

JUDGMENT CLAIMS IN RECEIVERSHIP PROCEEDINGS*

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In view of the importance of the subject it is unfortunate that so few of the reported cases on equitable receiverships of corporations have dealt in any comprehensive way with the principles underlying the administering of the fund for the benefit of creditors. The result is that controversy has outstripped authoritative decision, and the subject is unsettled. To this generalization an exception must be noted in respect of the special topic of the application of current railway income to current expenses, before the payment of mortgage indebtedness.¹ On another disputed topic, the provability of immature claims, the law, or at least the right principle of decision, has been settled, by the notable opinion of Judge Noyes in *Pennsylvania Steel Company v. New York City Railway Company*,² followed and reinforced by that of Mr. Justice Holmes in *William Filene's Sons Company v. Weed*.³ Notwithstanding these important exceptions, the dearth of authority on the general subject is such that Judge Noyes refers to a case cited in his opinion as "almost the only case in which rules have been formulated with respect to the provability of claims against insolvent corporations."⁴

Upon the particular phase of the subject here discussed, the decisions are to some extent in conflict, and no attempt seems to have been made in text books or decisions to examine the question in the light of principle. Black, for example, dismisses the subject by saying it is generally conceded that a receiver and the corporation whose property is under his charge "are so far in privity that a judgment against the

* This paper deals only with judgments against the defendant in the receivership, regarded as evidence of the validity and amount of the judgment creditor's claims for dividends to be paid out of the fund in the receiver's hands. It is further limited to equitable receiverships of corporations, whose existence is not terminated before the final decree. For convenience of discussion such judgments are divided into three classes: those rendered before the receivership, called judgments of the first class; those rendered after the receivership in actions in which the receiver has intervened or assumed the defence, called judgments of the second class; those rendered after the receivership in actions in which the receiver has taken no part, called judgments of the third class.

¹ *Gregg v. Metropolitan Trust Co.* (1905) 197 U. S. 183, 25 Sup. Ct. 415.

² (1912, C. C. A. 2d) 198 Fed. 735.

³ (1918) 245 U. S. 597, 38 Sup. Ct. 211.

⁴ 198 Fed. 741, n. 12, referring to *N. Y. Security Co. v. Lombard Inv. Co.* (1896, C. C. W. D. Mo.) 73 Fed. 537.

"latter will be conclusive against the former;"⁵ and the cases bear out his statement so far as judgments of the first class go, although no one has explained on what theory a receiver, who is the arm of the court, can be bound by a judgment rendered before he was appointed. Evidently he is not bound by it in any proper sense, for he is not bound to pay it in full or to the extent of the assets in his hands. The only question to be discussed is whether it is binding in the sense of being conclusive evidence of the validity and amount of the judgment debt. And the true explanation of the admitted finality of judgments of the first class is that a judgment against the corporation, when rendered by a court of competent jurisdiction acting within its jurisdiction, and not imposed upon by fraud or collusion, is conclusive as against the corporation in any other action between the same parties wherein the same issues are involved; and an equitable receivership in which the judgment creditor is invited to intervene, *pro interesse suo*, is such an action.

In referring to such judgments as binding on the receiver as though he were in privity of person or estate with the defendant corporation,⁶ it is possible that the courts have failed to keep in mind the fact that a receiver acts in several different representative capacities. For some purposes he represents the corporation; for others, the creditors who are prevented by the receivership from pursuing their legal remedies; and for others again, the court. When claims are presented to him for allowance or rejection, he is acting for the time being as the representative of the court, having the same duties and powers as a special master in chancery, who is often appointed for that purpose when the receiver's other duties are too onerous or the claims too numerous for the receiver himself to attempt to pass upon them. The procedure before the receiver is generally informal, but the issues tendered by each claimant are well defined;—whether the defendant corporation is indebted, whether the debt can be liquidated according to law within the time limited for the presentation of claims, and, if so, what the amount is. When a claimant presents to the receiver in due season an authenticated copy of a valid prior judgment against the defendant corporation as proof of the fact that it is indebted to him and in the sum adjudged, the receiver is indeed bound to admit it in evidence and to give to it the probative effect to which it is legally entitled on those issues. But say that the receiver is or is not estopped by the judgment as if he were a party or a privy to the prior litigation and a defendant in the receivership is to drag in a wholly unnecessary proposition quite

⁵ 1 Black, *Judgments* (2d ed. 1902) sec. 585a. See also High, *Receivers* (4th ed. 1910) 436; Beach, *Receivers* (1887) sec. 468; Clark, *Receivers* (1918) secs. 767, 768; 1 Tardy's Smith, *Receivers* (1920) sec. 29.

⁶ *Stearns v. Lawrence* (1897, C. C. A. 6th) 83 Fed. 738; *Hopkins v. Taylor* (1877) 87 Ill. 436; *Attorney General v. Supreme Council* (1907) 196 Mass. 151, 81 N. E. 966; *Pringle v. Woolworth* (1882) 90 N. Y. 502.

inconsistent with the quasi judicial position which he temporarily occupies.

If any confirmation were needed of so elementary a proposition, it would be found in the fact that the ultimate question is whether the court of the receivership is bound, and no one would say that the court was in privity with the defendant in the receivership. The truth is that neither court nor receiver is bound by the judgment, but both are bound by the rules of evidence.

The theory that the receiver is estopped by the judgment has more force when applied to judgments of the second class in cases wherein the receiver, by the order of or with the subsequent approval of the appointing court, intervenes in or controls the defence of an action pending against the defendant; and yet it still remains true that even in such a case the receiver is not bound by the judgment as such. In his character as representative of the corporation and of the creditors he is bound by the adjudication of the litigated issues, because those interests have had their day in court by his representation; but as custodian of the funds and representative of the court he is not bound by the sentence that the plaintiff recover of the defendant a stated sum. The Supreme Court of Illinois has said in such a case;

"It is unnecessary to inquire whether, as an abstract proposition, the doctrine of estoppel can be applied to the courts as well as to individuals. It is sufficient to say that the proceedings of courts must be based on the same principles of fairness which are ordinarily applied to the conduct of individuals."

This language is commendable enough, but why not recognize the fact that behind the manifest propriety of the observation by a court of equity of the principles of fair dealing, lies the paramount rule of the finality of the judgment of a court of competent jurisdiction in another action between the same parties on the same issues? This rule applies both as an abstract and as a concrete proposition to courts as well as to individuals, and it is therefore surprising to find that in explaining the conclusive effect given to judgments of the second class in receivership proceedings, some courts have thought it necessary to adopt a theory, apparently originating in Massachusetts,⁷ that the court of the receivership has permitted the claim to be liquidated in another court, or, as was said, *passim*, in a Connecticut case,⁸ that the court of receivership has delegated to another jurisdiction the right to determine the extent and validity of the claims; as though the court of the receivership had power to confer jurisdiction upon the courts of another sovereignty, or withhold it, at pleasure.

It is of course a matter within the discretion of the receivership

⁷ *Smith v. United States Express Co.* (1890) 135 Ill. 279, 293, 25 N. E. 525, 528.

⁸ *Attorney General v. Supreme Council*, *supra* note 6.

⁹ *Bashford-Burmister Co. v. Aetna Indemnity Co.* (1919) 93 Conn. 165, 189, 105 Atl. 470, 478.

court whether it will determine for itself all claims against the receiver, or will allow them to be litigated elsewhere. That is only another way of saying that unless expressly authorized by statute no suit can be brought against the receiver without the permission of the court which appointed him. And there is a phrase in *Porter v. Sabin*¹⁰ which, though probably not so intended, may be construed as meaning that no claim against the defendant corporation may be put in suit in another tribunal, after the receivership, without the permission of the court. But it is quite another thing to assume that courts of another sovereignty may not continue to exercise a jurisdiction *in personam* which they have lawfully acquired over the defendant corporation before the receiver is appointed, without the permission of the court of the receivership.

Of course no one claims in so many words that a court of equity sitting in one jurisdiction may, by force of its own decree and by a sequestration of local assets, deprive courts of another sovereignty of a jurisdiction *in personam* already lawfully acquired, or parties suing in a foreign court of their right to a trial by jury, or deprive judgments *in personam* by courts of other states of their constitutional sanction, or non-residents of their constitutional right to pursue an existing corporation in the federal courts. But it has been claimed that all these things may lawfully be done indirectly, and as to local assets completely accomplished, by a refusal of the court of the receivership to receive in evidence judgments of other courts rendered against the defendant after the receivership in actions commenced before the receivership, in which the receiver has taken no part. Thus the Massachusetts court speaking of judgments of the third class rendered by courts of other states says,

"This [the receivership] had no direct effect on pending actions. It had, however, this indirect effect upon them. If the plaintiff in such an action wanted a judgment against the defendant corporation for some purpose other than a right to share in the assets sequestered by and in the hands of this court, he could go on with his action. But if he wished to establish his right to share in the assets in the possession of this court the further prosecution of that action would not help him. To establish that right he had to prove his claim in this court or get an order from this court that a judgment in the action in the foreign court should establish his right to share in the assets here. It is for the court which has taken the assets of an insolvent into its hands for distribution and for that court alone to determine who its creditors are and what is due to them respectively. . . .

"These judgments do not affect the receiver, and these judgments as such cannot be proved against the funds in the hands of this court through its receiver."¹¹

It will be seen that the doctrine thus announced is not limited to the proposition that no other court can create a lien or preference upon the

¹⁰ (1893) 149 U. S. 473, 479, 13 Sup. Ct. 1008, 1010.

¹¹ 196 Mass. 157, 81 N. E. 967.

fund after its sequestration. It goes to the wholly inconsistent length of first admitting the jurisdiction of the foreign court to render a valid judgment *in personam* against the defendant corporation, and then asserting that the judgment is not admissible as evidence of the judgment debt. This result is not worked out by applying the technical doctrine of merger, for that point was made and overruled. No precedents are cited. The constitutional obligation of giving full force and effect to the judgments of the courts of another state is ignored. A reference is made by way of analogy to bankruptcy, but no analogy exists, for bankruptcy is a purely statutory proceeding, and the jurisdiction of a bankruptcy court is exclusive and paramount. The only reason assigned is as follows:

"The real objection to the proof of these death benefits is that they have gone to judgment since the date of the sequestration of the funds by this court, and by reducing the several demands to a judgment against the corporation the petitioners have elected not to prove them against the assets in the possession of this court."

In a later decision rendered in the course of the same receivership this theory of election is more fully developed and a reference is again made to the supposed analogous practice in bankruptcy.¹² But no such practice exists. On the contrary, section 63a (5) of the Bankruptcy Act includes among provable claims those "founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge." Thus, as Collier says, giving statutory recognition to the doctrine of *Boynton v. Ball*,¹³ decided in 1887. Aside from that, the doctrine of election between inconsistent remedies is not applicable because judgments are good legal currency anywhere.

After all, the underlying question is one of jurisdiction. What are the legal consequences of sequestration? Does it give the court power to select the beneficiaries of the fund at its discretion, or are all creditors who present claims capable of liquidation within the time limited entitled as of right to share in the fund? Clark seems to intimate that the court of the receivership may prefer one unsecured creditor to another.¹⁴ But it is unnecessary to argue that question, for the Supreme Court has decided it, and Mr. Justice Holmes has stated the rule, in *William Filene's Sons Co. v. Weed*, with his usual clarity and authority, as follows:

"When a statutory system is administered the only question for the courts is what the statutes prescribe. But when the courts without statute take possession of all the assets of a corporation under a bill like the present and so make it impossible to collect debts except from

¹² *Hackett v. Supreme Council* (1910) 206 Mass. 139, 142, 92 N. E. 133.

¹³ (1887) 121 U. S. 457, 7 Sup. Ct. 981. See 2 Collier, *Bankruptcy* (12th ed. 1921) 973.

¹⁴ *Op. cit.* note 5, at sec. 869.

the court's hands, they have no warrant for excluding creditors or for introducing supposed equities other than those determined by the contracts which the debtor was content to make, and the creditor to accept. In order to make a distribution possible they must of necessity limit the time for the proof of claims. But they have no authority to give to the filing of the bill the effect of the filing of a petition in bankruptcy¹⁵ so as to exclude any previously made and lawful claim that matures within a reasonable time before distribution can be made. *Pennsylvania Steel Company v. New York Railway Co.*, 198 F. R. 21.¹⁶

Lord Romilly puts the same doctrine into an epigram when he says, "The receiver was not appointed for the purpose of keeping persons 'out of their rights.'"¹⁷ And if that be true, the argument against the doctrine of the Massachusetts case is complete, without appealing to the constitutional obligation which that case disregards.

Upon the other side of the precise question and in direct conflict with the Massachusetts case stands the New York Court of Appeals.¹⁸ A receiver had been appointed in New York over a fire insurance company, and afterwards the company was sued in Pennsylvania, and a judgment in that action was held to be admissible and conclusive in the receivership, though the receiver had taken no part in the Pennsylvania litigation. The court points out that until judgment dissolving the corporation the policy sued on could be enforced against the company as well after as before the appointment of the receiver, and says,

"The receiver holds the property and the estate of the corporation as an officer of this court, for the purpose of distribution among the creditors and stockholders, and in the absence of fraud or collusion, neither of which is alleged in respect to the Pennsylvania judgment, the receiver and the other creditors are bound thereby. If any reason existed to question the judgment against the company it was the duty of the receiver to apply to the court that rendered it to reopen the judgment and to be permitted to defend."

It is submitted that this is the right rule of decision, and that the probative effect of a valid judgment *in personam* can not be ignored in another action against the defendant corporation in which the judgment creditor has intervened as of right. In the New York City Railway receivership, Judge Lacombe adopted this view, although the question was not in litigation before him. And in directing the procedure before the special master he said,

"he will, of course, follow the decisions of the higher courts of the state on all questions touching the construction of the state statute under which the claim arises, and in all instances where a claim shall

¹⁵ See *Schall v. Camors* (1920) 251 U. S. 239, 40 Sup. Ct. 135.

¹⁶ 245 U. S. 602, 38 Sup. Ct. 213.

¹⁷ *Eyton v. Denbigh Ry.* (1868) L. R. 6 Eq. 14.

¹⁸ *Pringle v. Woolworth*, *supra* note 6, cited with approval in *Lafayette Trust Co. v. Beggs* (1915) 213 N. Y. 280, 107 N. E. 644, and *Nicholas v. Lord* (1908) 193 N. Y. 388, 85 N. E. 1083.

have been adjudicated in the state court before it is taken up for consideration by him will liquidate in conformity to the decisions of the said courts, except in cases where newly discovered evidence may show that such court was imposed upon."¹⁹

In *Pringle v. Woolworth* the judgment was rendered in an action brought after the receivership; and in principle it should make no difference whether the action was instituted before or after the receivership, provided the corporation remained in existence and was duly served with process and the judgment was rendered in time to be seasonably presented to the receiver. Nor should it make any difference in principle whether the judgment is rendered in a court of the same sovereignty, or in a court of another state; except that in the latter case the rule of evidence is reinforced by the constitutional mandate.

The New York rule does not conflict with the undoubted exclusive jurisdiction arising from the seizure, whereby the property is withdrawn from the jurisdiction of all other courts, "as effectually as if it had been entirely removed to another jurisdiction,"²⁰ nor with the ancillary jurisdiction, arising from the sequestration, "to hear and determine all questions affecting the title, possession, or control of the property."²¹ The question is simply one of the admissibility and effect of evidence; and the obligation to receive a judgment in evidence is no more derogatory to the jurisdiction *in rem* than the obligation to receive in evidence a promissory note or other admissible evidence of debt.

If it be suggested that equity requires that all claims be liquidated by a uniform rule of decision, the answer is that the way to get that result, consistently with the rules of evidence and the Constitution, is by a statute summarily terminating, or authorizing the court of the receivership summarily to terminate, the corporate existence of the defendant. In the absence of such a statute the court has no power to prevent other courts from acquiring or exercising jurisdiction *in personam* over the defendant, or to deprive non-resident plaintiffs of their right to sue in the courts of their own domicile.

The disinclination of the court of the receivership to submit to the supposed dictation of another court in respect of the validity and amount of a claim on the fund may not be entirely unnatural, but it is purely sentimental. No court has the right to assume that a judgment of another court of competent jurisdiction is unjust; and if such other court had jurisdiction of the defendant and was not imposed upon, its judgment on the same issues between the same parties is conclusive in any tribunal which administers justice according to law. Even so, the fund cannot be reached except by the judgment of the court of the receivership.

¹⁹ *Pennsylvania Steel Co. v. N. Y. City Ry.* (1908, C. C. S. D. N. Y.) 161 Fed. 785.

²⁰ *Palmer v. Texas* (1909) 212 U. S. 118, 125, 29 Sup. Ct. 230, 232.

²¹ *Murphy v. Hofman Co.* (1909) 211 U. S. 562, 569, 29 Sup. Ct. 154, 156.