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RECEIVERSHIPS IN KENTUCKY

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Courts of equity sometimes find it necessary to appoint an agent to take charge of property or to carry on a business which is involved in the litigation before it. Such an agent is called a receiver. Not only do we find equity judges today making use of such agents in equity matters but we find statutory authority for their appointment by courts and by government officials such as the Comptroller of the Currency of the United States, who may appoint a receiver to wind up the affairs of a defunct national bank, or a state insurance commissioner to appoint a receiver to manage an insurance company that has gotten into difficulty. A receiver may also be appointed to take charge of a bankrupt's estate until a trustee can be selected at a meeting of creditors. Federal courts have in the past handled the reorganization of interstate railroads through receiverships. It is the purpose of this study to see to what extent and for what purposes receivers have been made use of by the courts of Kentucky in handling difficult matters that come before them.

BASIS FOR APPOINTMENT OF A RECEIVER

The right to appoint a "common law receiver" was one of the inherent powers of equity, dating back to early times.[1] It still is an inherent power of equity in those states that have not purported to combine law and equity. In states that have fused law and equity, the power to appoint receivers depends upon statutory authorization. Such is the case in Kentucky.

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[1] Boonville National Bank v. Blakey, 107 Fed. 891, at 894 (1901).

The Civil Code of Practice, sections 298–302, is the statutory authority for the appointment of receivers in this state. The Court of Appeals, however, seems to regard the source of the power to be the inherent right of the chancery court to appoint receivers. In holding that the circuit courts are the only courts of this state which can exercise the power, the Court of Appeals said that they are the only courts "which exercise a general jurisdiction in equity, and the judges thereof are the only judges of the state invested with full chancery jurisdiction and inherent power to appoint receivers."[2] The case which called forth this statement was one in which an intestate had left a large amount of land and the daughter had brought a partition suit in the circuit court against the window and two sons of the intestate asking for the appointment of a receiver to take charge of the land pending partition. This appointment was resisted in the circuit court on the ground that an action for partition was already instituted in the county court. The circuit court judge erroneously refused to appoint a receiver as a result of this argument. The appellate court pointed out that a county court is a court of limited jurisdiction and can exercise only such powers as are given it by statute, that since it is not a court of general equitable jurisdiction and there is no statute which confers upon it the power to appoint a receiver, it has no right to appoint one. The court also said that the same is true of other courts of inferior jurisdiction, such as police courts and justices of the peace.

In another case in referring to section 300 of the Code the court has said that this section of the code is merely declaratory of the law applied in courts of equity in receivership proceedings.[3] Section 300 refers more especially to the appointment of a receiver in regard to mortgaged property. The statement in this case, shows, however, that the court regards the code provisions as simply declaratory of the law at the time of its adoption.

The order appointing a receiver is final for the purposes of appeal but is not for other purposes and may be modified or set aside although sixty days have elapsed after such order has been entered. While one prejudiced by an appointment of a

[2] Cochran v. Simmons, 177 Ky. 562, 197 S. W. 930 (1917).
[3] Young v. Fidelity & Columbia Trust Co., 258 Ky. 263, 79 S. W. (2d) 944 (1935).

receiver may appeal therefrom, he may also obtain relief possibly by making a motion within the proper time to vacate the order of appointment.[4] Under section 298 of the Code a judgment appointing a receiver cannot be suspended by the clerk's issuing a supersedeas. In the particular case in which the court so held, the clerk of the circuit court refused to issue such an order directing an executor of a decedent's estate to turn the estate over to another as receiver and trustee. The circuit court properly refused to issue a mandamus to compel him to do so.[5]

The Code provision states that one having a lien or interest in the property or fund involved in the action and the property or fund is in danger of being lost, removed or materially injured may move for the appointment of a receiver.[6] The appointment of a receiver is an extraordinary and drastic power and exercisable only where the failure to appoint would cause irreparable loss or injury, as the court has recently pointed out.[7] From this it is evident that if the party moving for an appointment has an adequate remedy without the appointment the court will refuse his request.[8] The court has also said that the remedy is generally purely ancillary, a proceeding *in rem*, but that under proper circumstances, a receiver may be appointed as an independent remedy and as a main object of suit and where the court has jurisdiction of the subject matter and of the parties, the order of appointment cannot be collaterally attacked.[9] It follows, of course, that where the property is not in danger of being lost or materially injured, a receiver should not be appointed.[10] Furthermore, it is a general rule that "a receiver should be wholly impartial and indifferent towards the parties interested." However, where an ineligible person has been appointed, the appointment is not

[4] Fourseam Block Collieries Co. v. John P. Gorman Coal Co., 249 Ky. 710, 61 S. W. (2d) 28 (1933); McClure v. McGee, 128 Ky. 464, 103 S. W. 341 (1908).

[5] Thompson v. Page, 25 Ky. L. Rep. 557, 76 S. W. 128 (1903).

[6] Oscar C. Wright Co. v. Steenman, 254 Ky. 381, 71 S. W. (2d) 991 (1934).

[7] Oscar C. Wright Co. v. Steenman, supra, n. 6; Evans' Admr. v. Clinton Bank, 244 Ky. 270, 50 S. W. (2d) 563 (1932).

[8] *Ibid, supra*, n. 7.

[9] Scholl v. Allen, 237 Ky. 716, 36 S. W. (2d) 353 (1931); Mitchell Machine & Electric Co. v. Sabin, 218 Ky. 289, 291 S. W. 381 (1927); Elkhorn Hazard Coal Co. v. Fairchild, 191 Ky. 276, 230 S. W. 61 (1921).

[10] Evans' Admr. v. Clinton Bank, *supra*, n. 7.

void but only voidable,[11] and even then the party raising the objection may wait too long to have the appointment set aside.[12]

In determining whether a receiver should be appointed the court looks to the pleadings of both parties and if the equitable grounds asserted in the petition are denied by the defendant in his answer, the plaintiff must disprove them and sustain the grounds for appointment.[13] The appointment of a receiver is also a matter of the discretion of the court and equitable conditions may be imposed upon the appointment or by order made subsequent to the appointment.[14] The court has said that the language of the Code that a receiver "may" be appointed is not equivalent to "must" be appointed;[15] and has also pointed out that the power to appoint should be exercised by a court with great caution, and never indulged unless the danger of loss or injury to the property in controversy is imminent and the one seeking the receivership has no other adequate remedy.[16]

The question often arises when one is asking for the appointment of a receiver, whether notice must be given the other side when one is moving for the appointment or whether the court can make the appointment without a hearing. To authorize the appointment of a receiver without notice to the defendant, it must appear that the short delay necessary for the giving of such notice would result in irreparable damage to the applicant. Although the order appointing without a hearing may be erroneous, it is never void as the court has pointed out,

[11] Young v. Fidelity & Columbia Trust Co., *supra*, n. 3; East Tennessee Tel. Co. v. Watson, 147 Ky. 462, 144 S. W. 375 (1912).

[12] East Tennessee Tel. Co. v. Watson, *supra*, n. 11.

[13] Kratz v. Moser, 250 Ky. 383, 63 S. W. (2d) 330 (1933).

[14] Fore's Admr. v. Fore's Heirs, 1 Ky. Opin. 498 (1866); Douglass v. Cline, 75 Ky. (12 Bush) 608 (1877); Harmon v. Kentucky Coal, Iron & Dev. Co., 15 Ky. L. Rep. 12, 21 S. W. 1054 (1893); Woodward v. Woodward, 17 Ky. L. Rep. 464, 31 S. W. 734 (1895); Bashears v. Dickinson, 23 Ky. L. Rep. 2182, 66 S. W. 1011 (1902); Cecil v. Cecil's Exrs., 185 Ky. 787, 215 S. W. 794 (1919); Elkhorn Hazard Coal Co. v. Fairchild, *supra*, n. 8; Fleming Trustee v. Virginia Mining Co., 196 Ky. 38, 244 S. W. 295 (1922); Bradley v. Bradley, 194 Ky. 60, 238 S. W. 170 (1922); Producers' Coal Co. v. Barnaby, 210 Ky. 244, 275 S. W. 625 (1925); Baskett v. Ohio Valley Banking & Trust Co., 224 Ky. 29, 5 S. W. (2d) 473 (1928).

[15] McClure v. McGee, *supra*, n. 4; Fleming, Trustee, v. Virginia Mining Co., *supra*, n. 14.

[16] Greasy Creek & Land Co. v. Greasy Creek Coal Co., 196 Ky. 67, 244 S. W. 85 (1922); Fleming, Trustee, v. Virginia Mining Company, *supra*, n. 14.

and one ignoring the order on the ground that it is void may be punished for contempt.[17] In an early case,[18] the court had said that the parties to be affected by the appointment of a receiver must have notice and an order appointing one before the parties affected thereby were before the court, was void. The Court of Appeals in *Wilson* v. *Jones*[19], referring to this statement, said: "This is merely an instance of the unfortunate use, or rather misuse, of the word void. The order was held to be erroneous, and that is all that need to have been said. That case (*Price* v. *Price*) does not sustain the proposition that an order of appointment is void unless there has been notice. The facts in that case showed no emergency." Where a vendor sought to enforce his lien and asked for the appointment of a receiver to take charge of the land, the grounds being set out in affidavits of witnesses read upon the hearing, the court ruled that the defendant should have thereafter been allowed time to controvert the affidavits.[20] He had plowed the land for the spring planting and the court thought that a strong case should first be made out against him before he should be deprived of the possession. It goes without saying, of course, that parties filing and proving claims in an action for the appointment of a receiver, become parties to the action under section 432 of the Civil Code of Practice.[21]

WHO MAY ASK FOR A RECEIVERSHIP?

The question very naturally arises, who may petition for the appointment of a receiver? Creditors very often have occasion to request such an appointment. In the absence of insolvency or some peculiar equity, simple contract creditors of a corporation, whose claims have not been reduced to judgment, are not entitled to the appointment of a receiver.[22] Where the assets of an insolvent corporation are in danger of being lost or fraudulently disposed of a receiver may be appointed

[17] Wilson v. Jones, 8 Ky. L. R. 510 (1886); Woodward v. Woodward, 17 Ky. L. Rep. 464, 31 S. W. 734 (1895).
[18] Price v. Price, 5 Ky. L. R. 330 (1883).
[19] *Supra*, n. 17.
[20] Chapman v. Vanover, 4 K. L. R. 254, 11 Ky. Opin. 706 (1882).
[21] Combs v. Allen, 208 Ky. 519, 271 S. W. 598 (1925).
[22] Black Hawk Coal Co. v. Hazard Fruit Co., 205 Ky. 447, 266 S. W. 3 (1924).

at the request of an unsecured creditor.[23] Where an assignment was made of the debtor's property and the debtor had made false statements in regard to his liabilities and the assignee refused to allow the creditors to inspect the inventory, the court properly removed the assignee and appointed a receiver to take charge.[24] In another case involving an insolvent mining corporation where there was danger of the lease being cancelled because of the failure to pay royalties, the court appointed a receiver and the decree so appointing was held not subject to collateral attack.[25] It was error, however, to appoint a receiver where the creditor's execution was returned with "no property" endorsed thereon and where it was shown that the debtor had prior thereto mortgaged her property while insolvent for the purpose of defrauding her creditors. There was the added fact that it had not been shown that the property was in danger of being lost, removed, or materially injured.[26] The Court of Appeals also ruled that it would be improper to appoint a receiver to take charge of the farm of a deceased person where the evidence did not show threatened injury or deterioration. The remedy in such a case was to sue upon the administrator's bond.[27]

It is not uncommon to appoint a receiver at the prayer of a mortgagee to take charge of the mortgaged property, especially to have the income and earnings applied to the payment of the mortgage debt;[28] or where there is danger of the property being removed or materially injured.[29] Where the receiver collects funds while holding the property, the mortgagor cannot dispose of the same nor can a creditor garnishee or attach them.[30] Where a holder of a lien on three-eighths of a tract of timber land was in danger of losing his security because the owner of the five-eighths was cutting the timber, the court appointed a receiver to protect the lien holder's interest.[31] Where the affi-

[23] Kentucky Racing & Breeding Association v. Galbreaith, 117 Ky. 66, 25 K. L. R. 1212, 77 S. W. 371 (1903).
[24] Goldsmith v. Fechheimer, 16 Ky. L. Rep. 433, 28 S. W. 21 (1894).
[25] Mitchell Machine & Electric Co. v. Sabin, *supra*, n. 8.
[26] Griffith v. Cox, 79 Ky. 562 (1881).
[27] Evans' Admr. v. Clinton Bank, *supra*, n. 7.
[28] Douglass v. Cline, *supra*, n. 14.
[29] Newport & Cincinnati Bridge Co. v. Douglass, 75 Ky. (12 Bush) 673 (1877).
[30] *Ibid.*
[31] Dupayster v. Ft. Jefferson Imp. Co., 24 Ky. L. Rep. 1782, 72 S. W. 268 (1903).

davits filed by a lien holder showed that the defendant was mismanaging the land and the fences were being destroyed and these statements were not directly controverted, a receiver was appointed to take charge of the property.[32]

The vendor who has reserved a lien for the unsecured purchase money, of course, is entitled to the appointment of a receiver under circumstances that would warrant the appointment of one in the case of a mortgagee. If the security is sufficient to satisfy the claim and there is no threatened impairment of the lien, one should not be appointed.[33] The vendee who has paid the purchase price may be placed in a similar position to that of a vendor with a lien. Where hemp was sold and the purchase price partly paid, the seller neglected to stack the same and to protect it from weather conditions. The buyer sued to recover the money paid and asked to have a receiver appointed to take charge of the hemp until the rights of the parties could be adjusted.[34] Also where the title of land is in dispute and the one in possession is insolvent and is committing waste or threatening to do so, the court may put a receiver in possession until the question of title is settled.[35] And the same was true where a mechanic's lien which was not good against remaindermen was made effective as the remaindermen were forced by the chancellor to do equity in order to get equity.[36]

Ordinarily a court of equity will not interfere with the management of a corporation. It may do so where there is fraud and threatened danger to the minority stockholders' interest.[37] The court will not substitute the wishes of the minority for those of the majority and appoint a receiver to manage the corporation. It will appoint one, whether the corporation be solvent or insolvent, where there is fraud, "gross

[32] Bailey v. Bailey, 10 Ky. L. Rep. 793, 10 S. W. 660 (1889).

[33] Columbia Finance & Trust Co. v. Morgan, 19 Ky. L. Rep. 1761, 44 S. W. 389 (1898); modified in 19 Ky. L. Rep. 1761, 44 S. W. 628; Fleming, Trustee, v. Virginia Mining Company, *supra*, n. 14.; Cecil v. Cecil's Exrs., *supra*, n. 14.

[34] Summers Fiber Co. v. Walker, 33 Ky. L. Rep. 153, 109 S. W. 883 (1908).

[35] Collins v. Richart, 77 Ky. (14 Bush) 621 (1879); Bradley v. Bradley, 194 Ky. 60, 238 S. W. 170 (1922); Gabbard v. Sheffield, 179 Ky. 442, 200 S. W. 940 (1918); and Tarvin v. Walker's Creek Coal and Coke Co., 109 Ky. 579, 22 Ky. L. Rep. 1493, 60 S. W. 185 (1901).

[36] Rudd v. Littell, 20 Ky. L. Rep. 158, 45 S. W. 451, 46 S. W. 3 (1898).

[37] Venus Oil Corporation v. Gardner, 244 Ky. 176, 50 S. W. (2d) 537 (1932).

mismanagement or dissension among the stockholders, directors or officers, if there is no other adequate remedy,"[38] or where there is no governing body to conduct the affairs of the company.[39] And where an insurance corporation was still in the preliminary stages of organization, the stockholders were allowed to have a receiver appointed to wind up its affairs. The insurance department had not issued a license to the company and it was being fraudulently handled by its officers.[40] While a court of equity, in the absence of a statute, does not have authority to dissolve a corporation, it may have occasion to liquidate its affairs and the necessities of the case may call for the appointment of a receiver to take charge of it.[41] The fact that the corporation is incorporated in another state will not prevent the court's giving such aid.[42]

The court has refused to appoint a receiver at the request of a holder of a note where the holder did not show that he was a creditor of the corporation maker. He had taken the note by way of assignment.[43] Finally there is a case where a receiver was appointed at the request of a city to enforce a lien for taxes. The defendant in the suit conveyed the property to one not a purchaser for value and without notice. It was finally determined that the city had no lien. The appellate court held that the appointment of the receiver was not void and that the purchaser was entitled only to the rents collected from the property after deducting reasonable fees therefrom for the receiver.[44]

GROUNDS FOR APPOINTMENT

Section 298 of the Civil Code of Practice states the grounds for appointing a receiver. To be entitled to this extraordinary relief, one must have "a right to, a lien upon, or an interest in, any property or fund, the right to which is involved in the action,

[38] Oscar C. Wright Co. v. Steenman, *supra*, n. 6.
[39] Haldeman v. Haldeman, 176 Ky. 635, 197 S. W. 376 (1917).
[40] Metropolitan Fire Ins. Co. v. Middendorf, 171 Ky. 771, 188 S. W. 790 (1916).
[41] Rider v. The John G. Delker & Sons Co., 145 Ky. 634, 140 S. W. 1011, 39 L. R. A. (N. S.) 1007 (1911).
[42] Scholl v. Allen, *supra*, n. 9.
[43] Kelley v. Black, 19 Ky. L. Rep. 1049, 42 S. W. 738 (1897).
[44] City of Middlesborough v. Coal & Iron Bank, 33 Ky. L. Rep. 489, 110 S. W. 355 (1908).

and the property or fund must be in danger of being lost, removed or materially injured."

Under this section the court appointed a receiver to take charge of a stock of goods which had been attached in several different actions brought in the same court. He was ordered to sell the goods unless the appellant gave bond that it would perform the judgments of the court.[45] It also appointed a receiver where a trustee was misconducting himself in handling the estate of a lunatic. The appellate court felt that this came within the discretion of the lower court and presumed that there were sufficient equitable grounds for so doing.[46]

As to how far the court will go in granting motions for receivers under this section, is, perhaps, best learned from cases where it has declined to appoint. The fact that the appointment of a receiver will do no harm does not authorize an appointment.[47] Where the title to land is in question and it does not appear that the one in possession is insolvent and that he is committing waste, a receiver should not be put in possession.[48] Where the plaintiff owned half the stock of a drug company and the defendant and his wife the other half and there was a deadlock in the board of directors, no allegation being made of fraud nor that the property was in danger of being lost, removed or materially injured; it was error for the lower court to appoint a receiver to manage the drug store.[49] There are several cases where the court has been asked for a receiver to handle the estate of a deceased person. That the executor refused to rent land, collect rents, pay taxes, or look after the growing of crops thereon, was held not sufficient to warrant the intervention of a receiver;[50] nor will the insufficiency of surety on the executor's bond; nor the fact that the executor is a non-resident justify the court in appointing a reciver, and the additional fact that the executor is mismanaging the estate and wasting it by paying large sums in distribution and making no effort to recover the same, tip the scales in favor of appoint-

[45] Diamond Coal Co. v. Carter Dry Goods Co., 20 Ky. L. Rep. 1444, 49 S. W. 438 (1899).
[46] Holdbrook v. Fyffe, 164 Ky. 435, 175 S. W. 977 (1915).
[47] Saylor v. Hilton, 190 Ky. 200, 226 S. W. 1067 (1921); Reid Drug Co. v. Salyer, 268 Ky. 522, 105 S. W. (2d) 625 (1937).
[48] Saylor v. Hilton, *supra*, n. 47.
[49] Reid Drug Co. v. Salyer, *supra*, n. 47.
[50] Threlkeld v. Threlkeld, 248 Ky. 332, 58 S. W. (2d) 590 (1933).

ment.[51] The court pointed out in the case so holding that the statute provides a sufficient remedy in the case of executors. The allegation in a petition for a receiver that an executor under his wife's will was wasting the estate and had not made a true inventory of the same and not setting out that he was insolvent and was threatening to cut any more timber, was not sufficient to justify the court in granting the petition.[52] However, in an early case a receiver was appointed where the administrator had been tardy in settling the estate and payment by him to the receiver completely exonerated him and his sureties.[53]

Evidence that the company's assets exceed its liabilities and that the property is not in danger of being lost, removed or materially injured, shows that the petitioner has no right to a receiver.[54] Bondholders have been held not entitled to a receiver to take possession of a railroad which was in the hands of a lessee, the trust deed securing the bondholders not being acknowledged until after the lease was made.[55] The Court of Appeals ruled that the lower court was in error in appointing a receiver to take charge of funds in the hands of a sheriff where no allegation had been made by the petitioner that he was in danger of losing his debt to secure which he claimed a lien on the fund.[56] The appointment of a receiver to take charge of logs, title to which was in litigation, the defendant being insolvent, was held erroneous in one case;[57] and where the insolvent had assigned for the benefit of creditors and the trust was being so managed as to save expense, the court properly declined to appoint a receiver.[58] Finally the court has held that it was error to appoint a receiver to collect delinquent municipal assessments where it was not shown that the city commissioner of public finance could not have been directed by the court to make the collection.[59]

There are statutory provisions whereby employees are given a lien on mining, railroad and public service corporation prop-

[51] Home Mission Board of Southern Baptist Church v. Wylie's Exrs., 230 Ky. 284, 18 S. W. (2d) 1106 (1929).
[52] Fore's Admr. v. Fore's Heirs, *supra*, n. 14.
[53] Floor's Exr. v. Floor, 27 Ky. L. Rep. 894, 87 S. W. 272 (1905).
[54] Jackson Lumber & Supply Co. v. Bach, 218 Ky. 19, 290 S. W. 1055 (1927).
[55] Louisville & Nashville R. R. Co. v. Eakins, 100 Ky. 745, 19 Ky. L. Rep. 521, 39 S. W. 416 (1897).
[56] Combs v. Breathitt County, 20 Ky. L. Rep. 1247, 49 S. W. 2 (1899).
[57] McClure v. McGee, *supra*, n. 15.
[58] Baskett v. Ohio Valley Banking & Trust Co., *supra*, n. 14.
[59] City of Paducah v. White, 244 Ky. 733, 51 S. W. (2d) 935 (1932).

erty where such mine or corporation shuts down without paying such employees.[60] A mining company set up as a defense to an action to allow a receiver to operate such a mine, that the suspension of operations was due to the employees' striking. The plaintiffs rejoined that they had not been paid for two pay-days prior thereto and further alleged that the mine was being allowed to fill with water and their lien was in danger of being materially lessened. The company also contended that the suspension was only temporary and therefore the case did not come within the statutory provision. The court appointed a receiver and sold the property.[61]

RECEIVER'S POSSESSION IS THAT OF THE COURT

When a receiver has been appointed and has been put into possession of property or funds, his possession is the same as the possession of the court. No one has any right to intercept or to prevent its being turned over to the receiver, without first securing the permission of the court, where it has not actually reached his hands.[62] No one has any right to attach the same while in his hands and a judgment dismissing an attachment of the property after appointment of the receiver, was proper.[63] Where a court has taken jurisdiction over property by the appointment of a receiver, no other court has the power to annul or modify the orders of that court. A receiver garnisheed in a suit in another county, is not compelled to obey the orders of the court in the other county, made relative to the funds held by him as receiver for the court appointing him.[64] The fact that he has been named as a garnishee defendant, does not entitle him to set up the claim of the attaching creditor as a reason for not obeying the order of the court appointing him.[65] Where the property of a corporation has come into the possession of a court by the appointment of a receiver to take charge of the same, the jurisdiction of the court is "plenary and exclusive," and the power

[60] Ky. Stat., sections 2487, 2490.

[61] Producers' Coal Company of Kentucky v. Barnaby, *supra*, n. 14.

[62] Rowlet v. Eubank, 64 Ky. (1 Bush) 477 (1867); Hazelrigg v. Bronaugh, 78 Ky. 62 (1879).

[63] Faulkner & Faulkner v. Wakenova Coal Company, 249 Ky. 459, 61 S. W. (2d) 13 (1933). But see Phillips v. Wathen, 6 Ky. Opin. 174 (1872).

[64] Biggs v. Robinson, 5 Ky. Opin. 16 (1871).

[65] Cornelison v. Gatewood, 10 Ky. Opin. 576 (1878).

to exchange securities is included.[66] It is the duty of the chancellor to ascertain the condition of funds in the hands of a receiver.[67] Where the receiver sold property under direction of the court and delivered possession to the purchaser at the sale, he is liable for the amount as it will be presumed that he received the purchase price.[68] While one taking possession of property in the possession of a receiver might find himself in contempt of court, such was not the case where land was sold for taxes after the tenant moved out; the purchaser at the tax sale was not held in contempt for taking possession under his right as purchaser. In such case the receiver should have started suit to contest the right to sell for taxes. Had the receiver taken possession, the sheriff would have been obliged first to apply to the court before holding a tax sale.[69]

In *Wood & Co.* v. *Wilcox,*[70] a receiver was directed to pay out funds he had collected. He attempted to set-off his individual claim against the person to whom the court had directed payment to be made. It was held that he could not do this. And in *Johnson* v *Gunther,*[71] a receiver failed to pay over funds as directed after he had collected the same. When he was cited to show cause why he should not be attached for failure to do so, he offered to show that the appellant, to whom he was to make the payment, was personally indebted to him for part of the amount and that he was prepared to pay over the balance. It was held that he could not do this as the money was held subject to the court's orders.

POWERS OF A RECEIVER

The powers of a receiver are conferred upon him by the court which appoints him. He has no powers except those conferred by the court. He is practically without discretion and he must apply to the court for authority to do such acts as may be of advantage to the estate he is managing.[72] Where he was

[66] Jennings v. Fidelity & Columbia Trust Co., 240 Ky. 24, 41 S. W. (2d) 537 (1931).

[67] Gray's Exr. v. Patton's Admr., 3 Ky. L. Rep. 393, 11 Ky. Opin. 327 (1877).

[68] Ellis v. Carr, 64 Ky. (1 Bush) 527 (1867).

[69] Metcalfe v. Commonwealth Land & Lumber Co.'s Receiver, 113 Ky. 751, 24 Ky. L. Rep. 527, 68 S. W. 1100 (1902).

[70] 14 Ky. L. Rep. 574 (1893).

[71] 69 Ky. (6 Bush) 534 (1870).

[72] Leathers v. Kelling's Trustee, 12 Ky. L. Rep. 92 (1890).

directed by the court to sell property on credit, he had no right to sell for cash. Where he did this at the instance of the parties concerned, he was acting as the agent of the parties and not as agent of the court, and the sureties on his bond were not held liable for the money so received.[73] The fact that the receiver is authorized by the court to operate a mine, does not give him the right to take out indemnity insurance without first receiving authorization from the court and the claim of the insurer for priority for the unpaid premium will not be allowed.[74] Contracts made by the receiver in carrying on a business under court authority are the contracts of the court. His duty to preserve the property does not empower him to create debts on his own initiative. Thus a receiver cannot make a binding contract for an insolvent insurance company giving an agent a preference.[75] Under the earlier cases we find that it was his duty to loan out the money in his hands on notes,[76] but where he is winding up a business it is his duty to pay the expenses of receivership and then distribute the amount left over pro rata among the creditors.[77] Where he made contracts with amusement companies for putting on performances and these companies were to receive a certain percentage of the gross receipts, the percentage agreed upon vested in the companies and did not become assets of the receivership.[78]

It often becomes necessary to decide how far a receiver can go in incurring indebtedness when carrying on a business. Where a receiver was directed to operate a motor company and did so for a few months at a loss, the court ordered all the property sold and the lessor's claim of a lien on the personal property for the rent satisfied first.[79] Where the court ordered the receiver to work a mine and to issue receiver's certificates to meet obligations incurred in so doing, it was sought to make the one petitioning for the receiver bear the

[73] *Ibid.*

[74] Goodin & Barney Coal Co. v. Southern Elkhorn Coal Co., 219 Ky. 827, 294 S. W. 792 (1927).

[75] Moren v. Ohio Fire & Marine Ins. Company's Receiver, 224 Ky. 643, 6 S. W. (2d) 1091 (1928).

[76] De Bord v. Gateweed, 4 Ky. L. Rep. 230 (1882).

[77] Louisville Gayety Theater Company v. Rogan, 186 Ky. 672, 217 S. W. 929, 9 A. L. R. 294 (1920).

[78] *Ibid.*

[79] Mountain City Motor Company's Receiver v. Mountain City Motor Co., 221 Ky. 579, 299 S. W. 189 (1927).

loss incurred. It was held that he was not liable since he had no control over the receiver. Those who advanced money on the certificates were chargeable that the mortgagee was not a party to the suit and that their certificates were subject to his rights.[80] However, where the issue of certificates was authorized to displace prior liens for the preservation of the property, purchasers of the certificates would be given priority, but the receiver could not incur debts in continuing the business to the prejudice of prior lienholders without their consent. Taxes, royalties incurred under the receivership on leased lands, attorney's fees, allowance for receiver, and actual expenses in preserving the property were given priority over claims of the general creditors and the lessor's royalties. The costs of a spur track also came in ahead of the lessor's lien.[81] Of course where the mortgagee has never consented to the subordination of his claim to the receiver's certificates which are issued to meet the expenses for running the mine, he should prevail. The lower court erroneously subordinated his lien to the claims of those entitled to relief under the workmen's compensation act, certificate holders, and employees.[82]

In considering the powers of a receiver, it is pertinent to ask whether a receiver may sue or be sued. A general receiver may be authorized by the court to bring suit for the benefit of the estate under his control,[83] but he has no inherent right to do so as he is an officer of the court with limited powers. Although he may have a right to claim property in controversy for the estate in receivership, he cannot counterclaim and where he did so to litigate a disputed lien between creditors of such estate and a third party, who claimed to have purchased the lumber in question, a judgment in favor of the creditors on the counterclaim was held void.[84] Although the receiver may collect judgments already rendered, he has no right to institute suits without express authority from the court.[85] The receiver,

[80] Crump & Field v. First National Bank of Pikeville, 229 Ky. 526, 17 S. W. (2d) 436 (1929).

[81] Montgomery Coal Corporation v. Allais, 223 Ky. 107, 3 S. W. (2d) 180 (1928).

[82] Freeman v. Craft, 220 Ky. 15, 294 S. W. 822 (1927).

[83] Mitchell v. Chenault, 112 Ky. 267, 23 Ky. L. Rep. 1544, 65 S. W. 447 (1901).

[84] Rapp Lumber Company v. Smith, 243 Ky. 317, 48 S. W. (2d) 17 (1932).

[85] Adams v. McAllister, 2 Ky. L. Rep. 323 (1881); Murrell's Admr. v. McAllister, 79 Ky. 311 (1880).

it has been held, cannot maintain an action against a bank for damages for false and fraudulent representations as to the insurance company's deposits whereby the insurance commissioner was persuaded to give the company a certificate of solvency and to authorize it to continue in business since the company itself could not have maintained the action in its own behalf.[86] Also where a receiver was appointed to take charge and care for both real and personal property pending suit, the receiver had no power to sue to set aside conveyances of the property alleged to be fraudulent. In fact, the court itself could not confer upon him this power so as to bind the real parties in interest. The latter should bring the action and not the receiver.[87] So in actions involving the title to real estate against third parties, the receiver cannot bind the real parties in interest without their consent. He should join them in the action.[88]

Anyone wishing to sue the receiver must first get the consent of the court appointing him. For instance it was held that an action against a receiver for back taxes brought by the state was not maintainable without the permission of the court which appointed the receiver. This was held true even though that court had granted a temporary injunction restraining the sale of the company's property at the motion of the state's attorney, which injunction was later dissolved. The court said that leave to sue a receiver was a jurisdictional fact.[89] In a proceeding to compel a receiver to list funds in his hands for taxation, it was held that the county court, under consent of the circuit court, could compel him to list the funds.[90]

It is necessary for a receiver in order to sue to set out facts showing his appointment, the jurisdiction by which he was appointed, so much of the proceedings to show that his appointment was legal and so state these facts in such a way that they can be traversed.[91]

[86] Ray v. First National Bank, 111 Ky. 377, 23 Ky. L. Rep. 717, 63 S. W. 762 (1901).
[87] Hogg's Receiver v. Hogg, 265 Ky. 656, 97 S. W. (2d) 582 (1936).
[88] Caldwell v. McWhorter, 84 Ky. 130, 8 Ky. L. Rep. 79 (1886).
[89] Commonwealth v. Gibson Oil Co.'s Receiver, 264 Ky. 272, 94 S. W. (2d) 685 (1936).
[90] Spalding, Master Commissioner v. Commonwealth, 88 Ky. 135, 10 S. W. 420, 10 Ky. L. Rep. 714 (1889).
[91] Rhorer, Receiver v. Middleboro Town & Lands Co., 103 Ky. 146, 19 Ky. L. Rep. 1788, 44 S. W. 448 (1898).

A receiver may be given power by the court to sell the property in his hands. The court in its discretion may order all the property of a mining company sold as a whole, or such as it sees proper. In the particular case the plant was idle and the expense of maintaining it was large.[92] In such a case the value of the plant as a whole may be greater than the value of its parts sold separately. It would consequently be prejudicial to the lienholders to sell personal property separately in such a case, the court has ruled.[93] A judgment of a receiver's sale binds all the parties and their privies to the suit, and the purchaser at such a sale will be protected. The receiver in making such a sale, must, of course, follow the decree of the court authorizing the sale.[94] Where the court in vacation appointed a receiver to take over property and decreed a sale, the appellate court reversed the order appointing the receiver and order of sale.[95] In winding up a partnership the court appointed a receiver to take over the property and collect the firm debts. At the same time a sheriff sold the same property under his attachment. The purchaser of the property at the receiver's sale was allowed to prevail over the purchaser at the attachment sale. The latter sale, the court deemed void under the circumstances.[96] The appellate court ruled in a case of a receiver's selling real estate of a mining company which had failed that the sale was not void for the reason that there was a failure to describe the land, but that it was erroneous and the purchaser at the sale could not be relieved from the purchase after the expiration of the term at which the sale was confirmed.[97] Then there is the case where the purchaser at a judicial sale was incompetent to make a binding contract. After adjudging the sale rescinded, the court appointed a receiver and held the vendee for the rental value of the land for the time he was in possession and also for the costs of the commissioner's sale.[98]

[92] Wakenova Coal Company, Inc. v. Johnson, 234 Ky. 558, 28 S. W. (2d) 737 (1930).
[93] National Bank of Kentucky v. Kentucky River Coal Corp., 230 Ky. 683, 20 S. W. (2d) 724 (1929).
[94] Brand v. Trustees of Gaylord Iron & Pipe Co., 9 Ky. Opin. 795 (1876).
[95] Hurst v. Nicola Bros. Co., 23 Ky. L. Rep. 1406, 65 S. W. 364 (1901).
[96] Gaddis & Co. v. Ramsey, 8 Ky. Opin. 65 (1874).
[97] Thompson v. Brownlie, 25 Ky. L. Rep. 622, 76 S. W. 172 (1903).
[98] Worthington v. Campbell, 8 Ky. L. Rep. 416, 1 S. W. 714 (1886).

Many cases have arisen where the receiver has either directly or indirectly become a purchaser at the sale. As a general rule a receiver should not be permitted to derive an advantage from a purchase of claims referred to him.[99] There may be cases where the court will allow him to become a purchaser. There is an instance of one holding a secondary lien on a farm who became receiver for the same after the mortgagor had abandoned the farm and moved into another state. Through the mortgagor's surrender of his option to repurchase the receiver secured the title to the property. A few years later the mortgagor returned and tried to have the former receiver declared a trustee of the title of the farm for his benefit. In this case the court held that the debtor was estopped to dispute the receiver's title.[100] In still another case the court sustained the sale at which the receiver purchased the property, saying that when the receiver considers it for the best interest of the estate he may bid on and purchase the property under his control and when he does so the court should not set the sale aside unless it appears that the interests of the estate were prejudiced by what the receiver did.[101] Although a receiver's purchase at a sale may be unauthorized by the court and the proper persons might have the sale quashed, a disinterested party cannot complain of the irregularity or illegality of such sale.[102] Finally there is the case where a receiver ordered to sell partnership property, arranged before the sale with a third person that the third person should purchase it at the sale and that he and the receiver should then form a partnership to take over the property so purchased. The property was sold for less than its actual value but the court found no bad faith was shown on the receiver's part and did not hold him liable for the difference between what the property was sold for and its actual value.[103]

The court, of course, has no power to authorize a receiver to take possession of property beyond its own territorial jurisdiction. A case illustrating this principle involved the owner-

[99] Titherington's Admr. v. Hodge, 81 Ky. 286, 5 Ky. L. Rep. 211 (1883).

[100] Marcum v. Wallace, 246 Ky. 726, 56 S. W. (2d) 5 (1932).

[101] Williams v. Owensboro Savings Bank & Trust Co.'s Receiver, 153 Ky. 789, 156 S. W. 899 (1913).

[102] Rogers v. Moore, 9 Ky. Opin. 311 (1876).

[103] Wagner v. Swift's Iron & Steel Works, 16 Ky. L. Rep. 273, 26 S. W. 720 (1894).

ship of mining property in the state of Oregon. The officers of the corporation were within the jurisdiction of the Kentucky court and they were ordered to turn over the books and property in their possession to a new board of officers and the court erroneously went one step further in appointing a receiver to take charge of the mines in the state of Oregon and also enjoining the old officers and shareholders from bringing suit in that state. One, as trustee for the stockholders, filed suit in Oregon and asked for the appointment of a receiver in that state to take charge of the property. It was held that such person could not be punished for contempt in Kentucky.[104] In another case the Kentucky court allowed a Connecticut receiver, to whom an assignment of the company's property had been given, to take possession of property in this state belonging to the insolvent corporation. Since the receiver has no extra-judicial power, ordinarily he is not entitled to sue in another state. Courts may, however, allow him to do so.[105] The receiver, for instance, of a non-resident corporation may be allowed to maintain an action in the courts of this state to recover a debt due the corporation by a resident of Kentucky. The court of appeals in this case said that the right was well settled.[106]

EMPLOYMENT OF COUNSEL

A receiver should secure the authority from the court to employ counsel, but if he has not abused a sound discretion in the matter, the court will allow him a reasonable allowance for securing legal advice.[107] Although he usually selects his own attorney, it is clear that he cannot enter into a contract to hire for compensation that will be binding on the court as it is for the court to determine whether counsel shall be employed and the compensation that shall be given. While evidence of the reasonableness of attorney's fees may be admitted, the court is not bound by it but will determine itself what is reasonable. In the particular case the court held $3,600 was sufficient.[108]

[104] Kelly v. Mitchell, 98 Ky. 218, 32 S. W. 599, 17 Ky. L. Rep. 850 (1895).

[105] Zacher v. Fidelity Trust & Safety Vault Co., 109 Ky. 441, 22 Ky. L. Rep. 987, 59 S. W. 493 (1900).

[106] Hallom v. Ashford, 24 Ky. L. Rep. 870, 70 S. W. 197 (1902).

[107] Fidelity & Columbia Trust Co. v. Grommes & Ullrich, 186 Ky. 345, 216 S. W. 1078 (1919).

[108] Marble v. Husbands, Receiver, 185 Ky. 605, 215 S. W. 435 (1919).

In a case where the receiver was authorized to take charge of coal property during litigation, the court said he was entitled to reasonable allowance for legal services out of the funds in hand. The court below fixed the amount of attorneys' fees and taxed the costs and attorneys' fees to the plaintiffs. This was held error by the appellate court. There were several attorneys employed in the case and it did not appear how much was intended for each and that the allowance could not have been collected from the property.[109] In another receivership of a coal mining company, it was held error to allow fees for the receiver's attorney in the absence of a showing the extent of the services rendered. Under section 396 of the Kentucky Statutes, the court, said, it was necessary to file a certificate showing the extent of the services.[110] In the same case it was held error for the lower court to order the sale of the property free and clear from a non-resident claim.

LIABILITIES OF RECEIVER

The receiver like everybody else is liable for his own negligence. It does not follow that he will be liable for all injuries that occur upon the property under his charge. For instance a receiver was appointed *pendente lite* to take charge of an apartment house where foreclosure proceedings had been started. The plaintiff's intestate was killed owing to the faulty construction of an elevator shaft. It was held that the receiver did not supersede the building owner's authority except so far as care and custody of the property taken over by him was inconsistent with those of the owner. He had been given no authority by the court to change the construction of the building and was not liable since the evidence showed he had no knowledge of the defective construction. The court said: "If he omits to perform or performs an official act within the scope of his authority and in line of his duties as receiver, and thereby injures another, any judgment recovered therefor must be against him officially, to be paid out of the funds in his hands."[111]

There are instances where a receiver may become liable for interest on funds in his hands. If he refuses to pay them over

[109] Johnston v. Stephens, 206 Ky. 83, 266 S. W. 881 (1924).
[110] Continental Supply Company v. Sandy River Oil Company's Receiver, 218 Ky. 248, 291 S. W. 49 (1927).
[111] Sabiston's Admr. v. Otis Elevator Co., 251 Ky. 222, 64 S. W. (2d) 588 (1933).

when ordered to do so by the court, he should be held for interest.[112] When ordered to collect debts due the estate, it is his duty to use ordinary care and diligence in doing so and if he releases the debt through his negligence, he and his surety on his bond will be liable for the amount so lost and the burden is on him to show facts which excuse his failure to collect. In the particular case the loss was due to his negligence in failing to have an execution issued.[113]

It has been held error to grant a motion of a receiver to adjudge a reduction of rent, under a lease made by the owner before the receiver was appointed. He was also held accountable in this case for the loss of money through the failure of a bank in which he had deposited it without the authority of the court.[114] A receiver has no right to apply the rents received to repairs on the buildings without first securing the permission of the court to do so. He had entered into an agreement with the tenant to allow the cost of repairs as a set-off against the rent. This agreement was unauthorized. For loss of rent not due to his delay in collecting or his unauthorized act, he was not liable.[115] Finally there is the case where it was sought to charge a receiver of a trust fund for the amount of a note taken by a former receiver in a settlement made at the request of the beneficiary and confirmed by the court at the time defendant was appointed. There was no evidence that defendant had been ordered to collect this note. The maker had become insolvent and had committed waste upon the land by which the note was secured. Defendant, in the absence of fraud, was held not liable for the amount of the note.[116]

DUTY TO FURNISH BOND

A receiver should furnish a bond for the faithful discharge of his duties as receiver and take the oath required by law before taking up his duties as receiver. The bond furnished must be satisfactory to the court appointing him.[117] The fact that the bond is not executed until after the entry of the order

[112] Hodge v. Quiry, 9 Ky. L. Rep. 650 (1887).
[113] Jones v. Hudson, 6 Ky. Opin. 188 (1872).
[114] Ficener v. Bott, 20 Ky. L. Rep. 632, 47 S. W. 251 (1898).
[115] Vandergriff's Heirs v. Scott, 10 Ky. Opin. 529 (1880).
[116] Neel v. Carson, 18 Ky. L. Rep. 691, 37 S. W. 949 (1896).
[117] Owsley v. Cook & Co., 1 Ky. Opin. 518 (1866).

approving it is immaterial and a bond of a receiver that he "will faithfully discharge his duties as such and obey the orders of the court" is binding although no obligee is named in it.[118] A third proposition laid down by the court in the case of *Sanford* v. *Carr*[119] was that one cannot claim the proceeds from the receiver's sale of property and at the same time refuse to pay the expenses of taking care of and selling the property. Where a court named a receiver for funds belonging to a county at the settlement with a sheriff, the court held that it was the duty of the receiver to give a bond and his failure to do so would relieve the sheriff from paying over the money until he had done so. He was not a receiver, the court said, until he had executed the bond.[120] A bond executed by a receiver and not made payable to any particular person is in effect payable to the commonwealth for the use of the parties named in the bond. The cause of action against the appellant in the particular case did not accrue until the rendition of the judgment determining the parties entitled to the fund.[121]

LIABILITY OF SURETIES ON RECEIVER'S BOND

Sureties on a receiver's bond are liable for his failure to discharge his duties. His failure to pay over the funds in his hands as directed by the court will render them liable.[122] A receiver was ordered by the court to sell goods on five months' credit. The sureties sought to avail themselves of the defense when sued that the order of the court was not signed by the judge until after the sale had taken place. This was held no defense. The receiver had not acted within the orders of the court in making the sale and a creditor was allowed to hold the sureties for the loss resulting therefrom.[123] Where a receiver was appointed under an agreed order of the parties and he accepted a note in payment for property sold, the administrator of the estate was not chargeable for the amount of the note. His sureties were held bound by the receiver's acts and liable.[124]

[118] Sanford v. Carr, 8 Ky. L. Rep. 618 (1887).
[119] *Ibid.*
[120] Pate v. Hancock County, 9 Ky. Opin. 615 (1876).
[121] Newman v. Wickliffe's Exr., 5 Ky. Opin. 605 (1871).
[122] Commonwealth v. Leachman, 21 Ky. L. Rep. 1408, 55 S. W. 430 (1900).
[123] H. B. Claflin Co. v. Gibson, 21 Ky. L. Rep. 337, 51 S. W. 439 (1889).
[124] Carpenter's Admr. v. Demoisey, 237 Ky. 628, 36 S. W. (2d) 27 (1931).

Sureties were held for the amount of the fund ascertained to have been collected by a receiver who was insolvent at the time of his death in the case of *Rowlet* v. *Eubank*.[125] Of course sureties are not precluded from showing that the money coming into the receiver's hands has been accounted for,[126] and where a creditor having failed to file a supersedeas sought to hold the surety of the bond for certain fees allowed a receiver, he was not allowed to do so as his remedy was to seek a restitution from the receiver as distributee of the fee.[127] Lastly we have a case of a surety attempting to require a receiver who had defaulted during his first term, to apply the funds in his hands to the oldest items in the account. The court said he could not do this.[128] The court pointed out that the cause of action against the surety does not accrue until the receiver is ordered to pay over the money in his hands.

RECEIVER'S COMPENSATION

There is a statutory provision to the effect that no compensation shall be allowed a commissioner or receiver until he files his written statement under oath showing the number of days he has acted as receiver and that evidence may be heard against the allowance.[129] This, it has been held, is mandatory except in cases of special or extraordinary services.[130] Another section of the statutes fixes the fee of a receiver, where no agreement has been made, at three dollars a day; but where he pays out money amounting to one thousand dollars or less he is to receive two per centum and different rates for increased amounts.[131] He is also entitled to expenses connected with his duties as receiver, traveling expenses and attorney's fees.[132] Although his appointment was erroneous and his appointment be set aside, he is entitled to compensation for his services where they

[125] *Supra*, n. 62.

[126] Hamilton v. Steward, Receiver, 10 Ky. Opin. 509 (1878).

[127] U. S. Fidelity & Guaranty Company v. Adams' Executor, 232 Ky. 104, 22 S. W. (2d) 450 (1929).

[128] U. S. Fidelity & Guaranty Company v. Shields, 157 Ky. 371, 163 S. W. 203 (1914).

[129] Ky. Stat., Section 396 (Carroll's, 1936).

[130] St. Paul National Bank v. Hays, 252 Ky. 571, 67 S. W. (2d) 948 (1934); Hibbs v. Perkins, 206 Ky. 198, 266 S. W. 1075 (1924).

[131] Ky. Stat. Section 1740 (Carroll's, 1936).

[132] St. Paul National Bank v. Hays, *supra*, n. 130.

superseded, for the time, those of the creditors' committee.[133] The court said that where the appointment exacts unusual services in connection with the trust, the statutory provisions as to filing a statement regarding the number of days he has acted and also limiting the amount he can receive, do not apply.[134] The fact that bonds are made payable to a receiver does not entitle him to the fees allowed by statute for receiving and paying out money, unless he does in fact receive or distribute the same[135] Preparing advertisements and reporting a sale or appearing in court several days, does not entitle him to any extra compensation therefor.[136] The receiver of an insolvent insurance company was allowed a fee of $6,000.[137] Where a receiver in managing partnership property paid off debts to the extent of $40,000 and turned over a like amount to the estate at the termination of his receivership and evidence was offered that his services were worth from $5,000 to $10,000, the chancellor's allowance of $2,750, the appellate court said, could not be held to be too small.[138] For handling a distillery business an allowance of $6,000 for the first two years was held not "reasonable" and the court reduced it to $1,500 per year or $3,000 for the entire service.[139] Where a receiver so managed a $200,000 estate as to show an increase of $36,000 and the chancellor allowed him $15,000 for his services, this was reduced on appeal to $10,000. In this case the statutory rule as to fees did not apply.[140] In another case the court refused to disturb the chancellor's allowance of a fee of $500 for a receiver of a firm of distillers. The appellate court said the question was one peculiarly within the chancellor's discretion.[141] The allowance for investing a $50,000 trust fund in government bonds, calling

[133] Ohio Valley Banking & Trust Co. v. King, 238 Ky. 712, 38 S. W. (2d) 663 (1931).

[134] *Ibid.*; also Fidelity Oil Corp. v. Southern Oil & Pipe Line Co., 197 Ky. 676, 247 S. W. 950 (1923).

[135] Wathen v. England, 102 Ky. 537, 167 S. W. 678 (1898).

[136] *Ibid.*

[137] Levassor v. Metropolitan Fire Ins. Co.'s Receiver, 188 Ky. 23, 220 S. W. 752 (1920).

[138] Wilson v. Murphy's Admr., 33 Ky. L. Rep. 716, 110 S. W. 893 (1908).

[139] White v. Allen, 10 Ky. L. Rep. 1025, 11 S. W. 364 (1889).

[140] Spears v. Thomas, 24 Ky. L. Rep. 1154, 70 S. W. 1060 (1902).

[141] Sherley v. Mattingly & Sons, 21 Ky. L. Rep. 289, 51 S. W. 189 (1899).

for only fifteen days service, was $2,200.[142] For collecting about $34,000 dollars of debts for a bank and paying out about seventy-five percent of the same, a fee of $5,000 was regarded as reasonable.[143]

Where a receiver has been negligent in the management of trust funds and mingled them with his own and used them personally, the court refused to allow him any compensation for his services and the upper court rules that this was within the discretion of the chancellor.[144] A receiver's fees constitute preferred claims on the assets of the estate.[145] While the business is in the hands of a receiver and being managed by him, it is interesting to note that the regular manager of the company is superseded by the receiver and the former is not entitled to draw his salary for the time being.[146]

DISCHARGE

The termination of a receivership is a question for the court. His discharge, however, may not release him from liability incurred during his mismanagement of a trust. He is discharged only to act thereafter as a receiver.[147] Where the main action is dismissed, it is error for the court to refuse to rescind an order placing the property in the hands of a receiver.[148]

SUMMARY

In reviewing the Kentucky decisions on receiverships, it is seen that a receiver is simply an agent of the court in handling property and funds involved in litigation. His powers extend only so far as the court may authorize him to act. Whether a receiver shall be appointed in a particular case or not is largely within the discretion of the court hearing the case. The fact that the appointment will do no harm is no reason for appoint-

[142] Fidelity National Bank's Receiver v. Youtley, 26 Ky. L. Rep. 340, 81 S. W. 263 (1904).

[143] Stockholders of First State Bank v. First State Bank's Receiver, 159 Ky. 484, 167 S. W. 678 (1914).

[144] Higgins v. Shields, 151 Ky. 227, 151 S. W. 391 (1912).

[145] Grainger & Co. v. Old Kentucky Paper Co., 105 Ky. 683, 20 Ky. L. Rep. 1491, 49 S. W. 268 (1903).

[146] Hamner v. Lenox Saw Mill Co.'s Receiver, 217 Ky. 627, 290 S. W. 509 (1927).

[147] Erwin's Exr. v. Bedford, Grn., 3 Ky. Opin. 50 (1868).

[148] Campbell v. Eversole, 18 Ky. L. Rep. 723, 38 S. W. 486 (1896).

ing a receiver and the appellate court in such a case should reverse the ruling of the lower court. A receiver may not only be empowered to conserve and manage property or a business, but he may be given authority to sell the same and distribute the proceeds. The Code provision in regard to the appointment of a receiver, to wit, for the protection of those having liens or interests in property which is in danger of being lost, removed or materially injured; is declaratory of the common law in regard to receiverships before the adoption of the code; and the power to appoint is inherent in a court having equity jurisdiction, that is the Circuit Court in this State. A receiver is required to give a bond satisfactory to the court appointing him and he is liable for his negligence or mismanagement to the parties injured thereby. He is entitled to secure legal advice and the estate under his charge is liable for such attorney's fees, for his own expenses and for reasonable compensation for his services.