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THE SCHOOL OF LAW AND THE ST. LOUIS RECEIVERSHIP SURVEY

The report of the Receivership Survey Committee of the St. Louis Bar Association, made public February 20, 1934, has been welcomed by lawyers and by business men generally, as an earnest effort on the part of the Bar Association to clear the clouded factual atmosphere surrounding a branch of the law which has long been the subject of controversy in St. Louis—receivership practice in the St. Louis Circuit Courts. Consequently, it was considered appropriate that this issue of the ST. LOUIS LAW REVIEW be devoted, primarily, to consideration of receivership law—theory and practice.

The School of Law of Washington University has been intimately associated with the Receivership Survey since its inception. Assistant Professor Israel Treiman planned and directed the activities of the fact-gatherers whose findings constituted the basis for the general report of the Receivership Survey Committee. Joseph H. Grand, Daniel Bartlett, and John Gilmore, graduates of the School of Law, were members of the Bar Association Committee. The work of collecting the facts was done mainly by C. S. Cullenbine and David Campbell, graduates of the School of Law, assisted by Herbert K. Moss, Lewis Sigler, Sylvia Carafiol, and Elizabeth Kausch, all students or graduates of the School of Law.

The School of Law has welcomed the opportunity of cooperating with the Bar Association in an investigation which should have a considerable practical effect as a basis for reforms in receivership practice in St. Louis and in the State of Missouri.

Notes

FOUNDATIONS FOR RECEIVERSHIP IN MISSOURI

The appointment of a receiver is primarily a mode of action by the Equity court, rather than a benefit to be given to either of the litigants. The nature of a receiver is adequately defined by the United States Supreme Court in *Booth v. Clark*:¹

¹ (1854) 17 How. 322, l. c. 331; see *Crawford v. Ross* (1869) 39 Ga. 44; *Beverly v. Brooks* (1847) 4 Gratt. (Va.) 187.

A receiver is an indifferent person between the parties, appointed by the court to receive the rent, issues, or profits of land or other thing in question in the court, pending the suit, when it does not seem reasonable to the court that either party should do it. . . . He is an officer of the court; his appointment is provisional. He is appointed in behalf of all parties, and not of the complainant or of the defendant only. He is appointed for the benefit of all parties who may establish rights in the cause. The money in his hands is *in custodia legis* for whoever can make out a title to it. . . . It is the court itself which has the care of the property in dispute. The receiver is but the creature of the court; he has no powers except such as are conferred upon him by the order of his appointment and the course and practice of the court.

It necessarily follows, therefore, that the appointment of a receiver cannot be made an end in itself. It is ancillary to that relief of the complainant which is the main object of the suit.² The Missouri courts, in discussing the general equitable grounds and nature of receiverships have clearly adopted this view.³

Courts of Equity have inherent discretionary power to appoint a receiver,⁴ unless limited or defined by express statute.⁵ A

² Pusey & Jones Co. v. Hanssen (1922) 294 U. S. 491; In re Richardson's Estate (1923) 294 F. 349; Wilson v. Waltham Watch Co. (1923) 293 F. 811; 1 Clark, Receivers (2d ed. 1929) sec. 51.

³ Jones v. Schaff Bros. Co. (1915) 187 Mo. App. 597, 174 S. W. 177; Pullis v. Pullis (1900) 65 Mo. 565, 57 S. W. 1095; State ex rel. Merriam v. Ross (1894) 122 Mo. 435, 25 S. W. 947; State ex rel. Calhoun v. Reynolds (1922) 289 Mo. 506, 233 S. W. 483; State ex rel. Priest v. Calhoun (1920) 207 Mo. App. 149, 226 S. W. 329. "It is fundamental that there is neither in law or in equity any such thing as a plain receivership action, i. e. an action in which a receiver is the only desideratum. In short the appointment of a receiver by a court of equity, except in rare cases arising out of lunacy or infancy, is ancillary wholly to some other action having some definite relief in view." Price v. Banker's Trust Co. (Mo. 1915) 178 S. W. 745.

⁴ Laumier v. Sun-Ray Products Co. (1932) 330 Mo. 542, 50 S. W. (2d) 640; Cox v. Volkert (1885) 86 Mo. 505; 4 Pomeroy, Equity Jurisprudence (4th ed., 1919) sec. 1483.

⁵ For instance the following statutes affecting the appointment of receivers are in force in Missouri: *Attachments*, R. S. Mo. 1929, Sec. 1303: Authorizes circuit court to appoint receivers in aid of attachments— ". . . in a proper case." Sec. 2244: Justice of the Peace shall not have "power to appoint a receiver of attached property." *Corporations*: R. S. Mo. 1929, Sec. 4580: Upon a corporation's failure to obey a writ of *mandamus* "the court or judge may, upon application of the plaintiff, . . . fine such corporation in any sum whatsoever, and appoint a receiver and direct that he take possession of and preserve, control and manage all the property, rights, privileges, franchises and business of such corporation, and that he proceed to do the act or acts required to be done by such peremptory writ of *mandamus*. . . ." Sec. 4597: Provides for the appointment of a receiver for corporations formed in a foreign country and maintaining an office within the

statute declaratory of this principle has been enacted in Missouri.⁶ This statement of the broad rule of law applicable is acceptable to all. Difficulties arise when attempts are made to lay down principles which are to guide the exercise of judicial discretion in the granting of receiverships. The cases and textbooks point out three major principles by which judicial discretion is to be guided.⁷ These are: (1) imminent danger to the property involved; (2) reasonable probability that the plaintiff will prevail on the merits; (3) insolvency of the defendant, if accompanied

state. Sec. 5008: On judgment of forfeiture or dissolution of benevolent, religious, fraternal, etc., corporation, the court may appoint a receiver. Sec. 5063: "In case of the failure of" a bond investment company "the circuit court of the county or city in which the principal office is located, upon the application of one or more of the shareholders, shall appoint a receiver for such company. . . ." Secs. 5626-27: Provisions for appointment of receiver for building and loan associations. Sec. 4993: Provides for receiver for co-operative company. Sec. 6016: Provides for receiver for fraternal insurance company. Sec. 6017: Only the attorney-general can make such an application. Sec. 5965: Receiver for insurance company can be appointed on the petition of the superintendent of insurance. Sec. 4960: Court may appoint receivers of manufacturing and business companies. Sec. 4768: Receiver for railroad for violation of statutory regulations with regard to shipments of grain in bulk. Sec. 8706: Receiver for corporation violating statutory provision against pools, trusts, and conspiracies in restraint of trade. *Married Woman's Property*: R. S. Mo. 1929, Sec. 1518: "Any married woman may file her petition in the circuit court setting forth that her husband, from habitual intemperance, or any other cause, is about to squander and waste the property, money, credits or choses in action to which she is entitled in her own right, . . . or is proceeding fraudulently to convert the same . . . to his own use . . . , and the court may, upon hearing of the case, enjoin the husband . . . and may appoint a receiver to control and manage the same for the benefit of the wife. . . ." *Miscellaneous*; R. S. Mo. 1929, Sec. 3064: Court may "at discretion" during redemption period appoint receiver to take charge of the property. Sec. 3128: Vendee may be receiver in case of fraudulent sales of merchandise (bulk sales law). Sec. 2626: "If the tenant in possession of any land shall, pending a suit to recover or charge said land, commit waste thereon, the court in which the suit may be pending may order a receiver to take possession of the land." Sec. 1176: Evidences of debt are liable to seizure and being placed in hands of a receiver appointed by the court.

⁶ "The court, or any judge thereof in vacation, shall have the power to appoint a receiver, whenever such appointment shall be deemed necessary, whose duty it shall be to keep and preserve any money or other thing deposited in court, or that may be subject to tender, and to keep and preserve all property and protect any business or interest entrusted to him pending any legal or equitable proceeding concerning the same, subject to the order of the court." R. S. Mo. 1929, Sec. 998. This statute has been held to be declaratory of the general equitable jurisdiction to appoint a receiver, *Price v. Banker's Trust Co.* (Mo. 1915) 178 S. W. 745, and "does not shorten the arm of the court," *Greeley v. Provident Savings Bank* (1891) 103 Mo. 212, 15 S. W. 429.

⁷ *Bushman v. Bushman* (1925) 311 Mo. 551, 279 S. W. 122; 4 *Pomeroy, Equity Jurisprudence* (4th ed., 1919) pp. 3504-3508; 1 *Clark, Receivers* (2d ed., 1929) sec. 49.

by other factors such as the absence of any legal remedy, or any other equitable ground justifying such relief. Obviously, these so-called guides are very general. About the most definite statement which can be made is that the appellate courts will not reverse the discretionary act of the judge granting the appointment, unless there has been a palpable abuse of discretion.⁸

These general guides or principles have been enunciated in the Missouri appellate decisions. The spirit of the above mentioned guides has been applied fairly in the consideration by the higher tribunals of those receivership cases which have come before them for review. The first group of cases to be reviewed here are those in which it has been held that the factual set-ups did warrant the appointment of a receiver, and that the lower court had not erred in making such appointment.

In *Cantwell v. Columbia Lead Company*⁹ the petitioner was a minority stockholder in the defendant corporation, who alleged that the majority of the stockholders, aided and abetted by the board of directors and the officers of the corporation, were trying to force out the minority by unfair means and mismanagement. The court stated:

"The board of directors of a company are but trustees of an estate for all the stockholders, and may not only be amenable to the law, personally, for a breach of trust, but the corporate power under colour of office to effectuate a contemplated wrong may be taken from them when by fraud, conspiracy, or covinous conduct or extreme mismanagement, the rights of the minority stockholders are put in imminent peril, and the underlying, original, corporate *entente cordiale* is unfairly destroyed."

In *Stark v. Grimes*¹⁰ the plaintiffs were the heirs of the defendant's deceased wife, and alleged that there had been an agreement between the defendant and his wife that neither should receive any of the other's estate at death. Upon the death of the wife, the defendant had been appointed administrator. The plaintiffs, suing to obtain the property to which they alleged themselves entitled, prayed the appointment of a receiver pending this suit, on the ground that such appointment was necessary in view of the conflict of interests and extreme unfriendliness existing between them and the defendant. The substitute court held that a receiver had properly been appointed as a relief ancillary to the main purpose of the plaintiffs' suit.

⁸ *Abramsky v. Abramsky* (1914) 261 Mo. 117, 168 S. W. 1178; *State ex rel. Hampe v. Ittner* (1924) 304 Mo. 125, 263 S. W. 158.

⁹ (1906) 199 Mo. 1, 97 S. W. 167.

¹⁰ (1901) 88 Mo. App. 409.

In *Smith v. Kansas and Independence Short Line Railroad Company*¹¹ the defendant corporation was in debt, and the plaintiff stockholders were liable for debts but were entitled to be reimbursed by the other stockholders, according to the number of shares held by them. There had been no acting officers of the corporation for eighteen months and the corporate franchise had been forfeited. The Court of Appeals held upon review that the appointment of a receiver by the lower court was justified, because there was no adequate remedy at law for the stockholders, and they were in great danger of losing more money unless a receiver was appointed.

The above three cases are typical of those in which the Missouri appellate courts have allowed receiverships granted by the lower courts to stand, as properly granted.¹² The next group of cases includes those in which lower court action has not been sustained. Consequently either the decision of the lower court was reversed or a writ of prohibition was issued to prevent the receiver from discharging his functions.

In *State ex rel. Hadley v. People's United States Bank*¹³ a receiver had been appointed on the relation of the attorney-general, on the ground that there had been mismanagement of the bank. There had been purchases of stock by the defendant bank in other companies, which purchases were ultra vires. In addition there had been a fraud order issued by the postmaster against the bank, and its president had appointed dummy directors. The Supreme Court of Missouri held that there was no adequate ground for the appointment of a receiver in this case: *first*, because the ultra vires acts had been discontinued and there was no immediate danger to the bank therefrom; *second*: the mere fact that a fraud order had been issued did not mean that the officers of the bank could not change its policy and put it back in good condition; *third*, under the flexible power of the court, authorized by statute,

¹¹ (1892) 52 Mo. App. 439.

¹² The following are Missouri cases in which the appellate courts affirmed the appointment of a receiver by the trial court: *Cox v. Volkert* (1885) 86 Mo. 505; *Thompson v. Greeley* (1891) 107 Mo. 577, 17 S. W. 962; *Glover v. St. Louis Mutual Bond Inv. Co.* (1897) 138 Mo. 408, 40 S. W. 110; *State v. Phoenix Loan Ass'n* (1900) 159 Mo. 102, 60 S. W. 74; *Tuttle v. Blow* (1903) 176 Mo. 158, 75 S. W. 617; *State v. Shelton* (1911) 238 Mo. 281, 142 S. W. 417; *State v. Guthrie* (1912) 245 Mo. 144, 149 S. W. 305; *State v. McQuillan* (1914) 261 Mo. 117, 168 S. W. 1178; *State ex rel. Elam v. Henson* (Mo. 1919) 217 S. W. 17; *Commonwealth Finance Corp. v. Mo. Bus Co.* (Mo. 1921) 233 S. W. 167; *State ex rel. Hampe v. Ittner* (1924) 304 Mo. 135, 263 S. W. 158; *Keokuk Northern Pipe Line Co. v. Davison* (1886) 13 Mo. App. 561; *Martin v. Hurley* (1900) 84 Mo. App. 670; *Hammar v. St. Louis Motor Carriage Co.* (1911) 155 Mo. App. 441, 134 S. W. 1060; *Moser v. Renner* (Mo. App. 1931) 40 S. W. (2d) 490; *Williams v. Safety Savings and Loan Ass'n* (Mo. App. 1933) 58 S. W. (2d) 787.

¹³ (1906) 197 Mo. 598, 94 S. W. 953.

the court could have taken care of the fact that there were too many proxies in the hands of one man. Consequently none of the necessary elements justifying appointment of a receiver were present in the case—there was an adequate remedy at law and no imminent danger that the bank would lose more money.

In *State ex rel. Priest v. Calhoun*,¹⁴ a receiver had been appointed in the circuit court under the following set of facts: Receivers had been appointed for the Blue Bird Manufacturing Company, which owned 51 per cent of the stock of the Blue Bird Appliance Company. The latter company owed the former \$250,000. Other creditors were making attachments upon the property of the Appliance Company, whose officers and directors had resigned. The receivers of the Manufacturing Company prayed that a receiver be appointed for the Appliance Company, to safeguard the stock value and creditor's claim which the Manufacturing Company had in the Appliance Company. The Court of Appeals held that there were no grounds justifying appointment of the receiver for the Appliance Company, because since the receivers of the Manufacturing Company had control of the Appliance Company they could elect new officers and protect themselves.

A recent example of the strict compliance of the Supreme Court of Missouri with the general equitable principles of receivership appointment is *State ex rel. Kopke v. Mulloy*,¹⁵ in which a stockholder petitioned for the appointment of a receiver, alleging that due to mismanagement and changed economic conditions the corporation was indebted beyond any possibility of repaying all of outstanding obligations and could not possibly be operated at a profit. The Supreme Court, directing a writ of prohibition against further action of the receiver appointed in the lower court, pointed out that a receiver is to be appointed only where there is a reasonable probability that the plaintiff will obtain the ultimate relief sought. In the particular case, because the corporation, according to the plaintiff's allegations, was so deeply indebted that it could not pay even the claims of its creditors, there was no chance that the petitioning stockholders could ultimately obtain the relief sought, namely some recovery on his investment.¹⁶

¹⁴ (1920) 207 Mo. App. 149, 226 S. W. 329.

¹⁵ (1931) 329 Mo. 1, 43 S. W. (2d) 806.

¹⁶ The following are Missouri cases wherein the appellate courts have reversed the granting of a receiver by the lower court: *State ex rel. Merriam v. Ross* (1894) 122 Mo. 435, 25 S. W. 947; *St. Louis, etc. R. R. v. Wear* (1896) 135 Mo. 230, 36 S. W. 357; *Miller v. Perkins* (1900) 154 Mo. 629, 55 S. W. 875; *St. Louis National Bank v. Field* (1900) 156 Mo. 306, 56 S. W. 1095; *Pullis v. Pullis* (1900) 157 Mo. 565, 57 S. W. 1095; *Loomis v. Missouri Pacific R. R. Co.* (1901) 165 Mo. 469, 65 S. W. 962; *Reese v. Andrews* (1902)

In the light of the strict tests laid down by the Missouri appellate decisions with regard to grounds justifying the appointment of a receiver, it is interesting to note that in the statistical report featured in this issue of the REVIEW,¹⁷ it is pointed out that out of 603 applications for receivership during the eight years from 1925 to 1932, 330 of the cases resulted in appointments, and in only 31 out of the remaining 273 did the court formally deny the appointment after a hearing. This generosity in appointment would seem to indicate that the Circuit Courts of St. Louis seem hardly to have applied the strict tests of the appellate decisions considered in this note.

The percentage of receivership cases which have been taken on appeal to the higher courts of Missouri is very low. It is, however, probably not unreasonable to assume that this dearth of appeals has been due not to the fact that the circuit judge has not exceeded his discretion, but rather to the fact that once the receiver has been appointed the damage to the defendant has been done, and to appeal the case would be practically futile.

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THE INTEREST REQUIRED OF A PETITIONER FOR RECEIVERSHIP IN MISSOURI

The two student notes included in this receivership issue of the ST. LOUIS LAW REVIEW are intended to supplement the statistical report upon receiverships in the Circuit Courts of St. Louis, which is the feature article of the issue.¹ The note preceding this one considered the grounds for receivership in Missouri, in other words the factual set-ups in which the courts have deemed it necessary and proper that this drastic equitable remedy be applied. This note contemplates a consideration of the interest which a petitioner for receivership must show to give himself standing in court. The former note was an effort to answer the

169 Mo. 177, 69 S. W. 4; Ashton v. Penfield (1911) 233 Mo. 391, 135 S. W. 938; Price v. Banker's Trust Co. (Mo. 1915) 178 S. W. 745; Sedberry v. Gwynn (1920) 282 Mo. 632, 222 S. W. 629; State ex rel. Caron v. Dearing (1921) 291 Mo. 169, 236 S. W. 629; Ward v. National Ice Cream Co. (Mo. 1922) 246 S. W. 554; Bushman v. Bushman (1925) 311 Mo. 551, 279 S. W. 122; Ingram v. Clover Leaf Lumber Co. (Mo. 1932) 55 S. W. (2d) 295; State ex rel. Lund and Sager v. Mulloy (1932) 330 Mo. 333, 49 S. W. (2d) 1; Laumier v. Sun-Ray Products Co. (1932) 330 Mo. 542, 50 S. W. (2d) 640; Blades v. Billings Mfg. Co. (1915) 187 Mo. App. 597, 174 S. W. 177; State ex rel. Priest v. Calhoun (1920) 207 Mo. App. 149, 226 S. W. 329.

¹⁷ Treiman, An Analysis of the Statistical Data on Receivership Suits Filed in the St. Louis Circuit Court 1925-1932 Inclusive (1934) 19 ST. LOUIS L. REV. 87.

¹ 19 ST. LOUIS L. REV. 87.