

condition of actual insolvency; yet under other circumstances, his own interest would withhold him from attempting to have this power of the Court of Chancery applied to an unjust and pernicious purpose; for, it is rare that a man coolly indulges his malice to the ruin of his own interests. And, therefore, it cannot often happen, that a partner will deliberately abandon a gainful and prosperous traffic in which he is in the undisturbed participation, and maliciously endeavor to break it up, by fabricating such a statement as will induce the Chancellor to order the joint funds into the hands of a receiver. *Gov. Partner. 244.*

But, suppose a partner, in a prosperous and lucrative concern, to be actuated by such malignant feelings; how far could he carry *the abuse of this power; and to what extent, by its means, could he injure his antagonist? The appointment of a re- **424**
ceiver does not, of itself, divest any one of possession; it merely authorizes the receiver to demand, and to accept the possession when voluntarily delivered, or to take it when held by no one else. For, if the holder of the property refuses to deliver it, the receiver or party interested must apply to the Court for an order to deliver possession, or to shew cause to the contrary. In all cases, where the order making the appointment has been made *ex parte*, and before answer, the defendant is allowed to come in at an early day and move to have the order rescinded. And, as regards third persons, who may have an interest in property thus ordered to be taken possession of by a receiver, they too are allowed, in a summary way on notice of motion, to come in and be examined *pro interesse suo.* *2 Mad. Chan. 245.*

Upon the whole, from whatever point of view this Chancery power may be contemplated; or in relation to whatever of the various emergencies, to which it has been applied, it may be considered, it will be found in all respects as safe, and as little liable to abuse as any judicial procedure known to the common law. It will be found in practice, that little or no useless pressure can be produced in any case; and that, in no instance, can the mischief continue long before the party aggrieved may have an opportunity of being fully heard, and of obtaining complete relief.

This bill has been filed by one partner against his co-partners, charging them with a design to consume and waste the joint property, or to apply it to their own use: and it avers, that the firm is absolutely insolvent. The answer denies these charges of the bill, but admits the insolvency of the firm; and then charges the plaintiff with a design so to apply the joint funds as to give an undue and improper preference to one or more of their creditors. These parties have, in many respects, given an opposite and very different account of the state of affairs between them. They both, however, admit the present insolvency of the firm, and agree, that