



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 11 | Number 3

Article 21

4-1-1933

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Recommended Citation

Jule McMichael, *Receivers -- Enjoining Other Suits -- Judgments in Other Suits as Liens*, 11 N.C. L. REV. 365 (1933).

Available at: <http://scholarship.law.unc.edu/nclr/vol11/iss3/21>

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of the rapid growth of this relatively new business and the frequency with which the lessee finds himself in the position of the plaintiffs in the two cases noted, the decisions in these cases allowing recovery and the bases upon which the cause of action was worked out are highly significant.

J. C. EAGLES, JR.

Receivers—Enjoining Other Suits—Judgments in Other Suits as Liens.

An action in the nature of a creditors' bill was brought by a simple contract creditor against a debtor alleged to be solvent. The debtor joined in plaintiff's request for the appointment of a receiver. A receiver was appointed, and the court enjoined further prosecution of pending suits brought by other creditors. On motion, the restraining order was vacated and the court ordered that those creditors who had brought their actions prior to the receivership proceedings be permitted to proceed to judgment and that their judgments be claims in the receivership prior to the claims of the general creditors. *Held*: The order allowing the priority was correct.¹

Generally, an equity court appointing a receiver has inherent power to protect his possession of the debtor's property. Interference with that possession may be enjoined at the time of the appointment² or later upon petition by the receiver in the receivership proceedings.³ One interfering with his possession is subject to punishment for contempt, and this is true even where there is no injunctive order.⁴ The property is not subject to attachment,⁵ garnishment,⁶ or execution⁷ without the consent of the court, but execu-

¹ *Dillard v. Walker*, 204 N. C. 67, 167 S. E. 632 (1933).

² *Cherry v. Insull Utility Investments*, 58 F. (2d) 1022 (N. D. Ill. 1932).

³ *Virginia, T. & C. Steel & Iron Co. v. Bristol Land Co.*, 88 Fed. 134 (C. C. W. D. Va. 1898); *Lake Shore & M. S. Ry. Co. v. Felton*, 103 Fed. 227 (C. C. A. 6th, 1900); *Westinghouse Electric & Mfg. Co. v. Richmond Light & R. Co.*, 267 Fed. 493 (E. D. N. Y. 1920).

⁴ *In re Marcus*, 21 F. (2d) 480 (W. D. Pa. 1924); *Coker v. Norman*, 162 Ga. 351, 133 S. E. 740 (1926).

⁵ *Central Trust Co. v. Wheeling & L. E. R. Co.*, 189 Fed. 82 (C. C. N. D. Ohio 1911); *Carroll v. Cash Mills*, 125 S. C. 332, 118 S. E. 290 (1923); see *Ewing v. Ewing Planing Mill*, 183 Iowa 711, 167 N. W. 607 (1918).

⁶ *Fleegeer v. Swift*, 122 Kan. 6, 251 Pac. 187 (1926).

⁷ *Mercantile Trust Co. v. Baltimore & O. R. Co.*, 79 Fed. 389 (C. C. E. D. Pa. 1897); *Pelletier v. Greenville Lumber Co.*, 123 N. C. 596, 31 S. E. 855, 68 Am. St. Rep. 837 (1898); see *Shapiro v. Wilgus*, 55 F. (2d) 234, 235 (C. C. A. 3d, 1931); cf. *Meyers v. Washington Heights Land Co.*, 107 W. Va. 632, 149 S. E. 819 (1929).

tion must be allowed when there was a seizure before the receiver's appointment.⁸

When a receiver is appointed the courts often in their discretion enjoin further prosecution of pending suits⁹ or the prosecution of any suit subsequent to the receivership.¹⁰ These injunctions may restrain actions against the debtor¹¹ or actions in other courts against the receiver on causes of action arising before his appointment.¹² A restraining order may also be procured on the receiver's petition in the receivership suit,¹³ or in a separate action.¹⁴ A state court may enjoin a suit in another state,¹⁵ and an order of a federal court may stay proceedings in a state court.¹⁶

The receiver holds the property of the debtor subject to all valid liens properly executed and recorded at the time of his appointment.¹⁷ One who has no lien when the receiver is appointed cannot thereafter do anything to obtain a lien on the property and thereby gain a preference over other creditors entitled to share equitably in the distribution of the estate.¹⁸ It is specifically held that after the appointment of a receiver a creditor may not obtain priority over other creditors by obtaining a judgment against the debtor.¹⁹ This is true though such judgment may have been entered

⁸ Duval v. T. P. Ranch Co., 151 La. 142, 91 So. 656 (1922).

⁹ Central Surety & Ins. Corp. v. Bagley, 44 F. (2d) 808 (S. D. Cal. 1930).

¹⁰ Quinn v. Bancroft-Jones Corp., 12 F. (2d) 958 (W. D. N. Y. 1926); *In re* French, 181 App. Div. 719, 168 N. Y. Supp. 988 (1918).

¹¹ *In re* Yaryan Naval Stores Co., 214 Fed. 563 (C. C. A. 6th, 1914).

¹² Burke v. Ellis, 105 Tenn. 702, 58 S. W. 855 (1900); see Central Trust Co. of N. Y. v. East Tenn. V. & G. Ry. Co., 59 Fed. 523, 528 (C. C. D. Ky. 1894).

¹³ *In re* New Jersey Refrigerating Co., 97 N. J. Eq. 358, 127 Atl. 198 (1925).

¹⁴ Davis v. Butters Lumber Co., 132 S. C. 233, 43 S. E. 650 (1903).

However, it has been held that an injunction will not lie at the instance of the receiver to enjoin creditors who prior to the receivership proceedings garnished the funds of the debtor, and that their judgments recovered should be given priority in the order in which the actions were begun. Rickman v. Rickman, 180 Mich. 224, 146 N. W. 609 (1914); *cf.* Roberts v. Letchworth, 127 Ark. 490, 192 S. W. 375 (1917) (one appointed receiver cannot continue attachment suit against debtor but must suspend suit and present claim for allowance).

¹⁵ Davis v. Butters Lumber Co., *supra* note 14.

¹⁶ Central Surety & Ins. Corp. v. Bagley, *supra* note 9; *cf.* Riehle v. Margolies, 279 U. S. 218, 49 Sup. Ct. 310, 73 L. ed. 669 (1929).

¹⁷ Vanderwall v. Vanco Dairy Co., 200 N. C. 314, 156 S. E. 512 (1931); see *In re* K-T Sandwich Shoppe of Akron, Inc., 34 F. (2d) 962, 963 (N. D. Ohio 1929).

¹⁸ New York v. Maclay, 53 Sup. Ct. 323, 77 L. ed. (Advance Opinions) 416 (1933); see *In re* K-T Sandwich Shoppe of Akron, Inc., *supra* note 17.

¹⁹ Quinn v. Bancroft-Jones Corp., *supra* note 10; Britten v. Sheridan Oil Co., 205 Iowa 147, 217 N. W. 800 (1928); *Ex parte* International Harvester Co., 137 S. C. 124, 134 S. E. 530 (1926).

by leave of court,²⁰ or the suit in which it was rendered was begun before the receiver was appointed and took possession.²¹ The creditor gets no lien when his judgment was not actually entered of record or registered until after the appointment of the receiver,²² and such a judgment cannot be made a lien by entry *nunc pro tunc* as of a time before the appointment.²³ But the creditors may acquire such judgment liens in the case of a receivership *pendente lite* where the sole purpose is to preserve the property, or collect income from it, such as a receivership in a mortgage foreclosure,²⁴ as distinguished from a receivership for the general administration of the debtor's assets.

The court in the principal case was content to say that judgments are liens and as such are given priority under the statute.²⁵ This evades the question whether prosecution of the suits to judgment should have been enjoined, and evades also the general rule that the usual statutory priority of judgment creditors is absent when their judgments are entered after a receiver is appointed. In an earlier North Carolina decision the court in a well reasoned opinion specifically considered the latter problem and reached the result that a creditor who had begun a suit against a corporation before a receiver was appointed could not by prosecuting the action to judgment after the appointment obtain a lien and thereby gain a preference over the general creditors.²⁶

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²⁰ *Cowan v. Pa. Plate-Glass Co.*, 184 Pa. 1, 38 Atl. 1075 (1898).

²¹ *Lang v. Macon Construction Co.*, 101 Ga. 343, 28 S. E. 860 (1897); *Odell Hardware Co. v. Holt-Morgan Mills*, 173 N. C. 308, 92 S. E. 8 (1917).

²² *Ferris v. Chic-Mint Gum Co.*, 14 Del. Ch. 270, 125 Atl. 343 (1924).

²³ *Odell Hardware Co. v. Holt-Morgan Mills*, *supra* note 21.

²⁴ *Johnson v. Garner*, 233 Fed. 756 (D. Nev. 1916).

Where a receiver was appointed in a mortgage foreclosure it was held that creditors were entitled to sue at law and by judgments acquire a preference, but not after the court amended its decree and took steps to distribute the property among the creditors. *Moore v. Southern States Land & Timber Co.*, 83 Fed. 399 (C. C. S. D. Ala. 1896).

²⁵ N. C. CODE ANN. (Michie, 1931) §614.

²⁶ *Odell Hardware Co. v. Holt-Morgan Mills*, *supra* note 21. True, this case was decided under the statute relating to corporations. N. C. CODE ANN. (Michie, 1931) §1210. But the same statute would apparently apply to receivers of other insolvent debtors. N. C. CODE ANN. (Michie, 1931) §860: "The article Receivers, in the chapter entitled Corporations, is applicable, as near as may be, to receivers appointed hereunder."

