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Receiverships of Corporations

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THESIS

on

RECEIVERSHIPS OF CORPORATIONS

by

Robert Lathrop

Ithaca, New York

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The financial depression of the past ten months, so prolific in downfalls and embarrassments of corporations, with the usually natural sequence,—their being thrown into the hands of receivers, suggested to us the subject of Receiverships of Corporations for discussion. We are well aware of the broad field covered by such a theme, but have, from the whole mass of cases, on the subject, attempted to point to some of those which seemed to us most important. We have considered first the subject of receivers in general, and then proceeded to a discussion of when and for what causes receivers have been allowed to corporations; closing with a general outline of the rights, powers and duties of corporate receivers.
RECEIVERS IN GENERAL

A receiver is a ministerial officer of a Court of Chancery appointed as an indifferent person between the parties to an action, to take possession of and preserve pendent lite, the fund of property in litigation, when it does not seem equitable that either party should have possession or control of it.

The office of Receivership and the appointment of receivers have been assumed by courts of chancery for the advancement of justice and are founded on the inadequacy of remedies in the courts of law only. The Lord Chancellor well said in Bainbridge v. Baddeley, 3 Mac. & G., 419,—"There are few cases that can be stated in which the court has not jurisdiction, where it is essential to the justice of the case to interfere by appointing a receiver".

In exercising this wide discretion which is permitted to it the court should proceed with great caution for "It is a remedial measure whose effect, temporal at least, is to dispose of his property a defendant in possession before a final judgment or decree is reached by
the court determining the rights of the parties. It is therefore, not to be exercised doubtfully but the court must be convinced that the relief is needful and that it is the appropriate means of securing an appropriate end. And since it is a serious interference with the right of a citizen without the verdict of a jury and before a regular hearing, it should only be granted for the prevention of manifest wrong and injury. And because it divests the owner of property in his possession before a final hearing, it is regarded as a severe remedy, not to be adopted save in a clear case and never unless plaintiff would otherwise be in danger of suffering irreparable loss." (Spelling on Private Corps., Vol. 2, Sec.840)

The remedy of receivership operates really as an equitable execution. "The order of appointment is in the nature, not of an attachment, but a sequestration it gives in itself no advantage to the party applying for it over other claimants and operates prospectively upon rents and profits which may come to the hands of the receiver, as a lien of those interested, according to their rights and priorities in or to the principal subject out of which the rents and profits issue. In the exercise of this summary jurisdiction a court of equity reserves, in
in a great measure, its ordinary course of administering justice; beginning at the end and levying upon the property of a kind of equitable execution by which it works a general instead of a specific appropriation of the issues and profits, and afterward determining who is entitled to the benefit of the quasi-process. But acting, as it often must of necessity, before the merits of the cause have been fully developed, and not unfrequently when the proper parties in interest are not all before the court, it proceeds with much caution and circumspection in order to avoid disturbing unnecessarily or injudicially legal rights and equitable priorities."

(Spelling on Private Corporations, Vol. 2, Sec. 341.)

From the foregoing observations it is plain that courts of Chancery have entrusted to them the greatest discretion in this matter and few absolute rules could be laid down to govern in cases involving the appointment of receivers, but in Blondheim v. Moore, 11 Md., 394, LeGrand, C. J., mentions the following:—

I. That the power is a delicate one and to be exercised with great circumspection.

2. That it must appear that the claimant has a title to the property and the court must be satisfied by affidavit that a receiver is necessary to preserve the
property.

3. That there is no case in which the court appoints a receiver merely because measure can do no harm...

4. That fraud or imminent damage, immediate possession should not be taken by the court must be clearly proved.

5. That unless the necessity be of the most stringent character the court will not appoint until the defendant is first heard in response to the application.

As to the Appointment of Receivers for Corporations.

Our remarks so far have been concerned with receivers in cases between individuals but we feel that these observations apply to cases of corporate receivers as they applied to cases of receivers of individuals long before corporate receivers were of such every day occurrence as they now are. It is but pertinent to observe here that a court of Chancery has innate in itself power to appoint a receiver for the rents and profits as such of a corporation, but the power to appoint a receiver who shall bring about a dissolution of the corporation is primarily in the sovereign power (which power created the corporation) but in many cases and in most we think, such power has been delegated to the chancery
tribunals by statute.

We may now profitably turn our attention to a dis-
cussion of cases where receivers will be allowed for
corporations. This, however, is a troublesome subject.
The exact limits within which courts of equity will ap-
point a receiver and when they will not resort to this
means of securing right and preventing failure of jus-
tice have never been expressed in form applicable to all
cases and for this reason we may perhaps arrive at a
true knowledge of the subject if we consider some actual
cases. And firstly, as to the appointment of a receiv-
er on an ex parte application. Of course it is fair to
observe that a court of chancery does not favor the ap-
pointment of a receiver on an ex parte application. For
to exercise such summary power and deprive a corporation
of possession of its property without a chance to oppose
such a proceeding ought not to be entered upon lightly.

Indeed, in French v. Gifford, 148, it was held that
such an allegation as "that if notice of this application
be given to the defendant, the books records and papers
of said bank will be so falsified or spirited away that
they cannot ascertain the said frauds" was not sufficient
to justify the appointment of a receiver without notice.
so that the other parties who would oppose might have opportunity so to do. This case may be extreme but it shows the delicate manner in which the courts consider ex parte applications.

And now let us consider the question of insolvency and default in mortgage obligations as a cause for the appointment of a receiver. As a general proposition a receiver may be appointed when a corporation becomes insolvent, but the controlling question with the court must be whether the protection of the public or the interests of the creditors or of the stockholders require that a receiver be appointed. If such interests require the appointment he will be appointed, otherwise not. However in absence of a statute giving power to a court of equity it has no power to act as a court of insolvency for the liquidation of the affairs of an insolvent corporation. It has no peculiar jurisdiction over corporations to restrain them in the exercise of their powers or control their actions or prevent them from violating their charters, when there is no fraud or breach of trust alleged as the foundation of a claim for equitable relief. Thus in Pond v. Farmingham & Sound R. R. Co., 130 Mass.,
194, where the bill alleged that plaintiffs were creditors of defendant company which it was stated was insolvent, that all its property was mortgaged to trustees for the benefit of one class of creditors; that it owed large amounts to other creditors, one of whom had attached all its property; that it was about to execute a lease to said attaching creditor for the term of 99 years at a rental which did not pay the interest upon its indebtedness; and that the executor of said lease would be injurious to the creditors and stockholders and prayed for an injunction and receivers, the court held "In the absence of any statute giving the power, this court has no authority to act as a court of insolvency for the liquidation of the affairs of an insolvent Rail Road Company."

But the appointment of a receiver is not a necessary sequence of the insolvency of a corporation, but in almost all cases the application is addressed to the sound discretion of the court unless a statute can be shown regulating such appointments. In Deinke v. N. Y. & R. Line Co., 80 N. Y., 599, the court held "Assuming that the company was totally insolvent, so that it could never resume its corporate business the plaintiffs did not in
any aspect of the case have an absolute right to a receiver. The court in its discretion might conclude that it was for the interest of all parties to permit the property to be sold under the judgments or to be managed and controlled by the executors." and in Pullan v. C. & C. R. R. Co., 4 Bliss, 50, the court says "I suppose that in no case of a mortgage ought a court of chancery to appoint a receiver if the mortgaged property is of such a value as to render it clear that on a foreclosure and sale the debt could all be made.

The appointment of a receiver does not follow as a matter of course the foreclosure of a mortgage against the corporation. So it was decided that a court of equity would not appoint a receiver of a rail road company on its merely being shown there was a default in payment of interest secured by a mortgage of the properties and income of the company, when for such default the trustees under the mortgage were entitled to immediate possession, had demanded immediate possession and had been refused, for the court felt that it must be shown that ultimate loss would happen to the beneficiaries under the mortgage by permitting the property to remain in the
hands of the owners until final decree and sale, the court saying, "We are not of the opinion, therefore, that a court of equity is bound in every such case on failure to pay to appoint a receiver without considering other circumstances which have a proper bearing on the question of appointment". (Union TrusCo. v. R. R. Co., 4 Dillon, 114). In such a case, indeed, to appoint a receiver would amount to the enforcement of a penalty and equity does not enforce penalties. In fact we feel that a court of equity rather attempts to relieve for penalties and leave the party to his remedy at law.

But when a deed of trust, executed by a railroad Company, mortgaged its income and profits, as well as its railroad and other property to secure the payment of the principal and interest of its bonds, and authorized the trustees, in default of the payment of the interest, to take possession of the mortgaged property and apply the income to the payment of the interest, Judge Woods, in Allen v. Dallas & W. R. R. Co., 3 Woods 316, said "In my judgment, independent of the necessity for the appointment of a receiver to protect and preserve the trust property it was the right of the bond-holders under the
terms of the trust deed, to have a receiver appointed to take possession of the property". In this case the trustees had asked to have a receiver appointed.

In the case of Warner v. Rising Fawn Iron Co., same report, the trustees had refused to take possession and it was held that on the refusal of the trustees to take possession, a receiver, the conditions existing which a receiver would be authorized the trustees to take possession appointed at the suit of the bond-holders.

So where a railroad company, heavily mortgaged, had made several defaults in the payment of interest aggregating over $1 000 000, its business was decreasing with a probability of further decrease from competition with new lines; it was in need of repairs and improvements; and the bond-holders were not in harmony and a foreclosure was about to be declared and no other way existed for applying the rents and profits of the road to its debts, the court said, "Much as I should like to be free from the annoyance of a receivership it seems to me I should be delinquent if I refused this application" for a receiver. Brewer, J., in Mercantile Trust Co., v. Missouri & T. R. R., 36 Fed., 226. And so where a rail-
road company with its well known obligations to the public has become entirely insolvent and unable to pay the interest upon its secured debts, unable to pay its floating debt, unable to borrow money and in peril of breaking up and the destruction of business likely, and confesses this inability and a bill is filed by a mortgage bond holder for an injunction against attacks upon the mortgaged property, and prays a receivership to protect the property of the corporation against peril, a temporary receiver may be appointed, although no default has taken place on the securities owned by the plaintiff. (See Brassey v. N. Y. Gen. R. R. Co., 22 Blatchford, 72.)

And also when the mortgaged property, consisting of its road and other property, is in adequate security for the mortgaged debt, and the company is insolvent and appropriating its earnings to its own use, a receiver will be appointed during the pendency of a bill filed by the mortgagee to be put in possession of the mortgaged property. The court saying "The views of this court on the subject of appointing receivers of railroads are well known. It will not appoint a receiver except where the right and necessity to do so are clear." On the facts of this case
this case, the only duty of the court to appoint a receiver until final hearing of the bill would seem to be as nearly imperative as the exercise of that jurisdiction can be said to be in any case" (Dow v. Memphis &c. R. R., 20 Fed., 260). And again, in Haas v. The Chicago Building Society, 89 ILL., 504, the courts say, "We take it then to be undoubted law, that the court of Chancery may, where the security is inadequate and a foreclosure proceeding is pending appoint a receiver if there are circumstances of fraud or bad faith on the part of the mortgagor, or other facts involved which would render a denial of the relief sought inequitable and unjust." But the court of chancery will not in mere deference to the mere technical rights of a very small minority of bond holders of a corporation, appoint a receiver where it appears that such action would imperil, if not destroy, the interests of others whose rights are entitled to receive equal consideration. In the exercise of the broad discretion which the court has in the matter of appointing a receiver, it will not make such appointment if it perceives that a much greater injury would result to those interested in the corporation than by leaving the
property in the hands then holding it, especially when it appears that the large majority of the stock-holders and bond-holders favor a funding plan then being negotiated. (Lysen v. Wabash Co., 8 Bliss, 247). Nor will a court appoint a receiver where a mortgage upon income and tolls provided that the possession of a canal should remain in the company unless it was shown affirmatively that default was the result of some other cause than failure of business, and the fact is not shown to the satisfaction of the court. (See Stewart v. Canal Co., 4 Hughes, 47). Though it might prove profitable to pursue these observations farther the brevity of this paper will not permit such and we will now proceed to consider a few of the cases when a receiver has been appointed for misconduct of officers or managers of the corporation.

The officers and directors, of course, stand in a fiduciary relation to the stock-holders and creditors, and if the property is mismanaged by them and is in danger of being lost to the stock-holders and creditors through collusion and fraud of themselves, the court may properly appoint a receiver on application of any one of the stock-holders.

In the Coal Co. v. Edwards, 103 Ill, 472, a bill
was filed alleging that the corporation had contracted a large indebtedness for sinking a shaft on grounds purchased for that purpose by the company; that the company had become wholly insolvent; that the directors were fraudulently mismanaging the affairs of the corporation; that the company had ceased to prosecute the work for which it was organized; that it was useless for the company to attempt to resume business on account of its financial embarrassment, and prayed for a receiver; to which the court says,—"On the face of the bill it would seem to be a clear case for the appointment of a receiver, a necessary step under the facts stated, if true, to the preservation of the property of the corporation for the benefit of creditors and stockholders interested in it. That part of the decree appointing a receiver will be permitted to stand." And again in Forbes v. Memphis &c. R. R., 2 Woods, 323, a receiver was allowed where the money paid by the bondholders for the bonds of a corporation was, with the assent and connivance of the directors, being squandered, wasted and embezzled by its officers and agents instead of being used for the purpose to which it was pledged, and thereby the bondholders as well as the
bonafide stockholders were in danger of losing all their money by such frauds and embezzlements, and the corporation was being rendered wholly insolvent thereby. And so on the same principle when the executive committee of a company vote money to themselves, in addition to their regular compensation for their services as promoters and originators of the company, or in consideration of the members retiring from the executive committee, a receiver will be appointed at the suit of the stockholders. (Blatchford v. Ross, 34 Barb., 42).

However it is only in a strong case, when the majority are clearly violating the rights of the minority, and putting their interests in imminent danger that a court of equity will at the instance of a minority of the stockholders, in a corporation, interfere with the management of its affairs and appoint a receiver, and in such a case, a bill with mere general charges of fraud, illegality or mismanagement is not sufficient to authorize the appointment of a receiver by the court. Thus in the case of Hand v. Dexter, 41 Ga., 454, there was no pretense that the corporation was undertaking anything outside of its charter, but the burden of the complaint
was that the majority of the stock-holders, through the officers, were managing the company fraudulently,—not for the benefit of all, but in the interest of a portion of the stockholders and this was sought to be maintained by the fact that the corporation granted to one of its officers $20,000 in its stock, and the latter subsequently repudiated his agreement and set up a claim of $20,000 expended by him for the corporation, which the latter consented to and surrendered to its treasurer 34,000 shares of the stock, to be used by him to raise funds under the direction of a committee to put the property in order and pay the debts. But the court held that this was not sufficient to take the property out of the hands of the stock-holders and the appointment of a receiver was denied, the court saying,— "The very foundation principle of a corporation is that a majority of its stock-holders have a right to manage its affairs so long as they keep within their chartered rights. They may, they often do manage very foolishly, make very bad contracts and do very reckless things. " As a court of equity will not appoint a receiver to carry on the business of mining, it follows that there can be no sufficient cause
for such a bill unless the majority of the stock-holders are pursuing a course so illegal and ruinous as to require the affairs of the company to be stopped. Thus we here see what a confusion of all these cases clearly demonstrates, that the "power behind the throne" (if such it may be called) in the appointment of a receiver or not is, what we at first stated, namely, the sound discretion of the court, this of course supplemented by statutory power as we also noticed.

We shall now proceed with the last branch of our subject, the rights, powers and duties of a receiver.

While the receiver cannot take possession of the property of the corporation, or be deemed vested with the estate before he is appointed, yet when his appointment is completed the entire estate vested in him relates back to the time of granting the order, and from that moment no act can be done affecting the property either by the corporation or its creditors. So in the case of In re John Berry, Receiver, 26 Barb., 55, where at 10 A. M. an order was made that a receiver be appointed to take charge of the property of the company and it was referred to a referee to appoint a receiver and take from him the req-
uisite security, and at three o'clock P. M. the same day
a party recovered a judgment against the company under
which the sheriff levied on the property of the company,—
it was held that such levy by the sheriff was invalid as-
and subsequently the referee appointed a receiver,—Hav-
against the receiver ing been appointed receiver and entrusted with the power
incident thereto, to take possession of the property, a
correlative duty is implied on the part of every one hav-
ing it in possession to deliver it to him, and one hav-
ing the property in possession violates the law in re-
sisting the exercise of that lawful authority of a re-
ceiver to take possession of the property and the receiv-
er may oppose such resistance with all the means at his
command. He may call on the sheriff and through him may
have the power of the county to prevent the commission
of a crime and thus enable him (the receiver) to execute
the order (of his appointment). (State v. Rivers, 60 Ia,
653).

Having gotten possession of the property the receiv-
er holds it, and persons who may have liens on the prop-
erty which were acquired before the receiver was appoint-
ed have no right without application to the court (so ap-
pointing) to sell and dispose of the property. Indeed
after the receiver gets the property it is so exclusively within the control of the court that no one without its permission is permitted to meddle with it under pain of contempt of court. So he has a sufficient property in the estate to prosecute an action upon leave of the court without the requisite number of shareholders as required by the charter. So the trend of the decision in Davis v. Gray, 16 Wall., 203, is that with the progress and growth of equity jurisdiction it has become unusual to clothe receivers with much larger powers than were formerly conferred; that in some of the states they are by statute charged with the duty of settling the affairs of certain corporations when insolvent and are authorized expressly to sue in their own names, and that the court sees no reason why a court of equity, in the exercise of its undoubted authority, may not accomplish all the best results intended to be secured by such legislation without its aid.

The possession of the receiver is peculiar; it is really not in himself but in those for whom he holds the property. He is the officer of the court, and the property is in him as the officer of the court. Hence if a policy of insurance runs to a receiver, in a designated
suit, where it provided that it should become void "if any charge takes place in title or possession (except in case of succession by reason of the death of the assured) whether by legal process or judicial decree or voluntary transfer or conveyance" it will not become void by a change of receivership. (In Thompson v. Phoenix Co., 136 U. S., 287). So it is conceded that the general principle is that a receiver without the previous direction of the court appointing him to incur expense out of the property in his lands except such as is essential to the use of such property as getting it insured with funds in his hands, there the question as to whether or not he has exceeded his authority is a question in which no one is concerned except the court appointing him and the parties interested in the property within his charge and himself. (Thompson v. Phoenix Co., 136 U. S., 287). This case also determines that though the receivers use of the funds is subject to the approval of the court, yet as the receiver is under such personal responsibility for the safety of the property that such use of the funds is subject to the approval of the court and as for insuring would make a binding contract on the insurer.
As a general proposition the primary object of a receivership is the preservation of the property pending litigation, the receiver has not power incident to his general authority to make contracts. However the court may authorize the receiver to exercise such power but without such authorization contracts made by him are not binding and the court may ratify them or disaffirm them at its discretion. But where a receiver is appointed under a code provision under decree of dissolution, the statutory provisions mark the limits of the court's competency to confer powers upon the receivers of a dissolved corporation. However, when these statutory powers are conferred by decree they involve and carry with them such powers as may be implied from the general object and spirit of the statute, or as are incidental to the authority given expressly. So in the case of the Florence Gas Co. v. Hanby, 13 So., 347, where on the dissolution of a corporation it appeared that the dissolved company had contracted to erect an electric plant for defendant and had nearly completed the work when it was dissolved and no part of the agreed price had been paid, it was held the complainant as receiver had power to complete
the work under the contract, and his offer to complete the work and defendant's refusal, had the same effect as if the company had not been dissolved and had itself made the offer. And as we have before noticed, the receiver is trustee of the corporation, holding the property as successor of the corporation, but he has no interest or power over the property embraced in the trust except as is conferred by the statute. In controversies with third persons he represents no rights of the creditors and stockholders which the corporation could not itself represent, but in New York according to the case of Curtis against Leavitt, 15 N. Y., 9, he succeeds to the rights of creditors and takes title under them, where conveyances otherwise valid have been made in fraud of their rights, and in such cases he holds adversely to the corporation.

As to the standing of a receiver in regard to possession of corporate property the case of In re Atlantic Mutual Life Ins. Co. v. 16 Ala., Law Jour., 453, is interesting. Here the Attorney General had gotten a receiver appointed who was in the discharge of his trust when a decree of bankruptcy was given against the compa-
The receiver moved that the decree of bankruptcy against the company be set aside and the court, through Wallace, J., held that the receiver had sufficient standing in the court to make the motion and such motion was granted on his application. In New Jersey a receiver is given such standing that he may not set up as a defence in a suit for injuries for the negligent running of trains on a railroad operated by him. A statute that requires that such actions be brought within two years, the court in this case saying,—"The receiver, within the sphere of his instructions represents the company by virtue of such a relationship he exercises all its necessary franchises and in my opinion he is its agent appointed not by the corporate body itself but by the law for certain ends of his own. ——— Looking at the subject in the light of public policy there seems to be no propriety in giving a longer life to a right of action arising during a receivership than is given to one arising while the road is in the hands of the directors, for if the investigation in the latter case should not be unreasonably delayed, neither should there be procrastination in the former. (See Bartlett v. Kein, 50 N. J. Law, 260). These cases
would seem to prove that the receiver is practically the
corporation itself, and it would seem that if there is
anything that the receiver is bound to do it is to make
the most possible out of the assets of the corporation.
Hence he is allowed to do anything that the corporation
could do or have done to make the assets as large as
possible. In Jacobs v. Turpin, 83 Ill., 424, the trust-
eee under a deed of trust to secure the payment of a sum
due an insurance company over which a receiver had been
appointed was directed to sell the premises described in
the trust deed in accordance with its terms. At the
sale Jacobs bid $2,938 and the receiver, in his official
capacity bid $10,070. The trustee struck off the land
to the receiver and it was held that the sale was valid;
the court saying,— "The right to so bid off property in
satisfaction of a debt would belong to the power of the
receiver to collect the debts of the company. The act
would be necessary and, in the exercise of such power in
order to make the most of property held as security for a
debt and prevent its sacrifice, we do not see why the re-
ceiver might not do anything in this respect that the
company could have done to make the most of its assets".
At times the receiver of an insolvent corporation is in a broader position than a mere representative of the corporation; representing both the corporation and creditors, and when he stands as such dual representative he may and even must do many things which he could not do if he were the representative of the corporation merely. In Pittsburgh Carbon Co., v. McMillan, 119 N. Y., 46, there was a controversy over a fund arising through an unlawful combination over which the receiver was appointed. The court, on page 52, say,— "It is claimed that no action could have been maintained by the trustees, representing the trust combination against the E. & L. Co. to recover the purchase price of the carbons for the reason that the illegality of the combination would have constituted a good defense. Assuming this predicate, it is asserted that the receiver stands in the same position, and that his title is subject to the same infirmity as that of the combinations which he represents. Without considering the assumption on which his proposition is based, it is a sufficient answer to the proposition asserted, that the receiver unites in himself the right of the trust combination, and also the right of the cred-
itors, and that he may assert a claim as the representative of the creditors, which he might be unable to assert as a representative of the combination merely. The general rule is well established that a receiver takes the title of the corporation or individual whose receiver he is, and that any defence which would have been good against the former may be asserted against the latter.

But there is a recognized exception, which permits a receiver of an insolvent individual or corporation, in the interest of creditors, to disaffirm dealings of the debtor or in fraud of their rights. Assuming that the trustee could not have recovered of the E. & L. Co. for the reasons suggested, it would be a very strange application of the doctrine, that no right of action can spring from an illegal transaction, which should deny to the innocent creditors of the combination or to the receiver who represents them the right to have the debt collected and applied in satisfaction of their claim. But, as was said at the beginning, the receiver is an "indifferent person" hence he is not permitted to advocate the cause of one claimant against another; between them he must be indifferent, owing a like duty to all, and for that reason
should, as far as possible, see to it that each has an opportunity to enforce his claim. He is in this respect the representative of all the creditors and is bound to give them reasonable but equal aid. He ought to act in good faith and adopt all proper and prudent measures to put the claim of each creditor in the way of liquidation before the period of distribution. Hence he is not justified in interposing any unconscientious obstacles to the liquidation of any demand, or in pressing with unreasonable haste the collection of a claim due the corporation with a view of excluding an offset by a creditor. (See Matter of Van Allen, 37 Barb., 230).

The receiver has power to compel the restoration of all property unlawfully abstracted from the corporation previous to his appointment and in some states it is held that even though the title to the property of the corporation is not vested in the receiver, he may sue in his own name to recover possession, and even maintain an action for conversion if possession can not be restored. Thus in Terry v. Bamberger, 14 Blatchford, 234, a company in Connecticut had in the hands of one Castle of New York goods on sale on commission on which Castle had a lien as security for liability on acceptances for the
Connecticut company. Castle assigned to Ramberger under the New York Laws. Ramberger took possession with notice that the goods belonged to the Connecticut corporation. Terry being appointed receiver of the corporation, tendered the acceptances to Ramberger who refused to deliver them and sold them. Terry as receiver now sued him; the court held, "The plaintiff as receiver had a right to institute suit in this state against the defendant for a conversion happening prior to the plaintiff's appointment. The receiver is the agent of the law to collect property of the corporation and to wind up its affairs, and for that purpose to do all acts which may be necessary in the execution of the trust. By authority of law he acts in the place of the directors but no title to property is changed—whether the receiver or the corporation is plaintiff the action is for the recovery of the value of property the title of which is in the company. Being thus the agent by the law to wind up the affairs of the corporation, and to do whatever it could do in this behalf, the receiver is authorized to collect within the state, its debts and choses in action of whatever nature the same may be and to commence any proper suits, whether sounding in tort or in contract."
case was, of course, decided under the Connecticut statutes.

So the receiver has the power, we think, to compel the payment of unpaid subscriptions on behalf of creditors. If the capital stock of a corporation is a trust fund then it is the duty and legal obligation of the stock-holders to pay it in according to their agreement that it may be applied to the payment of debts. So where a court of equity has conferred power upon the receiver to sue for, collect, receive and take into possession all the goods rights and credits of the corporation, and the showing is that a share-holder is debtor to the corporation to the amount of his share, or subscription to the capital stock, such debt is a credit of the corporation, and therefore the receiver has full power and authority, not only to receive and collect it, but to sue in his own name for the same. (Frank v. Morrison Receivers etc., 58 Md., 423.). The case of Chandler v. Brown, 77 Ill., 333, does not lay down a doctrine opposed to the above as some writers would seem to contend, but holds that in order to maintain such an action the receiver must show that the stock-holder sued was made a party to the proceeding in which the receiver was appointed.
So as incident to the power of the receiver to collect unpaid stock subscriptions, the receiver has the power to make calls upon the stockholders for balance of capital remaining unpaid to satisfy creditors, and he may call in such subscriptions from time to time or all at once. In making such assessments the receiver should have the sanction of the court. Actually, however, the receiver makes the assessment, the court passing upon the question of whether facts exist which render the assessments necessary and proper. As an example of how careful the court is that the receiver do not proceed without its sanction we cite the case of Glenn v. Mocon, 32 Fed., 7, where an order contained these words,— "And if there shall be any sum unpaid and due upon the shares of the capital stock of said company the said receiver will proceed to collect and recover the same, unless the persons of whom the said sums may be due shall be wholly insolvent, and for this purpose may prosecute action". etc., and it was held that the authority intended to be conferred was merely to bring suit in case the court should levy an assessment, and that the order of itself did not amount to a call for which prescription would begin to run.
Some courts go even further as in the case of Chandler v. Keith, 42 Ia., 99, where the terms of a subscription to a joint stock company proscribed that after 20 percent had been paid, the balance should be "subject to the call of the directors, as they may be instructed by the majority of the stock-holders," and the company having become insolvent, a receiver was appointed, who instituted an action against a stock-holder for the remaining 80 percent of his stock subscription, and the court held that the receiver had no authority to call upon the stock-holders for payment until the court had determined the amount of indebtedness of the corporation and fixed the liability of each share of the stock, and that this fact should be averred in the petition of the receiver to enforce the payment of the 80 percent. This is a very strict decision, but we cannot but feel, in the light of the great power that a receiver does possess, that the court was right and eminently justified in arriving at the conclusion above set forth.
In the foregoing remarks we have not pretended to derive original conclusions from the matters and cases there discussed but have, as we stated in the beginning, attempted to point to some of the principal cases on Receiverships of Corporations, and we respectfully submit the same as a "discussion" or perhaps more properly a digest.

Robert Latuff

Ithaca, New York;

April, 1894.
We have consulted generally the following authorities:

Beach on Private Corporations;
Beauch on Receivers;
Cook's Stockholders and Corporation Law;
Gluck and Becker's Receivers of Corporations;
High on Receivers;
Kerr on Receivers;
Morawetz on Private Corporations;
Pomeroy's Equity Jurisprudence;
Spelling on Private Corporations;
Taylor on Private Corporations;
Waterman on the Law of Corporations.

and have made special reference to the following texts and cases:

Allen v. Dallas & W. R. R. .............Page 10
Bainbridge v. Baddeley ................. " 2
Blondheim v. Moore .................... " 4
Brassey v. N. Y. C. R. R. ............." 12
Blatchford v. Ross ..................... " 16
Pullman v. C. & C. R. R. ......................... Page 9
Pittsburgh Carbon Co. v. Millan ...................... 26
Stewart v. Canal Co. .................................. 14
Spellingon Private Corporations .................. 3 4
State v. Rivers ........................................ 19
Terry v. Ramberger ..................................... 28
Thompson v. Phoenix Ins. Co. ......................... 21
Union Trust Co. v. P. E. Co. ......................... 10
Warren v. Rising Fawn Iron Co. ..................... 11