

circumstances does it appear, that the estate of a debtor may be put into the hands of a receiver at the instance of a *creditor*. In most cases the application is founded upon the fact, that waste, or peril has assailed or does then immediately threaten the property in question. But there are cases in which it may become necessary to interpose for the purpose of keeping the profits of an estate in litigation apart from those arising from another which is not the subject of controversy; on the ground, that they are likely to become so inextricably mingled as to render it extremely difficult or impossible to make a correct estimate of those of the litigated estate after the right to it shall have been regularly determined. In such cases the court will appoint a receiver of the rents and profits of the litigated property. As where certain wharves were claimed by the plaintiff in opposition to the city of Baltimore, a receiver was directed to collect the wharfage of those wharves, the right to which had been made the subject of litigation, and keep it separate from that collected for the use of other wharves under the authority of the city.(f)

This, however, is not the case of a third person attempting to stop the course of a firm, or of any one then actually engaged in trade; but is the case of a partnership where one of the partners has averred, that their trading has ceased, and that the firm is utterly insolvent, and thereupon asks for the appointment of a receiver as the only means of saving him and their creditors from the fraudulent practices of his co-partners. Now, in cases of partnership it must strike every one, that to whatever extent of malignancy, or fraud a partner might be urged or tempted to go in a condition of actual insolvency; yet, under other circumstances, his own interest would withhold him from attempting to have this power of the Court of Chancery applied to an unjust and pernicious purpose; for, it is rare that a man coolly indulges his malice to the ruin of his own interests. And, therefore, it cannot often happen, that a partner will deliberately abandon a gainful and prosperous traffic in which he is in the undisturbed participation, and maliciously endeavour to break it up, by fabricating such a statement as will induce the Chancellor to order the joint funds into the hands of a receiver.(g)

But, suppose a partner, in a prosperous and lucrative concern, to be actuated by such malignant feelings; how far could he carry

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(f) The Wharf Case, post, vol. ii.—(g) Gow. Partner. 244.