

save you from loss, which, but for your own negligence might not have occurred. At the time of the controversy between these parties and Glenn, though the insolvency of Scott had taken place, he was still living. Since then, he has died, and administration, *de bonis non*, on the estate of the party whose administrator he was, has been granted to another, and thus the very event has occurred, of which the Court of Appeals spoke when they said, his death might give to others a right to receive that portion of the fund, to which, as administrator of one of the complainants, he was entitled. The proceedings in the case upon the petition against Glenn, and for the sale of the real estate of Samuel McKim's estate, a portion of the proceeds of which constitute the subject now in dispute are referred to in the bill in this case, and form a part of the record.

There is, however, as I conceive, another very strong objection to granting the relief prayed by this bill. It is a bill for the foreclosure and sale of the property mortgaged by Tiernan to Scott and Glenn, upon the allegation, that no part of the money has been paid; and that by virtue of the proceedings in the cause referred to, the complainants are to be regarded as having authority to sue upon it, without making either Glenn or the representatives of Scott, parties. The bill alleges that Tiernan, the mortgagor, by his will, executed in October, 1839, appointed Alexander Neill and W. Tiernan Somerville, his executors, and that they, in virtue of the authority thereby reposed in them, sold the mortgaged property in May, 1841, to William H. Tiernan, and that the executors joined with the purchaser in September of the same year in conveying said property to William H. Tiernan, and Charles Tiernan, in trust for the sole and separate use of Gay R. Tiernan, wife of said Charles Tiernan. The defendants to the bill are Charles Tiernan, William H. Tiernan, Gay R. Tiernan, Alexander Neill, and W. Tiernan Somerville; and its prayer is, for a sale of the mortgaged property for the payment of the debt and for general relief. Now, nothing, it is thought, can be clearer than that this property, in the hands of a *bona fide* purchaser, from the executors, who had power to sell, should be