the capacity, by additions and improvements of the Hotel, and in every respect made it a first-class house, with a reputation as such, which extends beyond the Atlantic.

McLaughlin left a last will and testament, in which he provided for continuing the business of the Hotel establishment, as enlarged and improved by him, for the benefit of his heirs, with Zenas Barnum as Trustee; the latter died also leaving a last will and testament with Bennett and Gegart, now made respondents, as his executors, who as his executors, superseding him in the trust under McLaughlin, carried on the Hotel for the benefit of the latter's heirs, until Mrs. Anne Barnum (now Gordon,) widow of Zenas, and daughter and devisee of McLaughlin, was, by decree of this Court, substituted in place of Zenas Barnum's executors, in the trust under her father's will; since when, she as such Trustee, has carried on the Hotel, as her father's estate, for the benefit of his devisees.

Upon the reappearance of the case in this Court by remand of the Court of Appeals for further proceedings here, Complainants filed their bill of revivor, making the necessary new parties, and in which they raise new issues, make out a new case, and ask for relief additional to and far beyond those presented by the original bill, and the case there made out and remanded from the Court of Appeals.

They also, in their bill of revivor, pray for the

appointment of a receiver, and it is upon this prayer for the appointment of a receiver in the bill of revivor, and for an order to grant an injunction on their petition subsequently filed viz: on the 9th of July 1867, and after the argument on the question of appointing a receiver had closed, that this case is now before this Court.

The first point suggested by these proceedings, is, that the appointment of a receiver and the grant of an injunction prayed for by the Complainants, is not upon an ex-parte proceeding; the parties are all in Court, and the record is before the Court, and in its action in the appointment of a receiver and grant of an injunction, the Court is not guided by the statements and allegations of the Complainants, but will look to and is bound to notice the whole record; and in the view I take of this case, if considered as an exparte proceeding, the Complainants had made out a case in their bill of revivor and petition calling for the interposition of the Court by the appointment of a receiver and grant of injunction, which they have not, inasmuch as the essential elements of the apparent fraud and danger are wanting, still looking to the whole record, every charge and allegation upon which the Complainants base, or pretend to base their right to a receiver and injunction, are sworn away by the answers.

But, again, it is further to be observed and held steadily in view, that the case which this Court