giving of an undue and improper preference, under such circumstances, is denounced by the express provisions of our insolvent laws, as a fraud. And in all cases, where a Court of Chancery can be called on, and does interpose for the purpose of administering the assets of an insolvent debtor, it is governed by the rule of equality; because equality is equity. The assets, if insufficient to pay all, are always distributed proportionably. But, although this is the duty of an insolvent debtor; and is what a Court of Chancery will do for him in all cases, where his effects can be subjected to its control; yet if a creditor can fairly and legally obtain full payment from his insolvent debtor, equity will not deprive him of his legal advantage and compel him to refund.

These parties admit themselves to be insolvent debtors. The plaintiff charges his co-partners, the defendants, with a design to waste the joint property, and to apply it to their own use. The defendants deny these allegations, and charge the plaintiff with a design to misapply the funds, and to give to some of the creditors an undue preference. Taking the charges of the plaintiff and of the defendants, or of either party to be true, or allow, that each or either party was about to waste the property, or has his favorite creditors to whom it is his design to give an undue preference; and it is clear, that one or the other or both of them have formed a fixed resolution to violate one of the great principles of equity, which it is the peculiar province of this Court to prevent. None of the creditors of these insolvent debtors, so far as it appears, have, as yet, obtained any legal advantage. It is proper therefore, that this Court should now lay its hands upon joint property of this partnership, and let all its creditors come in *pari passu*, and according as their respective priorities, if any, should appear. Both parties profess to have had this equitable distribution in contemplation; both acknowledge themselves to be in that insolvent condition, in which the making of such an equitable distribution has devolved upon them as a duty. And yet each charges the other with having made an effort, and formed a fixed design to disregard this duty. Neither of them seems to have the least confidence in the other. Under all these circumstances, I consider this as a case, in which it is peculiarly fit and proper, that a receiver should have been appointed before answer, and should now be continued,
* as a means of winding up the affairs of this partnership in **427**
safety, and with justice and equality to all concerned. *Peacock* v. *Peacock*, 16 *Ves.* 49.

It follows as a necessary consequence of appointing a receiver before answer, that the selection of the person to be appointed must be made by the Chancellor on the *ex parte* recommendation of the party applying for the appointment. In England, the selection of a suitable person is, most commonly, referred to a master, by whom both parties may be heard; but here, that duty must be