estate.

Further, it has been seen that Andrew McSaughlin, governed by advice of counsel, then deemed sound by all parties, purchased of the devisees under David Barnum's will, what he and they then considered an absolute estate in the Hotel property, and paid them respectively what they and he deemed a full and adequate sum for such an estate, and thus he and his vendors, among them the father of these Complainants, then believed, became the sole owner and proprietor of the Hotel property in his own right, except the share held in right of his wife, and all his purchases of other lots additions, improvements &c, and his expenditure of money upon, and all other of his acts in reference to this property, were in fair faith based and acted upon in this belief.

It cannot therefore be rightly charged, that McSaughlin in his own wrong, acted as Trustee, and managed the estate for the benefit of these Complainants; or, that at this stage of the proceedings, he or his representatives can be held accountable to them as such, to any further extent than in respect to the estate left by David Barnum, which he charged with the payment of certain mortgage and other debts; and as to how far these debts may have eaten into the estate, is a question yet open to proof.

Under this state of facts, the Complainants ask that the estate of the City Hotel property, not as left in its then comparative small and inferior condition by David Barnum, but the

whole estate in its present greatly enlarged and improved highly valuable condition, as left by Andrew McSaughlin, and which increased valuation it is fair to infer, in view of the proceedings now had, was the result of his skill, diligence and labor, and which it would be against conscience and equity to deprive his children of the benefit, shall be put in the hands of a receiver, and bound up and held within the grip of an injunction.

This is a Court of Equity, where conscience is the great leading light and rule to point the way to right and justice; and in an ex parte proceeding, where the Court acts upon the allegations and charges of the Complainant alone, it will look well to the ground work of the application to see that the rights of none are improvidently invaded, before resorting to the extraordinary powers here asked for. This is not an ex-parte proceeding.

The parties and their record are before the Court, and it is bound and will, as a matter obligatory, take notice of the whole record: that record raises all the issues between the parties, and are now the subjects of proof, but presents no case which calls for the appointment of a receiver or granting an injunction; and it is further to be considered, that Courts do not enter upon the business of Hotel keeping by the interposition of receivers in substitution of the litigants, and the effect therefore of appointing a receiver and granting an injunction in this case, would probably be to lock up the City —