

petition of March, 1843, and the answers and other proceedings thereon, was, whether Glenn was responsible therefor, and the Chancellor having so decided, Mr. Glenn appealed to the Court of Appeals, and the latter court, at its December term, 1845, reversed the Chancellor's order, being of opinion, that under the circumstances of the case, there was no just ground upon which Glenn could be made answerable. Subsequently, to wit, on the 17th of April, 1848, upon the petition of the parties in interest, an order passed, with the consent of Glenn, removing him, from what in said order is called the trust, created by the order passed upon the agreement of the 22d of July, 1836, and appointing John H. B. Latrobe, trustee, for the purpose of executing so much of said trust, as yet remains to be performed, and requiring said Glenn to yield up, assign and deliver, all securities, deeds and conveyances belonging to said trust.

And, thereupon, on the 28th of April, 1848, the present bill was filed by Mr. Latrobe, and the parties entitled to the money, seeking to charge the mortgaged premises with the payment thereof, upon the ground that no payment has been made. The defendants to this bill are the executors of the mortgagor, and those who claim under a sale of the mortgaged premises, made by them, under the provisions of his will, and the main question is, whether under all the circumstances of the case, the estate of Mr. Tiernan, or rather the mortgaged premises in the hands of the purchasers, can be made to pay this debt a second time. The evidence shows that the note of Tiernan, secured by the mortgage, was kept by Mr. Scott, and upon the death of the former, it was passed by the Orphan's Court, upon the affidavit of the latter; and that when the balance of the money was paid, Scott surrendered it to the executors, who made the payment.

In the argument of the case in the Court of Appeals, upon the appeal of Glenn, an effort was made to show, that the proper and only remedy open to the parties who were entitled to the money, was by a proceeding against the mortgaged property, upon the ground that the receipt and release of Scott