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Washington Receivership

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WASHINGTON RECEIVERSHIP

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The law of today permits the appointment of many kinds of receivers, whose powers and duties are infinitely greater than those of the early "sequestrators" to whom their origin may be traced.[1] The law of receivership developed out of the early Chancery Courts of England. Historically, a receiver was appointed because of the inability of the courts to manage properties through the use of injunctive power in staying waste and like acts. The early receivers were likely titled "sequestrators," and their primary function was the collection of rents.[2] The law of receivership which developed in the courts of Chancery or equity, and as expanded in those courts, has carried through to and is inherent in our present day courts with their combined powers of law and equity.

Though receivership is not an end in itself, and is only ancillary and in aid of the court's jurisdiction to grant other relief, the right of a creditor to the appointment of a receiver remains a valuable remedy used extensively in Washington against corporate debtors. Its use is, however, often foregone by attorneys either because they are not familiar with the rules governing receivership or because they are unaware of the results such proceedings may effect. Similarly, lack of knowledge in this field often causes attorneys difficulty in dealing with receivership proceedings instituted by other parties.

The purpose of a corporate receivership is undoubtedly the preservation of assets for a period during which an orderly liquidation can be effected and the resulting liquid assets equitably distributed. Such is also the purpose of corporate bankruptcy. For the individual bankrupt, the law now has as one of its objectives, relief for the debtor through discharge of his debts. Such a discharge does not exist in receivership, nor is it an important aspect of corporate liquidation because the distribution of assets leaves nothing to proceed against but a corporate name.[3]

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[1] 1 CLARK, RECEIVERS § 4 (3rd ed. 1959).

[2] CLARK, *op. cit. supra* at § 10.

[3] RCW 23.01.630 actually provides for dissolution of the corporation thereby even eliminating the name. No provisions for discharge of noncorporate debtors exist in our statutes.

While the number of receivership proceedings is perhaps small in comparison with the total number of bankruptcy cases, those dealing with corporate debtors having substantial assets compare favorably with similar corporate bankruptcies.

Even if the use of receivership could not be justified as a choice of remedies, its extensive use in this state merits consideration. There are many situations where receivership would be the preferable device for liquidation. In the small asset case receivership is speedier because only a 30 day notice to creditors is required,[4] as contrasted with the six month period allowed in bankruptcy to file claims.[5] In actual practice the receiver is likely to be more diligent in uncovering and liquidating assets to the best creditor advantage because he is paid the reasonable value of his services rather than an amount based upon an arbitrary schedule enacted by Congress.[6] The receiver may also find superior court judges more sympathetic than referees in bankruptcy in allowing expenses for examination of the debtor's books and for the tracing of assets. The appointment of a receiver can be secured on application of one creditor and therefore is often easier to secure than that of a trustee in bankruptcy which requires application by three creditors to whom is due a certain sum.[7] These are some of the considerations favoring use of receivership and others will appear incidentally through the article. There are of course many instances where bankruptcy may be the more effective device for liquidation. Where the debtor's estate will result from the setting aside of fraudulent and incomplete transactions, the powers given the trustee favor the use of bankruptcy.[8]

A full discussion of the historical development of the law of receivership, of the powers and duties of the numerous kinds of receivers, and of the advantages or disadvantages of receivership as contrasted with bankruptcy and other devices, is beyond the scope of this article. This discussion is limited to an examination of some of the rules governing appointment of general liquidating receivers in the State of Washington. Within that framework we shall examine two facets of the law, viz.,

[4] WASH. RPPP 66.04.
[5] 11 U.S.C. § 91 (1951).
[6] 11 U.S.C. § 76 (1956).
[7] 11 U.S.C. § 95 (1952). Three or more creditors with liquidated claims unsecured to the extent of $500.00 or over, or one creditor where less than 12 exist may file an involuntary petition in bankruptcy. Of course the appointment of a receiver is an act of bankruptcy under 11 U.S.C. § 21 (1952).
[8] Undoubtedly the trustee's power to deal with fraudulent transactions under § 67 of the Bankruptcy Act, 11 U.S.C. § 107 (1952) is greater than that of the state receiver.

(a) the sources and general rules of the law of receivership in Washington, and (b) the procedures to be followed by Washington receivers in the administration of assets and examination of the areas where court rules of procedure would aid in such administration. Wherever Washington law varies from normal receivership patterns those variations will be discussed.

SOURCES OF WASHINGTON LAW

Grounds for appointment of receivers and application therefor. As previously noted, our courts have inherent powers to appoint and regulate or instruct receivers. This inherent equity power is broad, and, without question, receivers would be appointed and function much as they now do without the existence of statutory rules and authority. This is not to say that rules for regulation of receivers are not desirable or necessary, but, rather, that most present statutes contain grants of power which were already vested in the courts.

Washington statutes governing the appointment and regulation of receivers are scattered throughout the code. Those statutes are supplemented by several court rules governing procedure—some of recent origin. The interpretation of the statutes by the Washington Supreme Court is worthy of examination because in several instances their application has been severely restricted.

There are three main provisions in the Washington statutes through which one may seek the appointment of a receiver, viz., those which provide for appointment (a) after entry of a money judgment, (b) for insolvent corporations, and (c) before entry of judgment in a variety of special situations.

The first general provisions for appointment of receivers appear in RCW 7.60.020, which sets forth six grounds, any one of which suffice for the appointment of a receiver. Those six grounds, briefly stated, are that:

(1) the action is one by a vendor to vacate a fraudulent purchase;

(2) the action is between joint owners, such as partners;

(3) the property or funds in controversy are in danger of loss or injury;

(4) the action is a mortgage foreclosure and the property is in danger of being lost or injured or is of less value than the mortgage and it is desired to collect rents prior to sale;

(5) the allegations are that the defendant is an insolvent corporation, has dissolved, forfeited its charter, or is in imminent danger of insolvency;

(6) it may be necessary to secure ample justice to the parties.

Additional authority for appointment of receivers of insolvent corporations, supplementing RCW 7.60.020(5), is to be found in RCW 23.01.540 and .570.[9]

One of the most important provisions authorizing appointment of receivers is to be found in the statutes relating to proceedings supplemental to execution. The grant of power to the court is contained in RCW 6.32.290, which provides:

> At any time after making an order requiring the judgment debtor or any other person to attend and be examined, or the issuing of a warrant, as prescribed in this chapter, the judge to whom the order or warrant is returnable, or the court out of which the order was issued, may make an order appointing a receiver of the property of the judgment debtor....

It is important to note that the duties of the receiver under this statute may cease when he has liquidated sufficient assets to discharge the judgment preceding his appointment.[10]

Statutes also provide for appointment of receivers as an adjunct of attachment,[11] under the *Cary Act* in defaults of contractors in reclamation,[12] to aid in lien foreclosures[13] and in other special circumstances.[14]

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[9] RCW 23.01.540 provides:
"*Involuntary dissolution, when authorized.* The court may, upon petition being filed, entertain proceedings for the involuntary dissolution of a corporation when it is made to appear
(1) that the corporate assets are insufficient to pay all just demands for which the corporation is liable or to afford reasonable security to those who may deal with it; or
(2) that the objects of the corporation have wholly failed, or are entirely abandoned or their accomplishment is impracticable; or
(3) that it is beneficial to the interests of the shareholders that the corporation should be wound up and dissolved; or
(4) that the number of directors is even and they are equally divided respecting the management of the corporate affairs, and, when the voting power of all shareholders is equally divided into two independent ownerships or interests, and one-half thereof favor the course of part of the directors and one-half thereof favor the course of the other directors, or the holders of such equal parts of the voting power are unable to agree on the election of the board of directors consisting of an uneven number."

[10] Pappas v. Taylor, 138 Wash. 22, 244 Pac. 390 (1926).

[11] RCW 7.12.150.

[12] RCW 79.48.100.

[13] RCW 60.12.100 (crop liens); 60.24.130 (timber and lumber); 60.32.050 (labor liens on franchises, etc.)

[14] RCW 32.24.070 (mutual savings banks).

Thus, a variety of situations lend themselves to the appointment of a receiver. A few practical examples derived from the cited statutes, are as follows: (1) every creditor who holds an unsatisfied judgment against a debtor with assets may, in proper proceedings, move for such appointment; (2) receivers may be appointed after mortgage foreclosure, during the redemptive period; (3) pending the foreclosure action in a shifting stock mortgage; (4) in actions between partners a receiver may be appointed to manage the business or property.

There are, however, some case law limitations on both the statutory and the inherent power of the court to appoint receivers. First, receivership is an extraordinary remedy, and a clear necessity should be shown for its use.[15] Where other remedies are available, receivers are not to be appointed.[16] Our supreme court has indicated, however, that courts should more readily exercise their power to appoint receivers for relief of corporate creditors than in other cases, *i.e.*, the necessity need not be as clear.[17] When the statutes expand the court's inherent powers they are in derogation of the common law and are to be strictly construed.[18]

The power of the courts to appoint receivers under, and independent of, the Washington statutes was the subject of extensive litigation in the Washington Supreme Court for a period of nearly twenty years—a subject upon which the court consistently divided, and on which no clear answers have been presented. In reviewing that case law, particular attention must be paid to the distinction in cases attempting to secure receivers for individual, as opposed to corporate, debtors—a distinction not always found then or now in the statutes or cases.

Under the statutes cited, several alternate methods are provided for obtaining the appointment of a receiver. Some of those methods are simple and self-explanatory; others are more complicated. If one proceeds under the authority of RCW 6.32.290 (formerly RRS § 640), the moving party must have a judgment, must cause execution to issue, a *nulla bona* return must be filed, supplemental proceedings must then issue, and thereafter the receiver may be appointed. In *State ex rel.*

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[15] Blinn v. Almira Trading Co., 190 Wash. 156, 66 P.2d 1132 (1937); Gahagan v. Wisner, 139 Wash. 664, 247 Pac. 965 (1926); Smith v. Brown, 50 Wash. 240, 96 Pac. 1077 (1908).

[16] Norris v. Anderson, 134 Wash. 403, 235 Pac. 966 (1925); Bergman Clay Mfg. Co. v. Bergman, 73 Wash. 144, 131 Pac. 485 (1913). As a practical matter no other state remedy exists which insures protection of corporate assets of an insolvent. Further, under RCW 23.01.540 the existence of other remedies will not defeat the application.

[17] State *ex rel.* Panos v. Superior Court, 188 Wash. 382, 62 P.2d 1098 (1936).

[18] State *ex rel.* Dunbar v. Superior Court, 161 Wash. 550, 297 Pac. 774 (1931).

Panos v. Superior Court[19] the supreme court permitted the appointment of a receiver in a case fitting the pattern of RCW 6.32.290, but did so under the authority of RCW 7.60.020 (then RRS § 741), rather than under the first cited statute, and added the further requirements that the debtor must be insolvent *and* possess assets. In *Kreide v. Independence League of America*[20] the Washington Supreme Court held that under RCW 7.60.020 (5), when it is shown that a corporation is insolvent and has assets, the court *must* appoint a receiver. The contention was there made that since the appellant had a money judgment, at law he should have proceeded by way of a creditor's bill in equity or by supplemental proceedings. An interesting side aspect of that case is the fact that the defendant was a charitable non-profit corporation and presumably immune from receivership under RCW 24.04.090 until after forfeiture of its franchise.

Earlier, in dealing with the same subject matter in *Grays Harbor Commercial Co. v. Fifer*,[21] the Washington court held, without reference to any statute, that a receiver would only be appointed to take charge of property when the application shows: (1) a clear right to the property, some lien on it, or that it constitutes a special fund out of which the creditor is entitled to have his claim satisfied; *and* (2) that possession was obtained by fraud, or that the property or income therefrom is in danger of loss from neglect, waste, misconduct or insolvency. The court also held that until a creditor has first obtained a judgment at law for his demand against the debtor and return of execution unsatisfied, an action in equity will not lie to reach assets to apply them to payment of a demand arising from contract, irrespective of allegations of insolvency. The case, however, was one involving an individual debtor, and, although the court made no mention of that, it was on that specific basis that the last mentioned rule was again followed in *Blum v. Rowe*.[22] In *State ex rel. Arine v. Superior Court*[23] the court held that *Blum v. Rowe,* was limited to its facts, and that receivers could be appointed in other cases before judgment under the authority of RCW 7.60.020 (6), (formerly RRS § 741), when "it may be necessary to secure ample justice to the parties"—this latter power to be used only sparingly, said the court. Again, in *Sixpine Leaseholders*

[19] 188 Wash. 382, 62 P.2d 1098 (1936).
[20] 188 Wash. 376, 62 P.2d 1101 (1936).
[21] 97 Wash. 380, 166 Pac. 770 (1917).
[22] 98 Wash. 683, 168 Pac. 781 (1917).
[23] 132 Wash. 258, 231 Pac. 785 (1925).

v. Seattle Recreation Co.,[24] the court held it had no authority to appoint receivers for individuals until after return of execution on judgment unsatisfied. In *City Mortgage Co. v. Skatveat*[25] the court reaffirmed the *Grays Harbor* case, and the *Sixpine* case, and said that RCW 7.60.020 (6) only applies to insolvent corporations, and not to individuals. The court made no reference to *State ex rel. Arine v. Superior Court.* The statute by its terms is not restricted to corporations, yet it probably is the law that receivers for individuals may only be appointed in proceedings supplemental to execution, except in the special instances provided by RCW 7.60.020 (1) (fraudulent purchase), (2) (action between partners), and (4) (mortgage foreclosure).

The Washington Supreme Court has said that there are areas where receivers *may not* be appointed, mainly because of the existence of other remedies. Some examples are: (1) divorce proceedings to compel the parties to liquidate and pay their creditors;[26] (2) actions against corporations based on mistakes, bad policy or inadvertence of corporate officers if their duties have been honestly pursued;[27] and even in illegal voting of high corporate salaries;[28] and (3) where garnishment, attachment or execution will enable the creditor to reach the property or fund.[29]

The ultimate object of receivership is the preservation of property for the benefit of persons who have rights therein. Thus, the rules to be derived from the statute and case law are that any appointment of a receiver will normally be based upon a showing that (a) there is property to be preserved or protected, (b) that the property is of a class subject to receivership, (c) that the applicant is in the class of persons who have rights in the property, (d) that the applicant has prayed for and made a prima facie case for other relief, and (e) that no adequate remedy at law exists. The appointment of every receiver is addressed to the sound discretion of the court, even under the statutes.[30]

Temporary and ancillary, or foreign, receivers should be mentioned at this point. The only statutory authority for the appointment of re-

[24] 171 Wash. 139, 18 P.2d 12 (1933).
[25] 176 Wash. 463, 29 P.2d 928 (1934), but see Boyd v. Hutton, 121 Wash. 685, 210 Pac. 33 (1922).
[26] Arneson v. Arneson, 38 Wn.2d 99, 227 P.2d 1016 (1951).
[27] Blinn v. Almira Trading Co., 190 Wash. 156, 66 P.2d 1132 (1937).
[28] Horejs v. American Plumbing & Steam Supply Co., 161 Wash. 586, 297 Pac. 759 (1931).
[29] Grays Harbor Commercial Co. v. Fifer, 188 Wash. 376, 62 P.2d 1101 (1936).
[30] Brown v. Mead, 22 Wn.2d 60, 154 P.2d 283 (1944); Puget Sound Tel. Co. v. Telechronometer Co., 130 Wash. 468, 227 Pac. 867 (1924).

ceivers pendente lite in our code is to be found in RCW 23.01.570 (2), which provides:

> (2) The court shall, upon the filing of any such petition, have the ordinary powers of a court of equity to appoint a receiver or receivers pendente lite when necessary to the ends of justice, but the authority of any such temporary receiver or receivers shall cease upon the appointment and qualification of a liquidating receiver or receivers.

While the application of the statute is restricted to use for insolvent corporations, the courts have inherent powers to appoint temporary receivers in other cases and do so frequently, for example, in actions between partners.

In Washington as in many other states there are no statutory provisions for appointment of ancillary or foreign receivers. Receivers are officers of the appointing court, and their powers do not extend beyond the territorial limits of the state of their appointment. Nevertheless, the courts have long exercised the power to appoint ancillary receivers.[31] Such procedure might be extremely important in assisting collection of assets in foreign jurisdictions. The ancillary receiver will, however, be an officer of the court appointing him, and not an agent of the primary receiver or of his appointing court. It therefore follows that proceedings initiated for the appointment of ancillary receivers must be an adjunct of a cause of action in the ancillary jurisdiction, and the appointment must be valid under the laws of that jurisdiction. Some states permit the primary receiver to make the application for his own appointment as ancillary receiver, but others have residence requirements for ancillary receivers.[32]

Who may be appointed receivers. Very few restrictions appear in our code as to who may be appointed receivers. The appointment of trust companies is expressly permitted.[33] Appointment of an attorney or party interested in an action is prohibited,[34] as is the appointment of a sheriff.[35] However, in the case of the appointment of the interested party a good argument can be made that where the party is merely one of several general creditors his interest, no greater than that of other creditors, is not such as to bar his appointment or that of his attorney. In any case the appointment may not be collaterally attacked.[36] It is

[31] 1 CLARK, RECEIVERS, § 317, *et. seq.*, (3rd ed. 1959).
[32] *Id.* § 318.
[33] RCW 30.08.150.
[34] RCW 7.60.020(6).
[35] RCW 7.08.180.
[36] Pratt v. Anderson, 126 Wash. 30, 216 Pac. 885 (1923).

doubtful that corporations may be receivers in Washington.[37] Where a receiver has been appointed in one proceeding, the code prohibits the appointment of an additional receiver.[38]

When and what title a receiver takes. When a receiver is appointed, the property of the debtor is generally *in custodia legis, i.e.,* it is technically in the court, rather than in the receiver.[39] Nevertheless, we generally regard the receiver as being in title. At least one of our statutes, RCW 6.32.330, specifically provides that title is vested in the receiver.[40]

This title of the receiver ordinarily dates from the time of his appointment,[41] but by special statutes it relates back to the time of service in supplemental proceedings[42] and to the date of application for the appointment in the recovery of preferences.[43]

Unlike the trustee in bankruptcy or the common law assignee, the receiver in many cases stands only in the "shoes" of the insolvent and has no greater or other power over property than would the insolvent.[44] The Washington court has held, for example, that a receiver has no greater rights against a seller of an unfiled conditional sales contract than the buyer, unless he in fact represents subsequent creditors or such creditors exist.[45] By contrast, a trustee in bankruptcy acts on behalf of creditors whether or not they exist and could avoid such a contract and take possession of the chattel.[46] To that extent the receiver does not represent or assert the rights of creditors. Yet, entirely inconsistent with that position, the Washington Supreme Court has held that a

[37] 1 CLARK, RECEIVERS, § 114 (3rd ed. 1959).
[38] RCW 6.32.310.
[39] 2 CLARK, RECEIVERS, §§ 332, 375 (3rd ed. 1959).
[40] RCW 6.32.330 provides:
"*Property vested in receiver.* The property of the judgment debtor is vested in a receiver, who has duly qualified, from the time of filing the order appointing him or extending his receivership, as the case may be, subject to the following exceptions:
(1) Real property is vested in the receiver only from the time when the order, or a certified copy thereof, as the case may be, is filed with the auditor of the county where it is situated;
(2) When the judgment debtor, at the time when the order is filed, resides in another county of the state, his personal property is vested in the receiver only from the time when a copy of the order, certified by the auditor in whose office it is recorded, is filed with the auditor of the county where he resides."
[41] RCW 6.32.330.
[42] RCW 6.32.340.
[43] RCW 23.01.600.
[44] Roeblings Sons Co. v. Frederickson L. & T. Co., 153 Wash. 580, 280 Pac. 93 (1929); Western Electric Co. v. Norway Pacific Constr. & Drydock Co., 124 Wash. 49, 213 Pac. 686 (1923).
[45] Johnson-Stephens & Skinkle Shoe Co. v. Marlatt & Miller, Inc., 181 Wash. 621, 44 P.2d 818 (1935); Bank of California v. Clear Lake Lumber Company, 146 Wash. 543, 264 Pac. 705 (1928).
[46] *In re* Gunning, 39 F. Supp. 706 (E.D. Wash. 1941).

receiver is not bound by the executory contracts or leases of the debtor, partly on the theory that were he bound, the other party to the contract would be placed in the position of a priority creditor.[47] If the receiver terminates or breaches such a contract, then the other party may file his claim for damages and share as other general creditors. However, the receiver may, and often does, by his acts, ratify or adopt contracts of the insolvent.[48]

The court may, under some circumstances, aid the receiver in taking possession of property through its summary jurisdiction.[49] Interference with the receiver's right to possession is contempt of the court appointing the receiver, and punishable as such.[50]

POWERS AND DUTIES OF THE RECEIVER

General powers. General powers for receivers are set forth in RCW 7.60.040, which provides:

> The receiver shall have power, under control of the court, to bring and defend actions, to take and keep possession of property, to receive rents, collect debts, and generally to do such acts respecting the property, *as the court may* authorize. (Emphasis added.)

Special powers of receivers for involuntary corporate dissolution proceedings are to be found in RCW 23.01.580, *et seq.*[51]

Rules for procedure and conduct of the receiver are to be found in a variety of places, but it is the absence, rather than presence, of such

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[47] Casey v. Northern Pac. Ry. Co., 15 Wash. 450, 48 Pac. 53 (1896); Scott v. Rainier Power & Ry. Co., 13 Wash. 108, 42 Pac. 531 (1895).

[48] Fotheringham v. Spokane Savings Bank, 175 Wash. 169, 27 P.2d 139 (1933); Johnson v. California-Washington Timber Co., 161 Wash. 96, 296 Pac. 159 (1931); Great Northern Ry. Co. v. Oakley, 135 Wash. 275, 237 Pac. 990 (1925).

[49] 2 CLARK, RECEIVERS § 632, (3rd ed. 1959) (where offender is a party to the proceedings).

[50] Seymour v. Landon, 128 Wash. 682, 224 Pac. 3 (1924); State v. Denham, 30 Wash. 643, 71 Pac. 196 (1903). The receiver's position here is akin to that of the trustee in bankruptcy. 11 U.S.C. § 69 (1938).

[51] "*Authority of receivers or trustees*—Bond. (1) The receiver or receivers appointed as provided in RCW 23.01.570, shall, after giving such bond as the court may require for the faithful performance of his or their duties proceed with the liquidation of the affairs of the corporation in such manner as the court shall direct.

(2) Trustees or receivers in dissolution proceedings shall have full authority to compromise, compound and settle claims by or against the corporation upon such terms as they shall deem best; but if the proceeding is subject to the supervision of the court, no such compromise, composition or settlement shall be valid unless approved by the court.

(3) Such trustees or receivers may summon meetings of the shareholders in the manner the directors might have done, or, if the proceeding is subject to the supervision of the court, in such manner as the court may direct."

Except where restricted by statute, general receivers possess the powers historically acquired, and have the power to instruct receivers under their inherent jurisdiction.

See also, Yakima Finance Corp. v. Thompson, 171 Wash. 309, 17 P.2d 908 (1933) and RCW 7.60.040.

rules that makes the receiver's task difficult. For the attorney who seldom handles receivership the problem of guiding the receiver through the proper steps is a difficult one, because no specific course of action is outlined in our statutes or rules such as that found in probate and other proceedings. The extent of the receiver's power and the areas of his duties should be found in the order appointing him, and to the extent that the order does not so delineate, the task of the court and receiver is made more difficult, because as previously indicated there are numerous kinds of receivers whose duties vary greatly.

Some specific duties of the receiver. The following are some, though not all, of the requirements governing a receiver: (1) the filing of an oath and bond;[52] (2) sending notification of his appointment to the Department of Labor and Industries[53] and (3) notification to the Commissioner of Internal Revenue;[54] (4) filing a copy of the order of his appointment in the office of the auditor of any county where the insolvent may have property;[55] (5) giving of notice to creditors by publication and mail;[56] (6) giving notice of his application to compromise claims at less than face value and of any hearing thereon;[57] (7) selling property only under court instruction;[58] (8) examining the corporate records for unpaid stock subscriptions, unpaid "paid-in capital" and preferences;[59] (9) preparing an inventory and having the assets of the receivership appraised;[60] (10) rendering an accounting;[61] and (11) setting forth in his petition the amount of any compensation asked for himself or his attorney and giving notice of hearing thereon.[62]

Under the Washington case law the receiver has a duty to take charge of and safely keep and account for all assets of the insolvent estate, and abide by orders of the court with reference thereto.[63] The receiver is charged with no greater care over property than such fiduciaries as the administrator or guardian.[64]

[52] RCW 7.60.030 (technically, to be sworn).
[53] RCW 51.16.160.
[54] 68A Stat. 744, 26 U.S.C.A. § 6036 (1954).
[55] RCW 6.32.320.
[56] WASH. RPPP 66.04.
[57] *Id.* Rule 98.08.
[58] Yakima Finance Corporation v. Thompson, 171 Wash. 309, 17 P.2d 908 (1933); RCW 7.60.040.
[59] This duty would arise from the receiver's general duty to use due diligence in collecting property of the insolvent.
[60] 2 CLARK, RECEIVERS § 382 (3rd ed. 1959).
[61] *Id.* § 383.
[62] WASH. RPPP 98.12.
[63] RCW 7.60.040.
[64] Johnson v. Pheasant Pickling Co., 174 Wash. 236, 24 P.2d 628, *rehearing denied and amended,* 174 Wash. 236, 27 P.2d 587 (1933).

Claims and the approval or rejection thereof. In proceedings for corporate dissolution subject to the supervision of the court the *Revised Code of Washington* applies the national bankruptcy act with respect to some aspects of approval or rejection of the claim. RCW 23.01.610 provides:

> In a proceeding for dissolution subject to the supervision of the court, all questions in respect to proof, allowance, payment and priority of claims shall be governed by the national bankruptcy act in force at the time of the dissolution proceedings.

No statute or rule governs questions of proof, allowance, payment and priority of claims in other receivership proceedings, with the exception of the rule fixing the time within which to file creditor's claims at thirty (30) days, unless extended by order of the court.[65]

Under case law, however, to be provable the claim must be such that a cause of action exists thereon at the time of the appointment of the receiver or the amount of the claim must be then capable of liquidation.[66]

The receiver has an obligation to resist any improper claims,[67] and he may not allow interest on claims, except those entitled to priority.[68]

Courts have universally held that a creditor's claim may, for good cause shown, be filed and allowed after the time fixed therefor has elapsed.[69] It would therefore appear that the limitation fixed or to be fixed is a procedural, rather than a substantive matter as in probate, and a proper subject for the rule making power.

The need for Court rules and the Court's power to promulgate rules. During the past few years our supreme court has promulgated several rules governing receiverships. Because of the court's inherent powers to make their own rules in receivership proceedings, it would seem that little question could be raised respecting the court's power to adopt rules to be uniformly applied by the lower courts in instructing receivers. Even were this not so, our courts have a general rule-making power, under which authority other existing court rules have been adopted.

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[65] WASH. RPPP 66.04.

[66] J. E. Berkheimer Mfg. Co. v. American Wood Pipe Co., 178 Wash. 98, 34 P.2d 351 (1929).

[67] Thompson v. Huron Lumber Co., 4 Wash. 600, 30 Pac. 741, *aff'd*, 4 Wash. 600, 31 Pac. 25 (1892).

[68] State *ex rel.* Hansen v. Chelan Co., 185 Wash. 327, 54 P.2d 1006 (1936); Great Northern Ry. Co. v. Oakley, 135 Wash. 279, 237 Pac. 990 (1925).

[69] Albright v. Sunset Motors, 148 Wash. 348, 268 Pac. 1036 (1928).

A study should be made into possibilities for adoption of a set of rules which would, partly because of their accessibility to attorneys, standardize the practice in receivership. Such rules would enable the attorney to work in the field of receivership without voluminous reading.[70] Adoption of rules would also be of great aid to the trial courts, who are often equally unfamiliar with such proceedings.

Some suggested areas for adoption of rules are the following:

1. Qualifications for receivers, including residence;

2. Filing of inventories, supplemental inventories and appraisals thereon;

3. Reporting of creditors and debtors and stockholders of insolvent corporations;

4. Reports with respect to unpaid stock subscriptions and paid-in capital;

5. Deposits of receivership funds;

6. Form and contents of creditors' claims;

7. Manner of approving or rejecting creditors' claims, notice to be given thereof, and persons who may except thereto;

8. Notice requirements in sale of assets;

9. Citation of corporate officers and insolvents;

10. Filing of reports, accounts and contents thereof;

11. Application for authorization of expenditures;

12. Application for adoption of executory contracts.

Rules governing these receivership activities and others are to be found in the codes of some states and the Chancery Rules of others.[71] The Chancery Rules governing receivership in the Delaware courts would prove a valuable aid in the effort to promulgate rules in Washington.

CONCLUSION

Although the basic purpose of this article is to discuss problems most frequently encountered in receivership, it also should point out the need for the adoption of rules to standardize the practice and procedure in this area of the law.

[70] 1 CLARK, RECEIVERS, § 142, (3rd ed. 1959).
[71] 13 DEL. CODE ANN. (1933), Rules 148-168.

Since the law of receivership provides the basis for the exercise of some of the most valuable rights of creditors in the management of debtors' estates, it should not be ignored by the practitioner because of the lack of a readily accessible rule for its use. If the attorney's of the state are to properly represent creditors, it is essential that both the bench and the bar exert efforts toward the improvement of the law in this field by standardization of procedural rules.