

and properly the hand of the Court; but his appointment determines no right; nor does it affect the title to the property in any way; it will not even prevent the running of the Statute of Limitations. The holding of the receiver, is the holding of the Court for him from whom the possession was taken; therefore, should any loss happen it must be borne by him from whom the property was taken, not by the party at whose instance the receiver was appointed. *Pow. Mort.* 294, note; 2 *Mad. Chan.* 233.

But it has been argued, that a measure so prompt and vigorous, as that which has been adopted upon the present occasion, may be applied to the most pernicious purposes; that it is open to the greatest abuse; and that the consequences of such a procedure among commercial people, may become most mischievous and irreparably ruinous in its operation. I have meditated upon what has been urged in this respect.

That this Court should have the power in unusual and pressing emergencies, at the instance of a party interested, effectually and without delay to put its hand upon property, so far as to prevent waste, inextricable confusion, or total destruction, seems to be admitted by all to be clearly right, or at least highly beneficial. The apprehension of abuse from such a power, when exercised by means of a receiver, seems to have arisen from a contemplation of the circumstances of this case. These parties were merchants, who had been extensively engaged in trade in the great emporium of our State. And, any merchant, it has been said, by means of this power of the Court of Chancery, may have his counting-house *closed, his trade broken up, and his commercial reputation utterly blasted at a single blow, by a malignant application **422** for the appointment of a receiver, founded on a statement of facts altogether fabricated and false.

There is one general answer, that may be given to this assertion; which is, that the plainest, most temperate, and best guarded forms of judicial proceedings, known to the common law, have been abused and made the instruments of malice. Of which the multitude and variety of the reported examples, in actions for malicious prosecutions and arrest, afford too strong proof; and, even in this very case, the defendants, by their answer, desire it to be recollected, that the well guarded common law process of replevin has been wantonly and grossly perverted and abused to their great wrong and injury. But upon the present occasion, since these applications have, of late, become more frequent, it may be well to consider this matter more particularly.

A receiver is never appointed before answer, but upon very strong special ground supported by affidavit; *Duckworth v. Trafford*, 18 *Ves.* 283; or, as is the practice in this State, on a bill sworn to by the complainant; or, in case of his not being in this State, by some one conusant of the facts stated. A motion to re-