

Chapter 31

Receivership

31.010

NOTES OF DECISIONS

A receiver is an officer of the court, whose agent he is, having power to manage and dispose of property as he may be directed. *Tobin v. Portland Flouring Co.*, (1902) 42 Or 117, 120, 68 P 749.

Relief by way of receivership is equitable in its nature and is controlled by and administered upon equitable principles. *French v. C.F. & T. Co.*, (1928) 124 Or 686, 265 P 443.

FURTHER CITATIONS: *Egan v. No. Am. Loan Co.*, (1904) 45 Or 131, 76 P 774, 77 P 392; *Grayson v. Grayson*, (1960) 222 Or 507, 352 P2d 738.

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NOTES OF DECISIONS

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1. In general

An assignee of a contract subjects himself to the jurisdiction of the court appointing a receiver and is therefore bound by an order annulling the contract where it appears that the receiver contracted to sell property and the buyer, with the assent of the receiver and the approval of the court, assigned the contract to the assignee who stipulated to carry out all its terms. *Pacific Lbr. Co. v. Prescott*, (1902) 40 Or 374, 384, 67 P 207, 416.

Persons making contracts with receivers are entitled to notice and a hearing on matters affecting their rights. *Id.*

A court of equity has inherent power to appoint a receiver in a proper case independent of statute. *Muellhaupt v. Strowbridge Estate Co.*, (1931) 136 Or 99, 298 P 186.

An order appointing a receiver is void if the court lacks jurisdiction over the corporation or there is no equity in the suit. *Id.*

An action for damages from the wrongful receivership is maintainable where the appointment of a receiver is void as unauthorized by this section, notwithstanding the void order is not vacated. *McKinney v. Nayberger*, (1931) 138 Or 203, 295 P 474, 2 P2d 1111, 6 P2d 228, 229.

Although general creditors are not named as parties to the original suit, when on the order of the court they filed

their claims with the receiver, they in effect become parties to the proceeding. *Home Mtg. Co. v. Sitka Spruce Pulp & Paper Co.*, (1934) 148 Or 502, 36 P2d 1038.

This section does not authorize the appointment of a receiver in a divorce suit. *Grayson v. Grayson*, (1960) 222 Or 507, 352 P2d 738.

2. Ancillary remedy

Prior to 1927, a suit for the sole purpose of having a receiver appointed could not be maintained. *Cook v. Leona Mills Lbr. Co.*, (1923) 106 Or 520, 212 P 785; *Taylor Fin. Corp. v. Ore. Logging & Tbr. Co.*, (1925) 116 Or 440, 241 P 388; *French v. C.F. & T. Co.*, (1928) 124 Or 686, 265 P 443.

Where a corporation is in imminent danger of insolvency, a receiver may be appointed for the same although there is no action pending. *Rugger v. Mt. Hood Elec. Co.*, (1933) 143 Or 193, 20 P2d 412, 21 P2d 1100.

3. When appointment authorized

Where it is not shown that partnership property will be lost because of the acts of the defendant partner, the court may refuse to appoint a receiver for a partnership. *Wellman v. Harker*, (1870) 3 Or 253.

In a suit to dissolve a partnership, the court should appoint a receiver to convert the property into cash and should award each partner his share of the net assets, after payment of firm liabilities, less what he may have already received. *Durkheimer v. Heilner*, (1893) 24 Or 270, 33 P 401, 34 P 475.

In a suit for the settlement of a partnership, a receiver may be appointed to take charge of the assets and wind up the business of the concern where the members cannot agree or the firm property is in danger. *Fleming v. Carson*, (1900) 37 Or 252, 62 P 374.

Where the establishment of a lien on a fund and distribution of the fund are the objects of a suit, a receiver should not be appointed. *Young v. Hughes*, (1901) 39 Or 586, 65 P 987, 66 P 272.

At the instance of a minority stockholder, a receiver may be appointed for a corporation where no creditors or innocent stockholders will be injured by the appointment and the rights of the applicant, victimized by the frauds of the majority, can best be secured through it. *Baillie v. Columbia Gold Min. Co.*, (1917) 86 Or 1, 166 P 965, 167 P 1167.

The complaint in a suit in which application for a receiver is made on the grounds of insolvency must lay a foundation for establishing the insolvency. *French v. C. F. & T. Co.*, (1928) 124 Or 686, 265 P 443.

The appointment of a receiver on behalf of a mortgagee pending foreclosure is proper if the security is inadequate, the mortgagor insolvent and there is a waste or danger of loss or destruction of the property. *Investors Syndicate v. Smith*, (1939) 105 F2d 611.

Where a decree was rendered stating the position of the parties as to certain water rights, the court could appoint a receiver to carry out the decree upon application of either party. *Tolman v. Casey*, (1887) 15 Or 83, 13 P 669.

Where a judgment debtor refused to produce stock cer-

tificates deposited in his name in Washington, the court could appoint a receiver and require the debtor to transfer the certificates to him to satisfy judgment and execution. *Hodes v. Hodes*, (1945) 176 Or 102, 155 P2d 564.

4. Proceedings for appointment

Where the court has jurisdiction in a suit brought for the sole purpose of dissolving an insolvent corporation, a stockholder, upon direct application, may not collaterally attack the appointment of a receiver. *McNary v. Bush*, (1899) 35 Or 114, 56 P 646; *Hafer v. Medford*, (1911) 60 Or 354, 117 P 1122, 119 P 337.

Generally, a receiver of an insolvent corporation should not be appointed without notice to the parties affected and before they have an opportunity to be heard. *Anderson v. Robinson*, (1912) 63 Or 228, 126 P 988, 127 P 546; *Stacy v. McNicholas*, (1915) 76 Or 167, 183, 144 P 96, 148 P 67.

On appeal in a suit for the dissolution of a partnership, the appointment of a receiver and proceedings thereunder will not be disturbed on the ground that the findings of the court on final hearing did not show cause for the appointment, if the appointment was justified when made. *Fleming v. Carson*, (1900) 37 Or 252, 254, 62 P 374.

A petition in a suit by a stockholder is insufficient to give a court, possessed of equity powers only, jurisdiction to dissolve the corporation and decree its winding up where it does not allege any of the jurisdictional facts referred to in subsection (7). *Wills v. Nehalem Coal Co.*, (1908) 52 Or 70, 96 P 528.

Notice of application for the appointment of a receiver should be given to the adverse party even though there is no provision in the statute requiring such notice. *Anderson v. Robinson*, (1912) 63 Or 228, 126 P 988, 127 P 546.

Failure of the defendant to raise an objection to the ex parte appointment of a receiver or by participating in the proceedings thereafter constitutes a waiver of notice. *Id.*

An order exceding the statutory limits authorizing a receivership is void as without jurisdiction over the subject-matter and subject to collateral attack in an action for damages from the wrongful receivership. *McKinney v. Nayberger*, (1931) 138 Or 203, 295 P 474, 2 P2d 1111, 6 P2d 228, 229.

In a suit by an assignee of labor claimants, the facts in the complaint warranted a receiver of a corporation on the ground that it was either insolvent or in imminent danger of becoming insolvent and that it was necessary to protect the property for the benefit of creditors. *Home Mtg. Co. v. Sitka Spruce Pulp & Paper Co.*, (1934) 148 Or 502, 36 P2d 1038.

Where the appointed receiver did not file his bond or oath or take possession of the property until less than four months prior to the bankruptcy proceedings, the bankruptcy court had jurisdiction of the insolvent estate. *Stacy v. McNicholas*, (1915) 76 Or 167, 144 P 96, 148 P 67.

5. Tenure

In a case which has been remanded to the circuit court, the receivers may be retained in office until their appointment is revoked by the court. *Thompson v. Holladay*, (1887) 15 Or 34, 14 P 725.

6. Title to and possession of property

Where persons placed in charge of property by the court were only agents of the parties, their appointment has been held not to prevent a United States court from directing a sale of a certain portion of the property on which the plaintiff had a lien by virtue of a judgment. *The Holladay Case*, (1886) 29 Fed 226.

The title of a receiver dates back to the time of the granting of the order of appointment. *Pope v. Ames*, (1890) 20 Or 199, 25 P 393.

An order appointing a receiver to take charge of partner-

ship assets operates as an equitable assignment giving the receiver a lien from the time of his appointment. *Re Assignment of Hamilton*, (1895) 26 Or 579, 38 P 1088.

The debtor's choses in action pass to the receiver upon his appointment, subject to the equitable right of set-off then existing against the debtor. *Id.*

A creditor who seeks to reach property in the hands of a receiver and have it applied to the payment of his claim should proceed in the receivership suit by petition and not by an original suit in equity. *Goodnough v. Gatch*, (1900) 37 Or 5, 60 P 383.

An insolvent debtor has no authority, after the appointment of a receiver, to subject a fund in the hands of the receiver to any legal liability for services performed for the benefit of the insolvent debtor only. *Ford v. Gilbert*, (1904) 44 Or 259, 75 P 138.

A debtor of a suspended bank cannot set off against his debt the amount of a check on the bank acquired with knowledge of the suspension, though he acquired the check before appointment of a receiver. *Re Assignment of Hamilton*, (1895) 26 Or 579, 38 P 1088.

An assignment of assets of a corporation in the hands of a receiver was sustained where the appointment of the receiver was not for all the creditors, and the assignment was for consideration, in good faith and after payment of the plaintiff, the receiver and his attorney. *Scandinavian-Am. Bank v. Wentworth Lbr. Co.*, (1921) 101 Or 158, 199 P 26.

7. Powers and duties

A receiver cannot become a mortgagee of property in his possession. *Thompson v. Holladay*, (1887) 15 Or 34, 14 P 725.

A receiver who advances money to defendant pending litigation is entitled to a decree for the amount of his debt against the defendant personally and the receivers who have been subsequently substituted in their official capacity. *Id.*

A receiver acts in a fiduciary capacity subject to the court's control, his office being to take possession of the property and hold it subject to the order of the court appointing him. *Id.*

A breach by the receiver of his trust, particularly a secret and devious one, will not be tolerated. *Estabrook v. Kellenberger*, (1961) 228 Or 612, 365 P2d 885.

A receiver acts in a fiduciary capacity in respect to all persons who have any direct or indirect interest in the assets subject to the receiver's control. *Id.*

A receiver of the property of a warehouseman had authority to collect charges for storage of wheat and sacks furnished by the warehouseman to owners whose wheat was emptied into bins for storage, where the contract of bailment treated the wheat as being in sacks at all times. *Tobin v. Portland Flouring Co.*, (1902) 42 Or 117, 68 P 749.

8. Claims

A secured creditor may prove his entire claim against an insolvent estate, whether in the hands of a receiver or an assignee, irrespective of his security. *Rockwell v. Portland Sav. Bank*, (1901) 39 Or 241, 64 P 388.

A creditor may petition the court for redress without an order permitting him to intervene. *Wilde v. Ore. Trust & Sav. Bank*, (1911) 59 Or 551, 117 P 807.

In a receivership proceeding, the court may allow counsel fees as a preferred claim where the defendant corporation employed the counsel to contest the appointment of a receiver. *Muellhaupt v. Stowbridge Estate Co.*, (1932) 140 Or 484, 14 P2d 282.

9. Actions

Suit cannot be brought against a receiver until leave of

court has been obtained. *Thompson v. Holladay*, (1887) 15 Or 34, 55, 14 P 725.

An order of court obtained ex parte and without notice to interested parties authorizing a suit against a receiver, did not preclude the court from dismissing such suit on the ground that the plaintiff had mistaken his remedy. *Good-nough v. Gatch*, (1900) 37 Or 5, 60 P 383.

10. Sales

An order requiring a receiver to join an administrator in the sale of certain property in which the estate had an interest and which was in the hands of such receiver, is not an appealable order. *Steel v. Holladay*, (1889) 18 Or 151, 22 P 535.

The court's approval of the report of a sale of screenings and chop found in warehouses by a receiver of the property authorized to take charge of stored wheat and to collect for storage ratifies the sale and renders it valid. *Tobin v. Portland Flouring Co.*, (1902) 42 Or 117, 68 P 749.

If a receiver sells securities to a bank for the highest sum obtainable at the time of the sale and such price is insufficient to satisfy the debt for which the securities were given, the balance is not canceled. *Devlin v. Moore*, (1913) 64 Or 433, 130 P 35.

11. Compensation

The receiver's fees and expenses are a first lien on the proceeds of the property of which he has taken charge where he was regularly appointed and the court had jurisdiction over the property. *Tobin v. Portland Flouring Co.*, (1902) 42 Or 117, 122, 68 P 749; *Stacy v. McNicholas*, (1915) 76 Or 167, 144 P 96, 148 P 67.

In the absence of a statute providing for the compensation of a receiver, the court appointing him may allow a reasonable compensation for his services. *Martin v. Martin*, (1886) 14 Or 165, 12 P 234.

An order allowing reasonable compensation for a receiver deals with a substantial right and is appealable. *Id.*

In a situation where a receiver performs duties not included in the ordinary functions of a receiver, the court may approve additional compensation. *Thompson v. Willamette Mfg. Co.*, (1888) 15 Or 604, 16 P 647.

Performance of duties from which others may derive a benefit, or which the receiver may not be required to perform but may employ others to do, furnishes no basis for an extra charge. *Id.*

When services are necessary and a part of the duties of the office, the fact that others may be benefited cannot give the receiver any claim in his own right to any other pay than that fixed as the measure of his compensation for discharging all the duties of his office. *Id.*

Refusal of an allowance of compensation is not error when the parties ask the appointment of an interested party representing that his appointment would save the salary of the receiver in office and he serves until removed without making any claim for compensation. *Steel v. Holladay*, (1890) 19 Or 517, 25 P 77.

The court has discretionary power, in an action brought to declare void a chattel mortgage, to assess reasonable compensation for the receiver out of the proceeds of the sale of the property even where the mortgage is subsequently found to be valid. *Hembree v. Dawson*, (1890) 18 Or 474, 23 P 264.

Though the court had no jurisdiction in the particular case to appoint a receiver pendente lite, where it had general power to appoint receivers and made the appointment with the express assent of all parties, the compensation of the officer and the expenses incurred by him are payable out of the funds of the receivership. *Ford v. Gilbert*, (1903) 42 Or 528, 71 P 971.

Determination of the amount of compensation is addressed to the trial court's discretion, subject to review or

modification in the event of abuse thereof. *First Nat. Bank v. Ore. Paper Co.*, (1903) 42 Or 398, 71 P 144, 971.

The compensation allowed a receiver for his services becomes taxable as part of the costs and constitutes a lien upon the property. *Stacy v. McNicholas*, (1915) 76 Or 167, 144 P 96, 148 P 67.

12. Expenses

An order approving the accounts of a receiver and directing payment of sums thereby shown to have been expended by him in performing his duties is equivalent to an order authorizing him to incur such obligations. *Ford v. Gilbert*, (1903) 42 Or 528, 71 P 971.

Counsel fees constitute a part of the expense of the receivership. *Wilder v. Reed*, (1905) 46 Or 54, 78 P 1027.

13. Priorities

Debts incurred in carrying on the business of corporations not quasi-public in character may not, without the consent of prior lien creditors, be given precedence over prior contract liens. *United States Inv. Corp. v. Portland Hosp.*, (1902) 40 Or 523, 534, 64 P 644, 67 P 194, 56 LRA 627; *Stacy v. McNicholas*, (1915) 76 Or 167, 144 P 96, 148 P 67.

A railroad mortgagee is not liable for unpaid wages or other obligations incurred by a receiver appointed at its instance in the foreclosure suit, unless such responsibility was imposed by the court. *Farmers' Loan & Trust Co. v. Ore. Pac. R. Co.*, (1897) 31 Or 237, 244, 48 P 706, 65 Am St Rep 822, 38 LRA 424.

During the distribution of the proceeds of mortgaged property in the hands of a receiver, unsecured claimants for labor and services furnished prior to the appointment of the receiver are not preferred over mortgagees where the mortgages were executed and filed before the claims for labor and services were filed, except in railroad corporations. *Meriam v. Victory Placer Min. Co.*, (1900) 37 Or 321, 56 P 75, 58 P 37, 60 P 997.

Expenses incurred in preserving the property and reasonable compensation for the receiver constitutes a first lien on the property and its income, but expenses incurred in carrying on the business do not constitute a first lien unless preference is authorized in a court order. *United States Inv. Corp. v. Portland Hosp.*, (1902) 40 Or 523, 64 P 644, 67 P 194.

Labor creditors of a railroad corporation in receiver's hands are not allowed priority for their claims over mortgage debt where their labor was not bestowed to keep the road a going concern. *Security Trust Co. v. Goble R. R. Co.*, (1904) 44 Or 370, 74 P 919, 75 P 697.

A subsequent debt for labor and supplies for operation of a railroad is entitled to priority over a secured debt. *Barnum v. So. Ore. Traction Co.*, (1921) 100 Or 652, 195 P 590, 197 P 269, 198 P 520.

Where the income from the operation of the railroad has been diverted to meet the demands of secured creditors in preference to claims for labor and materials furnished in operating the railroad, the secured creditors may be ordered to restore. *Id.*

The period of six months before the appointment of the receiver is generally the period fixed during which supplies furnished may have a priority of payment from operating income. *Id.*

14. Accounting and discharge

A court may discharge a receiver appointed pendente lite in a suit to wind up the affairs of an insolvent corporation without notice to creditors. *Rockwell v. Portland Sav. Bank*, (1897) 31 Or 431, 50 P 566.

A receiver may appeal from an order directing payment of money in his hands where the amount in his possession is less than the amount fixed in the order. *Meriam v. Victory*

Placer Min. Co., (1900) 37 Or 321, 56 P 75, 58 P 37, 60 P 997.

The order passing on the final report of a receiver must be made after notice to the creditors. *Wilder v. Reed*, (1905) 46 Or 54, 78 P 1027.

No appeal lies from an ex parte order allowing fees to the attorneys for a receiver. The order passing on the final report of the receiver is the appealable order. *Id.*

15. Foreign receiverships

A receiver appointed in another state, who is not actually or constructively in possession of certain real property in the state where a suit is brought to quiet title thereto, may be made a party to such suit without permission of the court in which he was appointed. *Egan v. No. Am. Loan Co.*, (1904) 45 Or 131, 134, 76 P 774, 77 P 392.

The comity between states will usually sustain an application by a receiver appointed by a court of one state for possession of the debtor's property in another state, where no rights of citizens of the latter jurisdiction will be thereby prejudiced. *Id.*

FURTHER CITATIONS: *Jackson v. Nicolai-Neppach Co.*, (1959) 219 Or 560, 348 P2d 9.

ATTY. GEN. OPINIONS: Liability of receiver for expenses incurred by the state in fighting forest fire, 1928-30, p 330; appointment of receiver for a defunct corporate at the instance of the Corporation Commissioner, 1948-50 p 181.

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NOTES OF DECISIONS

Property in the hands of a receiver, placed there by a court of equity, becomes charged with the necessary expenses incurred in caring for and saving the property. *Stacy v. McNicholas*, (1915) 76 Or 167, 144 P 96, 148 P 67.

The appointment of a receiver for an automobile dealer cannot be held to invade the rights of a creditor seeking to recover an automobile from a purchaser from the dealer where it is not shown that the receiver had qualified under the provisions of this statute. *Nepach v. Mitchell*, (1930) 132 Or 395, 285 P 1109.

The statutes contain no provision for the exaction of a bond from one who applies for receivership. *McKinney v. Nayberger*, (1931) 138 Or 203, 295 P 474, 2 P2d 1111, 6 P2d 228, 229.

31.050

NOTES OF DECISIONS

This section does not apply to earnings prior to the receivership or to the corpus of the administration. *Security Trust Co. v. Goble R. R. Co.*, (1904) 44 Or 370, 74 P 919, 75 P 697.

Expenses incurred for labor and services necessary to care for and protect the property constitutes a first lien on the property and are entitled to a priority in payment over a prior mortgage. *Stacy v. McNicholas*, (1915) 76 Or 167, 144 P 96, 148 P 67.

Debts contracted by a receiver in carrying on the business of a corporation not quasi-public in character do not constitute a first lien entitling them to a priority of payment over prior contract liens. *Id.*

The operating expenses should be paid out of the income of the corporation and any unpaid expenses will share with other like claims. *Id.*

Where a receiver was appointed and incurred expenses necessary to preserve the property of the corporation and evidenced these expenses by issuing receiver's certificates upon stipulation of the parties, the certificates constituted a priority over mortgage. *Id.*

Workmen are entitled to preferred payment for services earned not more than six months prior to the receivership or more than 30 days after it. *Brakebush v. Aasen*, (1928) 126 Or 1, 267 P 1035.

This section has no application where there is nothing left in the hands of the receiver but the corpus. *Parks v. Cent. Door & Lbr. Co.*, (1940) 164 Or 363, 102 P2d 706.

FURTHER CITATIONS: *Home Mtg. Co. v. Sitka Spruce Pulp & Paper Co.*, (1934) 148 Or 502, 36 P2d 1038.

ATTY. GEN. OPINIONS: As to the priority of receivers' certificates of indebtedness for labor over a prior mortgage lien, 1936-38, p 368.