protected by compelling the executors, if there are assets, to pay the claim. If blame attaches anywhere, it is to them for paying the money to Scott alone, and not to Scott and Glenn. The misapplication (if any) was the consequence of their act, and not the act of their vendee, and surely, therefore, the latter should be protected at least, until their inability to make good the loss is ascertained. But the bill does not make a case, nor is there anything in the evidence upon which any such relief can be granted under the general prayer; and as Tiernan, the mortgagee, died as far back as 1839, it may very reasonably be presumed his estate has been settled up, and the assets distributed.

I am of opinion, therefore, that the complainants are not entitled to relief, and shall dismiss the bill; but as there is hard ship in the case on both sides, shall do so, without costs.

CHARLES J. M. GWINN for Complainants.
WILLIAM SCHLEY and JOHN NELSON for Defendants.

PEARSON CHAPMAN
vs.
JAS. O. C. HOSKINS.
} DECEMBER TERM, 1851.

[RIGHTS OF RIPARIAN PROPRIETORS—RIGHT OF THE STATE TO GRANT LANDS COVERED BY NAVIGABLE WATERS.]

Since the decision of the Court of Appeals of this state in the case of *Browne* vs. *Kennedy*, 5 *H. & J.*, 195, it is impossible to deny but that it is competent to the state to grant land covered by navigable waters, subject to the right of the public to fish in, and navigate them; but it does not follow that she is bound to do so, or will do so, in every case in which application is made to her.

Owners of lands bordering upon navigable waters are, as riparian proprietors, entitled to any increase of the soil which may result from the gradual recession of the waters from the shore, or from accretion by alluvion, or from any other cause; and this is regarded as the equivalent for the loss they may sustain from the breaking in, or encroachment of the waters upon their lands.