

The argument in this case is, that as the claims of Mr. Glenn, who has given the bond, just exceeds \$4,000, a full indemnity will be secured to him by retaining that amount, with such additional sum as may be required to cover interest and costs. But in the view which I take of this case, a state of things may very well happen, which would render this course altogether wrong, and in its results any thing but just to the appellant. The orders of this court, under which these funds have been distributed, exclude a particular class of creditors, as not within the protection of the mortgage, and also certain other claims, as insufficiently proved. These orders are appealed from, and in case the Court of Appeals should reverse my decree, they will, as was decided in the case of *Diffenderffer vs. Winder*, 3 G. & J., 311, "exercise, as it were, an original equity jurisdiction, and place such a decree upon the record as the Chancellor ought to have passed."

Now, suppose the Court of Appeals should think that this court erred in excluding the holders of the notes of Hancock & Mann, which bear date prior to the mortgage of the 11th of April, 1846, or in excluding any other class of creditors for any cause, and should decide that all should come in and participate in the fund, is it not apparent that if Mr. Vickers, and the creditors who are now let in, should be permitted to receive their dividends, swelled as they are by the exclusion of those above referred to, that a manifest wrong would be done to the appellant? In that event Mr. Vickers and the others would receive more, and the appellant less, than his due proportion of the fund. It is, as I conceive, no answer that the creditors of the excluded class have not appealed, because if the decree of this court should be reversed, the appellate court will decide the cause in the exercise of a *quasi* original jurisdiction, and may direct many creditors to come in and take shares of this fund who have been shut out.

If the application of this petition is granted, it follows of course, that all others situated like him must be likewise paid, the court simply retaining so much of the fund as may be necessary, in its judgment, to indemnify the