

JOHN O'BRYAN
 vs.
 FRANCIS A. GIBBONS. } SEPTEMBER TERM, 1849.

[PARTNERSHIP—INJUNCTION—RECEIVER.]

A Partnership is entered into for a special purpose, to wit, the delivery of 40,000 feet of plank stocks at a certain place. Subsequently, the partnership was dissolved, the defendant agreeing to pay the plaintiff for his interest in the timber at certain rates specified in the contract of dissolution. A bill was then filed to set aside this contract of dissolution on the ground of fraud, and praying for an injunction and the appointment of a Receiver. Upon the motion to dissolve the injunction, it was HELD,—

That in case where a partnership still subsists, to authorize either party to apply for an injunction and the appointment of a Receiver, he must be prepared to show a case of great abuse or strong misconduct. Query—Should not the bill likewise ask for a dissolution of partnership?

After dissolution, the objection to an injunction and the appointment of a Receiver, is not so strong. But to induce the court to exert this strong authority, some urgent and pressing necessity must be shown.

Upon the motion to dissolve, the court cannot decide that the contract of dissolution is void. This contract transferred the legal title to the defendant, and this court is always reluctant to interfere in opposition to the legal title, and will only do so in case of fraud clearly proved, and of imminent danger.

[The facts of this case are fully stated in the Chancellor's opinion.]

THE CHANCELLOR :

This case coming before the court upon the motion to dissolve the injunction, and the counsel having been heard on both sides, the bill, answer, and the other proceedings, have been carefully read and attentively considered.

The contract of partnership between these parties was formed on the 21st of January, 1848, and was for the special purpose therein specified, that is, for the delivery of a certain quantity of timber, say, forty thousand feet of plank stocks, to be delivered at Kittery, in the state of Maine, in fulfilment of a contract which one of them, the defendant, had with the Government of the United States. The contract of partnership was by its terms, confined to that particular engagement, and the parties were to divide the profits after the payment of all expenses.