

abuse and misconduct on the part of one partner as that a dissolution ought to be decreed, and the affairs of the concern wound up, for otherwise as observed in one of the cases, the court might make itself the manager of every trade in the kingdom. *Goodman vs. Whitcomb*, 1 *Jacob and Walker*, 569. It, therefore, results that the court will never, on motion, appoint a receiver to take possession of the property and effects of a subsisting partnership, unless it appears that the plaintiff will be entitled to a dissolution at the hearing. The court, as was said by the lord chancellor, in *Waters vs. Taylor*, 15 *Ves.*, 10, and *Peacock vs. Peacock*, 16 *Ves.*, 57, will always pause before it takes a step likely to be so serious to the parties as the appointment of a receiver, which necessarily breaks up the business of the firm.

But, although there is less difficulty in granting this species of relief in the case of a partnership which has already determined, than in one which is still in existence, and although cases may be found in which, where the partnership is dissolved by the act of the parties, judges have said the court will, as of course, appoint a receiver, as in the case of *Law vs. Ford*, 2 *Paige*, 310, and although a similar course may be proper when all the partners are dead, and there consequently is no one living upon whom the original confidence of the partners, *interesse*, can have devolved, yet I am fully convinced that no case or *dictum* can be found in which, in a proceeding against a surviving partner by the representatives of the deceased, the court has appointed a receiver, without being satisfied, by the mismanagement or improper conduct of the surviving partner, that the confidence reposed in him was misplaced. The authorities already referred to, establish this proposition, in my opinion, very clearly, and are in nowise contravened by the cases of *Wilson vs. Greenwood*, 1 *Swanst*, 481, and *Harding vs. Glover*, 18 *Ves.*, 281. Indeed, in the last case, Lord Eldon expressly disavows the principle that the court will, as of course, appoint a receiver upon the mere ground of the dissolution of the partnership, and says there must be some breach of duty, or of the contract of partnership.