

dency of the appeal spoken of in the agreement, and on the same day a check was drawn accordingly, which it appears by the receipt of Messrs. Glenn and Scott, was received by them on the 27th of the same month, and the check was presented and paid at bank on the 30th.

A portion of the money was loaned by Scott and Glenn to Alexander Brown & Sons, in August of the same year, and for the portion so loaned, with the interest thereon, Mr. Glenn has duly accounted. Another portion, to wit, \$5,000, was loaned to one John H. Hunter, which, being repaid with interest on the 31st of July, 1837, was, on the day following, to wit, the 1st of August, 1837, loaned to Luke Tiernan, of Baltimore, upon his promissory note, payable six months after date, with interest, secured by a mortgage on real estate in the city of Baltimore.

The proceedings further show, that Tiernan paid Scott the interest on this sum, to the 1st of August, 1839, and the former having died in the course of that year, one of the executors having previously paid to the same party, the interest and a portion of the principal, on the 29th of May, 1841, paid him the entire balance of principal and interest, amounting at that time, to \$4,080. The Chancellor's order, distributing the money, was affirmed by the Court of Appeals at its June term, in the year 1838, but no proceedings appear to have been taken by the parties, who, by this affirmance, were decided to be entitled thereto, until March, 1843, when they filed a petition in the cause, requiring the said Scott and Glenn, to account; when it appeared by their answers, and the admissions of the parties, that the money paid to Scott by Tiernan and his executor, was paid without the authority, privity, consent, or knowledge of Glenn, and that the latter in no way participated in receiving such money, or indorsing the note given for its security, or in releasing the mortgage, which appeared to have been released by Scott alone, on the 2d of December, 1841.

The money received by Scott from Tiernan and his executor, having been wasted or misapplied, the question raised upon the