

points a receiver merely because the measure can do no harm." "This principle reconciles the cases found in the books."

The bill in this case alleges a variety of facts, which do show the fund to be in danger, and if proved to be true, or admitted, would be sufficient to overcome the reluctance of the court to interpose against the legal title, and take the possession of the property under its care, as a measure of safety. It alleges, that the defendants, the Diffenderfers, are insolvent, and wasting and misapplying the property from which the creditors could only expect to be paid; and there would seem to be no doubt of the power, and the duty of the court to interpose in such a case, even against the opposition of the mortgagees, Cariss and Catharine R. Diffenderfer; for though in the case of a prior mortgagee, having the legal title, the court will not, by the appointment of a receiver, deprive him 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. *Silan vs. The Bishop of Norwich*, 3 Swans., 112—115.

And as the defendants, the mortgagees in this case, do not propose exerting their legal rights by taking possession; but, on the contrary, express their willingness and consent that the mortgagors shall continue in possession of the property, and employ and dispose thereof in their business, it follows that the mere existence of the mortgages executed for their security, would not induce the court to forbear from appointing a receiver, if, independently of such mortgages, it would be proper to do so.

The question, therefore, is, have the complainants made out by clear proofs, or admissions, such a case as, according to the established principles regulating this branch of the jurisdiction of this court, entitles them to its interposition in their behalf, by appointing a receiver?

It is conceded that the power is a delicate one, and to be exercised with prudence and circumspection; and there can be no doubt that in the case of a commercial firm actually engaged in trade, the power of the court, as invoked upon the present