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## EXTRA-TERRITORIAL JURISDICTION OF RECEIVERS.

A RECEIVER is appointed by the court. He is removable by it. He is an officer of the court. All his acts, as receiver, are those of the court performed by an agent, so to speak. Any property in the possession of a receiver is *in custodia legis*—in charge of the court and subject to its control. The receiver is but the creature, "the hand," as has been aptly said, of the court. What, then, are his powers outside of the jurisdiction of the court that appoints him?

It is obvious that the powers of a receiver are limited by the same boundaries that limit the powers of the court that appoints him. What it cannot do, he cannot do. Property or persons beyond the reach of the court are beyond the power of its agent, the receiver. Since a receiver deals principally, if not entirely, with property, and since his powers over it can only be those of the court that gives him his official character, the first question is: Has a court power to appoint a receiver to take possession of property beyond its jurisdiction? To this question an affirmative reply may be given, subject to some limitations hereafter to be noticed.

The question has been thus answered in cases of receiverships of companies owning and operating railways in several states. In *Ellis* v. *Boston, &c., Railroad Co.*, 107 Mass. 1, the court affirmed

the appointment of a receiver for the entire line of the defendant company's road, which extended from Boston, Massachusetts, to Fishkill, New York. The same point was decided the same way in *Wilmer* v. *Atlantic & R. A. L. Co.*, 2 Woods 418, where the defendant was a corporate body existing in two states and owning property in three. Judge WOODS, said: "As the property of the defendant company is one entire and indivisible thing, and as it is all covered by one deed of trust, there seems to be no good reason why this court should not appoint a receiver for the whole, even though a part of the property may extend into another state. The court having jurisdiction of the defendant can compel it to do all in its power to put the receiver in possession of the entire property. If other persons outside the territorial jurisdiction of this court have seized the property of defendant, the receiver may be compelled to ask the courts of that jurisdiction to aid him in obtaining possession, but that is no reason why we should hesitate to appoint a receiver for the whole property. We think the courts of other jurisdictions would feel constrained, as a matter of comity, to afford all necessary aid in their power to put the receiver of the court in possession."

Admitting that a court may appoint a receiver for property outside of its jurisdiction, the question arises, how can such court put its receiver in possession of such foreign property, and compel recognition and observance of his rights in, and title to, such property?

As to property within the jurisdiction of the court appointing the receiver, the law is that his appointment *per se* gives him a right to its possession. The law is the same as to property outside of the jurisdiction of the court. Appointment *per se* gives a receiver the right to its possession. And this right will be recognised by the courts of the foreign jurisdiction wherein such property is situate. Thus in *Bagby* v. *Atlantic, &c., Railroad Co.*, 86 Penn. St. 291, the right of a foreign receiver to sue in Pennsylvania was affirmed. In *Hurd* v. *City of Elizabeth*, 41 N. J. L. 1, it was decided that the legal effect of the appointment of a receiver in a foreign jurisdiction in transferring to him the right to collect the property passing under his control by virtue of such office, will be so far recognised by courts of this state [New Jersey] as to enable such officer to sustain a suit for the recovery of such property, and as to the doctrine that a receiver going into a foreign

jurisdiction should not be permitted to remove property of his debtor situate in such foreign jurisdiction, the court were of opinion that such doctrine "has no direct authority in its favor." So also in *Runk* v. *St. John*, 29 Barb. 585, the Supreme Court of New York decided that receivers appointed in other states may sue as such in the courts of New York.

These cases, however, are apparently contradicted by the following authorities, wherein it has been decided that a receiver cannot bring an action in a court of foreign jurisdiction: *Booth* v. *Clark*, 17 How. 322; *Farmers' & Mechanics' Ins. Co.* v. *Needles*, 52 Mo. 17. In *Warren* v. *Union Nat. Bank*, 7 Phila. 156, A., a citizen of Kentucky, attached the moneys of B., a citizen of Tennessee, in the hands of C., a citizen of Pennsylvania. Prior to the issuing of the attachment in Pennsylvania, a receiver had been appointed by the Court of Chancery in Tennessee, of all the estate and effects of B. It was decided that the attaching-creditor was entitled to the money in preference to the receiver, and the court intimated that a receiver is but an appointee of the court from which he derives his authority, and as receiver he has no *extra-territorial* rights of action, and that the states of the Union, for all except national purposes, are to be regarded as foreign and independent of each other. See also *Hope Mut. L. I. Co.* v. *Taylor*, 2 Rob. 278. And again, *State* v. *J. P. & M. Railroad Co.*, 15 Fla. 202, decided that under the constitution and laws of Florida a receiver cannot be appointed by the judge of one circuit to take possession of railway property located in another.

In *Willitts* v. *Waite*, 25 N. Y. 577, it was decided that the acceptance by a corporation of a charter, whereby, upon its committing an act of insolvency, all its property is to vest forthwith in receivers, to be distributed in a prescribed mode, does not give to the transfer thus effected the character of a voluntary conveyance by the corporation to the receivers, under which they might sue in a foreign state. It was held that such receivers took the assets of the bank in New York subject to the claims of creditors who had attached them subsequent to the act of insolvency.

*Hunt* v. *Colombian Ins. Co.*, 55 Me. 290, lays down the doctrine that the legal authority of receivers, duly appointed in another state, is co-extensive with the jurisdiction of the court by which he is appointed, and asserts the precedence and priority of creditors of Maine who attach property of the insurance company in Maine,

as against the claims of a New York receiver of the company. See also *Taylor* v. *Colombian Ins. Co.*, 14 Allen 352. See also *Hoyt* v. *Thompson*, 6 N. Y. 320.

The case of *Booth* v. *Clark*, 17 How. 322, will perhaps be recalled. In that case Mr. Justice WAYNE, speaking for the United States Supreme Court says: "He [the receiver] has no extra-territorial power of official action; none which the court appointing him can confer, with authority to enable him to go into a foreign jurisdiction to take possession of the debtor's property; none which can give him, upon the principle of comity, a privilege to sue in a foreign court or another jurisdiction, as the judgment-creditor himself might have done where his debtor may be amenable to the tribunal which the creditor may seek. In those countries of Europe in which foreign judgments are regarded as a foundation for an action, whether it be allowed by treaty stipulations or by comity, it has not as yet been extended to a receiver in chancery. In the United States, where the same rule prevails between the states as to judgments and decrees, aided as it is by the first section of the 4th article of the Constitution and by the Act of Congress of 26th May 1790, by which full faith and credit are to be given in all the courts of the U. S., to the judicial sentences of the different states, a receiver under a creditor's bill has not as yet been an actor as such in a suit out of the state in which he was appointed. This court considered the effect of that section of the Constitution, and of the act just mentioned in *McEmoyle* v. *Cohen*, 13 Pet. 324, 327. But apart from the absence of any such case, we think that a receiver could not be admitted to the comity extended to judgment-creditors, without an entire departure from chancery proceedings, as to the manner of his appointment, the securities which are taken from him for the performance of his duties, and the direction which the court has over him in the collection of the estate of the debtor and the application and distribution of them. If he seeks to be recognised in another jurisdiction, it is to take the fund there out of it, without such court having any control of his subsequent action in respect to it, and without his having even official power to give security to the court, the aid of which he seeks for his faithful conduct and official accountability. All that could be done upon such an application from a receiver, according to chancery practice, would be to transfer him from the locality of his appointment to that where he asks to be recognised, for the execution of his trust in

the last, under the coercive ability of that court; and that it would be difficult to do, where it may be asked to be done, without the court exercising its province to determine whether the suitor, or another person within its jurisdiction, was a proper person to act as receiver."

Here, then, are two conflicting classes of cases, one affirming that a receiver may take possession of and sue for property in a foreign jurisdiction, the other affirming that he may not do so. How, if at all, may they be reconciled?

On examination, there appears to be this distinction between the two classes: In the cases wherein the extra-territorial power of the receiver was denied, its exercise was opposed by creditors of the debtor resident in the foreign jurisdiction where the receiver sought to act. In the cases where the extra-territorial power of receivers was affirmed, there was no opposition to his action in the foreign jurisdiction by creditors resident there—citizens of that jurisdiction. The rule affirming the extra-territorial power of receivers is in no case asserted as against creditors and citizens of the foreign jurisdiction wherein the receiver seeks to assert rights. On the contrary, their rights are expressly reserved by the courts which, while they affirm the extra-territorial power of the receiver, are careful to remark that his action was opposed by no creditor resident within their jurisdiction, and to affirm that it is their duty to protect their own domestic creditors of the debtor, and to give to them, in preference to the receiver, the prior right to the debtor's property within their jurisdiction.

The distinction between allowing a foreign receiver to sue when not opposed and refusing to allow him to sue when opposed, by domestic creditors, was very clearly pointed out and insisted upon in *Hurd* v. *City of Elizabeth*, 41 N. J. L. 1. Said Chief Justice BEASLEY: "That the officer of a foreign court should not be permitted, as against the claims of creditors resident here [in New Jersey], to remove from this state the assets of the debtor is a proposition that appears to be asserted by all the decisions, but that similarly he should not be permitted to remove such assets when creditors are not so interested, is quite a different affair, and it may perhaps be safely said that this latter doctrine has no direct authority in its favor." Again he says: "It [the power of a receiver to sue] could not be exercised in a foreign jurisdiction to the disadvantage of creditors resident there, because it is the policy of

every government to retain in its own hands the property of a debtor until all domestic claims against it have been satisfied." In *Runk* v. *St. John*, 29 Barb. 585, the Supreme Court of New York by CLERKE, J., says: "All that has been settled by the decisions referred to is that our courts will not sustain the lien of foreign assignees or receivers in opposition to a lien created by attachment under our own laws. In other words, we decline to extend our wonted courtesy so far as to work detriment to citizens of our own state who have been induced to give credit to the foreign insolvent. But this question does not arise in the case before us. This is not a contest between foreign creditors and domestic attaching creditors."

*Bagby* v. *Atlantic, &c., Railroad Co.*, 86 Penn. St. 291, affirmed the right of a foreign receiver to sue in Pennsylvania, expressly saving, however, the rights of creditor citizens of that state to defeat it. "Our own citizens," said the court, "would be protected against the extra-territorial act in a proper case, because they are not bound by it, and our assistance given to the extra-territorial act resting only in comity, would not be given at the expense of justice to them:" per AGNEW, J., page 294.

The right of creditors to hold the property of their debtor against a foreign receiver, and to subject it to the payment of their debts appears to be recognised by a recent case in the United States Supreme Court, wherein it was said: "If he [the creditor] has a right, in a distinct suit to prosecute his demand to judgment, without leave of the court appointing the receiver, he would have the right to enforce satisfaction of it. By virtue of his judgment he could, unless restrained by injunction, seize upon the property of the trust or attach its credits. *If his judgment were recovered outside the territorial jurisdiction of the court by which the receiver was appointed, he could do this, and the court which appointed the receiver and was administering the trust assets would be impotent to restrain him.*" Per WOODS, J., in *Barton* v. *Barbour*, 104 U. S. 128.

Some of the objections to a receiver being permitted to sue in a foreign court may be noticed. In *Booth* v. *Clark*, *supra*, the Supreme Court of the United States said: "If he [the receiver] seeks to be recognised in another jurisdiction, it is to take the fund there out of it, without such court having any control of his subsequent action in respect to it, and without his having even official

power to give security to the court the aid of which he seeks for his faithful conduct and official accountability."

As to the objection of a lack of security, may it not fairly be replied that the court which appointed the receiver can take from him sufficient security to indemnify against the loss of all the property placed in his charge—as well that outside the jurisdiction of the court appointing the receiver as that within its jurisdiction? Cannot creditors resort to that court and the security it takes? Certainly the debtor can if necessary resort to the security taken by the appointing court. He is already in that court, and both himself and his creditor, may have the benefit of any security that court may have taken. And if the security is sufficient and available to all who may lose by the receiver's breach of trust, what objection is there to allowing him to take possession of the foreign property, and to seek the aid of the foreign court to do so. It does not seem necessary, in order to do this, to transfer the receiver to the foreign court, and to make him an officer of that court. He may sue in his own name in the courts of the foreign jurisdiction, basing his suit upon the title conferred upon him by the court appointing him. Except as against their own creditors, why should not foreign courts assist the receiver as a matter of comity? It is not perceived that any confusion or lack of security results from applying these rules.

True, the foreign court whose aid is sought would not have control of the receiver. But another court, having already a sufficient security against his misconduct, has control of him and can compel performance of his duties. It is no hardship to compel the debtor to look to the appointing court for protection against the receiver's misconduct. The debtor is already in that court as a party to the proceedings which resulted in the appointment of a receiver, as to creditors, those resident in the jurisdiction wherein the receiver seeks to take property may have sufficient protection in their own courts, who will not, it must be remembered, permit the foreign receiver to assert rights in opposition to theirs. Other than domestic creditors may as well be remitted to the court appointing the receiver.

A court appointing a receiver will by injunction restrain persons within its jurisdiction from proceeding against foreign property of the debtor in a foreign court. In *Vt. & C. R. Co.* v. *Vt. C. R. Co.*, 46 Vt. 792, it is decided that the courts of Vermont

will restrain parties within their jurisdiction from prosecuting suits in foreign courts to reach foreign property owned by a corporation—railway company—over which the Vermont court has appointed a receiver. And *Bagby* v. *Atlantic, &c., Railroad Co.*, 86 Penn. St. 291, decides that where a receiver of a corporation has been appointed by a court of competent jurisdiction in another state, a creditor who resides in that state, and is bound by a decree of its court appointing said receiver, cannot in an attachment-execution recover assets of the corporation in Pennsylvania, which the receiver claims. It has been decided that a receiver may prove a claim in bankruptcy in the federal court of another district as fully as if vested with his powers as receiver by virtue of a decree of a court within the district in which the proceedings in bankruptcy are pending. *Ex parte Norwood*, 3 Bissell 504. And where a citizen of one state has recognised the appointment of a receiver in another state, by incurring obligations to him in his official capacity, as by giving him a mortgage, the receiver may maintain an action [of foreclosure, for example] to enforce such obligation: *Iglehart* v. *Beirce*, 36 Ill. 133.

So far the right of a receiver to sue for or take possession of property in a foreign jurisdiction has been considered solely with reference to the right to such property which he acquires by appointment *per se*. But of course his right to such property depends upon his title to it; and this a receiver may get in other ways than by appointment as receiver. For example, the court appointing him, having control of the debtor, may compel the latter to execute to the receiver an assignment or other deed of the property; or such deed may be executed voluntarily to the receiver, who then may take possession of or recover the property, whether at home or abroad, not as receiver but as grantee in the deed. Thus in *Graydon* v. *Church*, 7 Mich. 36, the Supreme Court of Michigan, in a case where under a creditor's bill, in the Court of Chancery of New York, a receiver had been appointed, and the debtor in pursuance of the order of the court made a general assignment to the receiver of all his property, reciting in it the proceedings had in the cause, and the assignment was made in due form for the transfer of an interest in lands under the Michigan statutes, the Supreme Court of Michigan decided that the assignee might file his bill in chancery, in Michigan, to foreclose a mortgage interest or to enforce a right of redemption held by the

debtor at the time of the assignment, in lands in Michigan. The court, by Judge CHRISTIANCY, said in substance, that the receiver in such a case, sued not strictly in his official character as receiver, by virtue of his appointment in New York, but as an assignee, holding the legal interest in the property by virtue of the assignment of the debtor.

Where property has once vested in an assignee or receiver by the law of the state where the property is situated, the law of another state will not divest him of his right to it if he should take it into such state in the performance of his duty. A receiver appointed by a court in such a case stands in the same position as an assignee or trustee in insolvency. Thus where a receiver of an insolvent manufacturing corporation appointed by a court in New Jersey, took possession of its assets, and for the purpose of completing a bridge which it had contracted to build in Connecticut, purchased iron with the funds of the estate and sent it to that state, it was decided that the iron was not open to attachment in Connecticut by a creditor residing there: *Pond* v. *Cooke*, 45 Conn. 126. See also *Blake Crusher Co.* v. *New Haven*, 46 Id. 473.

*Kilmer* v. *Hobart*, 58 How. Pr. 452, decides that receivers appointed in another state and operating a railway as such, but having property in their hands as such in New York, cannot there be sued; an attachment issued in such suit will be vacated.

And where C. was appointed by a court in Arkansas receiver of property of T., a defendant in a suit, and ordered to ship it to Memphis for sale, and to hold the proceeds subject to the order of the court, and did so ship it to Memphis, where it was attached by creditors of T., it was decided that C. could maintain an action of replevin in Tennessee notwithstanding he had not yet qualified and given bond: *Cagill* v. *Wooldridge*, 8 Baxter 580.

The substance of the law appears to be as follows: Any court having jurisdiction of a debtor may appoint a receiver of his property, including as well that property which is without, as that which is within the jurisdiction of such court.

Property within the jurisdiction of the appointing court passes by the appointment *per se* to the receiver who may assert his rights thereto as receiver either in the court which appoints him or any other court, foreign or domestic.

Property outside of the jurisdiction of the appointing court passes by the appointment *per se* to the receiver, as against the

debtor and his privies to the appointment but not as against creditors of the debtor residing in the foreign jurisdiction where the property is situate. Courts of such foreign jurisdiction will protect the rights of their own creditors to the property of the debtor that is within their jurisdiction, as against the receiver appointed by another court.

When a receiver has once obtained rightful possession of the property he was appointed to take charge of, he will not be deprived of its possession, except by the court appointing him, even though he remove with it to a foreign jurisdiction. While there it can not be taken by creditors of the insolvent who reside within that jurisdiction.

The power of a receiver to sue for or possess himself of property of his debtor in a foreign jurisdiction appears to rest entirely on comity. It has some economical reasons in favor of it. One is that it lessens expense, since it enables one receiver to take possession of the entire property, and saves litigation, which would be necessitated in case the receiver was not recognised in the foreign jurisdiction wherein he seeks to assert rights and the appointment of a new receiver be required. Take the case of a receiver of a railroad running through several states. If the receiver appointed by one court may not take possession of the whole road, then there must be a receiver appointed by a court in every jurisdiction through which the railway runs. There must be the expense of conducting costly litigation in several courts. Again, each court may appoint different receivers, whose management of the railway may not be at all harmonious. It certainly would be productive of great confusion and expense for several courts and receivers to control the same property. But where property is situate in several foreign jurisdictions the better way seems to be to compel the insolvent to execute a deed of assignment to the receiver. This would give him a better title than the court appointing the receiver could confer, because, unlike the title passed by appointment, the receiver's title by deed of assignment would be good even against creditors residing in the jurisdiction of the foreign court whose assistance the receiver might seek.

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