

DEBTORS' ESTATES

RECEIVERSHIP—JURISDICTION UNDER SECTION 57 OF THE JUDICIAL CODE—COUNTERCLAIM—ABRIDGEMENT OF BOOTH V. CLARK

Insurance Commissioner for the State of Iowa, as an Iowa receiver, asked the Federal District Court to take jurisdiction under diversity of citizenship¹ and Section 57 of the Judicial Code² to settle claims to a res. Section 57 provides for service by publication on non-residents to enforce a legal or equitable lien on or claim to personal property within the District where the suit is brought. The suit was begun pursuant to authority and direction of the Iowa state court.

The Iowa insurance company which had become insolvent agreed that a Michigan insurance company should reinsure the policyholders of the Iowa company. Now the Michigan company is in receivership. Securities had been deposited in Iowa according to law and contract, but the Michigan receiver was collecting the maturing principal and income on the securities and wishes to have complete control of them.

The Michigan receiver appeared specially and objected to the jurisdiction and was overruled. He then filed an answer and counterclaim. Thereupon, the Iowa receiver amended and asked the Michigan receiver to account for collections and to be enjoined from interfering with the Iowa administration. Held: the Federal District Court in Iowa had jurisdiction to resolve the controversy under Section 57 of the Judicial Code. *Fischer, Commissioner of Insurance for Iowa, v. American United Life Insurance Co., et al.*, 314 U. S. 549, 86 L. ed. 328, 62 Sup. Ct. 380 (1942).

On the strength of *Lion Bonding Co. v. Karatz*³ the Appellate Court held that the trial court had no jurisdiction to determine the interest of the Michigan receiver in the securities.⁴ The Supreme Court evaded this difficulty by distinguishing between interference with administering a res and determining rights in one. The present controversy did not "necessarily involve a disturbance of the pos-

¹ JUDICIAL CODE 24; 28 U. S. C. 41; 28 U. S. C. A. 41.

² 28 U. S. C. 118, 28 U. S. C. A. 148.

³ 262 U. S. 77, 67 L. ed. 832, 43 S. Ct. 518 (1922).

⁴ *American United Life Ins. Co. et al. v. Fischer*, 117 F. (2d) 811 (1941).

session or control of the Michigan . . . (court) over the property in (its) possession.”⁵ Further, as the Iowa state receiver sought the jurisdiction of the federal court, the prohibition of *Penna. v. Williams*⁶ was not in point.

As the principal case⁷ recognizes the right of a foreign equity receiver to appear and answer regardless of whether or not he is a statutory successor⁸ or quasi assignee,⁹ it further strengthens a limitation to *Booth v. Clark*¹⁰ which forbade an equity receiver to sue in a foreign federal court. In view of the fact that action under Section 57 of the Judicial Code is to quiet title and that unless such a receiver may appear and assert his claims he is in effect excluded, the limitation is highly desirable.

While it upheld the trial court's jurisdictional power to determine all rights to principal and interest in the securities held by the Iowa receiver, the decision falls far short¹¹ of deciding to what extent an adjudication of rights in securities under Section 57 may affect the administration of collections on such securities then in possession of a foreign court.¹²

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⁵ 314 U. S. at 554.

⁶ 294 U. S. 176, 79 L. ed. 841, 55 S. Ct. 380 (1934), which forbade assumption of federal jurisdiction in receiverships when there is special state machinery for administering the assets of particular businesses. See also: *Gordon v. Ominsky*, 294 U. S. 186, 79 L. ed. 848, 55 S. Ct. 391 (1934); *Penna. General Casualty Co. v. Penna.*, 294 U. S. 189, 79 L. ed. 850, 55 S. Ct. 386 (1934); (1934) 1 O. S. L. J. 322.

⁷ 314 U. S. at 553, citing *Clark v. Williard*, 294 U. S. 211, 86 L. ed. 330, 62 S. Ct. 382 (1935).

⁸ *Refle v. Rundle*, 103 U. S. 222, 26 L. ed. 337 (1881); *American National Bank v. National Benefit & Casualty Co.*, 70 Fed. 420 (1895).

⁹ *Conserve v. Hamilton*, 224 U. S. 243, 56 L. ed. 749, 32 S. Ct. 415, (1911); *Bernheimer v. Converse*, 206 U. S. 516, 51 L. ed. 1163, 27 S. Ct. 775 (1907); (1934) 1 O. S. L. J. 322; *First, Extraterritorial Powers of Receivers*, (1932) 27 ILL. L. REV. 482; *Laughlin, The Extraterritorial Powers of Receivers*, (1932) 45 HAR. L. REV. 704; *Rose, Extraterritorial Actions by Receivers*, (1933) 17 MINN. L. REV. 237.

¹⁰ 17 How. Rep. (U. S.) 322, 15 L. ed. 164 (1854).

¹¹ “Whether the scope of the decree entered by the District Court was proper we do not decide. We only hold that the District Court had jurisdiction to resolve the controversy under sec. 57 of the Judicial Code. The Circuit Court of Appeals should have decided what rights, under Iowa law, Iowa and its receiver had to the securities and collections thereon, and whether the decree entered by the District Court was kept within the appropriate limits.” 314 U. S. 555.

¹² Annotation, 96 A. L. R. pp. 485-490.