

it. It appears to me, then, and does now, that every allegation in the bill upon which, according to the established doctrine of this court, the propriety of appointing a receiver rests, was neutralized by the answer, and consequently, that, I should be interfering with the legal title, and wresting from the surviving partner the right which the law devolves upon him, without any evidence of a breach of duty or of the contract of partnership on his part.

The question, therefore, now to be considered is, whether there is in the evidence any thing which will justify the court in continuing this injunction, involving as its continuance does, the appointment of a receiver?

It was observed by the counsel who concluded for the plaintiffs, that, inasmuch as the defendant had expressed his willingness to sell immediately the remaining stock of the firm, if the court should direct it, it was a mere question whether this sale should be made by the agent of this court, who would be required to give security, or by the defendant who gives none. This view of the question appears to me to be too narrow. The appointment of a receiver does not merely carry with it an authority to sell the remaining stock of the firm, but confers the general power to take possession of its books, papers and effects, to receive its outstanding debts and wind up its affairs. It completely displaces and supersedes the authority of the surviving partner, putting the agent of this court in his shoes, and clothing him under its supervision with all the rights and duties which the law confided to the surviving partner. The management of his own interest in the concern, be it great or small, is taken from him and lodged elsewhere, and probably in hands not having the advantage of his skill and experience.

It seems to me that to give to an offer such as is contained in this answer, dictated as it manifestly was by a willingness on the part of the defendant to submit himself unreservedly to the authority of the court, and to comply with the wishes of his adversary, the effect contended for would be to pervert it to a purpose never contemplated, and, under the circumstances, unjust.