

LAURENCE THOMPSEN ET AL. }
 vs. } DECEMBER TERM, 1849.
 AUGUSTUS DIFFENDERFER ET AL. }

[RECEIVER—RULES OF EVIDENCE AND PRACTICE.]

THE court interposes, by appointing a receiver against the legal title, with reluctance, and fraud, or imminent danger, if the intermediate possession should not be taken by the court, must be clearly proved.

Though the court will not, by the appointment of a receiver, deprive a prior mortgagee, having the legal title, of his right of possession, it will not permit him to object to such appointment, by any act short of a personal assertion of his legal right, and taking possession himself.

The power of appointing a receiver, is a delicate one, and to be exercised with prudence and circumspection, yet, upon a sufficient cause stated and proved, the court will exercise the power, though, by so doing, the business of the defendants as merchants would be broken up.

It was urged, that the defendants should be required to offer proof in support of some of the statements of the answer, though responsive to the bill; because such proof was within their reach, whilst it was inaccessible to the complainants. **HELD—**

That the rule, that the answer, when responsive to the averments of the bill, shall be taken as true, unless discredited by two witnesses, or one witness with pregnant circumstances, is not subject to the modification which the introduction of such a principle would involve.

[The original and amended bills in this case, were filed by certain of the creditors of the firm of Diffenderfer and Brothers, against the members of said firm, and Sampson Cariss and Catharine S. Diffenderfer, stating that the defendant first named had commenced business in the city of Baltimore about the year 1846, and by falsely representing the extent of their means, had obtained credit with the several complainants and others, to a large amount; that about the month of October, 1849, they ceased to pay their debts, and afterwards called a meeting of their creditors, but at the meeting, and at others subsequently appointed by them, and in fact ever since, had refused to exhibit to their creditors the state of their affairs, putting them off on various pretences; that since their suspension they had refused to pay their creditors in whole or in part, but had been engaged in selling off their goods for cash, and ap-