ST. LOUIS
LAW REVIEW

Vol. XIX FEBRUARY, 1934 No. 2

AN ANALYSIS OF THE STATISTICAL DATA ON RECEIVERSHIP SUITS FILED IN THE ST. LOUIS CIRCUIT COURT 1925-1932 INCLUSIVE

BY ISRAEL TREIMAN

INTRODUCTION—PURPOSE, SCOPE, AND METHOD

The data presented herein was collected for the purpose of aiding the Receivership Survey Committee of the St. Louis Bar Association in its study of the disposition of receivership suits, and the administration of estates by receivers, in the Circuit Court of the City of St. Louis. The cases from which this data has been extracted fall within the period selected for study by the Committee, namely, January 1, 1925, to December 31, 1932, and include all cases in which an application for receivership was filed within that period, whether or not such application resulted in a receivership.

During the above-stated period 603 suits involving an application for a receivership were filed. Three hundred and thirty, or about 55 per cent of all the suits, resulted in a receivership appointment. Of the remaining 273 suits, 237 were terminated without a receivership appointment and 36 were pending without a receivership appointment having yet been made at the time when this data was being gathered. Of the 330 cases in which receivers were appointed, 190 had been terminated and 140 were still pending at the time when this data was being gathered. The following table will indicate the number of receivership suits filed and the number of receiverships granted, according to years:

TABLE I. CHRONOLOGICAL DISTRIBUTION OF RECEIVERSHIP SUITS AND RECEIVERSHIPS GRANTED

YEAR	NUMBER OF RECEIVERSHIP SUITS	NUMBER OF RECEIVERSHIPS GRANTED
1925	49	36
1926	33	16
1927	61	42
1928	51	24
1929	53	19
1930	91	43
1931	123	66
1932	142	84

The method of collecting this data was as follows: The Minutes books kept by the clerks of the two Equity divisions of the St. Louis Circuit Court from January 1, 1925, to December 31, 1932, were examined for the purpose of obtaining the court file numbers of all cases involving an application for receivership. After a complete list of these cases had been compiled, the court file for each case was obtained from the office of the Clerk of the Circuit Court. A five-page questionnaire was then prepared for the purpose of compressing into a single and easily digestible record all of the significant facts that could be gleaned from the court file of each case. This questionnaire was applied to every one of the 603 receivership suits filed in the period under survey, and as many of the questions on each questionnaire answered as was possible under the circumstances.[1] Very often a good part of the questionnaire had to be left unanswered either because no record of the necessary facts had ever been filed or because the record was missing from the file when the study was being made. This lack of available information in the court files was especially pronounced in matters pertaining to the financial aspects of the cases. A further obstacle lay in the fact that the court file ordinarily did not reveal the profession or trade of the receiver, and that in a number of receiverships involving estates of con-

[1] The work of collecting the cases in which a receivership application was filed, and of filling out the questionnaires, was done mainly by C. S. Cullenbine (LL.B. Wash. U. '28) and David Campbell (LL.B. Wash. U. '32). They were assisted at various times by the following students or former students of the Law School of Washington University: Herbert K. Moss (LL.B. '33), Lewis Sigler (LL.B. '34), Sylvia Carafiol (LL.B. '33), and Elizabeth Kausch (LL.B. '33).

siderable size the fees paid to the receivers and attorneys in the case were dispensed by private arrangement or stipulation and were therefore "off the record." In such cases, wherever possible, the *lacunae* were filled in with information obtained either by personal inquiry or from the testimony presented before the Bar Association's Committee.

After these 603 questionnaires were completed, the information contained in them was assembled into tables for analytical study.[2] The results of this study form the content of the present paper.[3]

I. The Cases in Which no Receivers Were Appointed

These cases were included in the present survey and subjected to careful study for the purpose of aiding the Committee in answering a question that is often heard locally, namely: Is it generally easy or difficult to obtain a receivership in the Circuit Court of the City of St. Louis? The actual figures show that out of the 603 receivership applications presented to that court in the eight-year period under consideration, 237, or about 39 per cent, did not culminate in a receivership appointment. An analysis of these 237 cases, however, reveals some rather interesting facts. Only 54 of these cases ever came to a hearing before the court, and of these 54 cases that came to a hearing, in only 23 did the court actually deny the application! The remaining 214 cases in which no receivers were appointed were simply *dismissed* either by stipulation or without stipulation (by voluntary dismissal by the plaintiff, or for failure to prosecute, failure to secure costs, etc.). Furthermore, of the 36 cases that were pending at the time when this survey was begun, without a receivership having been granted, in 8 cases a hearing had already been had and the receivership application denied. Adding these 8 cases to the 23 above mentioned, we find, therefore, that *out of the total of 603 suits asking for a receivership the court formally denied after a hearing only 31 or slightly more than 5 per cent!*

[2] This work was done mainly by Mrs. Marguerite S. Pyle, A.B. '24 (Washington University).

[3] The judges and lawyers involved in this report will be referred to herein only by letters of the alphabet. The numbers affixed to the cases mentioned are not the official court file numbers but simply numbers given them for identification in the survey. A code translating these letters and numbers into the actual personalities and cases corresponding therewith was submitted along with this report to the Receivership Survey Committee of the St. Louis Bar Association.

II. Distribution of the Cases as to the Judges Involved

During the period under consideration 23 judges sat at various times in the two Equity divisions of the Circuit Court. Two of these judges—Judge *A* and Judge *B*—each occupied an Equity bench for two regular year terms besides short vacation terms. Twelve were in Equity for one regular year term each, plus short vacation terms, and the remaining nine occupied the Equity bench only for vacation terms or less. In drawing any conclusions from the number of receiverships allowed by each judge, it is of course necessary to take into consideration the length of time occupied by each as an Equity judge. The following table has therefore been prepared for the purpose of showing the total number of receiverships granted by each judge in relation to the total time spent by each in the Equity division. Included in the

TABLE II. ANALYSIS OF RECEIVERSHIP APPOINTMENTS BY EACH JUDGE

Judge	Number Months on Equity Benches (counting full year term as 10 months)	Receivership Appointments (cases)	Average Number Receiverships Allowed Per Month	Per Cent of 330 Receivership Cases
A	22	69	3.136	21%
B	21	64	3.047	19%
C	11	39	3.545	12%
D	12	24	2.	7%
E	12	19	1.583	6%
F	11	19	1.727	6%
G	10	19	1.9	6%
H	11	19	1.727	6%
I	11	15	1.363	4½%
J	11	13	1.181	4%
K	10	10	1.	3%
L	11	10	.909	3%
M	2	6	3.	2%
N	2	5	2.5	1½%
O	10	3	.03	1%
P	2	3	1.5	1%
Q	11	2	.018	9/10%
R	1	2	2.	9/10%
S	1	1	1.	3/10%
T	2	0	0.	0%
U	1	0	0.	0%
V	1	0	0.	0%
W	1 day	0	0.	0%

table are also the figures representing the percentage ratio of the number of receiverships granted by each judge to the total number of receiverships granted by all the judges.

One of the interesting facts revealed by the above table is that *out of the 23 judges who sat in the Equity divisions 4 judges—A, B, C, and D—allowed 196 or almost 60 per cent of the total number of 330 receiverships granted.* Furthermore, it will be seen from the table that when the time element is taken into consideration—the "rate of appointments," or average number of receiverships allowed per month, of these four judges is about twice the average "rate of appointments" of the other twelve judges who sat for at least a full year term in an Equity division.

In connection with this study of the number of receiverships granted by each judge, it was also found that the greatest number of receiverships allowed by any judge during one full year term was 42—by Judge B in 1932. The next greatest was 39 by Judge C, also in 1932, and next to that 30 by Judge A in 1931.

III. Distribution of the Cases as to the Lawyers Involved

This phase of the study was undertaken for the purpose of throwing some light on two questions that seem to be in the fore-

TABLE III. "LAWYER CONTROL" IN RECEIVERSHIP CASES

Total number of granted receivership cases	330	100%
Cases in which an attorney receiver was appointed	185	56%
Total number of receivers appointed	427	100%
Number of attorney receivers appointed	206	48%
Cases in which an attorney receiver and attorney for receiver were appointed in a single case	128	38%
Cases in which 2 attorney receivers and attorney for receiver were appointed in a single case	16	5%
Cases in which 2 attorneys for receiver were appointed	89	27%
Cases in which 3 attorneys for receiver were appointed	10	3%
Cases in which 4 attorneys for receiver were appointed	2	6/10%
Cases in which an attorney for a party in the suit was appointed to some office in the receivership	158	47%
Cases in which an attorney for the plaintiff was appointed to some office in the receivership	121	36%
Cases in which an attorney for the defendant was appointed to some office in the receivership	49	14%
Cases in which an attorney for an intervenor was appointed to some office in the receivership	15	4%
Cases in which an attorney for the plaintiff was appointed attorney for the receiver	112	33%

front of current discussions on the administration of receiverships in the St. Louis Circuit Court, namely: (1) To what extent is the administration of receiverships "controlled" by the legal profession in general? and (2) To what extent do a few lawyers or law firms "predominate" in receivership litigation?

As to the first of these questions, the data as set out in Table III may provide a partial answer.

With regard to the second question, a study was made of all the lawyers who appeared in one capacity or another in each of the 603 cases that were examined. A careful check was then made so as to group together those lawyers who were associated with each other in the same firm. *It was found that there were four law firms that appeared each in more than 5 per cent of the cases, and that the cases in which these law firms appeared totalled more than 31 per cent of the entire number of receivership cases.* The figures on these four law firms are as follows:

TABLE IV. TOTAL APPEARANCES OF FOUR LAW FIRMS APPEARING MOST OFTEN IN RECEIVERSHIP SUITS

FIRM	APPEARING IN CASES	PER CENT OF ALL CASES
W	79 appearances in 65 cases	11%
X	60 appearances in 46 cases	7%
Y[4]	50 appearances in 43 cases	7%
Z	48 appearances in 37 cases	6%

A detailed analysis was made of the various capacities in which these four law firms appeared in the cases. The results are shown in Table V.

Tables IV and V reveal two noteworthy facts: first, that as to the total number of cases the margin between Firm W and the next highest firm (X) is far in excess of the margin between Firm X and those that follow it on the list; second, that there is a striking difference between the character of the majority of the capacities in which Firm X appeared and those in which the other three firms appeared, to-wit—that whereas

[4] The figures on this firm must be qualified somewhat by the fact that the three lawyers who at one time composed this firm were not associated formally with each other during a good part of the period covered by this survey, and that during the year 1932 one of them was not even in the same suite of offices with the other two.

TABLE V. ANALYSIS OF CAPACITIES IN WHICH FIRMS W, X, Y, AND Z APPEARED

Firm	AS ATTORNEY FOR				As Receiver	As Special Councilor	Total Appearances
	Complainant	Defendant	Intervenor	Receiver			
W	38	11	7	17	6		79
X	14	28	3	11	3	1	60
Y[5]	22	13	5	6	3	1	50
Z	21	11	1	12	3		48

Firm X appeared as attorney for the defendant twice as often as it appeared in the capacity of attorney for the complainant, the other three firms appeared as attorneys for the complainant in a far greater number of instances than those in which they appeared as attorneys for the defendant. *Especially worthy of notice is the fact that the leading firm (W) appeared as attorney for the parties seeking the receivership more than three times as often as it appeared in the capacity of attorney for the parties resisting the suit.*

IV. The Receivers—Their Number and Professions

In the 330 cases in which the court granted the application for a receivership, a total of 427 receivers were appointed. In 89 or 27 per cent of the cases, two or more receivers were appointed in the same case.

As has already been seen in Table III, *supra*, 48 per cent of all the receivers appointed were lawyers by profession. Of the remainder, 39 per cent were or had been in some kind of business, and about 10 per cent were public officials (including court clerks, court reporters, etc.). *Of special interest is the fact that in only 20 per cent of the cases was a receiver appointed who could be said to have been in the same general type of business as that of the defendant company.*

For purposes of comparative study, a detailed analysis of the number and character of the receivership appointments by each of the four judges—A, B, C, and D—who together granted almost 60 per cent of all the receiverships, is given in Table VI.

[5] See notation relative to this firm, in footnote 4, *supra*.

TABLE VI. COMPARATIVE STUDY OF APPOINTMENTS OF JUDGES A, B, C, AND D

	JUDGE				Total
	A	B	C	D	
Number of cases in which judge appointed receivers	69	64	39	24	196
Number of receivers appointed by judge...	92	83	53	37	265
Number of cases in which judge appointed 2 receivers	21	11	12	12	56
Number of cases in which judge appointed 3 receivers		1			1
Number of cases in which judge appointed—					
Attorney receivers	50	30	22	17	119
Businessmen receivers	27	40	19	8	94
Receivers in same business as defendant	13	24	7	5	49
Receivers from defendant company	7	17	6	3	33
Public official receivers	9	2	7	3	21
Medical student				1	1
Profession unknown		2			2

TABLE VII. DISTRIBUTION AS TO JUDGES OF RECEIVERSHIPS WITHOUT HEARING

Judge	Total Number of Cases in Which He Appointed Receivers	Cases in Which Either the Temporary or the Permanent Receiver Was Appointed Without Hearing, Consent, or Stipulation	Per Cent Without Hearing, Consent, or Stipulation
A	69	20	31%
B	64	14	20%
C	39	2	5%
D	24	5	29%
E	19	12	78%
F	19	3	21%
G	19	7	42%
H	19	2	10%
I	15	7	60%
J	13	5	46%
K	10	2	20%
L	10	5	50%
M	6	2	33%
N	5	0	20%
O	3	2	33%
P	3	0	0%
Q	2	1	50%
R	2	0	0%
S	1	0	0%

V. Appointment of Receivers Without a Hearing

In 89 of the 330 cases in which a receivership was ordered, the court appointed either a temporary or a permanent receiver without a hearing and not by consent or stipulation. The judges who made such appointments and the number of such appointments made by each are given in Table VII.

VI. Fees and Costs

A study of fees and costs was undertaken for the following purposes: (1) To determine what items account for the bulk of the

TABLE VIII. COMPARISON OF FEES AND COSTS WITH ASSETS REALIZED IN 20 CASES INVOLVING REALIZED ASSETS OF LESS THAN $1,000

Case Number	Receivers' Fees	Receivers' Attorneys' Fees	Fees of Attorneys Other Than Receivers' Attorneys	Other Administrative Costs (Appraisers, Accountants, Bonds, Court Costs, etc.)	Total Fees and Costs	Total Assets Realized	Percentage Ratio of Fees and Costs to Assets Realized
19	$ 25	$	$	$ 46	$ 71	$192	37
24	100	.....	.....	133	233	325	72
30	37	.....	.....	13	50	257	19
40	39	.....	40	66	145	205	71
50	.....	.....	350	261	611	807	76
70	50	.....	.....	33	83	211	39
90	235	235	.....	355	825	825	100
98	.....	.....	.....	29	29	35	83
129	75	75	225	127	502	631	80
169	250	.....	.....	73	323	991	35
190	227	.....	.....	71	298	476	63
232	35	150	.....	70	255	255	100
199	175	.....	.....	111	286	710	40
289	45	45	.....	160	250	250	100
317	125	.....	200	76	401	658	61
362	40	.....	77	88	205	205	100
480	60	.....	.....	61	121	121	100
551	142	.....	100	130	372	568	65
637	.....	.....	.....	76	76	125	61
651	200	.....	.....	74	274	427	64
Totals	$1,860	$505	$992	$2,053	$5,410	$8,274	66%

administrative expenses involved in receiverships; (2) To determine the relative size of the fees and costs in comparison with the assets realized; and (3) To observe how certain law firms have fared in respect to the fees allowed them. It is believed that the tables included in this section will throw some light on each of these inquiries.

As has already been observed, the investigation of the finan-

TABLE IX. COMPARISON OF FEES AND COSTS WITH ASSETS REALIZED IN 26 CASES INVOLVING REALIZED ASSETS OF AN AMOUNT BETWEEN $1,000 AND $5,000

Case Number	Receivers' Fees	Receivers' Attorneys' Fees	Fees of Attorneys Other Than Receivers' Attorneys	Other Administrative Costs (Appraisers, Accountants, Bonds, Court Costs, etc.)	Total Fees and Costs	Total Assets Realized	Percentage Ratio of Fees and Costs to Assets Realized
7	$ 55	$	$100	$123	$ 278	$1,135	25
29	50	100	.....	117	267	1,000	27
34	225	75	.....	36	336	2,068	11
42	400	100	250	374	1,124	1,487	80
84	500	.....	1,020	512	2,032	3,451	60
86	443	.....	.....	140	583	1,177	50
122	400	300	.....	95	795	3,537	22
133	150	175	.....	162	487	1,170	42
154	714	914	.....	122	1,750	1,750	100
164	350	.....	.....	50	400	1,519	26
170	500	400	.....	41	941	4,987	20
191	563	250	.....	26	839	1,300	65
202	100	100	.....	46	246	2,794	90
303	1,000	.....	.....	25	1,025	1,357	76
337	312	.....	450	215	977	1,223	80
343	200	300	200	180	880	4,018	22
380	150	.....	.....	50	200	4,822	4
384	500	500	250	200	1,450	2,990	50
390	500	1,250	.....	64	1,814	2,643	70
450	500	100	.....	259	859	4,042	21
459	300	300	.....	184	784	3,970	20
486	80	.....	375	57	512	1,269	40
530	156	.....	.....	43	199	1,080	19
584	250	210	.....	41	501	1,473	34
590	310	150	.....	554	1,014	1,023	98
596	400	300	400	99	1,199	1,981	60
Totals	$9,108	$5,524	$3,045	$3,815	$21,492	$59,266	36%

cial aspects of the cases was seriously hampered by the fact that in a great number of cases information as to the necessary facts was missing from the court file. In only 85 of the 190 cases in which a receivership had been granted and which had been terminated at the time when this survey was begun, was the available information sufficiently complete and specific to enable a satisfactory study to be made of the various fees and costs and their relationship to the assets realized in the particular case. It is believed, however, that the data contained in these 85 cases furnishes a fairly sufficient basis on which to make a profitable study.

TABLE X. COMPARISON OF FEES AND COSTS WITH ASSETS REALIZED IN 22 CASES INVOLVING REALIZED ASSETS OF AN AMOUNT BETWEEN $5,000 AND $25,000

Case Number	Receivers' Fees	Receivers' Attorneys' Fees	Fees of Attorneys Other Than Receivers' Attorneys	Other Administrative Costs (Appraisers, Accountants, Bonds, Court Costs, etc.)	Total Fees and Costs	Total Assets Realized	Percentage Ratio of Fees and Costs to Assets Realized
2	$1,300	$1,200	$	$ 215	$2,715	$ 6,956	40
20	.....	750	.....	350	1,100	5,520	20
73	2,000	.....	2,300	1,923	6,223	22,766	27
146	500	400	750	69	1,719	6,382	29
150	1,200	700	.....	1,306	3,206	10,417	30
157	1,500	.....	.....	113	1,613	9,889	16
173	300	300	250	46	896	9,701	9
206	1,000	.....	400	169	1,569	5,370	30
219	400	550	450	125	1,525	7,915	20
242	1,200	2,000	.....	481	3,681	11,579	32
258	71	.....	.....	25	96	9,222	1
259	7,500	1,000	.....	325	8,825	10,906	81
262	1,500	750	.....	149	2,399	12,355	20
307	2,949	350	300	43	3,642	11,932	31
319	2,000	2,000	.....	130	4,130	10,164	40
391	500	1,300	.....	36	1,836	6,744	27
402	500	2,000	300	90	2,890	12,141	24
426	750	200	500	225	1,675	9,667	17
466	300	200	100	205	805	5,596	14
575	625	750	.....	79	1,454	8,015	18
577	850	500	.....	59	1,409	7,510	19
614	800	800	400	371	2,371	24,521	10
Totals	$27,745	$15,750	$5,750	$6,534	$55,779	$225,268	25%

TABLE XI. COMPARISON OF FEES AND COSTS WITH ASSETS REALIZED IN 9 CASES INVOLVING REALIZED ASSETS OF AN AMOUNT BETWEEN $25,000 AND $100,000

Case Number	Receivers' Fees	Receivers' Attorneys' Fees	Fees of Attorneys Other Than Receivers' Attorneys	Other Administrative Costs (Appraisers, Accountants, Bonds, Court Costs, etc.)	Total Fees and Costs	Total Assets Realized	Percentage Ratio of Fees and Costs to Assets Realized
10	$10,900	$ 3,000	$2,231	$2,259	$18,390	$38,825	47
27	4,000	2,750	.....	125	6,875	67,912	9
28	19,000	19,000	.....	2,671	40,671	75,403	53
136	1,500	2,500	245	120	4,365	34,742	13
179	3,500	3,000	1,000	268	7,768	60,420	13
306	5,300	4,000	.....	1,458	10,758	32,733	33
368	4,250	4,250	6,000	475	14,975	60,907	24
394	6,350	5,250	.....	1,579	13,179	59,472	26
589	1,600	1,600	400	329	3,929	40,267	10
Totals	$56,400	$45,350	$9,876	$9,284	$120,910	$470,681	26%

Tables VIII, IX, X, XI, XII, and XIII, are based upon the data extracted from these 85 cases. It will be noted that in making this study of the fees and costs, and their comparison with the assets realized, the cases were divided into 5 groups, the division being based upon the amount of realized assets involved: the first group including all cases in which the realized assets amounted to less than $1,000, the second group including all cases in which the realized assets were between $1,000 and $5,000, the third group including all cases in which the realized assets were between $5,000 and $25,000, the fourth group including all cases in which the realized assets were between $25,000 and $100,000, and the fifth group including all cases in which the realized assets amounted to more than $100,000. This grouping of the cases was adopted because a preliminary examination indicated that the ratio between fees and costs and assets realized showed a wide variation dependent upon the relative size of the assets involved.

A digest of Tables VIII, IX, X, XI, and XII is given in Table XIII.

TABLE XII. COMPARISON OF FEES AND COSTS WITH ASSETS REALIZED IN 8 CASES INVOLVING REALIZED ASSETS OF AN AMOUNT IN EXCESS OF $100,000

Case Number	Receivers' Fees	Receivers' Attorneys' Fees	Fees of Attorneys Other Than Receivers' Attorneys	Other Administrative Costs (Appraisers, Accountants, Bonds, Court Costs, etc.)	Total Fees and Costs	Total Assets Realized	Percentage Ratio of Fees and Costs to Assets Realized
15	$11,500	$ 9,500	$ 1,500	$ 1,664	$24,164	$136,696	18
60	11,850	3,950	150	413	16,363	206,360	8
116	15,000	20,000	15,000	3,661	53,661	237,638	22
330	15,300	3,250	5,500	740	24,790	127,486	19
376	20,000	4,500	63,150	1,740	89,390	275,989	30
377	16,000	12,886	5,500	7,398	41,784	425,976	10
435	7,000	2,500	6,704	2,318	18,522	152,397	12
498	4,000	5,000	1,500	2,354	12,854	108,879	11
Totals	$100,650	$61,586	$99,004	20,288	$281,528	$1,671,421	17%

A special study was made of all the reported fees received in receivership cases during the period under survey, by the four law firms (W, X, Y, and Z) mentioned in III *supra*.[6] Tables XIV, XV and XVI are based upon this study.[7]

VII. Financial Results to Stockholders, Bondholders, and Creditors

Perhaps the most striking fact revealed by a study of the financial aspects of the 190 receivership cases which had been brought to a close at the time when this survey was begun is that, *with but*

[6] All figures on firm Y must be taken subject to the qualification noted in footnote 4, *supra*.

[7] The figures set forth in these tables probably do not represent all of the fees actually received in receivership litigation by the law firms mentioned therein. Only such fees are included as were either set forth in the court file of the case or were divulged by reliable and undisputed testimony before the Receivership Survey Committee of the St. Louis Bar Association. In a good many cases, however, it was apparent that compensation was paid to the lawers involved by private agreement and stipulation, concerning which no specific information as to amounts received could be obtained.

TABLE XIII. COMPARISON OF FEES AND COSTS WITH ASSETS REALIZED IN 85 CLOSED CASES

Case—Type as to Amount of Realized Assets involved	Receivers' Fees	Receivers' Attorneys' Fees	Fees of Attorneys Other Than Receivers' Attorneys	Other Administrative Costs (Appraisers, Accountants, Bonds, Court Costs, etc.)	Total Fees and Costs	Total Assets Realized	Percentage Ratio of Fees and Costs to Assets Realized
20 cases involving assets of less than $1,000	$ 1,860	$ 505	$ 992	$ 2,053	$ 5,410	$ 8,274	66%
26 cases involving assets from $1,000 to $5,000	9,108	5,524	3,045	3,815	21,492	59,266	36%
22 cases involving assets from $5,000 to $25,000	27,745	15,750	5,750	6,534	55,779	225,268	25%
9 cases involving assets from $25,000 to $100,000	56,400	45,350	9,876	9,284	120,910	470,681	26%
8 cases involving assets over $100,000	100,650	61,586	99,004	20,288	281,528	1,671,421	17%
Totals	$195,763	$128,715	$118,667	$41,974	$485,119	$2,434,910	
Percentages in relation to assets realized	8%	5%	5%	2%	20%		

one exception,[8] *there is no record of any payment having been made to stockholders, or bondholders.* This fact acquires added significance when considered in conjunction with the data as to the final dispositions made in these cases (see Sec. VIII, *infra*),

[8] Case No. 116, in which a receiver was placed in charge of a hospital. The receiver sold the hospital, and out of the proceeds paid off all creditors and, in addition, distributed $138,226 among the trust-certificate holders who were the beneficiaries of the common-law trust under which the hospital had been

TABLE XIV. ANALYSIS OF REPORTED FEES RECEIVED BY LAW FIRMS W, X, Y, AND Z IN CLOSED CASES

	FIRMS			
	W	X	Y	Z
Fees received as receivers	$10,100	$ 500	$ 200	$ 350
Fees received as attorneys for receivers	21,500	9,300	10,041	1,975
Fees received as attorneys for petitioners	63,300	450	4,500	916
Fees received in other capacities	1,000	250	.....	300
Total fees received	$95,900	$10,500	$14,741	$3,541
Number cases in which fees were reported	9	6	6	6
Average amount of fees per case	$10,655	$1,750	$2,456	$590

and especially in view of the relatively large number of cases in which the receivers reported a sale of all the assets of the defendant and a winding-up of the business, and, on the other hand, the relatively small number of cases in which the receivers reported that a reorganization of the business had been accomplished.

TABLE XV. ANALYSIS OF REPORTED FEES RECEIVED BY LAW FIRMS W, X, Y, AND Z IN PENDING CASES

	FIRMS			
	W	X	Y	Z
Fees received as receivers	$	$ 750	$	$
Fees received as attorneys for receivers	22,500	850	.....	1,850
Fees received as attorneys for petitioners	1,450	400	1,850	1,425
Fees received in other capacities	1,466	6,574	10,475	1,550
Total fees received	$25,416	$8,574	$12,325	$4,825
Number cases in which fees were reported	11	3	4	7
Average amount of fees per case	$2,310	$2,858	$3,081	$689

For the purpose of seeing how the creditors fared in these cases, a study was made of all the cases in which the receivers reported some payment to creditors, whether secured or unsecured. *The number of cases in which the receivers reported some payment to secured or unsecured creditors amounted to 47 (out of 190).*

built and operated. The distribution to these certificate holders represented a return of about 29 per cent on their original investment. (See summary of this case in Sec. X, *infra.*)

TABLE XVI. ANALYSIS OF REPORTED FEES RECEIVED BY LAW FIRMS W, X, Y, AND Z IN CLOSED AND PENDING CASES

	FIRMS			
	W	X	Y	Z
Fees received as receivers	$ 10,100	$ 1,250	$ 200	$ 350
Fees received as attorneys for receivers	44,000	10,150	10,041	3,825
Fees received as attorneys for petitioners	64,750	850	6,350	2,341
Fees received in other capacities	2,466	6,824	10,475	1,850
Total fees received	$121,316	$19,074	$27,066	$8,366
Number cases in which fees were reported	20	9	10	13
Average amount of fees per case	$6,066	$2,119	$2,707	$644

As in the case of the study made of fees and costs in comparison to assets realized, the cases were grouped according to the amounts involved. The grouping for this study was under three heads, to-wit: (1) Cases in which the unsecured claims amounted to less than $10,000: in this group were also included those cases in which no unsecured claims were reported but which did involve some secured claims; (2) Cases in which the unsecured claims amounted to more than $10,000 but less than $100,000; (3) Cases in which the unsecured claims amounted to more than $100,000. Tables XVII, XVIII, and XIX contain an analysis of the payments made on claims in the 47 cases mentioned, each of the above groups being treated separately. Table XX presents a comparison and summary of the totals in each of the first three tables.

VIII. The Interest and Purpose of the Petitioner

A study was made of the petitions that were filed in all the cases in which a receivership was granted for the purpose of examining the interest and purpose which the petitioner claimed entitled him to sue for a receivership. This study was undertaken mainly to determine to what extent the local circuit courts have been following the established law in this state with regard to the interest and purpose which the petitioner must show in order to enable him to ask for a receivership. Before discussing the results of this study, therefore, a brief reference should be made to the law regulating this matter as laid down by the Supreme Court of this state.

TABLE XVII. PAYMENTS MADE TO CREDITORS IN 25 CASES IN WHICH THE UNSECURED CLAIMS AMOUNTED TO LESS THAN $10,000. (Including cases in which no unsecured claims, and only some secured claims, were reported.)

Case Number	Total Unsecured Claims	PAYMENTS ON UNSECURED CLAIMS		Total Secured Claims	PAYMENTS ON SECURED CLAIMS	
		Amount	Per Cent		Amount	Per Cent
7	$7,500	$3,250	19	$ 524	$ 524	100
20	1,877	1,877	100	.....	.....	...
29	.....	.....	...	1,559	1,559	100
42	2,601	362	14	.....	.....	...
50	399	.....	...	195	195	100
84	1,907	801	42	600	600	100
98	554	.....	...	.....	.....	...
116	500	500	100	7,000	7,000	100
129	411	.....	...	.....	.....	...
170	6,181	3,152	52	.....	.....	...
191	1,350	1,350	100	.....	.....	...
203	1,027	1,027	100	.....	.....	...
262	6,598	4,179	63	280	280	100
288	2,375	143	6	.....	.....	...
317	1,876	250	13	.....	.....	...
340	1,997	36	2	.....	.....	...
343	9,893	3,671	27	387	387	100
362	2,419	.....	...	.....	.....	...
384	.....	.....	...	4,557	463	10
391	.....	.....	...	77,700	4,838	6
445	2,921	.....	...	.....	.....	...
450	3,746	1,835	49	108	108	100
459	2,184	287	13	.....	.....	...
520	98	.....	...	.....	.....	...
551	5,873	.....	...	.....	.....	...
Total	$64,287	$22,720	35%	$92,910	$15,954	17%

In the first place, "a person maintaining the suit must have a beneficial interest to be enforced or preserved."[9] In line with this rather obvious requirement, the Supreme Court has held that even a stockholder may not maintain a suit for a receivership where his only interest is that of a stockholder and the defendant company is insolvent, because in such a case there is no possible benefit that can accrue to him.[10] *A fortiori,* if the petitioner sues only as a stockholder and in his petition *alleges* that the defendant company is insolvent, he "states himself out of court."[11] The only

[9] State ex rel. Kopke v. Mulloy, 329 Mo. 1, 43 S. W. 2d 806.
[10] State ex rel. Kopke v. Mulloy, *supra.*
[11] State ex rel. Kopke v. Mulloy, *supra.*

TABLE XVIII. PAYMENTS TO CREDITORS IN 18 CASES IN WHICH THE UNSECURED CLAIMS WERE BETWEEN $10,000 AND $100,000

Case Number	Total Unsecured Claims	PAYMENTS ON UNSECURED CLAIMS		Total Secured Claims	PAYMENTS ON SECURED CLAIMS	
		Amount	Per Cent		Amount	Per Cent
2	$17,030	$ 3,250	19	$ 524	$ 524	100
28	34,129	34,129	100	.....	.....	...
190	50,000*	.....	...	.....	.....	...
242	47,678	2,582	5	2,496	2,496	100
257	10,000*	5,000*	50	531	531	100
306	33,356	10,114	30	287	287	100
307	27,781	6,945	25	.....	.....	...
344	20,715	10,358	50	.....	.....	...
368	65,586	19,675	30	.....	.....	...
383	10,760	.....	...	.....	.....	...
402	19,000	8,550	45	.....	.....	...
426	26,587	7,292	28	.....	.....	...
480	14,990	.....	...	.....	.....	...
557	20,023	5,005	25	.....	.....	...
575	10,390	6,281	60	198	198	100
589	24,503	2,408	10	1,530	1,530	100
614	39,886	20,166	51	.....	.....	...
15	87,636	87,636	100	.....	.....	...
Total	$560,050	$229,391	40%	$5,566	$5,566	100%

TABLE XIX. PAYMENTS TO CREDITORS IN 4 CASES IN WHICH THE UNSECURED CLAIMS AMOUNTED TO MORE THAN $100,000

Case Number	Total Unsecured Claims	PAYMENTS ON UNSECURED CLAIMS		Total Secured Claims	PAYMENTS ON SECURED CLAIMS	
		Amount	Per Cent		Amount	Per Cent
10	$237,808	$16,170	7	$	$	...
73	112,204	10,469	9	555	555	100
179	116,784	23,054	20	.....	.....	...
447	102,791	2,056	2	22,200	22,200	100
Total	$569,587	$51,749	9%	22,755	22,755	100%

persons who can possibly benefit from the receivership where the company is insolvent are obviously the creditors. In view of this limitation on the right of a stockholder to sue for a receivership, it is immaterial that there has been "mismanagement" on the part of the officers conducting the business.[12]

[12] State ex rel. Kopke v. Mulloy, *supra*.

TABLE XX. COMPARISON AND SUMMARY OF PAYMENTS TO CREDITORS IN 47 CLOSED CASES IN WHICH RECEIVERS REPORTED A PAYMENT TO CREDITORS. (Digest of Tables XVII, XVIII, and XIX.)

Type of Case as to Amount of Claims	Total Unsecured Claims	PAYMENTS ON UNSECURED CLAIMS		Total Secured Claims	PAYMENTS ON SECURED CLAIMS	
		Amount	Per Cent		Amount	Per Cent
Less than $10,000 of unsecured claims	$ 64,287	$ 22,720	35	$ 92,910	$15,954	17
Between $10,000 and $100,000 of unsecured claims ...	560,050	229,391	40	5,586	5,586	100
More than $100,000 of unsecured claims	569,587	51,749	9	22,755	22,755	100
Totals	$1,193,924	$303,860	26%	$121,251	$44,295	36%

In the second place, with regard to creditors, it is the accepted rule that in the absence of special statutes——

> "A general or simple contract creditor who has not reduced his claim to judgment, who has no right or interest in, or lien upon, the property of the debtor, and whose interest or position does not differ from that of any other ordinary creditor, has no standing to obtain the appointment of a receiver of such property."[13]

This rule forbidding simple creditors from obtaining a receivership

> "is applicable, although defendant is disposing of his property; and *the mere fact of the insolvency of the debtor, or an allegation of fraud, will not change the rule.*"[14] (Italics mine.)

In the third place, the Missouri Supreme Court has emphatically and unequivocally stated on numerous occasions that if the sole purpose of the petitioner in seeking the receivership is to wind up and liquidate the business of the defendant, a receivership should not be granted. As said by the Supreme Court in *State ex rel. Kopke v. Mulloy:*

[13] 53 Corpus Juris 29; and see Miller v. Perkins, 154 Mo. 629, in which the Supreme Court of Missouri very emphatically applied this general rule.
[14] 53 Corpus Juris 29-30.

"The law is that, except in very exceptional cases, if any, proceedings by receivership are not maintained for the sole purpose of taking over, liquidating, or closing out a business, returning, not the business and property, but the residue, if any, in money to the owners. *A receivership is merely an ancillary proceeding in aid of a pending suit* involving property in order to preserve such property as far as practical till the termination of the suit in order that it may then go as the court directs. . . . *'It is fundamental that there is neither in law nor in equity any such thing as a plain receivership action,* i. e., *an action in which a receiver is the only desideratum.' . . . A court of equity has no power to dissolve a corporation and wind up its business by a receivership.* And if the appointment of a receiver and investing him with power to collect the debts of the corporation, assemble and dispose of all the property, pay its debts, and distribute the residue, if any, to the stockholders, does not work a dissolution of the corporation, then what would?" (Italics mine.)

Bearing in mind these requirements and limitations that have been laid down by the Supreme Court of Missouri, let us now examine the 190 closed cases and the 140 pending cases in which the St. Louis Circuit Courts appointed receivers during the period under survey.

In 106 of these 330 cases the suit was brought at the instance of a petitioner who described himself as being solely a stockholder. *In 35 of these cases the stockholder alleged in his petition that the company was insolvent!* In many of these cases it is not very clear whether the term "insolvent" was used in the sense of a temporary inability to meet current obligations or in the bankruptcy sense of total assets being worth less than the total liabilities. All doubt as to the real condition of the defendant in these cases, however, is dispelled by a consideration of the facts set forth in the preceding section dealing with results to stockholders, bondholders and creditors. It was there seen that with but one exception in 190 closed cases there is no record of any payment having ever been made to stockholders. The tables in that section also indicated that in the vast majority of these cases the creditors suffered substantial losses in the final liquidation of the assets. *It is therefore reasonably safe to surmise that in a great number of cases receiverships have been granted at the instance of stockholders not only where the evidence could well*

have shown, but even where the petition itself asserted, that the financial condition of the company was such that the petitioner could not possibly have had any beneficial interest to be enforced or preserved through a receivership.

Coming now to the rule forbidding simple creditors from petitioning for a receivership, it was found that *in 76 cases or almost one-fourth of the total number of cases in which a receivership was granted the suit was instituted at the behest of a simple, unsecured contract creditor!* (The total number of creditor-filed suits resulting in receivership was 135, of which 59 were suits filed by judgment creditors, secured creditors, bondholders, mechanics-lien holders, etc.) The most frequent allegation in these suits filed by simple creditors is that many other creditors' suits are being threatened and that unless a receivership is granted for the purpose of "staying such suits" a forced liquidation of the assets will be necessary with resultant impairment of the value of such assets and inequitable advantages to a few creditors over the rest of the creditors.

With regard to the rule forbidding a court of equity from entertaining a receivership suit instituted solely for the purpose of winding-up and liquidating a business, and not as an ancillary remedy in aid of a pending suit, it was found that *in 35 cases the petitioner expressly stated that the receivership was sought for the sole purpose of winding-up and liquidating the business.* But it was further found that whether the petitioner expressly stated that to be his sole purpose or not, the subsequent history of the case in the vast majority of instances clearly showed that a winding-up and final liquidation was, if not the actual purpose, certainly the inevitable outcome of the receivership. Out of the 190 receivership cases that were terminated at the time when this survey was begun, 156 contain some information as to the manner of the final disposition of the case. Of these 156 cases, 45 were dismissed by plaintiff or settled by stipulation, and in 14 the receivership appointment was subsequently reversed. Of the remaining 97 cases, 14 finally wound up in the bankruptcy court and in 3 cases the assets were transferred to a federal receiver. In all, therefore, there were 80 cases which were reported as having been brought to a final status by the receiver in the Circuit Court. *In 63 or more than 75 per cent of these cases the final outcome was a sale of the assets and a liquidation of the business.*

There were only 9 cases in which the receiver reported a reorganization of the business, and but 8 cases in which the business or the assets remaining were turned back to the defendant.

IX. Miscellaneous Data

The following miscellaneous data was also collected in the belief that it might be of some interest to the committee:

A. *Operation of Business by Receivers*

In 57 of the 190 receivership cases that had been closed when this survey was commenced, the receivers reported that they had continued to operate the business. Unfortunately, the information in the files as to the financial results of such operations is very scanty. In at least 15 of the 57 cases, however, the receivers reported that their operation of the business resulted in a *loss*, the total amount of the reported loss in these cases being $69,859. In 21 cases the receivers reported a *profit*, the total amount of the reported profit in these cases being $54,980.

B. *Bonds*

A study was made of the receivers' bonds that were filed in the cases for the purpose of noting the frequency with which certain bonding companies appear in the cases as well as the frequency with which they appear in cases handled by the same judge. Of the total of 330 cases in which receivers were appointed (closed and pending cases), bonds were filed in 302 cases. (The cases in which no bonds were filed were mostly cases in which the receiver appointed was a public official, like the State Superintendent of Insurance or the Commissioner of Finance, whose appointment without bond was authorized under the law.) In all but four of the cases the bond was written by a bonding company. Table XXI shows how the bonds were distributed among the various companies, together with the amounts of such bonds.

In connection with this study of the bonds, it was also found that Company A appeared in 71 per cent of the cases handled by Judge A, that the same company appeared in 44 per cent of the cases handled by Judge B, in 23 per cent of the cases handled by Judge C, in 31 per cent of the cases handled by Judge D, and in 73 per cent of the cases handled by Judge I. The appearances

TABLE XXI. DISTRIBUTION OF BONDS AS TO COMPANIES WRITING THE BONDS

Company	Number Cases in Which Company Wrote the Bonds	Percentage of All Cases	Total Amount of Bonds Written	Average Size of Bond Per Case
A	148	49	$1,617,500	$10,929
B	45	14	2,015,000	44,777
C	39	12	588,000	15,076
D	15	4	207,000	13,800
E	12	3	229,500	19,125
F	9	2	200,500	22,277
G	9	2	53,000	5,888
H	6	1	51,000	10,200
I	6	1	280,500	46,750
All Other Companies	32	10	466,500	14,578

of the other companies with respect to cases handled by the same judge did not show any such concentration as the appearances of Company A, with the possible exception of Company B, which appeared in 43 per cent of the cases handled by Judge C.

C. *The Duration of Receiverships*

Because of the great variety of purposes for which receiverships are sought and the consequent variety of functions which must be exercised by the receivers, it would be vain to try to deduce from the records any conclusions as to the length of time that is consumed in the administration of the "typical" receivership case. The following figures may, nevertheless, be of some interest.

In the group of cases that had been terminated when this survey was begun, it was found that the duration of temporary receiverships ranged from a few days to several years, the estimated average being slightly more than 6 months. In one case, the temporary receivership lasted 4½ years! The duration of permanent receiverships in the same group of cases ranged from less than a month to several years, the average being slightly more than 13 months. In one case the receivership lasted 6½ years!

Coming to the group of cases in which a receivership had been granted but the case was still pending when this survey was be-

gun, it was found that in two cases the receivership had been in effect since 1925, the first year of the period under survey; that in two other cases the receivership had been in effect since 1926; in four cases since 1927; in five cases since 1928; in six cases since 1929; in 20 cases since 1930; in 38 cases since 1931; and that in the remaining 63 cases the receivership had been granted during the last year of the period under survey—1932.

Perhaps the most significant fact observed in connection with the duration of these receiverships was that in a good number of them the active administration and functions of the receivers had apparently ceased long before either the termination of the case or, in pending cases, the time when this survey was begun. In most of these cases it was difficult to understand the reason for the prolongation of the case after the activity of the receiver had ceased.

D. *Receiverships by Consent*

In 111 cases (more than one-third of all the cases in which a receivership was granted) it was found that the defendant consented to the appointment of receivers. Especially interesting is the fact that these "consent receiverships" are much more numerous among the recent cases than among the older ones. Thus, in the group of 190 cases that had been terminated when this survey was begun the number of consents was found to be 47, or slightly less than one-fourth of the total number. On the other hand, in the group of pending receiverships—which for the most part were cases instituted more recently than those in the closed group—the number of consent receiverships jumped to 64 out of 140, or more than 45 per cent of the total number.

E. *Appraisers*

A study of the appointments of appraisers and the fees allowed them revealed nothing of special significance except, perhaps, the fact that the frequency of such appointments and the size of the fees tend to increase in the more recent cases. Thus, in the group of 190 closed cases appraisers were appointed in 33, or 17 per cent of the cases, whereas in the 140 cases still pending 34, or almost 25 per cent, already have a record of appointment of appraisers. And whereas in the former group the average size of the appraisers' fee is less than $100, in the latter group the

fees allowed to date show an average of more than $500. Examples of large appraisers' fees are to be found in the following cases:

Case No. 404, in which Judge B allowed a fee of $2,400 to three appraisers, one of whom was a lawyer, for appraising the assets of a real estate mortgage and promotion company. The appraised value of the assets amounted to $1,219,205. The total receipts to date from all sources amounted to $179,850.

Case No. 509, in which Judge C allowed a fee of $2,700 to three appraisers for appraising the assets of a manufacturing company. The appraised value of the assets amounted to $646,675. According to their report, the appraisers spent 28 days making their appraisement. Motions were filed to set aside the allowance on the grounds that it was excessive and that no provision was included in the receivership decree for such an appraisement to be made.

Case No. 111, in which Judge O allowed a fee of $3,000 to three appraisers for a $644,913 appraisement on the assets of a real estate loan and investment company.

Case No. 498, in which Judge C allowed a fee of $1,500 to three appraisers for a $1,049,715 appraisement on the assets of a hotel company.

X. Selected Cases Deserving Special Attention

In the course of this statistical survey a number of cases came under observation that seemed to merit special attention in connection with the particular lines of inquiry pursued in the survey. A summary of the noteworthy facts in each of these cases is given below so as to enable the Committee more conveniently to make specific reference to some of these cases in its final report, should it so desire.

A. CLOSED CASES

Case No. 10: The file in this case is completely missing, with the exception of the petition of the complainant, petitions of the receiver for compensation and the appointment of a special counsel, and the clerk's wrapper containing the minutes of the case. From these meager records, however, it appears that the receiver realized a total of $38,825, out of which the receiver—an attorney by profession—received $10,900 for his services. An additional $7,490 was paid out

for other fees and costs, leaving a balance of $20,435 to be distributed among unsecured creditors whose claims amounted to $237,808.

Case No. 24: This case involved a small partnership in the retail grocery business. The suit was for a dissolution of the business and an accounting, with a prayer for the appointment of a receiver to sell and distribute the assets. The defendant consented to the receivership. The receiver was appointed on January 14, 1925, and reported that he sold the business for $325 shortly after his appointment. The sale was approved by the court on January 26, 1925, leaving nothing further to be done except to distribute the proceeds of the sale and file a final report. Nevertheless, the case remained in court for more than six years.

Case No. 28: This case involved a receivership for an insurance company. The petition was filed by the State Superintendent of Insurance and alleged mismanagement of business, violation of insurance laws, and dangerous impairment of the company's assets. Although a general denial was filed, a receivership was granted without a hearing but on stipulation of the parties. Although the defendant company had previously made an assignment of all its assets to another insurance company, which was under a receivership in the federal courts, and although the chief function of the state receivership was to satisfy a few small claims against the defendant company and turn the balance of the assets over to the federal receiver—most of these assets being already on deposit with the State Superintendent of Insurance—Judge P, nevertheless, appointed three receivers and two attorneys for receivers in this case. The receivers appointed were: the Superintendent of Insurance; the lawyer who had been appointed receiver of the assignee company in the federal courts; and a person who had served as court stenographer for Judge P. The last two receivers were allowed $19,000 for their services jointly, and the two attorneys for receivers were allowed an equal amount.

Case No. 42: The defendant in this case was a company manufacturing food products. The petitioner was a creditor holding unsecured claims of $400 and a small number of shares of stock in the company. The total claims against the company amounted to $2,600. On default of the defendant, Judge E appointed a lawyer as receiver as well as an attorney for the receiver. The total assets realized in the case amounted to $1,487, out of which the attorney-receiver was allowed $400, the attorney for the receiver $100 and an addi-

tional $250 for his services as attorney for the petitioner. The total fees and costs amounted to $1,124 or about 80 per cent of the total assets realized.

Case No. 84: Although the case involves a rather small estate, the fees received by the attorneys who appeared in it are of special interest. The total assets realized were $3,451. Out of this, the receiver—an attorney by profession—was allowed $500 for his services, the attorneys for the plaintiff were allowed $500, and the attorneys for the defendant were also allowed an equal amount. The total fees and costs were $2,032, or about 60 per cent of the total assets realized.

Case No. 90: An excellent example of fees and costs "eating up" all the assets. The suit was brought at the instance of a stockholder and alleged insolvency and impairment of the assets of the defendant company (operating taxicabs). The intervening parties alone asserted claims of over $14,000. The estate was hopelessly insolvent, as shown by the fact that the total assets realized amounted to $825. A lawyer was appointed receiver, and an attorney for the receiver appointed at the same time. The fees and costs consumed the entire amount of assets realized. The case unquestionably belonged in the Bankruptcy Court, rather than in a court of Equity.

Case No. 116: In this case a large hospital was put in receivership. The receiver appointed to operate the hospital in place of the original trustees was the local Collector of Revenue (appointed by Judge B). After operating the hospital at a considerable loss for a period of several months, the receiver succeeded in selling it for about $213,000. Other receipts made the total assets realized amount to $237,638. For his services, the receiver was allowed $15,000, and an equal amount was allowed to the law firm representing the plaintiffs in the case (firm W). An additional $20,000 was allowed the attorneys for the receiver.

Case No. 129: Another example of fees eating up assets. The defendant company was in the laundry business. An attorney was appointed receiver, and at the same time an attorney for the receiver was appointed. Yet the total assets amounted to but $631, out of which the receiver, the attorney for the receiver, the attorneys for the plaintiff, the attorney for the defendant, and the attorneys for the intervenors were each allowed a sum of $75, or a total of $375 distributed among five groups of attorneys.

Case No. 136: A good example of "lawyer-control." The plaintiff was a lawyer, and was represented in court by a member of

his firm. The same firm likewise represented the defendant, a hotel-operating company. The defendant consented to the receivership. The plaintiff was appointed receiver, and his attorney was made attorney for the receiver. The receiver was allowed a fee of $1,500, and his attorney (member of the receiver's law firm) was allowed $2,500. In addition, the receiver's law firm was allowed a fee of $245 for representing the defendant in the case.

Case No. 159: The receiver in this case served exactly 27 days, at the end of which time he turned over the assets in his hands (consisting of $1,614 in cash and a stock of merchandise) to the federal receiver in bankruptcy. For these services and the services of the attorneys for the receiver (firm W, which had appeared only as attorney for the petitioner and had never been formally appointed by the court to act as attorney for the receiver) the court made an allowance of $3,000. (Judge L.)

Case No. 259: In this case a lawyer and a broker, acting as receivers, operated a building for a period of four months, during which time their receipts amounted to $10,906. For these services they were paid $7,500, and an additional sum of $1,000 was allowed to the two attorneys for the receivers. (Fees allowed by Judge D.)

Case No. 337: Another example of fees being out of proportion to assets realized. The total assets realized were $1,223. Out of this the receiver—an attorney by profession—was allowed $312, the attorney for the plaintiffs $300, and the attorney for the defendant $150. Appraisers in the case received $30, and auctioneers $120, with the result that out of the total $1,223 of assets, $977 or about 80 per cent were consumed by fees and administrative costs. Defendant filed a motion to set aside the allowances as excessive, but his motion was overruled.

Case No. 376: An excellent example of a "fat" receivership. The defendant company was a large brokerage house. The plaintiff was an attorney who represented himself as holding a claim of $1,000 against the defendant. He was represented in court by law firm W. The answer of the defendant, admitting most of the allegations in the petition and consenting to the appointment of receivers, was filed on the same day that the petition was filed; on the same day the court (Judge A) appointed two receivers—one a lawyer, associated with law firm W, and the other a broker. The court also appointed a special master, a referee, and a substitute-referee. Most of the fees were agreed to by a stipulation.

These fees were as follows: To law firm W, for services as attorney for the plaintiff—$50,000; to the receivers, one of whom was associated with law firm W, $20,000; to the attorneys for the receivers, one of whom had represented the defendant, $4,500; to the special master, referees, and other attorneys in the case, $13,150. The receivership lasted about 11 months, during which time the receivers filed exactly four reports, of which only the last contained a statement of receipts and disbursements. The principal asset received by the receivers during the time of their administration of the estate seems to have been a sum of $275,000 in cash received from the reorganization group to which the business was finally transferred.

Case No. 384: Two receivers were appointed, one of them an attorney; and two attorneys for the receivers were appointed. The business in receivership was a small hotel. The gross receipts during the receivership were $990, plus $2,000 received from the sale of the property. The receivers, attorneys for receivers, and attorney for plaintiff were allowed $1,250.

Case No. 389: The court (Judge A) appointed two receivers, and four attorneys for the receivers. These appointments were made after the Circuit Court of St. Louis County had already appointed a receiver over the same estate.

Case No. 390: The estate in receivership consisted of an apartment house, against which foreclosure proceedings were being threatened. The only function of the receivers seems to have been to collect the rents until the property could be sold. The court (Judge A) appointed two receivers, one of them an attorney, and three attorneys for the receivers. The rents collected during the receivership amounted to $2,642, of which the receivers and attorneys for receivers received $1,750.

Case No. 394: The same type of case as 390, above. Judge A appointed two receivers, one of them an attorney, and three attorneys for receivers. Subesquently Judge B appointed an additional attorney for receivers, as well as a successor to to one of the original receivers and a successor to one of the original attorneys for receivers.

Case No. 474: This case involved a receivership for a life insurance company. The receivership lasted 15 days. Firm W was appointed attorneys for the receiver (the State Superintendent of Insurance). The only document filed in the case by firm W was a motion for an allowance of a fee for the services rendered by it during the period of 15 days. Judge G

made the allowance—$20,000. The attorneys for the plaintiff got an equal amount.

Case No. 551: Another example of a case that properly belonged in the Bankruptcy Court. The creditors' claims amounted to $5,873. The total assets realized were $568, of which every dollar was consumed by administrative expenses. The suit was brought by a stockholder, who alleged gross mismanagement on the part of the officers, and asked for an accounting and a winding-up of the business by a receiver.

Case No. 565: As receivers for a retail shoe store, the court (Judge C) here appointed two attorneys, and in addition appointed an attorney for the receivers. The business was finally adjudicated bankrupt.

Case No. 651: The court here (Judge B) appointed two attorneys to operate a small household supplies manufacturing company, as well as two attorneys for the receivers. The estate ended up in bankruptcy.

B. PENDING CASES

Case No. 26: This receivership has been pending for more than eight years. The defendant company is in the loan and investment business. Nine judges have at various times taken jurisdiction over the case. The original judge in the case (Judge P) appointed three receivers, two of them being lawyers, and, in addition, three attorneys for the receivers. A number of additional attorneys, acting as special counsel and referees, have also been appointed from time to time. Up to the time when this case was investigated, the receivers had reported that the total assets realized by them amounted to $168,041. Of this amount, more than $85,000 had already been paid out as fees to the receivers and the various attorneys in the case. Applications are now pending for additional allowances.

Case No. 62: The receivership here was granted in April, 1926. The last record entry in the case is dated June 6, 1926. The case has never been heard on the merits, and the receiver to date has filed no report of his activity.

Case No. 88: Receivership granted in June, 1926. Two attorneys for the receiver were appointed. The business was sold by the receiver in January, 1927, but nothing has been done since that time. The court record discloses no reason why the case was not terminated shortly after the sale, from which the total proceeds were only $500.

Case No. 167: At the time when this case was investigated, the receivers had reported total receipts of $11,165. The allowances granted by the court were as follows: $2,500 to the two lawyers who were acting as receivers; $850 to the two attorneys for receivers; $100 to a special counsel; and $250 each to the attorney for plaintiff and attorney for defendant.

Case No. 181: Two lawyers were appointed receivers to take over the work that was being carried on by the officers of the defendant company—a large candy manufacturing company—in selling the assets, consisting chiefly of machinery used in the manufacture of candy, and winding up the business. A third lawyer was appointed to act as attorney for the two attorney receivers.

Case No. 301: A beautiful example of lawyers jockeying for remunerative positions in a receivership. The original petition, which sought a receivership for the defendant loan company and an accounting from certain individuals connected with the management of the company, named two attorneys among the individual co-defendants. Shortly thereafter an amended petition was filed striking out the names of these two defendant attorneys. On the same day the defendant company withdrew the denial that it had previously filed in answer to the plaintiff's petition, and consented to the appointment of a receiver. In accordance with a stipulation signed by the attorneys for all the parties, one of the original defendant attorneys was appointed receiver, and the other defendant attorney together with the attorney for the plaintiff were appointed attorneys for the receiver. In making the allowances of fees, the court included an allowance of $1,500 to the attorneys for the plaintiff as well as an allowance of $1,000 to the attorneys for the defendant.

Case No. 316: Another good example of "lawyer-control." Two lawyers, one of them a member of the firm representing the defendant loan company, were appointed receivers. To act as attorneys for these attorney-receivers, two large law firms—one of them representing the plaintiff in the case—were appointed at the same time. The estimated value of the assets, as set forth by plaintiff's petition, amounted to less than $20,000.

Case No. 367: Receivership of an automobile manufacturing company. A lawyer was appointed receiver. Three lawyers were appointed to act as attorneys for the receiver. In addition, a fifth lawyer was appointed to act as "special counsel" for the prosecution of some claims against former offi-

cers of the company, and a sixth attorney was appointed to hear and determine certain other disputed claims. At the date when this case was investigated, the receivers had reported that they had thus far realized a little more than $80,000. Out of that sum, the court had already allowed $15,000 to the receiver and $5,000 to the special counsel. The other attorneys had not yet applied for allowances.

Case No. 369: Receivership of a loan company. Two lawyers appointed receivers, and three lawyers appointed as attorneys for these attorney-receivers. After more than a year in office, the receivers reported that they had succeeded in realizing assets amounting to $350. (Judge B made the appointments.)

Case No. 371: To collect some rents *pendente lite,* the court (Judge D) appointed a lawyer and an Assistant Chief of the St. Louis Fire Department as co-receivers, and two attorneys for these receivers. The rents collected by the receivers amounted to about $400 per month.

Case No. 379: Receivership of a loan company. Two lawyers were appointed receivers, as well as two attorneys for the receivers. Total receipts reported after two years of receivership administration amount to $2,739.

Case No. 381: The attorneys who represented the defendant company were appointed attorneys for the receivers, and were given substantial allowances for their services in each capacity.

Case No. 396: After six months of service as attorneys for the receiver of an automobile manufacturing company, these attorneys were given an allowance of $15,000, and have motions pending for additional allowances for later services.

Case No. 442: Another example of jockeying by lawyers for remunerative positions. Suit for an equitable foreclosure of a deed of trust on a large hotel was filed by the trustees. Law firm W applied for leave to intervene on behalf of certain *stockholders* in the defendant company, alleging incompetency and mismanagement on the part of the trustees, and asking for the appointment of receivers to take charge of the hotel and the removal of the trustees. While this application was still pending, the same law firm appeared as intervenors in behalf of certain *bondholders,* and again prayed for the removal of the trustees and the appointment of receivers in their place. At the hearing, the attorneys for the trustees objected to the appearance of firm W in the dual and inconsistent capacities of attorneys for both stockholders and

bondholders; whereupon firm W withdrew its intervening petition in behalf of the stockholders and proceeded solely in behalf of the bondholders whom it represented. At the conclusion of the hearing, the court removed one of the two trustees and appointed a lawyer in his place. This implied of course that the new trustee and the remaining original trustee were regarded by the court as competent to act as trustees. Nevertheless, the court then proceeded—without any application being made by the trustees—to appoint two receivers to take over the management of the hotel. One of the attorneys appointed to act as attorneys for the receivers was a member of firm W. (Judge C handled the case.)

Case No. 452: A substantial fee was allowed not only to the attorney for the plaintiff but also to the attorney for the *defendant* company "for bringing the fund into court." Both of these attorneys were appointed attorneys for the receivers in the case, and received additional substantial fees for their services in that capacity.

Case No. 461: The petition asked for but one receiver, alleging that one would be sufficient. The court (Judge A) nevertheless appointed two receivers (both lawyers) and two attorneys for the receivers. The inventory made by the receivers estimated the total assets to be worth less than $15,000.

Case No. 560: The person appointed receiver had been named as an individual co-defendant who allegedly had been partly responsible for the depletion of the assets available to the creditors of the defendant company. If the allegations in the petition are well-founded it would mean that the receiver would have to proceed against himself to recover the assets wrongfully taken by him. A motion is now pending to have the receiver removed for that reason.

Case No. 587: The estate involved consisted of an apartment house. Judge B appointed a member of the law firm representing the defendant as one of two co-receivers, and appointed three attorneys for the receivers, one of them being another member of the law firm representing the defendant.

Case No. 630: A flagrant example of a case that properly belonged to the Bankruptcy Court being administered through receivership proceedings in Equity. The petition admitted that the sole purpose of the receivership was to shield the company against threatened suits by numerous creditors. There were no allegations of mismanagement or any other recognized grounds for an equitable receivership. The defendant company consented to the receivership, and recom-

mended the appointment of one receiver, and of one of the attorneys for the plaintiff as attorney for the receiver. However, the court (Judge A) appointed two attorneys for the receiver, an action which was subsequently criticized by the judge (Judge B) who later presided in the case. The unsecured claims in this case amounted to more than $11,000. The total receipts reported by the receiver from the sale of the business amounted to but $1,750, out of which the receiver was allowed $500, the attorneys for the receiver an equal amount, and the accountants $275.

Case No. 658: A unique case—the receiver, appointed to take charge of a large apartment building, agreed to serve without compensation.

CONCLUSIONS

In the opinion of the writer, the material contained in the foregoing study leads to the following conclusions:

1. The large percentage of cases in which a receivership was granted and the small percentage of cases in which the court denied the petition for a receivership, leave considerable doubt as to whether some of the judges have given sufficient heed to the following generally accepted rule for the guidance of judges in the exercise of their discretionary power to grant receiverships:

> "The power to appoint a receiver is a delicate one—(which) should be exercised sparingly, with caution and circumspection, and only in an extreme case, under extraordinary circumstances, or under such circumstances as demand or require summary relief."[15]

2. The large number of cases in which a receiver was appointed without a hearing leaves considerable doubt as to whether some of the judges have given sufficient heed to the following generally accepted rule:

> "A receiver may be properly appointed without notice, and before giving the adverse party an opportunity to be heard, in, and only in, an extreme and exceptional case, in which there is a great emergency and an imperious and most stringent necessity for an immediate appointment, as where the adverse party is out of the jurisdiction of the court or cannot be found and served with notice, or, for some other

[15] 53 Corpus Juris 33-34, reiterated on numerous occasions by the appellate courts of Missouri.

reason, it is absolutely and imperatively necessary for the court to interfere, before the lapse of time required to give notice and afford a hearing, in order to prevent loss, waste, destruction, irreparable injury, or the defeat of the petitioner's rights, or the giving of notice would jeopardize the delivery, safety, custody, or control of the property over which the receivership is to be extended, and the rights of the complaining party may be amply and sufficiently protected in no other way, or by no other remedy, such as a temporary injunction or restraining order."[16]

3. A study of the petitions on which receiverships have been granted raises considerable doubt as to whether some of the judges have paid sufficient attention to the generally accepted requirements with respect to the interest and purpose of the petitioner seeking a receivership. Particular laxity seems to have been shown in allowing a receivership at the suit of a stockholder whose own allegations indicated that the defendant company was insolvent and that, consequently, he had no beneficial interest that could be preserved or enforced through the receivership; in allowing a receivership at the suit of a simple contract creditor whose petition stated no recognized ground for equitable relief to which the receivership would be ancillary; and in allowing a receivership where the petition on its face showed that the sole and actual purpose of the suit was to close out and liquidate the defendant company.

4. The large number of cases in which the defendant company consented to the receivership and the subsequent history of such cases would seem to indicate that receivership proceedings are often regarded and intended to function as a voluntary process of judicial liquidation, in lieu—and frequently in avoidance of liquidation through bankruptcy proceedings.

5. Laying aside the question of the legal propriety of making receivership proceedings serve as a substitute for liquidation through bankruptcy, it is highly questionable whether from an economic point of view such substitution is desirable. Although no attempt has been made in this study to compare the losses suffered by creditors in receivership liquidations with the losses suffered by creditors in bankruptcy liquidations, the records reveal

[16] 53 Corpus Juris 59-60, quoted and approved by the Supreme Court of Missouri in State ex rel. Kopke v. Mulloy, 329 Mo. 1, 10.

at least two important reasons for believing that receivership liquidation tends to be costlier to creditors than bankruptcy liquidation. These are: (1) the unregulated practice of dispensing fees in receivership cases; and (2) the lack of control exercised by creditors in receivership cases.

6. The large percentage of cases in which practicing lawyers have been appointed receivers—not merely to wind up but frequently to operate business ranging from chop suey restaurants to large theaters, hotels, and manufacturing companies—leaves considerable doubt as to whether the judges have always given serious heed to the generally accepted rule that in selecting a receiver the court should—

> "give due consideration not only to his quality of indifference, but also to his business ability and his fitness with respect to the character of the property which is to come under his care and the duties he will be required to perform in its management and conservation."[17]

Additional doubt as to the judges' recognition of this rule is created by the numerous cases in which the receiver appointed was neither a lawyer nor one whose trade or business was even remotely connected with the particular trade or business involved in the receivership.

7. The frequency with which the court has appointed attorneys for receivers simultaneously with its appointment of the receivers, and particularly the great number of cases in which attorneys were appointed for receivers who were themselves lawyers—often two large law firms for receivers who were themselves attorneys—raise a serious question not only as to the necessity of such appointments in particular cases but as to the propriety of such a practice in general.

8. With respect to evidence of concentration of receivership litigation in the hands of certain law firms, it was found that four firms showed a somewhat conspicuous record of involvement in such litigation, but the character of such involvement, i. e. the capacities in which each appeared most frequently, must be taken into consideration before any foundation for criticism of these firms can be laid down. Thus, whereas one of these firms—second in number of cases—appeared far more often for the purpose of

[17] 53 Corpus Juris 70.

resisting the application for receivership, another firm—first in number of cases—represented the party seeking the receivership more than three times as often as it appeared in the capacity of attorney for defendant, and, in addition, apparently received a much greater sum for fees than all three of the other firms put together.

9. The great length of time that elapsed in a number of cases after all activity of the receiver had ceased and no apparent reason existed for the pendency of the receivership, would seem to indicate considerable laxity on the part of the court in its supervision of receivership cases.

10. The inadequate and unsatisfactory reports of the receivers in many of the cases, particularly with respect to the financial matters in the case, strongly suggest the advisability of having a special officer of the Court of Equity to act as a sort of Master or Referee in Receiverships, whose principal duty would be to check over all reports of receivers and recommend their approval or disapproval by the Court.