

## Equity Receiverships: Comity: Full Faith and Credit

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## NOTE

**EQUITY RECEIVERSHIPS—COMITY—FULL FAITH AND CREDIT.**—The appointment of receivers to administer the estates of insolvent corporations is one of the historic functions of a court of equity. The intervention of the court through its receiver, at the suit of an unpaid judgment creditor, may be necessary to prevent the immediate dismemberment of the corporate estate and to insure a supervised liquidation and a fair distribution of assets.

Equity courts can appoint receivers for corporate estates in other kinds of cases. They may appoint receivers to conserve assets of certain corporations pending investigations of the firms' internal affairs.<sup>1</sup> Under the direction of the legislature, or sometimes on their own initiative, equity courts may appoint receivers and order the liquidation and distribution of the assets of corporations which are still able to pay their debts. The stockholders, promoters, or directors of a particular corporation, for example, may have failed to comply with some local regulatory policy applicable to all business corporations. An administrative official proceeds under a local statute to have the corporation dissolved by order of the court, to have its affairs wound up, and its assets distributed through a receivership as prescribed by statute.<sup>2</sup> Or the equity court, without any suggestion from the legislature, may take unto itself the power to order a dissolution of a domestic corporation, to supervise a winding up and a distribution of assets under a receiver, as the only scheme it can propose to give minority stockholders effective relief against the majority group in control of the corporation's properties.<sup>3</sup>

When the assets of a particular corporation are located within the limits of several territorial sovereign units no one court through its own receiver can give complete protection to everyone concerned in the distribution of the estate. The several courts having physical control of the properties must co-operate with one another to insure anything approaching a planned liquidation and an equal distribution of all the assets. Whether each court must co-operate with the others under pressure, or whether each is free to do as it chooses in the matter of supervising the distribution out of the particular assets under its control, are questions which can be answered only after a consideration of the standards set by the Supreme Court. It is perhaps generally accurate to suggest that the several courts do not always have to co-operate under pressure and that they are not always free to do as they choose. With the help of the federal constitution, its full faith and credit clause, and its equal protection clause, the Court has been able to give vitality to the generalizations of the "law of conflicts" and the "principles of private international law."<sup>4</sup>

<sup>1</sup> See *Dunn v. Acme A. & G. Co.*, 168 Wis. 128, 169 N.W. 297 (1918).

<sup>2</sup> *Lillard v. Lonergan*, 72 F. (2d) 865 (C.C.A. 10th, 1934); WIS. STAT. (1933) §§ 286. 36 to 286. 41; see *West Park Realty Co. v. Porth*, 192 Wis. 307, 314, 212 N.W. 651 (1929).

<sup>3</sup> *Goodwin v. von Cotzhausen*, 171 Wis. 351, 177 N.W. 618 (1920).

<sup>4</sup> See Brandeis, J. in *Broderick v. Rosner*, U.S.L. Week, April 2, 1935, at 714, col. 1: "For the States of the Union, the constitutional limitations imposed by the full faith and credit clause abolished, in large measure, the general principles of international law by which local policy is permitted to dominate rules of comity."

Except where Congress has conferred special powers upon the federal courts, they are in no better position than the equity courts in the several states to carry out an all inclusive plan of distribution through several receivers for one corporate estate. The federal equity courts, too, seem frequently to have regarded themselves as local courts concerned primarily about the interests of the corporations' creditors resident within their own jurisdictions. Congress has, however, enacted a Bankruptcy Act, and Congress has conferred power upon the federal equity courts in certain situations to order dispositions of physical assets lying outside the confines of their own territorial jurisdictions but within the boundaries of contiguous districts.<sup>5</sup> Liquidation as prescribed in the Bankruptcy Act can be worked out satisfactorily under the supervision of one court. Sometimes complete relief for all concerned in the liquidation can be effected under the supervision of the original court only through the co-operation of ancillary bankruptcy courts. Before a trustee is finally chosen, and after a petition has been filed against a debtor who is eventually adjudged a bankrupt, it may be necessary to have receivers for the debtor's estate appointed in other districts than that in which the petition has been filed.<sup>6</sup> And the trustee, himself, may have to go outside the original district to get relief by way of summary process against persons in other jurisdictions.<sup>7</sup> Little or nothing has been done by the recent additions to the Bankruptcy Act to enhance the powers of the federal bankruptcy courts with respect to the liquidation of estates of insolvent corporations. The distribution of the assets of insolvent or dissolved insurance companies and state banks can be carried out only under the supervision of some courts other than the federal bankruptcy courts.<sup>8</sup>

It was suggested above that the problems in these cases, where different courts are competing with one another over the matter of supervising the administration and distribution of corporate assets, are problems in the field of conflict of laws and constitutional law. The courts are constantly talking about chancery and statutory receivers,

<sup>5</sup> See 36 STAT. 1102 (1911), 28 U.S.C.A. 117 (1926).

<sup>6</sup> See *Butler v. Ellis*, 45 F. (2d) 951 (C.C.A. 4th, 1930). See also General Order in Bankruptcy, LI, promulgated May 15, 1933, limiting the appointment of ancillary receivers in bankruptcy to those instances where the primary receiver or the court in the original jurisdiction has consented to the application for the appointment.

<sup>7</sup> See *Shortridge v. Utah Savings & Trust Co.*, 40 F. (2d) 328 (C.C.A. 10th, 1930). By the recent additions to the Bankruptcy Act, 77 A [47 STAT. 1474 (1933), 11 U.S.C.A. 205 (1934)] and 77 B [48 STAT. 912, 11 U.S.C.A. 207 (1934)], jurisdiction over the debtor and his property wherever located is conferred upon the court with which the petition is filed. When it becomes necessary to carry out the plan of reorganization the court can issue effective process leading up to summary orders against third persons residing outside the territorial limits of the particular district. *Continental Illinois Nat'l Bank & Trust Co. v. C. I. & P. Ry. Co.*, U.S.L. Week, April 2, 1935, at 723, 729, col. 2, where the Court was considering Section 77A; *In re Greyling Realty Corporation*, 74 F. (2d) 734 (C.C.A. 2nd, 1935), where the court was considering Section 77 B. In the *Greyling* case the court pointed out that there is no express provision in Section 77 B prescribing the method for service of process outside the territorial limits of the particular district. In each case the court must work out some scheme for service of process which will give notice to the party concerned and afford him a reasonable opportunity to be heard.

<sup>8</sup> See § 4 of the Bankruptcy Act. 30 STAT. 547 (1898), 36 STAT. 839 (1910), 47 STAT. 47 (1932), 11 U.S.C.A. 22 (1934).

comity, and full faith and credit. Underlying all the cases, the decisions of the Supreme Court, itself, and the decisions of those courts which pretend to be doing what the Supreme Court has said or has indicated must be done, there is the idea of compromise, between, on the one hand, what a particular court can do to insure local residents within the jurisdiction satisfaction out of the assets under its control, and what the court must do in the way of recognizing claims of others than the local creditors to a share in the assets. The most important other person whose claim must be considered is the appointee of some other court which has assumed, too, to exercise some degree of supervision over the winding up and distribution out of the assets of the particular corporation.

A Delaware corporation, for example, is doing business in New York and in Wisconsin. It has assets in both states. At the suit of an unpaid judgment creditor, who alleges that the corporation is insolvent and unable to pay its debts, an equity court in New York appoints a receiver to take over the administration of the affairs and assets of the corporation.<sup>9</sup> That is an act of bankruptcy.<sup>10</sup> A petition in bankruptcy may be filed against the corporation within the New York district, within the Delaware district, or conceivably within a federal district in Wisconsin. If the corporation is adjudged a bankrupt, administration through the equity receivership will be superseded by administration in the bankruptcy court.<sup>11</sup> Perhaps no petition is filed against the corporation, or if a petition is filed, the corporation is not adjudged a bankrupt because it is not insolvent according to the definition in the Bankruptcy Act.<sup>12</sup> The New York equity court has appointed its receiver to take over the assets in New York temporarily and until it can make further inquiry into the necessity for liquidation. Immediately, thereafter, the temporary receiver petitions to be appointed ancillary receiver by the Wisconsin court for the corporation's assets located within the territorial jurisdiction of that court. The petitioner makes his request on an *ex parte* application and the court grants his petition, requiring him to give a bond for the protection of local creditors, and recognizing him as the local receiver.<sup>13</sup> In due time the New York court

<sup>9</sup> For the purpose of the hypothetical illustration at this point in the discussion it makes no difference whether the equity courts referred to are taken to be state courts or federal courts.

<sup>10</sup> Section 3 (a) (4) of the Bankruptcy Act, 30 STAT. 546, (1898), 32 STAT. 797 (1903), 44 STAT. 662 (1926), 11 U.S.C.A. 21 (a) (4) (1934). It is important to emphasize that the appointment of a receiver to conserve assets, for example, or for any other reason than the "insolvency" of the corporation, is not an act of bankruptcy within the definition of this Section. *Walker v. Morgan & Bird Gravel Co.*, 20 F. (2d) 547 (C.C.A. 5th, 1927).

<sup>11</sup> *Hazelwood v. Third & Wells Realty Co.*, 205 Wis. 85, 236 N.W. 591 (1931).

<sup>12</sup> See § (15) of the Bankruptcy Act, 30 STAT. 544 (1898), 11 U.S.C.A. 1 (15) (1926), where "insolvency" from the point of view of the Bankruptcy Act is defined as inability to pay one's debts in the event of a forced liquidation.

<sup>13</sup> Whether an appointment on an *ex parte* application is ever sufficient if a party defendant should thereafter contest the capacity of the ancillary receiver, and when such appointment can be sufficient, if ever, are still open questions. The Supreme Court in *McCandless v. Furlaud*, 55 Sup. Ct. 42 (1934) was willing to take judicial notice of the fact that appointment on such applications is a frequent practice. The receiver in that case had been appointed ancillary receiver on an *ex parte* application, but the court refused to permit the matter of capacity to be raised on review in the particular case because the defendant had not presented the matter to the trial court.

orders the receiver to liquidate. The New York court has no power to dissolve the Delaware corporation.<sup>14</sup>

Wisconsin creditors have filed their claims with the receiver as prescribed by the local court. These creditors have not filed in New York. The receiver has collected the debts owing to the corporation by Wisconsin debtors, and he has reduced all the local assets to cash. He petitions the Wisconsin court, after giving notice to local creditors, for permission to transfer the fund in his possession to the general estate. He offers to protect Wisconsin creditors and to insure their getting equal distributions out of all the assets of the general estate with all the other creditors who may have filed their claims in any other jurisdiction. The court denies the petition. At the instance of the local creditors the Wisconsin court orders the ancillary receiver to pay out of the local fund the claims of the Wisconsin creditors first, and to transfer the balance, if there is a balance, to the general estate.

When the Wisconsin court chooses to do as the local creditors request, is the court refusing to give equal protection to the interests of those who are entitled to that protection as a matter of right? Is the Wisconsin court effecting a discrimination which it has no power to sanction? Has the court refused to recognize the "title" of the receiver and does that mean that the court has not given full faith and credit to the decrees or statutes of some one of the other forty-eight states? The Wisconsin court does have some choice. The receiver appointed by the New York court is a "mere" chancery receiver. Temporarily he was recognized by the Wisconsin court as its own receiver. The assets were then and they are now still under the "jurisdiction" of the Wisconsin court. The court must permit any individual, a citizen of any one of the forty-eight states, who chooses to file his claim in the Wisconsin proceeding, to share pro rata with other local participants in the distribution out of the local fund.<sup>15</sup> The Wisconsin court cannot prefer local

<sup>14</sup> A corporation, even though insolvent and unable to pay its debts, can only be dissolved, if at all, by a domestic court. *McGuire v. Mortgage Co. of America*, 203 Fed. 358 (C.C.A. 2nd, 1913); *Frankland v. Remington Phonograph Corporation*, 13 Del. Ch. 312, 119 Atl. 127 (1922).

<sup>15</sup> *Blake v. McClung*, 172 U.S. 239, 19 Sup. Ct. 165, 43 L.ed. 432 (1898). In that case the local court was attempting to carry out the provisions of a statutory scheme. Local residents were to be preferred. Non-resident creditors, who were individuals and not corporations and who were citizens of the United States, the court held, could protest effectively against the carrying out of this scheme where they had filed their claims with the local court. Cf. *Security Trust Co. v. Dodd*, 173 U.S. 624, 19 Sup. Ct. 545, 43 L.ed. 835 (1899), in which the local court preferred an attaching creditor who had come in after an involuntary assignee had taken over the debtor's estate. The involuntary assignee is in a position comparable to that of the chancery receiver. There were no creditors in that case in any position comparable to the position of the protesting creditors in the *Blake* case. In *Carpenter v. Ludlum*, 69 F. (2d) 191 (C.C.A. 3rd, 1934), the court which had appointed the receiver in the first place purported to equalize the distribution of assets among all creditors by taking into consideration in ordering a distribution out of the general estate that some of the creditors had already received preferences through their own local courts where those courts had permitted a distribution out of the assets under their control according to the plan suggested in the text above. And in *Torrington v. Sidway-Topliff Co.*, 70 F. (2d) 949 (C.C.A. 7th, 1934) the appellate court refused to permit the lower court in the ancillary jurisdiction to prefer local creditors in ordering a disposal of the local assets because only local creditors had been permitted to file within the local district. That was clearly in accord with the limitation enforced in the *Blake* case.

creditors, as such, but the court can order a preference in favor of those who do participate in the Wisconsin proceeding.

What could the Wisconsin court have chosen to do in the way of ordering a distribution out of the fund under its physical control if the original receiver had been a statutory receiver? And what is a statutory receiver?

Had the receiver appointed originally by the New York court been a statutory receiver he would not have had to petition the Wisconsin court for recognition as a local "ancillary" receiver.<sup>16</sup> He would have been entitled as a matter of right to appear as a party plaintiff in his representative capacity before the courts, federal or state, in Wisconsin and in all the courts in all the other forty-eight states, in any lawsuit in which he was seeking protection for some alleged interest of the corporation against some adverse claimant in control of corporate assets, or against some debtor of the corporation. Service of process by any third party, as a plaintiff in any lawsuit based upon an asserted claim against the corporation, would have had to be effected upon the statutory receiver unless a local statute had prescribed some regular method for getting substantial service upon foreign corporations.<sup>17</sup>

Had the receiver been a statutory receiver, the Wisconsin court, through its physical control over the proceeds of the estate within the local jurisdiction, could have given some degree of protection to the claims of local creditors. Any local lien creditor, who had got in with his attachment, execution or garnishment before the primary court had appointed the receiver, would enjoy priority against the claim of the statutory liquidator.<sup>18</sup> Any lien creditor who had got in before the receiver had taken over the estate, even any local general creditor without a lien, in a suit begun in the local court with the receiver as a party defendant, might persuade the local court to protect his interests and the interests of all local creditors by holding up the liquidation and distribution out of the local estate through the primary receiver.

<sup>16</sup>*Converse v. Hamilton*, 224 U.S. 243, 32 Sup. Ct. 415, 56 L.ed. 749 (1912); *Good v. Derr*, 46 F. (2d) 411 (C.C.A. 7th, 1931).

<sup>17</sup>*Martyne v. American Union Fire Ins. Co.*, 216 N.Y. 183, 110 N.E. 502 (1915); *United States Truck Co. v. Pennsylvania Surety Corp'n.*, 259 Mich. 442, 243 N.W. 311 (1932).

<sup>18</sup>See *Fisheries Products Co. v. Timmons*, 16 F. (2d) 266 (C.C.A. 4th, 1926), where the chancery receiver already appointed in the foreign jurisdiction was permitted to keep his preferred position in spite of the fact that a statutory receiver had been appointed subsequently by the domestic court. See, too, *Standard Lumber Co. v. Henry*, (Ark. 1934) 74 S.W. (2d) 226, where the court held that a statutory receiver, like any local liquidator, can take advantage of the local statute against preferences. As a part of its scheme for the protection of local persons doing business with a foreign corporation the legislature may require, as in the case of an insurance company, for example, that the foreign corporation deposit with some local official a prescribed fund in the form of commercial paper, bonds or such, to be used in discharging the obligations of the corporation to local creditors if the company should be unable to pay its debts in the regular course of business at some future date. It is suggested here that should a statutory receiver be appointed for a particular foreign insurance company which had complied with these local statutes, the court in the local jurisdiction could dispose of the proceeds in the hands of the local official to prefer local creditors. All local creditors would be lien creditors. Cf. *Gagliano v. Ferguson*, 245 Mass. 364, 139 N.E. 527 (1923); and see *Blake v. McClung*, 172 U.S. 239, 257, 19 Sup. Ct. 165, 43 L.ed. 432 (1898), *supra* note 15.

ership until local creditors should be assured of equal distributions with all other creditors out of all the assets located in all territorial jurisdictions, and without the local creditors having to file their claims within the time set and at the place prescribed by the original appointing court.<sup>19</sup> And the local court would have power, also, to pass upon and to determine the validity of contested claims of local creditors. The extent to which the local court could give relief to those alleged lien creditors who had acquired their asserted liens after the appointment of the receiver would depend, too, on the relief the local court would give to such claimants against any administrator appointed to supervise the liquidation of the assets of any local insolvent corporation.<sup>20</sup> The statutory receiver would be entitled to no more protection in the local courts than would be afforded to a locally appointed liquidator.

It is not always easy to know the kinds of receivers which must be recognized as statutory receivers. Certainly no receiver appointed by any court other than a court in the jurisdiction where the corporation has been chartered can qualify as a statutory receiver.<sup>21</sup> With respect to statutory schemes prescribed in many states for the liquidation of particular kinds of corporations like banks, building and loan associations, and insurance companies, it is generally true, that, if the statutes so permit, the equity court may order a dissolution in case of insolvency, order a winding up, appoint a special liquidator of its own choice, or acknowledge the position of a designated administrative official if that is included in the statutory scheme, and the liquidator will be entitled to recognition as a statutory receiver.<sup>22</sup> Perhaps when the legislature sets out a type of proceeding in the nature of quo warranto, permitting the local courts of general equity powers to inquire into the

<sup>19</sup> See *Blake v. McClung*, 172 U.S. 239, 257, 19 Sup. Ct. 165, 43 L.ed. 432 (1898), *supra*, note 15; and see the order of the trial judge as set out in the statement of facts in *Clark v. Williard*, 292 U.S. 112, 54 Sup. Ct. 615, 78 L.ed. 1160 (1934).

<sup>20</sup> *Clark v. Williard*, 55 Sup. Ct. 356 (1934).

<sup>21</sup> *Frankland v. Remington Phonograph Corporation*, 13 Del. Ch. 312, 119 Atl. 127 (1922). It is quite uncertain just how much effect a federal equity court may give, or can give, to a statutory scheme for the appointment of corporate receivers where the scheme is prescribed by the local legislature in the jurisdiction where the court is located. In *Pusey & Jones Co. v. Hanssen*, 261 U.S. 491, 43 Sup. Ct. 454, 67 L.ed. 763 (1923) the Court seems to suggest that it is a matter of choice, that the federal courts do not have to enforce the local statutes. Where the appointment of the receiver is incidental to a suit involving the forfeiture of the corporation's charter, the federal equity court can probably do no more than put a temporary receiver in control of the estate, at the suit of corporation creditors, until the state court has inquired into the grounds for forfeiture and has ordered a winding up under its own receiver. See *Lillard v. Lonergan*, 72 F. (2d) 865 (C.C.A. 10th, 1934).

<sup>22</sup> *Clark v. Williard*, 292 U.S. 112, 54 Sup. Ct. 615, 78 L.ed. 1160 (1934); *Ashcraft v. Bream*, 51 F. (2d) 301 (M.D. Pa. 1931); see WIS. STAT. (1933) § 200.08 (3) pertaining to the liquidation of insurance companies. Even in these cases, unless the statute purports to have the receiver appointed by the court literally invested with the "title" of the corporation, the receiver appointed in any particular case is not the kind of statutory receiver who is entitled to recognition as a matter of right outside his own state. *Sterrett v. Second National Bank*, 248 U.S. 73, 39 Sup. Ct. 27, 63 L.ed. 135 (1918). If dissolution of the corporation is a necessary prerequisite for the vesting of "title," a mere order appointing the receiver is not enough to make him a statutory liquidator. See *Mylander v. Chesapeake Bank of Baltimore*, 162 Md. 755, 159 Atl. 770 (1932).

question of forfeiture of the corporate charter at the suit of some administrative official or some other interested person, to order a dissolution and a winding up, the liquidator thereafter appointed would be classified as a statutory receiver.<sup>23</sup> In the case of any general corporation, insolvent because it cannot pay its debts, whose assets within the domestic jurisdiction have been taken over by a receiver appointed by the court at the suit of an unpaid judgment creditor, it is problematical whether the receiver is entitled to recognition as a statutory receiver although the local statutes have purported to cause a receiver so appointed to be vested with all the "title" of the corporation to the assets of the estate.<sup>24</sup> Perhaps most often the statutes pertaining to these situations are merely declaratory of the "common law." But the receiver, appointed by the domestic court under a statutory scheme for enforcing stockholders' double liability, has been held to be a statutory receiver and entitled to recognition in a lawsuit begun in some foreign jurisdiction against a stockholder to enforce the latter's statutory liability.<sup>25</sup> A receiver appointed until an accounting can be had, or a receiver appointed to conserve assets pending an inquiry into the corporate management, cannot be a statutory receiver, even when he is appointed by the court in the jurisdiction where the corporation has been chartered.<sup>26</sup>

If the receiver is a chancery receiver, any court other than the original appointing court has much freedom of choice as to what it shall

<sup>23</sup> Cf. WIS. STAT. (1933) §§ 286.36 to 286.41; and see *Lillard v. Lonergan*, 72 F. (2d) 665 (C.C.A. 10th, 1934).

<sup>24</sup> See *Abm. S. See & Depew v. Fisheries Products Co.*, 9 F. (2d) 235 (C.C.A. 4th, 1925) and *Fisheries Products Co. v. Timmons*, 16 F. (2d) 266 (C.C.A. 4th, 1926). Cf. WIS. STAT. (1933) § 286.10. The Wisconsin statute does not purport literally to invest the receiver through the appointing court with the "title" of the corporation. The Wisconsin court has said that this section is declaratory of the "common law." *Hazelwood v. Third & Wells Realty Co.*, 205 Wis. 85, 236 N.W. 591 (1931). Within the courts of the state the receiver appointed under this statute can appear as a party plaintiff. In order to contest the adverse claim of some third party to an interest in the corporation's estate, or to collect from a corporation debtor, the receiver does not have to petition the local courts to have these third parties brought in as defendants to the suit on the original creditor's bill. In his representative capacity he can make them defendants in separate actions. *Hazelwood v. Third & Wells Realty Co.*, *supra*.

<sup>25</sup> *Converse v. Hamilton*, 224 U.S. 243, 32 Sup. Ct. 415, 56 L.ed. 794 (1912). Cf. *Finney v. Guy*, 189 U.S. 335, 23 Sup. Ct. 558, 47 L.ed. 389 (1903), where the Court held that the receiver was not entitled to recognition as a party plaintiff outside the courts of the domiciliary jurisdiction because the statutory scheme set up in the home state provided for enforcement of the stockholders' statutory liability in a general suit in equity in the local courts. Unless the particular defendants could be made parties to that suit their statutory liability could not be enforced against them as a matter of right. See also *Broderick v. Rosner*, U.S.L. Week, April 2, 1935, at 712, in which the Court restates the proposition laid down in *Converse v. Hamilton*, *supra*, and holds, also, that the statutory liquidator can appear in a court outside the domiciliary state to enforce collection of a special assessment on double liability bank stock where the liquidator, himself, a state official, had made the determination with respect to the necessity for enforcing the statutory liability against all stockholders. The Court did not in this decision purport to preclude any further inquiry into this matter of necessity by any court into which the liquidator might go for help against any particular stockholder.

<sup>26</sup> *Ward v. Faulkrod*, 264 Fed. 627 (C.C.A. 3rd, 1920); see *Mylander v. Chesapeake Bank of Baltimore*, 162 Md. 755, 159 Atl. 770 (1932).

do about recognizing him in his representative capacity as a party plaintiff before the court, and about acknowledging his claims for protection to alleged interests in the corporate estate. Comity is an important factor. When the interests of no local creditors seem to be affected, the state courts are inclined to permit the foreign receivers to appear within the courts although the receivers have not petitioned for ancillary appointments.<sup>27</sup> The federal courts insist that the foreign receivers petition for ancillary appointments before those courts will recognize the receivers as having the capacity to sue.<sup>28</sup> When local creditors are claiming to be interested in a distribution of assets which are under the control of the local court, perhaps through its receiver, who may be the foreign receiver as the local court's ancillary appointee, that court, whether it is a federal or a state court, is likely to be interested in protecting the interests of the local creditors to the disadvantage of other creditors of the estate.<sup>29</sup> The local court has power to enforce several schemes of distribution. The court may choose to permit the foreign receiver to take all the corporate assets from the local jurisdiction without discharging the claims of the local general creditors, and the creditors can have no effective ground for further protest.<sup>30</sup> The local court may insist on the foreign receiver's giving some security for the local creditors' protection before the court will permit the receiver to transfer any assets to the general estate, or the court may; perhaps by reason of the suggestion of a local statute, insist on priority for those who have filed their claims with the local court,

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<sup>27</sup> See *Gilman v. Ketcham*, 84 Wis. 60, 54 N.W. 395, 23 L.R.A. 52 (1895); *Pontiac Trust Co. v. Newell*, (Mich. 1934) 254 N.W. 178; see also footnote 1 in *McCandless v. Furland*, 55 Sup. Ct. 42, 43 (1934).

<sup>28</sup> *Sterrett v. Second National Bank*, 248 U.S. 73, 39 Sup. Ct. 27, 63 L.ed. 135 (1918). A federal equity court will not always appoint as its ancillary receiver one who petitions for appointment because he has already been appointed a receiver by another court interested in supervising the administration of the assets of the same corporation. The appointment of the ancillary receiver is a matter within the discretion of the court to which the petition is addressed. *May Hosiery Mills v. F & W. Grand Stores*, 59 F. (2d) 218 (D. Mont. 1932).

<sup>29</sup> See *Disconto & Gesellschaft v. Umbreit*, 208 U.S. 570, 28 Sup. Ct. 337, 52 L.ed. 625 (1907), where the local court chose to permit a subsequent attaching creditor to get the fund rather than to permit the foreign receiver to withdraw it. No other persons than the one local creditor had claimed any interest in the fund adverse to the interest of the foreign receiver. There was no question of full faith and credit in the case because the administrator had been appointed by a foreign court which was not a court in one of the forty-eight states. Some question was raised as to whether the foreign administrator was entitled by a treaty between his government and the government of the United States to the same protection as would be afforded to any citizen of the United States. The Court seemed to feel that the liquidator was in no position to attack the local court's disposition of the fund, that a citizen of the United States would have been in no better position than that of the foreign liquidator. *Quaere*: Could the local court have preferred the resident creditor over any other non-resident individual claimant, a citizen within the equal protection clause, and who had purported to catch the same fund at the same time with the local creditor, as, for example, where the non-resident claimant and the local creditor had each filed his claim with a receiver appointed by the local court? That is what *Blake v. McClung*, 172 U.S. 239, 19 Sup. Ct. 165, 43 L.ed. 432 (1898), *supra*, note 15, says that a local court cannot do.

<sup>30</sup> *Sands v. E. S. Greeley & Co.*, 88 Fed. 130 (C.C.A. 2nd, 1898); *Engineering Co. v. Perryman Electric Co.*, 114 N.J.Eq. 51, 168 Atl. 298 (1933).

priority to the immediate disadvantage of the foreign receiver and other creditors of the corporation. And the foreign receiver can raise no "federal question."<sup>31</sup>

When the foreign receiver is a statutory receiver the local court must be conscious of "full faith and credit." This receiver is entitled to recognition as a party plaintiff in any lawsuit he chooses to initiate in his representative capacity. He is entitled to the same consideration within the courts of the local jurisdiction that a locally appointed liquidator for a local insolvent and dissolved corporation would enjoy.<sup>32</sup>

The Montana Supreme Court has recently chosen to prefer as against the statutory receiver the claims of local lien creditors who purported to have perfected their positions as lien claimants after the statutory receiver had been appointed by his own domestic court.<sup>33</sup> The statutory receiver was the liquidator appointed under the Iowa statutes to carry out the liquidation of an Iowa insurance company. The decision of the Montana court was not a refusal to give full faith and credit to the appointment and investiture of the Iowa liquidator under the Iowa statutes because the Montana court pretended to be deciding as it would decide in any lawsuit between lien claimants like those in the particular case and the liquidator of a local dissolved insolvent corporate enterprise.<sup>34</sup> To prefer its own creditors in a particular case involving a foreign statutory receiver the Montana court chose to enunciate a general policy which in effect resulted in its giving up one of its inherent equity powers, the power to supervise the administration and distribution of the assets of an insolvent dissolved corporate enterprise. The court pretended to be following the statutes in the local jurisdiction, but the statutes had not literally prescribed that the local court could not intervene to insure effective protection for the interests of all persons concerned in the distribution of the assets of an insolvent and defunct organization. The court purported to arrive at its decision after its own construction of the language of the statutes. If the Montana legislature should enact specific legislation permitting the court to escape from the shortsighted position which it consciously assumed in this case, the new plan would have to be uniformly administered whether the liquidator in any particular case should be one appointed by the local court or one appointed by a court in another jurisdiction as a statutory receiver.<sup>35</sup>

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<sup>31</sup> *Blake v. McClung*, 172 U.S. 239, 19 Sup. Ct. 165, 43 L.ed. 432 (1898), *supra*, note 15; *Security Trust Co. v. Dodd*, 173 U.S. 624, 19 Sup. Ct. 545, 43 L.ed. 853 (1899), *supra*, note 15.

<sup>32</sup> *Clark v. Williard*, 292 U.S. 112, 54 Sup. Ct. 615, 78 L.ed. 1160 (1934).

<sup>33</sup> *Mieyr v. Federal Surety Co.*, (Mont. 1934) 34 P. (2d) 982; see Note (1935) 48 Har. L. Rev. 835.

<sup>34</sup> *Clark v. Williard*, 55 Sup. Ct. 356 (1934).

<sup>35</sup> *Clark v. Williard*, 292 U.S. 112, 54 Sup. Ct. 615, 78 L.ed. 1160 (1934).