

closed, his trade broken up, and his commercial reputation utterly blasted at a single blow, by a malignant application for the appointment of a receiver, founded on a statement of facts altogether fabricated and false.

There is one general answer, that may be given to this assertion; which is, that the plainest, most temperate, and best guarded forms of judicial proceedings, known to the common law, have been abused and made the instruments of malice. Of which the multitude and variety of the reported examples, in actions for malicious prosecutions and arrests, afford too strong proof: and, even in this very case, the defendants, by their answer, desire it to be recollected, that the well guarded common law process of replevin has been wantonly and grossly perverted and abused to their great wrong and injury. But upon the present occasion, since these applications have, of late, become more frequent, it may be well to consider this matter more particularly.

A receiver is never appointed before answer, but upon very strong special ground supported by affidavit;(d) or, as is the practice in this State, on a bill sworn to by the complainant; or, in case of his not being in this State, by some one conusant of the facts stated. A motion to rescind an appointment is always heard on a short notice; and a receiver is in no case permitted to take charge of the property without having first given bond with approved surety. So far then this chancery power is at least as little susceptible of abuse as the process of replevin, as is shewn by the example furnished by the defendants' answer. But, this is not all; there are other safeguards against the abuse of this power. The court always reluctantly interferes against the legal title, only in a case of fraud clearly proved, and of imminent danger; and a receiver will not be appointed when the matter in dispute depends on the legal title; unless strong grounds are shewn, and the rents and profits are in imminent danger.(e)

Where a plaintiff is permitted to come into a court of chancery in behalf of himself and other creditors, or may sue here because of the equitable nature of his claim, and in respect of a fund in the hands of the defendant, out of which he has a right to ask payment, he may, under certain circumstances, have a receiver put upon the property or assets liable to his claim. But under no other

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(d) *Duckworth v. Trafford*, 18 Ves. 283.—(e) *Lloyd v. Passingham*, 16 Ves. 59; *Norway v. Rowe*, 19 Ves. 148, note; *Maguire v. Allen*, 1 Ball & Bea. 75.