, had they not, by their negligence and delay, caused the loss of the money which they were then attempting to throw upon Glenn?

The order of the Chancellor, distributing the funds, was affirmed by the Court of Appeals, at its June term, 1838, and it was not until March, 1843, nearly five years afterwards, that the petitioners took any steps to recover the money from either Scott or Glenn. The whole amount of the money loaned Tiernan, had been received by Scott, as early as May, 1841, a portion of it before that time, and it may very well be, and indeed it is not by any means unreasonable to suppose, that if these parties had proceeded promptly after the decision of the Court of Appeals in 1838, the money would have been properly applied, and there would have been no loss at all. It was in this state of circumstances, that the court ask the very significant question, "may not Glenn claim the benefit of the *maxim vigilantibus non dormientibus leges subveniunt?*" "So far as we can judge, (say the court,) it was owing to the petitioners entirely—owing to their remissness in procuring a revocation of the Chancellor's order, by which the money was to be retained, *pendente lite*, that the default of Scott remained