

Receivers--Action by Receiver of Corporation for Possession of Funds on Deposit in a Foreign Jurisdiction (Union Guardian Trust Co. v. Broadway Nat. Bank, 138 Misc. 16 (1930))

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restriction to his detriment. The fact that others may have violated the restriction and no action was brought to enjoin and restrain such violations is immaterial.¹⁰ The enforcement of the restriction does not involve great hardship or inequitable consequences to the plaintiff as the building contemplated was a mere plan. In determining whether an injunction shall issue to restrain the violation of restrictions, the conduct of the parties, the character of the district and all circumstances must be considered in the light of equitable rules and principles.

R. L.

RECEIVERS—ACTION BY RECEIVER OF CORPORATION FOR POSSESSION OF FUNDS ON DEPOSIT IN A FOREIGN JURISDICTION.—Plaintiffs, as receivers of a Michigan corporation, brought an action to recover funds, originally placed in a New York bank in the name of a corporation, but later transferred to the individual account of its president, defendant Brown. Defendants moved to dismiss the complaint on the ground that plaintiffs had no legal right to sue in this jurisdiction, their appointment in a foreign state having no extra-territorial effect. *Held*, motion denied. While the action may not be maintained as of right, it is permitted under principles of comity, this though the foreign state does not act reciprocally in this respect. *Union Guardian Trust Co. v. Broadway Nat. Bank*, 138 Misc. 16, 245 N. Y. Supp. 2 (1930).

A receiver appointed by a Chancery court to function merely as an officer of the court to conserve the assets of a corporation is not permitted as a matter of legal right to sue in another jurisdiction from the one of appointment.¹ This rule has no application where the receiver is created by force of statute,² since in that instance he succeeds to the title of the corporate assets by the law of the sovereignty which has the power to clothe him with such a right.³ The Federal rule denies to a chancery receiver a right to maintain such an action outside the state of appointment, even on principles of comity.⁴ This rule is qualified so that it has no application where the receiver

¹⁰ *McCain Realty Co. v. Aylesworth*, 128 Misc. 408, 219 N. Y. Supp. 59 (1926).

¹ *Mabon v. Ongley Electric Co.*, 156 N. Y. 196, 50 N. E. 805 (1908); *Ross Lumber Co. v. Daniel Clark & Son, Inc.*, 211 App. Div. 591, 207 N. Y. Supp. 391 (4th Dept., 1925); *McNelus v. Stillman*, 172 App. Div. 307, 158 N. Y. Supp. 428 (1st Dept., 1916).

² *Howarth v. Angle*, 162 N. Y. 179, 56 N. E. 489 (1900); *Martyne v. American Union Fire Ins. Co. of Philadelphia*, 216 N. Y. 183, 110 N. E. 502 (1915).

³ *Sinnott v. Hanan*, 214 N. Y. 454, 108 N. E. 858 (1915).

⁴ *Booth v. Clark*, 17 How. 322, 15 L. ed. 164 (U. S., 1848); *Great Western Mining & Mfg. Co. v. Harris*, 198 U. S. 561, 25 Sup. Ct. 770 (1905); *Lion Bonding & Surety Co. v. Karatz*, 262 U. S. 77, 43 Sup. Ct. 480 (1923).

has secured an assignment of the property in question,⁵ or is acting by virtue of a statute vesting title in him,⁶ or a quasi-assignee to enforce a statutory liability for corporate debts.⁷ An early case in this jurisdiction denied a foreign equity receiver the right to sue on the ground that his appointment in another jurisdiction had no extra-territorial effect.⁸ A later case adopted a broader view.⁹ The business of a corporation is no longer restricted to the confines of the state of its creation. The rule adopted must conform with changing conditions. In the instant case the need is recognized and the rule made to conform. It remains to be seen what effect this decision, if sustained, will have on the attitude of courts in other jurisdictions.

F. A. D.

WORKMEN'S COMPENSATION LAW—VALIDITY OF LAW REQUIRING COMPULSORY CONTRIBUTIONS TO COMPENSATION AND REHABILITATION FUNDS.—Joseph Perroth, in the course of his employment by one Anderson, was killed through the negligence of the appellant Railway Company. Perroth left him surviving a dependent, his widow. In an action brought by his administratrix against the appellant to recover damages caused by his death, the claim was settled by the payment of an amount in excess of that which the dependent would have been entitled to receive under the Workmen's Compensation Law, appellant receiving a general release in full settlement of all claims. As insurer of the deceased's employer, respondent paid the state treasurer the amount of two awards of \$500 each, made jointly against the employer and respondent under subdivisions 8 and 9 of section 15.¹ This suit was then brought by respondent under

⁵ Hawkins v. Glenn, 131 U. S. 319, 9 Sup. Ct. 739 (1889).

⁶ Relfe v. Rundle, 103 U. S. 222 (1880).

⁷ Converse v. Hamilton, 224 U. S. 243, 32 Sup. Ct. 415 (1912).

⁸ Hope Mutual Life Ins. Co. v. Taylor, 25 N. Y. Sup. Ct. 278 (1864).

⁹ Mabon v. Ongley Electric Co., *supra* Note 1.

¹ Sec. 15. Schedule in case of disability. The following schedule of compensation is hereby established * * *

8. Permanent total disability after permanent partial disability. If an employee who has previously incurred permanent partial disability through the loss of one hand, one arm, one foot, one eye, incurs permanent disability through the loss of another member or organ, he shall be paid, in addition * * * out of a special fund created for such purpose in the following manner: The insurance carrier shall pay to the state treasurer for every case of injury causing death in which there are no persons entitled to compensation the sum of five hundred dollars. The state treasurer shall be the custodian of this special fund and the commissioner shall direct the distribution thereof.

Subdivision 9 provides for the expense of rehabilitating injured employees and requires the insurance carrier to pay the state treasurer the sum of five hundred dollars under terms similar to those contained in subdivision 8.