

2-1931

Receivers-Appointment Without Notice-Sufficient Cause--Plaintiff

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Recommended Citation

(1931) "Receivers-Appointment Without Notice-Sufficient Cause--Plaintiff," *Indiana Law Journal*: Vol. 6 : Iss. 5 , Article 8.

Available at: <https://www.repository.law.indiana.edu/ilj/vol6/iss5/8>

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RECEIVERS—APPOINTMENT WITHOUT NOTICE—SUFFICIENT CAUSE—Plaintiff filed amended verified complaint seeking appointment of a receiver for defendant. Defendant was not served with summons. A receiver was appointed on the day the amended complaint was filed, and furnished bond for \$1000 which was approved. Defendant filed exceptions to the appointment of receiver without notice. Appointment set aside. The court de-

clared oral evidence inadmissible and that the only competent evidence to be considered was the varified complaint since no supporting affidavits were filed; that allegations of conclusions were insufficient under Burn's Ann. Stat., Sec. 1301 to show sufficient cause for appointment without notice; that a receiver should not be appointed without notice where a temporary restraining order or other relief would protect plaintiff until notice could be given and a hearing had; that the facts alleged by plaintiff that president of defendant who was also manager, wrongfully paid out funds, that only security for plaintiff's debt from defendant was the income which would be wasted unless receiver was appointed does not show that a temporary restraining order would not protect plaintiff. *Ind. Merchants Protective Assoc., Inc. v. Little*, Supreme Court of Indiana, 172 N. E. 905.

The statutory to appoint receivers without notice is derived from Burns Ann. Stat. 1926, sec. 1301. The court has the power if sufficient cause is shown. "Sufficient cause" is not defined in the Statute. The exercise of the power is within the discretion of the court subject to the judicial determination of what constitutes sufficient cause. On review, the Supreme Court has been extremely reluctant to sustain an appointment of receiver without notice. *Continental Clay & Mining Co. v. Bryson*, 148 Ind. 485, 81 N. E. 210; *Steel's Dept. Stores v. Buckingham*, 123 A. 391, 143 Md. 680; *Beack, Receivers*, Sec. 134; 23 Ruling Case Law p. 39.

A review of the Indiana cases shows that the courts have considered that the following were essential allegations of fact in the various cases to establish sufficient cause:

- I. That a necessity for appointment of receiver exists.
- II. That a necessity for appointment of receiver without notice exists;
 - A. Because of emergency or imperious necessity requiring immediate action due to:
 - (1) Fraud—secretion of property to defeat creditors.
 - (2) Property being wasted, misappropriated or removed from the jurisdiction.
 - (3) Delay necessary to giving notice would defeat the relief sought and cause irreparable injury.
 - (4) Notice itself would defeat the relief sought.
 - (5) Threatened actions by creditors whereby the assets would be wasted in fruitless litigation.
 - (6) Judgment creditors intended levying execution before notice could be given and hearing had (necessary to set out the amounts of the judgments).
 - B. Defendant beyond jurisdiction or not to be found (concealing himself).
 - C. Temporary restraining order or other relief ineffective to protect plaintiff and the property.

Verification of complaint and affidavits must be in positive terms (insufficient if merely on belief of party making. *Marshall v. Matson*, 171 Ind. 250, 86 N. E. 339). See: *Chicago & S. E. R. R. v. Cason*, 132 Ind. 49, 133 N. E. 822; *Wabash R. R. v. Dyheman*, 133 Ind. 56, 53 N. E. 823; *Continental Clay & Mining Co. v. Bryson*, *supra*; *Henderson v. Reynolds*, 168 Ind. 485, 41 N. E. 210; *Marshall v. Matson*, 171 Ind. 250, 86 N. E. 339; *Ryder*

v. Shea, 183 Ind. 18, 108 N. E. 104; *Kent Ave. Groc. v. Geo. Hitz & Co.*, 187 Ind. 120 N. E. 659; *Oren Jessup Land Co. v. Lannes*, 193 Ind. 644, 141 N. E. 454, *Ledger Pub. Co. v. Scott*, 193 Ind. 683, 141 N. E. 609; *Tucker v. Tucker*, 194 Ind. 108, 142 N. E. 11. In *Steel's Dept. Store v. Buckingham*, *supra*, the Court said, "No principle is more firmly inbedded in the law than that, courts ought not to appoint receivers on *ex parte* application except on clearest and most satisfactory showing that only so can the interests of justice be served." In *Kolb Coal Co. v. Sauter*, 295 Fed. 640, it was said "a receiver is never appointed without notice unless it is made to appear clearly that substantial and irreparable injury will probably accrue to the moving party unless order for receivership be made without notice." See also *Supreme Council of Royal Arcanum v. Hobart*, 244 Fed. 385.