

PROBLEMS IN FEDERAL "RECEIVERSHIP" JURISDICTION

INTRODUCTION

When the fathers provided that the judicial power shall extend to cases arising in law and equity they did not envision the modern federal equity receivership.¹ The breadth of the diversity clause² and the ingenuity of the Supreme Court, in extending it to embrace corporations,³ afforded an original basis of jurisdiction. The resourcefulness of the federal bench and bar in adapting analogous proceedings of the English High Court of Chancery, and the remarkable growth of equity jurisdiction in keeping with changing economic and social needs account for the remainder of the process.⁴

During the past few decades many pleas have been made for the abolition of the diversity clause,⁵ with it would have gone the federal equity receivership.⁶ That the original reason for its adoption is now non-existent and that as the reason fails so should the rule have been the motivating thoughts.⁷ Chief Justice Marshall's classic statement⁸ that however true may be the fact that state courts are impartial, the "constitution entertains apprehensions or views with such indulgence the possible fears and apprehensions of suitors that it has established national tribunals for the decision of controversies between citizens of different states" is still generally accepted as the foun-

¹ See Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 HARV. L. REV. 485 (1928).

² "The Judicial power shall extend to all cases in law and equity . . . between citizens of different states." *U. S. Const., Art III, section 2*.

³ The process by which corporations were brought within the diversity clause is discussed later in the text.

⁴ See the language of Judge Manton in *Graselli Chemical Company v. Aetna Explosives Co., Inc.*, 252 Fed. 456 (C.C.A. 2d, 1918) discussed in ROSENBERG, SWAINE, WALKER, *CORPORATE REORGANIZATION AND THE FEDERAL COURT* (1924) 54.

⁵ Wilson, *Federal Usurpation of Jurisdiction of State Courts*, MINN. STATE BAR ASS'N REP. (1884) 45. See also the bills introduced in the Senate in 1928 and 1930 and reported upon favorably by the Senate Judiciary Committee. SEN. REP. 626 (1928); SEN. REP. 691 (1930).

⁶ Substantially all receiverships arise under the diversity clause although the appointment of a receiver may be proper in the exercise of a "specialty jurisdiction".

⁷ See the report of the Senate Committee on the Norris bill to eliminate diversity jurisdiction, reprinted in full in 14 MASS. L. Q. 33 (1928).

⁸ Delivered in *Bank of the United States v. Deveaux*, 5 Cranch 61 (1809).

dation of the diversity clause.⁹ Of late, doubts have been raised as to whether the real fear was not of state legislatures rather than of state courts and it has been suggested that whatever distrust of state courts was felt was due to the defective nature of state judicial structures rather than to bias of the judges.¹⁰ The evidence is meagre,¹¹ however, and Marshall's interpretation has, by his decision in *Bank of United States v. Deveaux*,¹² been written into the Constitution.

Whether local prejudice no longer exists is hardly susceptible of proof; it may at least be said, that with available materials no certain conclusion can be reached. Over forty years ago¹³ it was urged that local prejudice had vanished and that, accordingly, the diversity clause should be abolished; the defenders of diversity jurisdiction suggested that irrespective of whether or not local tribunals were impartial, diversity jurisdiction should be retained, if only to preserve the feeling of security it afforded to non-residents.¹⁴

During the past decade the contention that local prejudice has ceased has become more pronounced and has resulted in some congressional activity.¹⁵ A bill to abolish diversity jurisdiction was introduced by Senator Norris; although it was reported upon favorably by the Judiciary Committee, no further action was taken. The Committee reported that in its opinion local prejudice no longer exists;¹⁶ this brought forth a

⁹ See Newlin, *Proposed Limitations Upon our Federal Courts*, 15 A.B.A.J. 401, 403 (1929); Foster, *Diminishing the Jurisdiction of the Federal Courts*, TEXAS BAR ASS'N 169 (1928); Shelton, *Concurrent Jurisdiction—Its Necessity and its Dangers*, 15 VA. L. REV. 137 (1929); Brown, *The Jurisdiction of the Federal Courts Based on Diversity of Citizenship*, 78 U. OF P. L. REV. 79 (1929).

¹⁰ Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 HARV. L. REV. 483 (1928); Frankfurter, *Distribution of Judicial Power Between United States and State Courts*, 13 CORN. L. Q. 499, 520 (1928); YEAR BOOK, NEW JERSEY STATE BAR ASS'N 1928-1929, 99, 119.

¹¹ Compare Hamilton in the FEDERALIST No. 80 (Lodge Ed. 1888) 494, 497. See Yntema & Jaffin, *Preliminary Analysis of Concurrent Jurisdiction*, 79 U. OF PA. L. REV. 869, 876 (1931).

¹² 5 Cranch 61 (1809).

¹³ Wilson, *Federal Usurpation of Jurisdiction of State Courts*, MINN. STATE BAR ASS'N REP. (1884) 43.

¹⁴ Rossington, *Federal and State Jurisdiction*, KANSAS BAR ASS'N (1888) 34.

¹⁵ See Frankfurter, *supra* note 10; 44 HARV. L. REV. 97 (1930).

¹⁶ See 14 MASS. L. Q. 33 (1928). The bill referred to in the text was introduced in 1928. In 1930 a similar bill was introduced and met a like fate. See SEN. REP. 691 (1930), 44 HARV. L. REV. 97 (1930).

storm of dissents from all sections of the country.¹⁷ Many addresses before bar associations were devoted to reaffirming the position taken by Chief Justice Taft in 1922. At that time¹⁸ the Chief Justice expressed the belief that there might be a strong dissent from "the view that danger of local prejudice in state courts against non-residents is at an end"; he suggested that the important question is not whether local courts are actually impartial but whether they are thought to be so by foreign money interests who are expected to invest their capital in local enterprises; finally he emphasized the thought that no single factor had done more to secure foreign capital for legitimate development than the diversity jurisdiction of the federal court.

The Chief Justice's position that it is economically desirable to retain diversity jurisdiction has been vigorously attacked,¹⁹ although here again available materials render the matter hardly susceptible of proof. This much, however, will hardly be gainsaid by those whose activities bring them in contact with corporate affairs: the fear of local prejudice still continues among financial interests;²⁰ may it not be desirable to allay that fear by the retention of diversity jurisdiction?

But why the extended controversy as to whether the original reasons for diversity jurisdiction remain; if new causes have arisen, if present day considerations so demand, should not diversity jurisdiction be retained insofar as it is presently, economically useful?

¹⁷ Judge Foster, United States Circuit Judge for the fifth circuit, directing his remarks towards his circuit, expressed a contrary opinion; Mr. Newlin, President of the American Bar Association, in an address before that body, expressed the opinion that local prejudice still continues; editorials in the *Massachusetts Law Quarterly* and *American Bar Association Journal* as well as law review articles expressed opinions contrary to that advanced by the Senate Committee. See the references in note 9 *supra* and also 14 A.B.A.J. 200 (1928) and the memorandum in opposition to the bill by the Committee on Jurisprudence and Law Reform of the American Bar Association printed in 69 CONG. REC. 8078 (1928). In support of the Committee's position see Frankfurter *supra* note 10. See also Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 HARV. L. REV. 49, 152 (1923).

¹⁸ Taft, *Possible and Needed Reforms in the Administration of Justice in Federal Courts*, 8 A.B.A.J. 601, 604 (1922).

¹⁹ Frankfurter *supra* note 10 at 521.

²⁰ The continued resort to federal courts by foreign corporate interests is, in itself, indicative of the fear of state courts. Compare the repeated attempts by states to prevent removals, all of which have been frustrated by the Supreme Court. See *Terral v. Burke Construction Co.*, 257 U.S. 529 (1922); *Donald v. Philadelphia & Reading Coal & Iron Co.*, 241 U.S. 329 (1916).

The modern receivership has taken its place in our economic structure as a means towards corporate rehabilitation and reorganization; ends generally conceded to be socially desirable.²¹ Of the existing agencies,²² the federal equity receivership seems to be most adequately equipped to achieve the desired results. The procedure provided by the Bankruptcy Act is entirely inadequate²³ and between state and federal courts²⁴ the latter, at least as to corporations whose businesses extend beyond the confines of a single state,²⁵ are clearly to be preferred.²⁶

²¹ As to the social utility of reorganization see DEWING, *FINANCIAL POLICY OF CORPORATIONS* (1926) 930, 975, 976 where he states that "the development of the theory and practice of railroad reorganizations is one of the most original and remarkable achievements of American business genius". He also refers to the following quotation from Mead, *Reorganization of Railroads*, 17 AN. AM. AC. POL. SOC. SCI. 242 (1901).

"The reorganization of American railways is a more noteworthy achievement than the payment of the French indemnity or the refunding of the United States debt."

See also ROSENBERG, SWAINE, WALKER, *CORPORATE REORGANIZATION AND THE FEDERAL COURTS* (1924) *passim*; Spring, *Upset Prices in Corporate Reorganization*, 32 HARV. L. REV. 489 (1919); DEWING, *CORPORATE PROMOTIONS AND REORGANIZATIONS* (1913) 7. The federal courts have uniformly viewed reorganizations with favor.

²² The only practical modes of effecting reorganizations (other than reorganizations effected by the parties without the aid of judicial proceedings) is in the state and federal courts. The bankruptcy court is not adapted to extensive reorganizations (See ROSENBERG *et al* *supra* note 21 at 68), although Judge Hough has suggested that much might be said in favor of reorganizations in bankruptcy. See *Manhattan Rubber Mfg. Co. v. Lucey Mfg. Co.*, 5 F(2d) 39 (C.C.A. 2d, 1925). As early as 1895 Judge Taft, (later Chief Justice) suggested that an administrative body to handle receiverships might be advisable but no progress in that direction has been made. See Taft, *Recent Criticism of the Federal Judiciary*, 18 A.B.A. REP. 237 (1895).

²³ See ROSENBERG *et al* *supra* note 21 at 68.

²⁴ At present our problem is not whether a better statutory machinery might be devised although there is little doubt that there might be. Our problem is whether as between the alternatives of state and federal jurisdiction the latter is not preferable. See in this connection the remarks by Judge Taft (later Chief Justice) in 18 A.B.A. REP. 237 (1895), defending the federal receivership jurisdiction although recognizing that a better statutory system might be devised.

²⁵ Many of the arguments advanced in favor of the federal receivership apply equally to corporations doing only intrastate business. Additional arguments support the federal receivership where the business is interstate. It is our belief that with proper exercises of discretion the federal receivership is often to be preferred over the state receivership, even in cases of corporations doing only intrastate business; the fact that a corporation does only intrastate business should, of course, be considered by the district judge in exercising his discretion as to whether a receiver should be appointed. The necessity of more stringent exercises of discretion will be considered later in the text.

²⁶ See STETSON *et al* *SOME LEGAL PHASES OF CORPORATE FINANCING REORGANIZATION AND REGULATION* (1917) 80.

Admittedly the federal courts have had more experience with receiverships and have developed fairly certain rules of practice;²⁷ their relations with each other are more intimate and they more readily accept the subordinate position involved in ancillary proceedings;²⁸ and the rules of procedure in the various districts are fairly uniform as contrasted with the divergent practices prevalent among the states.

Moreover, there seem to be several advantages incident to the nature of the personnel of the federal bench. Their security of tenure and appointment by the President aid in shielding them, at least in part,²⁹ from political strife in which local judges often play an important part. And in large industrial centers³⁰ where partisan political feeling is strong, the presence of federal judges of opposite political antecedents to state judges seems to present a wholesome influence. In all, there is the general belief that the members of the lower federal bench are more qualified because of their ability, position and experience to handle receiverships than are lower state court judges. Although definite proof in support of the foregoing belief may not be had, nevertheless it is not more desirable to retain such jurisdiction, than to remit it to state judges?

The most weighty present day argument in favor of the abolition of diversity jurisdiction is that it will relieve the congestion of the federal courts thus enabling them to devote more time to cases arising under their "specialty jurisdictions".³¹ One wonders whether the federal receivership is not now to be classed with the "specialty jurisdictions" and whether their

²⁷ See STETSON *et al* *supra* note 26.

²⁸ See *e.g.* the action of the United States District Court for the District of New Jersey in ancillary receivership proceedings as shown by the table annexed at the end of this paper.

²⁹ It would be a naive unconcern to assert that "politics" play no part in the selection of federal judges; concededly it is otherwise. But the fact that the attorney general may exercise considerable influence for good is important; compare the recent action of President Hoover in rejecting the recommendation of Mr. Mishel by Senator Schall of Minnesota, for appointment to a federal district judgeship. See *New York Times*, March 31, 1931, page 1, col. 5. Cf. Sears, *The Appointment of Federal District Judges*, 25 ILL. L. REV. 54 (1930). See 44 NEW JERSEY LAW JOURNAL 97 (1931).

³⁰ In New York City most of the lower state court judges are members of the Democratic party while the federal judges are Republicans.

³¹ See Frankfurter *supra* note 10 at page 52. But see Yntema and Jaffin, *Preliminary Analysis of Concurrent Jurisdiction*, 79 U. OF PA. L. REV. 869, 915 (1931).

criminal jurisdiction, which at present is most burdensome, is not really the troublesome feature. Although the courts of some districts are congested, others are not, and the more frequent use of the power of transferring district and circuit judges to congested areas may be of some aid.³³ The further thought of adding more judges must be considered³⁴ in the light of the counter thought that "a powerful judiciary implies a relatively small number of judges".³⁵

Studies of receivership cases in several of the district courts,³⁶ the results of which will be referred to later, indicate that receiverships do not constitute as heavy a burden on the federal courts as is often asserted. Furthermore, a proper exercise of their discretionary powers by the district judges would eliminate whatever force there may be to the suggestion that receivership jurisdiction should be obviated to aid in the relief of the federal courts.

Finally, in view of the fact that state courts are often further behind in their calendars than are the federal courts,³⁷ we

³³ See MASS. L. Q. 33 (1928). Compare the problem considered in Lilienthal, *The Federal Courts and State Regulation of Public Utilities*, 43 HARV. L. REV. 379, 425 (1930).

³⁴ See Foster *supra* note 9.

³⁵ See Brown *supra* note 9.

³⁶ See Frankfurter *supra* note 10 at page 521.

³⁷ See Douglas and Weir, *Equity Receiverships in the United States District Court for Connecticut*, 4 CONN. B. J. (1930) 1; Wyzanski, *Friendly Receiverships in the Federal Courts with Special Reference to Unreported Cases in the Federal District Court for Massachusetts 1920-1930* (Harvard Law School 1930). The results of a study of 100 receivership cases in the United States District Court for the district of New Jersey are appended at the end of this article.

³⁸ See Foster *supra* note 9.

In Lilienthal, *The Federal Courts and State Regulation*, 43 HARV. L. REV. 379 (1930) a problem allied with ours is considered. The exercise by the federal courts of jurisdiction to review state utility regulation has caused considerable adverse comment. Considering the relative capabilities of state and federal judges in such matters, Mr. Lilienthal says (P. 419):

"There can be no question but that, by and large, the capacity and ability of the members of a federal three-judge court is distinctly greater than that of the trial judges who, in most of the states review commission decisions in the first instance. The prestige of the federal bench, and particularly of the circuit courts of appeals, provides an inducement to able lawyers which the state trial bench does not have. And by reason of the increased flow of these rate cases into the federal courts, with their rarely changing personnel, many of the circuit and district judges have become skilled in the complex fact-technique in the law of confiscation."

With reference to the suggestion that the federal courts should be relieved of cases dealing with local utility regulation in order to lessen the congestion Mr. Lilienthal says (P. 425):

"If the Constitutional issues in these cases are the very ones which it is the peculiar duty of the federal courts to determine, it is more appropriate that

may question the utility of remitting to state courts the receivership jurisdiction. The contention that a removal of diversity jurisdiction will lighten the burden carried by the circuit courts of appeal and the Supreme Court has no material application to receiverships³⁸ which seldom advance further than the district court.

The remaining arguments against diversity jurisdiction are of less significance. Contentions based on increased cost³⁹ and the evils of *Swift v. Tyson*⁴⁰ have no real bearing on receiverships and the argument founded upon the unfairness incident to diversity jurisdiction in permitting to non-residents a choice of courts,⁴¹ need not detain us. The argument that diversity jurisdiction over corporations was a "usurpation," recurring as

those cases consume the time of the federal rather than of the state courts which are equally hard pressed. The President has just pointed out the road which will lead the federal courts out of the morass of congestion."

Mr. Lilienthal refers to the Presidential Message of December 3, 1929, where it was recommended that "provision should be made for relief of congestion in the federal courts by modifying and simplifying the procedure for dealing with the large volume of petty prosecutions under various federal acts".

Without expressing any opinion as to the merits of the controversy dealt with by Mr. Lilienthal, the pertinence of his comments to our problem seems evident.

³⁸ In only one of the 100 New Jersey district court receivership cases was an appeal taken.

³⁹ It has been asserted (14 MASS. L. Q. 33 (1928) and denied (Foster *supra* note 9) that the cost of proceeding in the federal courts is greater than in state courts. Admittedly, the development of transportation facilities has minimized whatever force the early assertions, as to hardship because of the necessity of extensive travel, might have had. See *e.g.* 4 LAW & BANK 223, 226 (1911); 4 CONG. REC. 1595 (1876); 46 CONG. REC. 1065 (1911). See also Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 HARV. L. REV. 49, 80 (1925) citing INDEPENDENT GAZETTEER (Phil.), August 27, 1789, where a similar argument was made even before the judiciary act of 1789.

⁴⁰ The doctrine of *Swift v. Tyson* (16 Pet. 1 (1842)) has been often severely criticized (See Frankfurter *supra* note 9 at 526; Shelton, *Concurrent Jurisdiction—Its Necessity and its Dangers*, 15 VA. L. REV. 137 (1929)) as well as defended (See Brown *supra* note 9); Schofield-*Swift v. Tyson*; *Uniformity of Judge Made State Law in State and Federal Courts*, 4 ILL. L. REV. 533 (1910). See on the question generally Meigs, *Decisions of the Federal Courts on Questions of State Laws*, 45 AM. L. REV. 47 (1911); Von Moschzisker, *The Common Law and our Federal Jurisprudence*, 74 U. OF PA. L. REV., 109, 270 (1925); Trickett, *The Non Federal Law Administered in Federal Courts*, 22 DICKINSON LAW REVIEW 153 (1928); Johnson, *Federal Jurisprudence, Origin and Growth*, 47 WASH. L. REP. 179 (1919); 5 TEXAS L. REV. 191 (1927); 40 HARV. L. REV. 510 (1927); 58 U. OF PA. L. REV. 222 (1910).

Brown *supra* note 9 states that if *Swift v. Tyson* is considered undesirable it and not the diversity clause should be abolished. Compare Frankfurter *supra* note 90 at page 524.

⁴¹ See Frankfurter *supra* note 90 at page 524. But see Foster *supra* note 9.

it has even of late,⁴² must be considered, since the elimination of corporations from the diversity clause would result in substantial abrogation of the federal receivership.

The twenty odd private corporations⁴³ in existence in 1789 were not of sufficient significance to call for constitutional reference, and historical research⁴⁴ has failed to shed light on whether they were intended to come within the diversity clause. For about fifteen years⁴⁵ suits under the diversity clause were brought by and against corporations without any jurisdictional objections being raised.

When in 1809 in *Bank of the United States v. Deveaux*⁴⁶ an objection was made for the first time Chief Justice Marshall expressed no doubt that a corporation was not a citizen but sustained the court's jurisdiction upon the citizenship of its members. Later, in *Commercial Bank of Vicksburg v. Slocomb*,⁴⁷ this doctrine was reaffirmed with a consequent denial of jurisdiction. In view of the doctrine of *Strawbridge v. Curtis*⁴⁸ to the effect that the citizenship of each plaintiff must be diverse from that of each defendant, adherence to Marshall's view in the *Deveaux* case would have excluded most large corporations from the diversity clause.

When in 1844 the question was again presented, it was evident that economic considerations necessitated a modification of Marshall's view. The country's development was still in its infancy; the use of corporations was increasing; and eastern capital, moving westward, demanded the protection of federal

⁴² Compare the language in *United States v. Mayor and Council of City of Hoboken*, 29 F2d 932, 937 (D.N.J. 1928) and see the references therein.

⁴³ Baldwin, *A Legal Fiction with its Wings Clipped*, 41 AM. L. REV. 38 (1907); TWO CENTURIES' GROWTH OF AMERICAN LAW (1902) 296; ANNUAL REPORT OF THE AMERICAN HISTORICAL ASSOCIATION FOR 1902, s. 255.

⁴⁴ See Warren, *New Light on the History of the Federal Judiciary Act of 1789*, 37 HARV. L. REV. 49, 89 (1923). Possibly it was intended that corporations were to be included within the term "citizens". Cf. HENDERSON, POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW (1910) 179. But see HALL, CONSTITUTIONAL LAW (1911) 360; DUNN, UNITED STATES COURTS (2d Ed. 1921) 65; Russell, *Congress Should Abrogate Federal Jurisdiction over State Corporations*, 7 HARV. L. REV. 16 (1893).

⁴⁵ 3, ROSE, FEDERAL JURISDICTION AND PROCEDURE (4th Ed. 1931) 253.

⁴⁶ 5 CRANCH 61 (1809). *Hope Insurance Co. v. Boardman*, 5 CRANCH 57 (1809) involved the same question but was held over until the *Deveaux* case was decided. See Harris, *Corporation as a Citizen*, 1 VA. L. REV. 507 (1914).

⁴⁷ 14 PETERS 60 (1840)

⁴⁸ 3 CRANCH 267 (1806).

courts against local prejudice.⁴⁹ In *Louisville, Cincinnati etc. R. R. co. v. Letson*⁵⁰ the court boldly declared that corporations were citizens for purposes of diversity jurisdiction; shortly thereafter, however, the court in *Marshall v. Baltimore & Ohio R. R. Co.*⁵¹ denied the doctrine of corporate citizenship but achieved the desired result by a "conclusive presumption" that its members were citizens of the state of incorporation. The last pronouncement became authoritative and is no longer questioned.

Although the doctrine of "corporate citizenship" has brought with it numerous abuses,⁵² those abuses are not generally involved in receivership cases.⁵³ Economic considerations called for a result⁵⁴ which could have been achieved by construction⁵⁵ and which has been adhered to for almost a century. If, as has been suggested, a retention of the federal equity receivership is desirable upon present day considerations, the notion that in origin the assumption of jurisdiction over corporations was not entirely warranted should prove no obstacle.⁵⁶

As has already been indicated, the utility of the federal equity receivership lies in the good it may accomplish by furnishing a judicial moratorium pending rehabilitation or reorganization; and the modern proceeding usually invoked for that purpose is the "friendly receivership".

⁴⁹ See Thompson, *Federal Jurisdiction in Cases of Corporations*, 29 AM. L. REV. 864 (1895).

⁵⁰ 2 How. 497 (1844).

⁵¹ 16 How. 314 (1853). See *Doctor v. Harrington*, 196 U.S. 579 (1905), where the plaintiffs, citizens of New Jersey, sued the defendant corporation of New York as stockholders thereof. It was held that the plaintiffs would not be presumed citizens of New York so as to deprive the court of jurisdiction.

⁵² E.g. corporations formed to create diversity jurisdiction. See e.g. *Giddens v. Estero Bay Estates*, 18 F(2d) 265 (C.C.A. 5th, 1927); *Rojas Adam Corp. of Del. v. Young*, 13 F(2d) 988 (C.C.A. 5th, 1926); *Black & White Taxicab Co. v. Brown & Yellow Taxicab Co.*, 276 U.S. 518 (1928). See also Frankfurter *supra* note 9 at page 525.

Many bills to eliminate corporations from within the diversity clause have been introduced but defeated. See FRANKFURTER AND LANDIS, *THE BUSINESS OF THE SUPREME COURT* (1927), 137; Thompson, *Federal Jurisdiction in Cases of Corporations*, 29 AM. L. REV. 864 (1895). See also 3 WARREN, *SUPREME COURT IN UNITED STATES HISTORY* (1926), 427.

⁵³ The chief instances of abuse, "tramp corporations" and corporations formed to create diversity jurisdiction have not arisen in receivership cases.

⁵⁴ See Thompson, *Federal Jurisdiction in Cases of Corporations*, 29 AM. L. REV. 864 (1895).

⁵⁵ Compare HENDERSON, *POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW* (1916) 179.

⁵⁶ Compare the problems discussed in ROSENBERG, SWAYNE, WALKER, *CORPORATE REORGANIZATION AND THE FEDERAL COURT* (1924) *passim*.

I.

In the typical "friendly receivership"⁵⁷ the corporation procures a non-resident creditor to file a bill on behalf of himself and all other creditors for the appointment of a receiver for the corporation. The bill alleges that although the corporation's assets exceed its liabilities it is unable to meet its obligations as they mature; and that unless a receiver is appointed, creditors will levy executions which will result in the dissipation of the estate to the complaining creditor's damage. The bill concludes with prayers for the appointment of a receiver to administer the corporate assets and for an order restraining all persons from proceeding against the corporation or its assets without leave of the court. The company then files an answer, admitting the allegations of the bill of complaint and consenting to the appointment of a receiver; almost, as a matter of course, the court appoints a receiver with power to manage the corporate business.

Here again we meet a contention similar to that dealt with in our discussion of corporate citizenship; namely, that the assumption of jurisdiction to appoint a receiver in a friendly proceeding was unwarranted. Concededly no direct authority for the friendly receivership can be found in the early history of the English Court of Chancery or in earlier law; but sufficient analogies exist which seem to render the friendly receivership but an ordinary incident to the general growth of equity jurisdiction.

In the Roman law, after the creditor's right to kill or sell his debtor was abolished,⁵⁸ the Praetors inaugurated a proceeding wherein, upon application by a judgment creditor, in which other creditors might join, the Praetor would authorize the creditors to take possession of the debtor's estate. The creditors would then elect from their midst a magister or manager who would proceed with the sale of the estate.⁵⁹

⁵⁷ For summaries of the procedure of the usual friendly receivership see STETSON *et als supra* note 26; Wickersham, *Principal and Ancillary Receiverships*, 14 VA. L. REV. 599 (1928).

⁵⁸ The right to sell or kill the debtor was abolished by lex Poetelia (313 B.C.), SOHM, *INSTITUTES OF ROMAN LAW* (Ledlie 1907) 288.

⁵⁹ SOHM, *INSTITUTES OF ROMAN LAW* (Ledlie 1907) 288; POSTE GAUS' *ELEMENTS OF ROMAN LAW* (3d Ed. 1890) 323; BUCKLAND, *TEXTBOOK OF ROMAN LAW* (1921) 637.

In addition to the foregoing mode of execution, the creditors retained the power of proceeding against the debtor's person; in consequence of a *lex Julia*,⁶⁰ however, the debtor could avoid execution against his person by voluntarily causing execution against his estate.

One of the ancient⁶¹ heads of English chancery jurisdiction⁶² bears many of the incidents of the modern equity receivership. Because of the inadequacy of the remedy at law, equity early assumed jurisdiction over creditors' bills against executors;⁶³ and where the creditor consented, equity found no difficulty in enlarging the suit into one for the administration of the decedent's assets. The further step taken by the English Court of Chancery is most interesting; it encouraged executors to obtain friendly creditors to file bills for the administration of decedents' estates.⁶⁴ Having gone that far it is not surprising to find that the English Court of Chancery entertained such bills by executors themselves⁶⁵ although Dean Langdell has said that such procedure may not be justified on principle.⁶⁶

Although the proceedings under bills for the administration of decedents' estates bear many resemblances to the modern friendly receivership,⁶⁷ it is generally asserted that the latter is a development from a different head of equity jurisdiction recognized by the English Court of Chancery.⁶⁸ By the seven-

⁶⁰ SOHM, *INSTITUTES OF ROMAN LAW* (Ledlie 1907) 287 *et seq.*

⁶¹ We are not directly concerned with English Bankruptcy Acts, the first of which was passed in 1542. See 2 BLACKSTONE'S COMMENTARIES (Wendell Ed. 1859) 473.

⁶² LANGDELL, *A BRIEF SURVEY OF EQUITY JURISDICTION* (1904) 125, 144.

⁶³ Langdell *supra* note 62.

⁶⁴ Paxton v. Douglas, 8 VES. JR. 520, 522 (1803); Gilpin v. Lady Southampton, 18 VES. JR. 469, 470 (1812).

⁶⁵ Rush v. Higgs, 4 VES. JR. 638 (1799); Newman v. Norris, 1 DICK CH. 259 (1754); Buccle v. Atleo, 2 VERN. 37 (1687).

⁶⁶ Langdell *supra* note 62 at page 179. See Glenn, *Basis of Federal Receivership*, 25 COL. L. REV. 434 (1925).

⁶⁷ Glenn, *Basis of Federal Receivership*, 25 COL. L. REV. 434 (1925) contends that the basis of the federal receivership is the creditors' bill for the administration of decedents' estates. See Payne, *The General Administration of Equity Receiverships of Corporations*, 31 YALE L. J. 685 (1922). Compare Kroeger, *The Jurisdiction of Courts of Equity to Administer Insolvents' Estates*, 9 ST. LOUIS L. REV. 87, 179 (1924).

⁶⁸ It is generally asserted that the friendly receivership is an outgrowth of equity's jurisdiction to reach equitable assets on behalf of judgment creditors. See Dodd, *Equity Receiverships as Proceedings in Rem*, 23 ILL. L. REV. 105 (1928). See also Manhattan Mfg. Co. v. Lucey Mfg. Co., 5 F(2d) 39 (C.C.A. 2d, 1925) where Judge Learned Hand expressed the thought that the friendly receivership "depends upon the jurisdiction of a judgment creditor's bill and

teenth century there was a well defined equity jurisdiction over judgment creditors' bills to set aside fraudulent conveyances and to reach equitable assets.⁶⁹ Here again the basis of the assumption of jurisdiction by equity was the inadequacy of the remedy at law. Although no judgment was necessary to maintain a creditor's bill against an executor since no adequate means of obtaining judgment and satisfaction at law was available,⁷⁰ in a creditor's suit to reach equitable assets, a judgment and return of execution *nulla bona* were required, since otherwise the remedy at law was not exhausted.⁷¹

In such suits creditors could obtain the appointment of receivers.⁷² Nor was the appointment of receivers confined to creditors' bills; Spence⁷³ says that by the time of Queen Elizabeth receivers were often appointed to collect rents and profits pending litigation. These receivers, however, were merely custodians without any managing powers.

As early as the eighteenth century, however, we find the English Court of Chancery appointing receivers to manage businesses⁷⁴ and although the English chancellors were reluctant to exercise such jurisdiction, and its existence was sometimes denied,⁷⁵ there is ample authority for its exercise.⁷⁶

Under the accepted view that our federal courts received, at least the jurisdiction exercised by the English Court of Chancery,⁷⁷ the lower federal courts had no difficulty in recognizing

nothing more". See also Clark, *Simple Contract Creditor Securing Appointment of Receiver*, 1 U. CINN. L. REV. 388 (1927).

⁶⁹ See *Smithier v. Lewis*, 1 Vern. 398 (1686).

⁷⁰ See Kroeger *supra* note 67; Langdell *supra* note 62.

⁷¹ *Angell v. Draper*, 1 Vern. 399 (1686).

⁷² See BISPHAM'S PRINCIPLES OF EQUITY (9th Ed. 1915) 806. See also Sweet v. Partridge, 1 Cox 435 (1788).

⁷³ 1 SPENCE, *EQUITABLE JURISDICTION* (1846) 673. See the various types of cases in which receivers were appointed collated in BENNETT, *A PRACTICAL TREATISE ON THE APPOINTMENT, OFFICE AND DUTIES OF A RECEIVER* (1849). See also *Skip v. Harwood*, 3 ARKYNES 564 (1747).

⁷⁴ *Ex Parte O'Reilly*, 1 Ves. Jr. 112 (1790).

⁷⁵ *Gardner v. London, Chatam & Dover Ry. L. R.*, 2 Ch. App. 201, 223 (1867).

⁷⁶ See 3 DANIELS' CHANCERY PRACTICE (1st Ed. 1837) 275 where the cases are collected. But see Nelles, *A Strike and its Legal Consequences—An Examination of the Receivership Precedent for the Labor Injunction*, 40 YALE L. J. 507, 539 (1931), with which compare Taft, *Recent Criticism of the Federal Judiciary*, 8 A.B.A. REP. 237, 258 (1895).

⁷⁷ See CLARK, *RECEIVERS* (2d Ed. 1929) 7. In *Pennsylvania v. The Wheeling etc. Bridge Co.*, 13 How. 518, 563 (1851) the court said:

"The rules of the High Court of Chancery of England have been adopted by the courts of the United States. And there is no other limitation to the exercise

a power to appoint receivers; and such jurisdiction was exercised very early.⁷⁸ No authoritative pronouncement was rendered, however, until 1858 when the Supreme Court sustained the appointment of a receiver to collect tolls and recognized that the English practice permitted the appointment of receivers to act as managers as well as custodians of corporate property.⁷⁹ Shortly thereafter the Supreme Court⁸⁰ recognized that the lower federal courts could appoint receivers to manage railroads although it declared that only necessity could justify the exercise of such jurisdiction.⁸¹

During the sixties the lower federal courts displayed some hesitation in appointing receivers to manage railroads although their power to do so was, of course, not denied.⁸² The period following the Civil War, marked as it was by a mania for reck-

of a chancery jurisdiction by these courts, except the value of the matter in controversy, the residence or character of the parties, or a claim which arises under a law of the United States and which has been decided against in a State Court.

"In exercising this jurisdiction, the courts of the Union are not limited by the chancery system adopted by any state and they exercise their functions in a State where no Court of Chancery has been established. The usages of the High Court of Chancery, in England, whenever the jurisdiction is exercised, govern the proceedings. This may be said to be the common law of chancery and since the organization of the Government, it has been observed."

⁷⁸ *Dick v. Laird*, 4 Cranch C. C. 667; Fed. Case No. 3891 (1835) (the court appointed a receiver upon a creditor's bill against the surviving partner of a mercantile firm. Cf. *Oliver v. Decatur* Fed. case No. 10494 (C.C. Dist. of Col. 1834); *Morrison v. Buckner* Fed. case No. 9844 (C.C.D. Ark. 1843). See the following state cases: *Jenkins v. Jenkins*, 1 Paige 242 (N.Y. 1828); *Osborn v. Heyer*, 2 Paige 342 (N.Y. 1831); *Bloodgood v. Clark*, 4 Paige 574 (N.Y. 1834). See also *Collins v. Central Bank*, 1 Ga. 435 (1846) where the court entertained a bill by the corporation itself. But see *contra*: *Hugh v. McRae* Fed. case No. 6840 (C.C.S.C. 1869).

⁷⁹ *The Covington Drawbridge Co. v. Shepherd*, 21 How. 112 (1858). The court cited "*Blanchard v. Cawthorn*, 4 Simon's R. 566; *Tripp v. The Chard Railway Company*, 21 E. Law. & E.R. 53".

⁸⁰ *Milwaukee & Minnesota Railroad Co. v. Soutter*, 2 Wall 510, 524 (1864).

⁸¹ In opinions rendered before the decisions of the Supreme Court were handed down, individual justices of the Supreme Court had recognized a power to appoint managing receivers although a reluctance to do so was displayed. In *Williamson v. New Albany etc. R.R. Co.*, Fed. Case No. 17753 (C.C.D. Ind. 1857), Mr. Justice McLean refused to appoint a receiver for the defendant railroad although he did not deny his power to do so. See *Bell v. Ohio Life Ins. Co.*, Fed. Case No. 1261 (C.C.D. Ohio 1858) where Mr. Justice McLean and District Judge Miller appointed a receiver for a life insurance company.

⁸² *Bronson & Souter v. The LaCrosse & Milwaukee Railroad Co.*, 1 Wall 405 (1863); *Milwaukee & Minnesota Railroad Co. v. Soutter*, 2 Wall 510 (1864); *Cowdry v. Railroad Co. Fed. Case No. 3293* (C.C.D. Tex. 1870). See also *Conkling v. Butler* Fed. Case No. 3100 (C.C.D. Ind. 1865); *Perego v. Bonesteel* Fed. Case No. 10976 (C.C.D. Wis. 1860).

less railroad building,⁸³ culminated in an influx of railroad receiverships which were readily received by the federal courts. In the seventies railroad receiverships were frequent;⁸⁴ they had become so common, that in 1881 the Supreme Court contrasted the old practice of ceasing business and selling the assets with the new practice of appointing receivers to continue the business.⁸⁵ In the same case⁸⁶ Mr. Justice Miller remarked that of the fifty railroads in his circuit hardly more than half a dozen had escaped receivership. The bills for the appointment of receivers were generally instituted by mortgagees,⁸⁷ bondholders⁸⁸ or judgment creditors,⁸⁹ and "collusion" in the filing of the bill was not unheard of.⁹⁰

In the eighties the prevalence of receiverships continued⁹¹ and in 1884 a lower federal court, in the *Wabash* case,⁹² recognized the propriety of a proceeding seeking the appointment of a receiver in which the railroad was the moving party. Although the decision never received the direct⁹³ sanction of the Supreme Court it continued to be the normal proceeding for a number of years.⁹⁴

⁸³ See HICKS, HIGH FINANCE IN THE SIXTIES (1929) 1.

⁸⁴ See *Kennedy v. St. Paul & P. R. Co.* Fed. Case No. 7706 (D. Minn. 1873); *Stanton v. Alabama & C.R. Co.* Fed. Case No. 13296 (C.C.D. Ala. 1875); *Illinois Cent. R. Co. v. Mississippi Cent. R. Co.* Fed. Case No. 7008 (D. C. Miss. 1876); *Allen v. Dallas & W.R. Co.* Fed. Case No. 221 (C.C.D. Texas 1878); *Young v. Montgomery & E.R. Co.* Fed. Case No. 18166 (C.C.D. Ala. 1875); *Wilmer v. Atlanta & R. Airline Ry. Co.* Fed. Case No. 17775 (C.C.D. Ga. 1875); *Ruggle v. Southern Minn. R. Co.* Fed. Case No. 12121 (C.C.D. Minn. 1872). But compare *1 Tyson v. Wabash R. Co.* Fed. Case No. 14315 (1878) opinion by Harlan, Circuit Justice; *Union Trust Co. v. St. Louis, 1 M. & S.R. Co.* Fed. Case No. 14402 (C.C.D. Mo. 1877) opinion by Miller, Circuit Justice.

⁸⁵ *Barton v. Barbour*, 104 U.S. 126, 135 (1881). See also Warren, *Federal and State Court Interference*, 43 HARV. L. REV. 345, 364 (1930).

⁸⁶ *Barton v. Barbour*, 104 U.S. 126, 137 (1881).

⁸⁷ *Stanton v. Alabama & C.R. Co.* Fed. Case No. 13296 (C.C.D. Ala. 1875).

⁸⁸ *Kennedy v. St. Paul & P.R. Co.*, Fed. Case No. 7706 (D. Minn. 1873).

⁸⁹ See facts of case referred to in *Hamworth v. Loan & Trust Co.* 105 U.S. 77 (1881). See also *Atkins v. Petersburg R. Co.* Fed. Case No. 604 (C.C.D. Va. 1879).

⁹⁰ Cf. *Wilmer v. Atlanta & R. Airline Ry. Co.*, Fed. Case No. 17775 (C.C.D. Ga. 1875); *Brassey v. New England Ry.* 19 Fed. 663 (C.C.D. Conn. 1884).

⁹¹ See Warren, *Federal and State Court Interference*, 43 HARV. L. REV. 345, 364 (1930).

⁹² See *Wabash St.L. & P. Ry. v. Central Trust Co.*, 22 Fed. 272 (C.C.D. Mo. 1884), 29 Fed. 618 (C.C.D. Mo. 1886). See Chamberlain, *New Fashioned Receiverships*, 10 HARV. L. REV. 139 (1896) and State cases referred to in Glenn, *The Basis of the Federal Receivership*, 25 COL. L. REV. 434, 442 (1925).

⁹³ See the reference to the procedure in *Quincy Mo. & Pac. R.R. v. Humphreys*, 145 U.S. 82 (1892).

⁹⁴ See Chamberlain, *New Fashioned Receiverships*, 10 HARV. L. REV. 139 (1896).

Its continued use was rendered unnecessary by the development of the "friendly receivership".⁹⁵ The first important step towards the recognition of the propriety of such proceedings was taken in 1888. In that year the Supreme Court stated⁹⁶ that the appointment of a receiver, with the consent of the defendant, upon a bill brought by a judgment creditor who had not levied execution at law, was proper. The facts of the case indicate clearly that the suit was instituted at the instance of the defendant.

In 1892 in *Hollins v. Brierfield Coal and Iron Co.*⁹⁷ the Supreme Court furnished added impetus to the development of the friendly receivership. While the Court dismissed a bill brought by a simple contract creditor for the appointment of a receiver, it stated that if the company had made no objection to the appointment of a receiver and the distribution of its assets, it would not have been permitted to insist later that the proceeding was defective, because of the lack of a judgment and return *nulla bona*.

The *Hollins* case marked the real beginning of the modern friendly receivership. For the next fifteen years the practice of appointing receivers in friendly proceedings continued⁹⁸ without further sanction by the Supreme Court. In 1908 the Supreme Court in *Re Metropolitan Railway Receivership*⁹⁹ set at rest, at least temporarily, all doubts as to the validity of the friendly federal equity receivership. The defendant, New York City Railways, had admittedly procured a friendly non-resident creditor to bring the bill and had consented to the appointment of a receiver, and the Metropolitan Railway had been made a party defendant upon its own request.

⁹⁵ See STETSON *et als*, SOME LEGAL PHASES OF CORPORATE FINANCING REORGANIZATION AND REGULATION (1917) 85.

⁹⁶ *Sage v. Memphis and Little Rock Railroad Co.*, 125 U.S. 361 (1888). The suit originated in a state court where a receiver was appointed, and was removed to the federal court. Two years after the *Sage* case the court decided *Brown v. Lake Superior Iron Co.*, 134 U.S. 530 (1890). In that case a judgment creditor who had not levied execution and two simple contract creditors brought suit in a federal court for the appointment of a receiver. The corporation permitted a decree *pro confesso* to be entered against it. Nine months later the company sought to dismiss the proceedings. The Supreme Court held that whatever rights it might have had were lost by its inaction.

⁹⁷ 150 U.S. 371 (1893).

⁹⁸ See STETSON, *et als*, SOME LEGAL PHASES OF CORPORATE FINANCING REORGANIZATION AND REGULATION (1917) 84.

⁹⁹ 208 U.S. 90 (1908).

For the first time all of the doubtful elements of the friendly receivership jurisdiction were considered and disposed of; the contention that the proceeding was not a "controversy" within Article Three of the Constitution was held to have no force, in view of the fact that the creditor's claim was valid and unpaid; the objection that the suit was collusive met with a like response; and the lack of a judgment was, in the opinion of the court, waived by the defendant.

Although the decision in the *Metropolitan Railway* case¹⁰⁰ met with adverse criticism, the lower federal courts displayed no hesitancy in adopting it to its outermost implications;¹⁰¹ and abuses of its authority, which will be dealt with later, became prevalent.¹⁰² During the next fifteen years the Supreme Court

¹⁰⁰ See the comment on the case by Professor Schofield in 3 Ill. L. Rev. 385 (1908). Compare Thatcher, *Some Tendencies of Modern Receiverships*, 4 CALIF. L. REV. 32 (1915). The earlier doctrine of the *Wabash* case had been severely criticized. See Chamberlain, *New Fashioned Receiverships*, 10 HARV. L. REV. 139 (1896). See also 21 Cent. L.J. 2 (1885).

¹⁰¹ The lower federal courts have with fair uniformity held that a simple contract creditor may obtain the appointment of a receiver if the company consents. See *Manhattan Rubber Mfg. Co. v. Lucey Mfg. Co.*, 5 F(2d) 39, 42 (C.C.A. 2d, 1925); *Field v. Kansas City Refining Co.*, 9 F(2d) 213 (C.C.A. 8th, 1925); *American Can Co. v. Erie Preserving Co.*, 171 Fed. 540 (C.C.D.N.Y. 1909) *aff'd* 183 Fed. 96 (C.C.A. 2d, 1910); *Burton v. Peters Salt & Lumber Co.* 190 Fed. 262 (D.Mich. 1911); *Luhrig Collieries Co. v. Interstate Coal & Dock Co.* 281 Fed. 264 (D.N.Y. 1922) *aff'd* 287 Fed. 711 (C.C.A. 2d, 1923); *American Brake, Shoe & Foundry Co. v. Pere Marquette R.R. Co.*, 205 Fed. 14 (C.C.A. 6th, 1913); *Equitable Trust Co. v. A. C. White Lumber Co.* 41 F(2d) 60 (D.Idaho 1930); *Union Trust Co. of Pittsburgh v. Jones*, 16 F(2d) 236 (C.C.A. 4th, 1926); *Merchant Bank & Trust Co. v. Pflug*, 6 F(2d) 385 (C.C.A. 7th, 1925); *Wiggington v. Auburn Wagon Co.* 33 F(2d) 496 (C.C.A. 4th, 1929); *First Nat'l Bank v. Stewart*, 17 F(2d) 621 (D.Cal. 1927). If the corporation objects a receiver will not be appointed on a simple contract creditor's bill. See *Felice Perrelli Canning Co. v. Certified Food Stores*, 15 F(2d) 891 (D.N.Y. 1926); *Woodford v. Inter Ocean Refining Co.*, 5 F(2d) 68 (C.C.A. 7th, 1925); *Lee v. Riefler & Sons*, 43 F(2d) 364 (D.Pa. 1930). Insofar as the following cases indicate the contrary they are without any authority. *Brown v. Cuba—American Jockey & Auto Club*, 2 F(2d) 612 (D.Fla. 1924); *National Park Bank v. McKibben & Co.*, 43 F(2d) 254 (D.Ga. 1930). In some instances the conduct of defendant has been held equivalent to a consent sufficient to confer jurisdiction over a simple contract creditor's bill. Compare *Finney v. Continental Baking & Milling Co.*, 17 F(2d) 107 (D.Ind. 1927); *Walker v. United States Light & Heating Co.*, 220 Fed. 395 (D.N.Y. 1915). See 43 HARV. L. REV. 1298 (1930).

¹⁰² When the complaining creditor is a secured creditor he may maintain a bill for the appointment of a receiver to prevent waste. See *Kountze v. Omaha Hotel Co.* 107 U.S. 378 (1882); 2 FOSTER, FEDERAL PRACTICE (6th Ed. 1920) s.302 A. Compare *Cobb v. Interstate Mortgage Corporation*, 20 F(2d) 786 (C.C.A. 4th, 1927); *Barnett v. Mayes*, 43 F(2d) 521 (C.C.A. 10th, 1930). In the *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 497 (1923) the court said:

"A receiver is often appointed upon application of a secured creditor who fears that his security will be wasted. *Kountze v. Omaha Hotel Co.* 107 U.S. 378, 395, 2 Sup. Ct. 911, 27 L. Ed. 609. A receiver is often appointed upon

had no occasion to express itself again on the question. Since 1922, however, it has been called upon to decide several of the problems attendant upon friendly receiverships; its decisions indicate that the abuses of the *Metropolitan Railway* doctrine have not escaped its notice.

In *The Pusey & Jones Co. v. Hanssen*¹⁰³ it dismissed a bill brought by a general creditor under the authority of a state statute upon the ground that the state statute was remedial and could not enlarge the jurisdiction of a federal court sitting in equity. If the Supreme Court had been at all inclined towards extending the jurisdiction of the federal courts over equity receiverships the result might well have been otherwise.¹⁰⁴ In subsequent cases the Supreme Court has displayed a like tendency to limit the receivership jurisdiction of the lower federal courts.¹⁰⁵

Finally, in 1928 the Supreme Court in *Harkin v. Brundage*,¹⁰⁶ speaking through Chief Justice Taft, took occasion to express, in no uncertain terms, its disapproval of the extensive use of the friendly receivership, stating that a judgment and return of *nulla bona* would ordinarily be required. The court cited *Re Metropolitan Railway Receivership* for the proposition that where a receiver had been irregularly appointed upon a simple contract creditor's bill with the company's consent, and the administration had proceeded to a point where it would have

application of a judgment creditor who has exhausted his legal remedy. See *White v. Ewing*, 159 U.S. 36, 15 Sup. Ct. 1018, 40 L.Ed. 67."

¹⁰³ 261 U.S. 491 (1923). In the course of its opinion the court went out of its way to point out that a creditor must have a judgment and return of execution to maintain a bill for the appointment of a receiver, and that even if the defendant consents to a simple contract creditor's bill the court may decline to appoint a receiver.

¹⁰⁴ See the opinions of the courts below, 276 Fed. 296 (D.Del. 1921); 279 Fed. 488 (C.C.A. 3rd 1922). See also *Kessler v. Necker*, 256 Fed. 654 (D.N.J. 1919) where conflicting lower federal court cases are collected.

¹⁰⁵ In *Lion Bonding & Surety Company v. Karatz*, 262 U.S. 77 (1923) the court held that a creditor must have a claim in excess of \$3000 before he may maintain a bill for the appointment of a receiver. See Dobie, *Jurisdictional Amount in the United States District Court*, 11 VA. L. REV. (N.S.) 513, 516 (1926). There are other points involved in the case, the decisions as to which indicate with equal force the desire of the Supreme Court to limit the jurisdiction of the lower federal courts over receiverships. In *Riehle v. Margolies*, 279 U.S. 218 (1929) the court held that a creditor who had instituted suit in a state court before the federal receivership should be permitted to proceed to judgment. Of course his judgment is not entitled to priority.

¹⁰⁶ 276 U.S. 36 (1928).

been detrimental to all concerned to discharge the receiver, the receivership was permitted to continue.

There can be no doubt that the Supreme Court intended to call a halt to the unlimited use of the friendly receivership; but with occasional exceptions¹⁰⁷ the district judges have continued as before. The continued failure of the district judges to exercise their unquestioned discretion to limit the friendly receivership to proper situations and to eliminate prevalent abuses¹⁰⁸ is indeed unfortunate for it may well lead to a reversal by the Supreme Court of its decision in *Re Metropolitan Railway Receivership*.¹⁰⁹ Such action, while it would undoubtedly remove abuses, would eliminate the most effective means developed to achieve highly desirable results in corporate affairs.¹¹⁰ With the purpose of determining whether the useful features might not be retained and the abuses removed we have made a study of unreported cases in the United States District Court of New Jersey, and have compared the results with the results of like studies in the United States District Courts for Massachusetts and Connecticut. A complete table of the results of our study of the New Jersey cases is appended at the end of this article;

¹⁰⁷ See *Municipal Financial Corporation v. Bankus Corporation and City Financial Corporation*, 45 F(2d) 902 (D.N.Y. 1930) commented upon in 40 YALE L. J. 996 (1931); 44 HARV. L. REV. 991 (1931); *Hardy v. North Butte Mining Co.* 20 F(2d) 967 (D.Montana 1927) *rev'd* on other grounds in 22 F(2d) 62 (C.C.A. 9th, 1927). See *Central Union Trust Co. of N.Y. v. North Butte Mining Co.* 26 F(2d) 675 (D.Montana 1928).

¹⁰⁸ See Trieber, *The Abuses of Receiverships*, 19 YALE L. J. 275 (1910); Thatcher, *Some Tendencies of Modern Receiverships*, 4 CALIF. L. REV. 32 (1915); *New York Times* Nov. 26, 1923 at 2; Dec. 28, 1923 at 19. For interesting sidelights see 27 LAW NOTES 82 (1915); 51 AM. L. REV. 780 (1917); 67 CENT. L. J. 233 (1908).

¹⁰⁹ The doctrine of the *Re Metropolitan Railway Receivership* case has been extended to cover all kinds of corporations and is not confined to quasi public corporations. See cases cited in note 101 *supra* and *First Nat'l Bank of Medford v. Stewart Fruit Co.*, 17 F2d 621 (D.Cal. 1927). See also *Riehle v. Margolies*, 279 U.S. 218 (1929). Compare *Pennsylvania Steel Co. v. New York City Railway Co.* 198 Fed. 721, 737 (C.C.A. 2d 1912); 39 YALE L. J. 668 (1929).

¹¹⁰ The attitude of the courts, including the Supreme Court, when dealing with reorganizations should be contrasted with the attitude referred to in the text. After the decision in *Northern Pac. Ry. Co. v. Boyd* (228 U.S. 482 (1913)) new modes of procedure were inaugurated and the federal courts were called upon to perform new functions. The lower federal courts readily accepted their new powers and the Supreme Court has inferentially approved their action. See the lectures by Messrs. Cutcheon and Swaine in BALLENTINE *et als*, *SOME LEGAL PHASES OF CORPORATE FINANCING REORGANIZATION AND REGULATION 1925-1930* (1931). It would seem safe to say that although the abuses of the "friendly receivership" doctrine have incurred the wrath of the Supreme Court, that body still looks favorably upon reorganizations, which, it must be remembered, are made possible by the "friendly receivership" device.

for present purposes we will refer to pertinent portions thereof along with the results of the studies in the Massachusetts and Connecticut districts.

There were forty-four receivership cases over a period of ten years in the Connecticut district court;¹¹¹ all but one were original proceedings and thirty-eight were friendly; over a like period there were sixty-nine¹¹² receivership cases in the Massachusetts district court, of which thirty-seven were original proceedings and fifty-nine were friendly.

The receivership calendar of the New Jersey district court far exceeds the combined calendars of the districts referred to; over a twenty-eight month period following the decision in *Harkin v. Brundage* one hundred receivership bills were entertained. Of these eighty-seven were original proceedings, of which at least sixty-four were of a friendly nature. In all of the friendly proceedings receivers were appointed; four of the remaining cases were dismissed by consent and in three the prayer for the appointment of a receiver had not been acted upon; in the remaining sixteen original proceedings receivers were appointed as was the case in all of the ancillary proceedings.

Thirty-four of the friendly proceedings were brought by unsecured creditors, eighteen by stockholders,¹¹³ eleven by creditors and stockholders jointly, and one by a trustee under a trust indenture. All but two of the bills alleged an excess of assets over liabilities; generally the bills alleged an inability by the defendant to meet its obligations, as they matured, with the consequent danger of dissipation of its assets by levies and attachments; in every case a formal answer, admitting the allegations of the bill and consenting to the appointment of a receiver, was filed; and in every case where such an answer was filed a receiver was appointed without further proof.

A mere reading of the bills discloses that in many of the cases, although solvency was alleged, the margin of assets over

¹¹¹ Douglas and Weir, *Equity Receiverships in the United States District Court of Connecticut*, 4 CONN. B. J. 1 (1930).

¹¹² WYZANSKI, *FRIENDLY RECEIVERSHIPS IN THE FEDERAL COURTS WITH SPECIAL REFERENCE TO UNREPORTED CASES IN FEDERAL DISTRICT COURT FOR MASSACHUSETTS 1920-1930* (1930).

¹¹³ As to whether a stockholder may maintain a bill for the appointment of a receiver, see *O'Neil v. Welch*, 245 Fed. 261 (C.C.A. 3d, 1917); *Re Clinton Co.* 288 Fed. 829 (C.C.A. 7th, 1923). See also *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 501 (1923); *Burnrite Coal Co. v. Riggs*, 274 U.S. 208 (1927).

liabilities was so narrow as to render fair assurance, that upon the appointment of a receiver, he would come into possession of a bankrupt estate. Indeed, in two of the cases the figures contained in the bill disclosed insolvency in the bankruptcy sense,¹¹⁴ and it may safely be said that in fifty of the cases such were the actual facts.

Those cases had no place in federal equity; all involved winding up, and the bankruptcy act has provided a machinery to take care of such cases. It would serve no useful purpose to detail the reasons why the bankruptcy court is the proper forum in such cases;¹¹⁵ suffice it to say, that by the passage of the bankruptcy act Congress has provided for the disposition of such cases, with a consequent limitation on federal equity jurisdiction.

The contention might be made that the district judge has no means of controverting the admitted allegation of solvency. As has been indicated, in most cases a careful scrutiny of the bill of complaint will create sufficient doubt to warrant the denial of the prayer for the appointment of a receiver, in the absence of further proof of solvency. Still more effective would be a rule that bills of complaint, containing general allegations of solvency, would no longer be entertained; and that detailed financial statements certified wherever possible by accountants and verified by an officer of the consenting corporation must be presented to the court before it will consider the prayer for a receiver. Furthermore, even where the bill is proper on its face, the order should merely appoint a temporary receiver, with directions to investigate the financial condition and other material aspects of the defendant, and report to the court as early as possible.

¹¹⁴ Where its assets are less than its liabilities the corporation is insolvent in the bankruptcy sense; where its assets exceed its liabilities but it is unable to meet its obligations as they mature, it is insolvent in the equity sense. Insolvency in the equity sense plus an allegation that unless a receiver is appointed the complainant will be damaged because of consequent levies, etc., is sufficient for the appointment of a receiver. See *Luhrig Collieries Co. v. Industrial Coal & Dock Co.*, 281 Fed. 264 (D.N.Y. 1922) *aff'd* 287 Fed. 711 (C.C.A. 2d, 1923), and the cases cited in note 101. But compare *Trust & Deposit Co. of Onondago v. Spartanburg Waterworks Co.*, 91 Fed. 324 (D.S.C. 1898); *Adler v. Campeche Laguna Corporation*, 257 Fed. 789 (D.Del. 1919); 43 *HARV. L. REV.* 1298 (1930). See also 38 *YALE L. J.* 668 (1929).

¹¹⁵ See *Municipal Financial Corporation v. Bankus Corporation and City Financial Corporation*, 45 F(2d) 902 (D.N.Y. 1930) commented upon in 40 *YALE*

In none of the New Jersey district court cases studied was any attempt made to ascertain the truth of the allegations of the bill, and the practice in other districts is similar. However, the recent case of *Municipal Financial Corporation v. Bankus Corporation*,¹¹⁶ decided by Judge Woolsey of the southern district of New York, may have a wholesome influence, even beyond its territorial confines. The court had appointed a receiver with directions to report upon the financial condition of the defendant; after receiving the receiver's report, Judge Woolsey vacated the appointment and in a reported opinion emphatically disapproved of the practice of procuring the appointment of equity receivers in situations where bankruptcy is the proper remedy. Although constrained by *Manhattan Rubber Co. v. Lucey Mfg. Co.*,¹¹⁷ to refrain from ordering the defendant to file a petition in bankruptcy, the court's suggestion that such action be taken, was shortly complied with.

Allied with the necessity of ascertaining whether the defendant is solvent is the necessity of determining whether there is a reasonable likelihood that a continuance of the corporate business will result in rehabilitation or reorganization. If the receiver's investigation discloses that in all probability the estate will be liquidated after the business has been conducted for a short time, the receivership should ordinarily be dismissed, since here again the bankruptcy court is the proper forum.

The order appointing a receiver should not only direct the receiver to furnish the court with an adequate report but should also provide that objections by creditors and stockholders to the continuance of the receivership will be heard on the day specified for the presentation of the receiver's report.¹¹⁸ After considering the receiver's report and the objections of interested parties, the court should display no hesitancy in vacating its appointment if the circumstances warrant such action.

Unfortunately the foregoing procedure has been but seldom

¹¹⁶ *Supra* note 115.

¹¹⁷ 5 F(2d) 39 (C.C.A. 2d, 1925). The court held that the lower court had no power to compel the directors to file a voluntary petition in bankruptcy. See 11 CORN. L. Q. 371 (1926).

¹¹⁸ See ROSENBERG, SWAINE, WALKER, CORPORATE REORGANIZATION AND THE FEDERAL COURT (1924) XII, where Mr. Rosenberg refers to the practice adopted by Judge Learned Hand of appointing only temporary receivers pending a public hearing on whether the receivership should be continued. See also 44 HARV. L. REV. 991 (1931).

invoked. In but a minority of the New Jersey District Court cases were creditors afforded an opportunity of presenting their objections; in all of those cases their objections were unavailing, since they were unable to substantiate their positions. If, however, the court had been furnished with an adequate report by the receiver, the objections of interested parties could have been intelligently considered.

There are other criticisms which may be justly made. Oftentimes the nature of the corporate defendant is such that a proper exercise of discretion would require that their control be left with other courts or administrative bodies. Banks, insurance companies, local utilities and foreign corporations might often be properly permitted to remain subject to the jurisdiction of different bodies; yet, in all of the friendly proceedings before the New Jersey District Court receivers were appointed, without consideration of the nature of the corporate defendant.

Similarly, the nature of the complainant's claim has been equally ignored; in at least five of the New Jersey district cases receivers were appointed on bills brought by creditors whose claims failed to exceed three thousand dollars, despite the denial of such jurisdiction in *Lion Bonding and Surety Co. v. Karatz*.¹¹⁹ Indeed, the outermost bounds of judicial readiness to appoint receivers, in friendly proceedings, was displayed in two of the cases, where receivers were appointed, although the bills of complaint disclosed a lack of diverse citizenship.

The necessity of judicial awareness is not confined to a consideration of whether a receiver should be appointed; for even in situations where receivers may properly be appointed discretionary powers continually come into play and abuses are far from uncommon. Who is to be the receiver is of vital importance¹²⁰; and although it goes without saying that he should be peculiarly fitted for the position, only too seldom are capable persons appointed as receivers. Lawyers are frequently appointed as receivers¹²¹ of enterprises with which they are en-

¹¹⁹ 262 U.S. 77 (1923).

¹²⁰ See 35 YALE L. J. 640 (1926). The courts might by rule borrow from the English practice and use an "official receiver" in cases where no special knowledge is required, appointing specially qualified persons in situations where special knowledge is required.

tirely unfamiliar and the general practice of permitting lawyer receivers to retain counsel may hardly be justified. The granting of unlimited authority to continue the business accompanied by unlimited restraining orders should be curbed, and the length of receiverships must be curtailed. In the New Jersey district no efforts have been extended towards the accomplishment of those purposes. The receiver should be required to report to the court at frequent intervals and the district judge should insist that matters be carried out expeditiously. In view of necessary delays attendant upon reorganizations, it would hardly be possible to set definite time limits for receiverships although there might be a requirement that receiverships must be terminated within a specified time, unless upon cause shown, the court orders otherwise. Other abuses might be detailed but they have been amply considered elsewhere.¹²²

The district courts must awaken to the fact that the friendly receivership is justifiable in only a limited number of cases¹²³; that in that limited number of cases it may not only be justified but is a convenient mode of achieving highly desirable ends; and that to avert the elimination of a desirable jurisdiction they must exercise their powers to eliminate its undesirable aspects. Many suggestions in addition to those made above may be¹²⁴ outlined but they are sufficiently familiar to district judges; in

¹²¹ The practice of appointing an officer of the defendant as receiver has received severe criticisms but continues unabated.

¹²² See Caldwell, *Railroad Receiverships in the Federal Courts*, 30 AM. L. REV. 161 (1896); Thatcher, *Some Tendencies of Modern Receiverships*, 4 CALIF. L. REV. 32 (1915); Thompson, *Court Management of Railroads*, 27 AM. L. REV. 481 (1843); Couetts, *Rule Forbidding Suits Against Receivers*, 38 AM. L. REV. 516 (1904); Swain, *Economic Aspects of Railroad Receiverships*, 3 ECONOMIC STUDIES 53 (1898); RIPLEY, *RAILROADS, FINANCE AND ORGANIZATION* (1915) 387; Sterne, *Recent Railroad Failures and Their Lessons*, 17 FORUM 18, 31 (1894).

¹²³ As we have earlier stated, the chief utility of the "friendly receivership" lies in the fact that it affords the most highly developed mode of effecting reorganizations. It seems clearly defensible for that purpose although no attempt is made to justify its abuses. A reversal of *Re Metropolitan Railway Receivership* (and in view of *Harkin v. Brundage* such action is not entirely unlikely—see 41 HARV. L. REV. 70, 804 (1928)) or congressional action abolishing the federal equity receivership would remove the means whereby reorganizations are best effected.

¹²⁴ The suggestion made above that definite proof of solvency be required seems most important. In the ordinary case the defendant is seeking to avoid bankruptcy. Since an admission of insolvency in the bankruptcy sense would render it without a defense to a suit by creditors to have it declared bankrupt (see *Greenwood Co. v. Zimmerman*, 240 Fed. 637 (C.C.A. 6th, 1917)) the bill alleges that the assets exceed the liabilities. This allegation may seldom be credited. Where the defendant is not subject to bankruptcy, different consider-

all, they require more stringent excises of discretionary powers and a curtailment of judicial leniency and generosity in the entertainment and conduct of receiverships.

And the circuit courts of appeals might lend their aid by abandoning their *laissez faire* attitude of permitting most phases of receiverships to remain within the unreviewable discretion of district judges. In a recent state case¹²⁵ the laxity of the lower courts in receivership cases was severely scored; some improvement has resulted.

With a proper exercise of discretion the suggestion that the removal of receivership cases would alleviate the burdens of the federal courts loses much of its force. Forty-four receiverships in Connecticut and sixty-nine in Massachusetts over a period of ten years do not seem burdensome. While it is true that each receivership extended over a long period of time, practically all of the proceedings were of a friendly nature, involving but little of the courts' time.

While the figures for the New Jersey District Court are more troublesome, it is evident that proper exercises of discretion would have eliminated a considerable proportion of the cases; here again the proceedings were mostly friendly with few controversial issues.

It must, of course, be admitted that receiverships of large corporations doing interstate business have often burdened¹²⁶ federal judges. But such cases are of social importance and are mostly adequately disposed of by the federal courts; they have reached the stature of a "federal specialty" and should not be sacrificed for the purpose of allowing to federal judges more time in which to try matters which require no special treatment.¹²⁷

A troublesome thought with reference to the "friendly receivership" remains. Assuming that it is desirable to retain

ations apply; here the federal court may well appoint a receiver even though the liabilities exceed the assets.

¹²⁵ *Glaser v. Achtel-Stetter's Restaurant*, 106 N.J. Eq. 150, 149 Atl. 44 (E.&A. 1930).

¹²⁶ See Frankfurter, *Distribution of Judicial Power Between United States and State Courts*, 13 CORN. L. Q. 499, 526 (1928).

¹²⁷ *E.g.* criminal matters, negligence cases, etc. For a warm defense of the modern federal equity receivership see Judge Mayer's address in VI LECTURES ON LEGAL TOPICS, 161 (1929).

federal jurisdiction to declare moratoriums pending rehabilitation or reorganization, is the modern friendly proceeding a proper method of attaining the desired result? The thought of permitting a corporation to procure a non-resident creditor to present what is in form a "controversy" continues to appear somewhat unseemly although such appearance may be without substance. The procedure in the *Wabash*¹²⁸ case, in which the corporation was permitted to file the bill of complaint, achieved the same result as *Re Metropolitan Railway Receivership* without resorting to its circuitous method.

Congress might sanction equity proceedings by the corporation under the bankruptcy clause,¹²⁹ although in view of repeated attempts to limit federal jurisdiction such an enactment is unlikely. However, the *Wabash* case was never disapproved by the Supreme Court; and although a tendency to limit friendly receiverships has been noticeable, it may yet receive sanction as a partial avoidance of the unfavorable atmosphere surrounding *Re Metropolitan Railway Receivership*. If so, a proceeding by the corporation naming foreign creditors as defendants, alleging its inability to pay its debts and praying for the appointment of a receiver to conduct its affairs pending rehabilitation or reorganization would be sustained. Historically there is sufficient basis for such a proceeding; and in view of the line of cases represented by *Pierce v. Society of Sisters*,¹³⁰ the court should have little difficulty in justifying a conclusion that the facts outlined present a "controversy" within Article Three of the Constitution. Since the ends to be attained are socially and economically desirable and since the proceeding is well fitted to

¹²⁸ *Supra* note 92.

¹²⁹ Compare Brown, *The Jurisdiction of the Federal Courts Based on Diversity of Citizenship*, 78 U. OF PA. L. REV. 179 (1929); ROSENBERG, SWAINE, WALKER, *CORPORATE REORGANIZATION AND THE FEDERAL COURT* (1924) 1. As to companies doing interstate business the interstate commerce clause furnishes an additional basis for statutory enactments.

Congress might go further and vest title in the federal receiver, to all property wherever situated, thus obviating the necessity of ancillary receiverships. See ROSENBERG, SWAINE, WALKER, *CORPORATE REORGANIZATION AND THE FEDERAL COURTS* (1924) XIV.

See 2 ILL. L. REV. 189 (1907) where the Constitutionality of "reorganization statutes", both state and federal, is considered.

¹³⁰ 268 U.S. 510 (1925), holding that a suit to enjoin the enforcement of a statute before any substantial attempt to do so had been made could be entertained

enable the attainment of those ends, need we express surprise if it becomes the recognized procedure of the future?¹³¹

(To be continued)

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¹³¹ Compare Brown, *The Jurisdiction of the Federal Courts Based on Diversity of Citizenship*, 78 U. OF PA. L. REV. 179 (1929).

APPENDIX

NEW JERSEY CASES

	Number
1. Bills filed between September 28, 1928, and December 16, 1930, seeking the appointment of receivers -----	100
2. Original bills:	
By stockholders -----	29
By creditors -----	45
By stockholders and creditors jointly -----	13
	<hr/>
Total	87
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3. Ancillary Bills -----	13
4. Original bills by non-resident stockholders against New Jersey Corporations:	
(A) Receivers appointed with defendant's express consent	14
(B) Receivers appointed without objection although no express consent appears -----	2
(C) Cases dismissed -----	2
(D) No action taken -----	1
(E) Receiver appointed above objection -----	1
(F) Receiver appointed but action reversed by appellate court -----	1
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Total	21
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5. Original bills by non-resident stockholders against insurance companies of New Jersey:	
(A) Receivers appointed above objection -----	2
(B) Receiver appointed without objection -----	1
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Total	3
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(C) Statutory receivers sought on statutory grounds ----	2
(D) Statutory and general equity grounds alleged for general equity receiver -----	1
	<hr/>
Total	3
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6. Original stockholder's bill against National Bank -----	1
Receiver appointed but order was reversed by appellate court..	—
7. Original bills by non-resident stockholders against New Jersey corporation:	
(A) Prayer for statutory receiver—receiver appointed with defendant's express consent -----	8
(B) Prayer for general equity receiver although statutory	

	Number
grounds were alleged—receiver appointed with defendant's express consent -----	2
(C) Prayer for general equity receiver on equity grounds—receiver appointed with defendant's express consent -----	4
Total	14
8. Original bills by New Jersey stockholders against foreign corporations:	
(A) Receivers appointed with defendant's express consent -----	4
(B) Receiver appointed without objection -----	1
(C) Not disposed of -----	1
Total	6
(D) Statutory grounds alleged for statutory receiver -----	3
(E) General equity grounds -----	3
Total	6
(F) Winding up sought -----	3
(G) Winding up not prayed for -----	3
Total	6
9. (A) Original bill by New York stockholders against New York corporation -----	1
(This bill sought a statutory receiver on statutory grounds; a receiver was appointed with the defendant's express consent.)	
(B) Original bill by New York and New Jersey stockholders against a New York corporation -----	1
(This bill sought a statutory receiver on statutory grounds; a receiver was appointed with the defendant's express consent.)	
10. Original bills by stockholders and creditors jointly:	
(A) By unsecured creditor and stockholder -----	11
(B) By judgment creditor and stockholder -----	1
(C) By bondholder and stockholder -----	1
Total	13
11. Original bills by creditors and stockholders:	
(A) Against New Jersey corporations -----	10

	Number
(B) Against foreign corporations -----	3
Total	13
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12. Original bills by non-resident creditors and stockholders against New Jersey corporations:	
(A) Receivers appointed upon defendant's express consent	8
(B) Receivers appointed without objection -----	2
Total	10
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13. Original bills by New Jersey creditors and stockholders against foreign corporations:	
(A) Receivers appointed upon defendant's express consent	2
(B) Receivers appointed without objection -----	1
Total	3
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14. (A) Original bill by stockholder and bondholder -----	1
(a) Against a New Jersey insurance company.	
(b) A receiver was appointed above objection.	
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(B) Original bill by judgment creditor and stockholder -----	1
(a) Receiver appointed without objection.	
(C) One of the original bills was against a New Jersey local railroad—a receiver was appointed without objection.	
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15. Original bills by unsecured creditors and stockholders against New Jersey corporations:	
(A) Statutory receiver sought on statutory grounds -----	3
(B) Creditors claims less than \$3000 -----	6
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16. (There was one proceeding by a member and creditor of a country club, a corporation organized under the New Jersey Act for the incorporation of non-profit associations. The bill sought a statutory receiver; a receiver was appointed with the express consent of the defendant.)	
17. (There was one proceeding by a trustee under a mortgage against a New Jersey corporation; a receiver was appointed with the defendant's express consent.)	
18. Original bills by unsecured creditors -----	43
(Bills by member and creditor and trustee are included in total of 45 bills by creditors referred to on first page of this appendix.)	
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19. Original bills by general creditors:	
(A) Against New Jersey corporations -----	36

	Number
(B) Against foreign corporations -----	6
(C) Against a New Jersey partnership -----	1
Total	43
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20. Original bills by creditors against New Jersey corporations:	
(A) Receivers appointed with defendant's express consent	30
(B) Receiver appointed without objection -----	3
(C) Bills dismissed -----	2
(D) No action taken -----	1
Total	36
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(A receiver was appointed with the defendant's express consent in the proceeding against a partnership.)	
21. Original bills by general creditors against foreign corporations:	
(A) Receivers appointed with defendant's express consent	4
(B) Receiver appointed without objection -----	2
Total	6
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22. Original bills by general creditors against New Jersey corporations:	
(A) 1 receiver appointed -----	21
2 receivers appointed -----	7
3 receivers appointed -----	5
Total	33
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23. Original bills by general creditors against foreign corporations:	
(A) 1 receiver appointed -----	1
2 receivers appointed -----	4
3 receivers appointed -----	1
Total	6
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ANCILLARY PROCEEDINGS

- (A) Receivers were appointed in all 13 of the ancillary proceedings.
- (B) In 6 of the cases 1 receiver was appointed.
 In 6 of the cases 2 receivers were appointed.
 In 1 of the cases 3 receivers were appointed.
- (C) In 5 of the cases in which 1 receiver was appointed, the New Jersey court appointed the same receiver as did the court of original jurisdiction.
- In 2 of the cases in which 2 receivers were appointed they were the same as the receivers in the primary court; in the remaining 4 cases, 1 of the receivers was a local receiver.

In the single case in which 3 receivers were appointed, 2 were local receivers.

(D) In all of the cases, all of the orders of the primary jurisdiction, were confirmed.

(E) All of the ancillary proceedings were against corporations with the exception of 1 which was against a partnership.

(F) In 4 of the proceedings, the court of primary jurisdiction, was the federal court sitting at the domicile. In 4 of the proceedings the defendants were New Jersey corporations; in the remaining 5 cases they were corporations of states other than New Jersey or the state in which the court of original jurisdiction was sitting.