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NEED OF A NEW RECEIVERSHIP STATUTE IN INDIANA

PHELPS F. DARBY*

Our receivership statute in Indiana is now forty-seven years old. It is obsolete and insufficient in many respects. Our circuit and superior court judges are entitled to more aid from the Legislature in this field of litigation than the present statute affords. Creditors and stockholders, particularly those located outside of Indiana, are entitled to know with more certainty the course of procedure which will be followed by Indiana courts in receivership proceedings.

The writer does not advocate the enactment of a statute or the promulgation of court rules that would deprive the courts of the wide discretion which should be exercised in directing the administration of insolvent estates. The broad powers of a court of equity to do ample justice to all the parties should of course be preserved. Doubtless, however, every circuit or superior court judge will welcome a new statute that will definitely outline the various successive steps to be taken in a receivership proceeding and which will clearly define the duties of the receiver and the rights of the creditors and stockholders.

The writer suggests that a new statute should be comprehensive in its provisions and should expressly repeal the receivership statute of 1881 and also the old deed of assignment statute of 1859. It should also embrace many of the more important features of the federal bankruptcy act.

Since 1881 our receivership statute has remained precisely as originally passed, except for one rather unimportant supplemental amendment in 1911. On the other hand, the federal bankruptcy act of 1898, although remarkably comprehensive as originally passed, has been given since then a continued careful consideration by the American Bar Association and by trade organizations and by Congress itself. The law has been changed in many respects since 1898. The most important amendments appear in the amendatory acts of 1903, of 1906, of 1910, of 1915, of 1922, and of 1926. Certainly it must be true that the subject

* See p. 270 for biographical note.

deserves some attention by our State Bar Association and by our Legislature. We ought to have a statute that will not only aid the courts in determining the procedure but which will also furnish a more effectual means of obtaining relief and justice to all parties when there develops a condition of insolvency that justifies a court administration. The federal jurisdiction will of course in almost all cases be superior but it will undoubtedly be in the interest of both litigants and attorneys for a state court receivership proceeding in Indiana to be more nearly similar to a bankruptcy proceeding.

In furtherance of the foregoing general purpose, the writer believes that a new statute is needed which will embrace not only the essential features of the present act of 1881 but also will include provisions such as the following: (1) Defining receivers *pendente lite* as distinguished from general receivers and enumerating the duties of each; (2) vesting title to all the insolvent's property in a general receiver, including real estate located in Indiana; (3) duties of a general receiver to include the filing of a certified copy of the receiver's appointment in the office of the County Recorder where the real state is located, also the filing of a detailed inventory and appraisement and list of creditors within a specified time and also the giving of notice by mail to all creditors and stockholders of the pendency of the receivership and later of the receiver's sale and subsequent steps; (4) a provision for the oral examination of the insolvent or any officer, stockholder or creditor, this to be similar to the provision for the general examination of the bankrupt under the federal act; (5) a definite requirement as to the time for filing receiver's reports and as to what the reports shall contain; (6) the general receiver in each instance to be empowered to recover assets previously transferred in fraud of creditors or by way of preference; (7) the employment of the receiver's counsel to be approved by the court, and a provision that the court at the instance of a creditor or stockholder or the receiver may appoint some other attorney to represent the receiver in any particular matter arising in the course of the proceeding; (8) insolvency and not mere threatened insolvency to be shown in every case and the requirements incident to the appointment to be uniform whether it be the case of an individual, a partnership, or a corporation; (9) the application for a receiver to be authorized as an independent action and not necessarily auxiliary to some other court action at law or in equity; (10) with a view of insuring a fair and equitable distribution of assets to all creditors, that the void-

able preference provision contained in the federal bankruptcy act be also incorporated in our receivership statute; that the receivership statute be made broad enough to permit of a voluntary proceeding by the insolvent as well as one at the instance of creditors or stockholders.

The foregoing are just a few suggestions. Other lawyers will think of further important provisions to be incorporated into a new statute. Perhaps some of the things here suggested belong more properly in a code of court rules rather than a general statute. The idea of uniformity of procedure throughout the State, however, will certainly appeal to every one interested in the subject.

There are many queer and anomalous situations that arise under the present statute as interpreted by our higher courts. For illustration, if a creditor in connection with his suit on account applies for the appointment of a receiver and establishes insolvency, the creditor is entitled to a receiver if the stock of groceries belongs to a corporation, but not so if it belongs to an individual.¹

An insolvent corporation is prohibited from preferring a creditor where a director of the corporation is or was within four months of the preference a surety on the indebtedness preferred; but under Indiana law an insolvent corporation may prefer any creditor at any time by payment direct to the creditor even if the latter be a director or officer of the corporation.²

There are many other strange inconsistencies in our state court receivership system even more glaring than the above. There is undoubtedly a real need for legislation that will cover this important field. A comprehensive statute upon the subject will save much time for both court and practitioner and should result also in the saving of money to the creditors and stockholders of insolvents.

¹ *Steinbrenner Rubber Co. v. Duncan*, 86 Ind. App. 218.

² *Travis v. Porter*, 86 Ind. App. 369.

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