

posing of any of said effects, and for the appointment of a receiver to take charge of the affairs of the partnership.

The injunction was granted and the motion for a receiver set down for hearing on the 1st of May, 1848, and on the 19th of May a receiver was accordingly appointed. The answer of Roberts was filed on the 19th of June, 1848, denying the equity of the bill, and all the various charges of misapplication of the effects, his own insolvency, &c. And a motion was entered to dissolve the injunction and discharge the receiver. Upon the hearing of which the following opinion was delivered.]

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THE CHANCELLOR :

It appears by the bill and answer in this case, that a commercial partnership was formed between these parties in October, 1845, which terminated by mutual consent in April, 1847, and that until the 15th of May, 1847, the property and effects, books, papers and debts due the firm, were transferred by the plaintiff to the defendant, upon an undertaking on the part of the latter, to secure and save the plaintiff harmless, from the claims of creditors. The bill alleges, and the answer admits, that upon this agreement, the property and assets of the firm were handed over to the defendant, upon his engagement to pay the debts, settle up its affairs, and protect the plaintiff from loss. And an exhibit is filed with the bill which with the statements contained in the latter, together with the admissions in the answer, show this to have been the contract of the parties. The answer to be sure, sets up an additional agreement, but as this is not exhibited, and the answer in this respect is not responsive to the bill, no notice can be taken of it.

The gravamen of the bill, upon which its claim to the equitable interposition of this court rests, in the form in which it is invoked, is, that the defendant has failed to comply with his engagement : 1st, in omitting to take proper steps to get in the assets of the firm ; 2d, in wasting and misapplying them, and 3d, in the danger to which the plaintiff is exposed, in consequence of the apprehended insolvency of the defendant, and his, the plaintiff's, responsibility to the creditors of the firm.