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EQUITY RECEIVERSHIPS IN THE UNITED STATES DISTRICT COURT FOR CONNECTICUT: 1920-1929.

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The need and utility of fact research in the study of law administration was graphically presented in these pages some months ago by Dean Charles E. Clark.[1] In that article Dean Clark in presenting a preliminary report of a study of a large number of court records, made the following statement:

> "These records are capable of use for at least two important purposes. They may be used to illustrate and to test the efficacy of our rules of procedure and our general methods of administering justice. And they may be used, second, as starting points for the further detailed investigation of social problems of many and varied kinds."[2]

This study falls within the second group mentioned by Dean Clark. It is part of an extensive study of business failures undertaken at the Yale Law School last spring, having a three-fold

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1 Clark, Fact Research in Law Administration, 2 Conn. Bar. Journ. 211 (1928).

2 Ibid., p. 212.

aim: first an analysis of the causes of failure; second, an analysis of the efficiency of the administrative machinery employed in reorganizing or liquidating the business; and third, the incidences of the failure as measured by the effect on the owners, the creditors, the employees and other groups in the community. The first part of the study is being conducted under the auspices of the Institute of Human Relations of Yale University on a rather small group of insolvent retailers in New Jersey. Data is being obtained from the court records, the debtor, creditors, trade associations and social, medical, and health agencies for the purpose of throwing light upon the relationship to business failures of such factors as economic and industrial conditions, business practices, physical and mental health, morals, education, home and community conditions. The second part of the study deals with the administrative machinery used in reorganizing or liquidating insolvent businesses. This embraces the machinery of the equity receivership, bankruptcy and common law assignment. Here the court records constitute the primary sources of information. The study is aimed to test the efficiency with which these devices function. The hypothesis is that the problem at hand on a reorganization or liquidation is essentially a business one. For a reorganization it consists of some species of refinancing. For liquidation it consists of gathering in the assets, selling them, and distributing the proceeds. Legal problems appear at every turn. Yet, as the problem is basically a business one, it would seem to require a business technique. The extent to which a business technique has been employed or can be devised to handle the process is the aim of this part of the study. This, of course, entails an analysis of the efficiency with which the technique employed—whether business or otherwise—actually functioned. At the time the study of equity receiverships was started in Connecticut a study of 2000 bankruptcy cases was launched in New Jersey The equity receivership study has now been extended to New Jersey also. The study in New Jersey has been made possible by the active cooperation of Judge William Clark of the United States District Court for New Jersey who is cooperating in the first two parts of this business failures project. The third part of the study has not been begun. But it is hoped to start certain phases of that in the near future.

The following discussion deals with data obtained in a study under part two of the business failures project. All of the equity receiverships—numbering 44—which were instituted in the Federal court in Connecticut during the past ten years were studied.[3] Most of these cases have been closed. Almost all of the information received was obtained from the court records. Occasionally, supplementary data was obtained from other sources. Forty-three of these cases were domiciliary receiverships. The other case was in form an ancillary receivership, but because all of the assets were situated in Connecticut, the entire administration of the estate was supervised by the court in this district.

Twenty-eight of the complaints filed in these cases were creditors' bills; thirteen were complaints filed on behalf of shareholders, while three bills were filed on behalf of mortgagees. Most common among the reasons alleged for the necessity of a receiver was the general allegation that the defendant was unable to meet maturing obligations and that suits were threatened which would dissipate the assets unless a receiver were named. This allegation was found in 31 cases. Other reasons alleged in the bills of complaint were—mismanagement, in 5 cases; default in mortgage payments, in 5 cases; fraud, in 4 cases; the cessation of corporate business, in 2 cases; dissension among shareholders, in one case; and absence of directors and officers, in one case. The great majority of the businesses against which bills of complaint praying for the appointment of a receiver were filed were corporate in form. Thirty-eight of the defendants were corporations, five were individual proprietorships and one was a partnership.

Nearly all these receiverships were of a friendly nature. In 38 of the cases studied the answer formally admitted the allegations of the complaint. In several the bill of complaint, the answer and the decree appointing the receiver were filed on the same day. In 3 of the remaining 6 cases in which the answers denied the allegations of the complaint, the appointment of a re-

[3] The authors wish to express their appreciation for the generous aid and cooperation of Judge Edwin S. Thomas, Mr. Charles E. Pickett, and Miss C. A. Stevens of the District Clerk's office in securing this information.

ceiver was denied; in one, the complaint was withdrawn when the plaintiff received payment for the shares which he held in the defendant corporation; in another, a receiver was named; while in the sixth a receiver was appointed upon the filing of the bill of complaint but this appointment was later vacated on the defendant's motion. Thus receivers were appointed in 40 of the cases studied.

A single receiver was named in 32 cases; in 4 of these cases a new receiver had to be substituted because of the resignation or death of the original receiver. In 7 cases two receivers were named. In the remaining case (#33)[4] instituted in 1920 and not yet closed—ten receivers have served. Two receivers were appointed originally. After their resignation a committee of three creditors was named but they resigned due to the opposition of the largest creditor and shareholder. Two receivers succeeded them but they too resigned after charges of serious mismanagement of the estate had been filed against them by this same creditor and shareholder. The single receiver who succeeded them resigned because of pressure of business. Then the largest creditor and shareholder who had opposed the previous receivers was named. That party resigned in 1925 and a relative was substituted as receiver. An interesting feature of this case is that with the exception of the two original receivers, all agreed to serve without compensation.

The attorney for the complainant very often became an officer in the administration of the receivership. In one case he was named receiver. In 23 cases the complainants' attorney was appointed attorney for the receiver; in one of these cases, he afterwards was appointed receiver because of the resignation of the original receiver. In three cases where creditors objected to the receivers named or to their actions, the attorney for these objecting creditors was named receiver or co-receiver.

The bill of complaint always alleged that the defendant was solvent in that the total assets exceeded liabilities. One of the objects of any receivership is to protect these assets for the bene-

[4] Each case studied has been given a number. For convenience the number of the case rather than the name has been used throughout.

fit of all parties concerned. Two classes vitally concerned are creditors and stockholders. From their viewpoint the success or failure of the receivership turns to a great extent on whether or not the assets have been adequately preserved or the attempt at a reorganization has been successful, or a sacrifice liquidation has been necessary. With this test in mind the following figures prove interesting. Few of the parties at the inception of these receiverships seem to have contemplated liquidation of the estate. Generally the parties had some form of reorganization in view and often a long time was spent in attempts to effect a reorganization. Yet in the cases studied which have been closed or are so far advanced that it can be seen what the eventual result will be, only one case has involved a reorganization.[5] Twenty-six cases have been or are now being liquidated. Four of the cases have been referred to bankruptcy by order of the Court—in three of these cases an involuntary petition was filed against the defendant, while in the other the defendant filed a voluntary petition . In two of these four cases a composition with creditors was eventually made and confirmed. Varying results have been reached in other cases—in one, the receivers bond was cancelled because no assets could be found in the jurisdiction; in another the receiver was discharged when he reported that a satisfactory settlement had been reached with creditors; in a third, a settlement was made whereby the creditors received 60% of their claims; 50% in cash and 10% in notes; in a fourth, the creditors received 50% of their claims in cash and one-third of the net profits of the business was to be applied on their deferred claims.

In all but one of the cases involving a liquidation which have been closed, preferred creditors have apparently been paid in full. Mortgages, taxes and unpaid wages were the most common preferred claims. In one case (#25), the preferred creditors with claims totalling $20,539.86 received $82.45 on the dollar. The result of liquidations as far as general creditors are concerned are shown by the closed cases in Table I.

[5] By reorganization is meant the formation of a new company which acquires the assets of the old company and offers to the various classes of creditors and stockholders of the old company opportunity to receive securities in the new company in partial or complete satisfaction of their claims or in substitution of their former interests.

TABLE I.

(Closed Cases.)

Case No.	Assets (Appraisal Value)	Amount of General Claims	Length of Receivership	Amount paid on General Claims
1	$2,062,474.98	$1,248,231.22	9 years 2½ months	Nothing
3	282,234.26	594,109.65	5 years 6 monhs	22.3%
12	21,915.20	57,637.90	2 years 1 month	.0488%
13	48,044.07	61,470.60	1 year 11 months	22½%
14	340,264.50	557,397.10	1 year 9 months	13%
24	146,775.95	51,230.84	5 years	10%
25		66,801.63	3 years	Nothing
30	339,351.13	683,124.95	1 year 8½ months	20%
31	62,031.50	61,772.32	1 year 10 months	Nothing
32	203,071.81	45,282.28	2 years 6 months	Nothing
34	1,472,551.29	596,905.50	4 years 8 months	46.9% on claims of $104,972.86 not participating in Creditors Committee
36	174,758.45	211,036.88	2 years 4 months	Nothing
41	51,211.80	49,688.80	1 year 4 months	36½%
42	86,286.18	160,034.15	1 year	.08313%
43 & 44	1,775,559 44	621,225.16	9 years 9½ months	81¼%
Average	———	———	3 years 7 months	16.83879%

In five of the fifteen cases tabulated general creditors received nothing; in two of the cases these creditors received less than one-tenth of one percent; in five cases there was between 10% and 23% paid on these claims; the other three cases tabulated show payments to general creditors of 36½%, 46.9% and 81¼%. The 46.9% was paid on claims of $104,972.86 which did not participate in the creditors' committee formed in that case. In one instance (Cases #43 and 44), a new company was organized and it secured an assignment of all general claims except one held by the president of defendant and organizer of the new company. The creditors received 50% of their claims in cash and 50% in stock of the new company. Thus the creditors received nominal payment in full while the 81¼% dividend went to the new company. The large dividend paid in this case was due almost entirely to a settlement with the United States government, of almost one million dollars for unfilled orders which the government had cancelled. The case should not be considered as normal. In seven cases out of fifteen the general creditors received less than one-tenth of one per cent.; in four other cases a reference to bankruptcy was had after the receivership had been carried on for some time. As will be noted from Table I, in seven of the cases the appraisal value of the assets was less than the total of the general claims allowed against the estate. Then, of course, there was a substantial amount of preferred claims in each case. And in most cases the assets did not bring their appraisal value on a forced sale. In each case the allegation had been made that the defendant was solvent in the bankruptcy sense and the defendant had filed an answer admitting this allegation among others. It might be argued that one of two things must be true in these cases—either receivers are being appointed for defendants which are insolvent in the bankruptcy sense at the time of the appointment or the administration of the receivership has failed of its primary purposes, viz. a reorganization or other preservation of the assets. Judge Thomas in an unreported memorandum of decision filed in Franklin County Trust Co. v. Shoninger Co. said, "I was likewise impressed with the figures which were submitted and which appeared to me, without passing on the question, to indicate a condition of affairs which might better have warranted proceedings in bankruptcy than the

institution of a suit on the equity side of this court. Counsel are prone to institute suits in equity which only have a place in the bankruptcy courts and the result is frequently a confusion which might have been avoided." Though this statement was not directed to the group of cases embraced in this report, it could be argued that Table I gives support to this statement, including the data therein respecting the length of these receiverships. The periods range from one year to over nine years. The average length was three years and seven months. In the one year case the general creditors received .08313% on their claims. In four cases which consumed from one year and ten months to three years the creditors received nothing. The same result occurred in case #1 which lasted over nine years. Another case which so far has lasted nine years and is not yet closed promises little or nothing to creditors. The argument would be that from the viewpoint of creditors and stockholders a speedier liquidation should be effected; that such process should be conducted in bankruptcy, which normally, though, of course, not always, aims at immediate liquidation.[6]

Yet the case for a more expeditious liquidation would not be complete without a consideration of other factors which this research does not purport to cover or analyze definitely. One factor would be the avoidance of a sale at scrap value which would normally result in considerable loss to creditors and stockholders. There is no ready market for plants and factories. The sole assets of a retail merchant may consist of a stock of goods which can be disposed of readily. But the case of larger business units here involved is normally quite different. The sale of such businesses as going concerns is more difficult and requires a longer time. It was frequently reported that continued operation often made possible a sale of the unit as a going concern. Another factor would be the effect of immediate liquidation on employees as well as on creditors and stockholders. To be sure the employees do not have an investment in the business in the legal or popular sense. Yet their association with the business has given them a prospective

[6] The case for equity receiverships as against bankruptcy receiverships was not within the scope of this study.

income from the business as measured by the labor turnover which is as certain as the bondholders' prospect of interest or the stockholders' prospect of dividends. They have acquired a status which in light of human behavior and experience has a measurable degree of permanency. In view of that, a court might well be motivated by the case of the employees in deciding either that an attempt at reorganization be made or that an attempt be made to sell the business as a going concern to a creditor group or to some outside interest. Another factor relevant to such decision would be the state of the labor market at the time. A liquidation which would cause an immediate displacement of labor with little chance of an early absorption of the displaced labor might argue for such attempt even though it would not be deemed good judgment if the interests of creditors and stockholders alone were considered. There is somewhat of an analogy in the case of the public utility where the transcending interest of the community in the particular enterprise is the compelling reason for reorganizing rather than liquidating such business. Though that analogy is not on all fours with the cases being discussed, it at least demonstrates that interests of creditors and stockholders are not always the sole factors to be considered. It is not attempted here to show that any or all of these lengthy receiverships were justified as a result of balancing the "equities" between creditors, stockholders, and employees. No exhaustive study of the position of employees in each case has been made. Hence even a tentative analysis will not be attempted. But a few facts pertaining to the size of the payrolls of these businesses have been collected and tabulated in Table II. At most these facts merely indicate one possible justification for an attempt at a reorganization or sale of the business as a going concern rather than immediate liquidation. Such hypothesis is, of course, most tentative.

TABLE II.

LABOR PAYROLL

Case No.	Monthly Payroll at Date of Receivership (Estimated)		Subsequent Monthly Payrolls (Estimated)		
	No. Employees	Wages	No. Employees	Month*	Wages
1	330	$48,840.	270	3rd	$38,524
				16	79,783
			442	18	61,656
			394	19	62,783
			233	20	33,463
			193	21	26,091
				25	52,828
				26	22,585
				28	6,972
				46	26,199
				52	12,459
				56	40,134
				61	33,058
				68	11,377
				77	16,525
				84 (L)	17,498
7		9,361		1st	7,745
				8th (L)	8,742

10	166	23,076	171	2	——
			194	3	26,392
			216	4	29,168
				7 (L)	23,228
14		16,176		1 to 6 (L)	10,207 (aver)
23		60,000 (app.)		1st & ½ 2nd	100,237 (total)
				During re-ceivership	28,000 to 32,000 (aver.)
30	172	19,092		1	10,615
34		7,852		1	9,552
				3	5,022
				8	8,803
				9	5,679
				12 (L)	6,834
43 & 44				1-5½ incl.	22,210 (aver.)
				5½-11½ incl.	3,564 "
40				1 and 2	11,377
				14	5,227
				25 (L)	1,428
33				1	4,409
				2	2,112
				7	3,267
				17	2,588

* L indicates month immediately preceding sale or discontinuance of business.

† Where blanks appear the information was not available.

A few evidentiary facts have been gathered in an attempt to determine the efficiency of the administrative machinery employed in the receivership and to ascertain if a business technique has been adopted. The receiver more than any other officer, more even than the Court, can determine the character and result of the receivership. It may be almost trite to state that the type of man best fitted to conduct the receivership in each particular case is one who is experienced in the field in which the concern in receivership is engaged. An attempt was made to check the profession or trade of the receivers named in the cases studied. That has been done in a large number of the cases. The result is shown in Table III. A lawyer was named as sole receiver in 14 cases, while a lawyer was named as one of two receivers in 1 case, and two lawyers were named as receivers in 1 case. Officers of the defendant were continued as sole receivers in 3 cases, while officers of the defendant were named as one of two receivers, in 7 cases. Banks were named as sole receiver in 2 cases. An engineer was named in 1 case.

TABLE III.

Case No.	Type of Business	Profession or trade of Receivers	Profession or trade of Appraisers
1	Manufacture of brass	Engineer	Appraiser, Realtor, Lawyer.
2	" " Taxicabs	President of Defendant	Industrial engineer, Realtor, ———
3	Commercial Financing	Lawyer	Banker, Banker, ———
4	Real estate development	Officer of Defendant, Lawyer	Insurance, ———, ———
5	Manufacture of wire goods	Lawyer	None
6	" of compressors	Vice-Pres. of Defendant	Furniture, ———, Lawyer
7	Manufacture of electrical devices	Textile manufacturer	Secretary to Judge, ———
8	Real estate operation	Lawyer	None
9	" " "	"	"
10	Manufacture of Tools	"	Appraisers
11	" " Hats	Bank	Hatter, Hatter, Milliner
12	" " Paper	Lawyer	———, Firearms, ———
13	" " Hats	"	Hatter, Lawyer, Realtor
14	" of Compressors	Iron & Steel manufacturer	Industrial Engineer, Furniture, ———
15	Bakery	Realtor & Property Management	Sec'y to Judge, Salesman, Insurance
16	Dry Goods	———	None
17	Mfg. of rubber goods	Pres. of tube bending Co. Employee of Defendant	None

TABLE III (Continued.)

Case No.	Type of Business	Profession or trade of Receivers	Profession or trade of Appraisers
18	Building contractors	Insurance	Mill Supt., Mason Builder, Contractors Equipment
19	Mfg. of Automobile Accessories	———	Industrial Engineer, Salesman, Lawyer
20 & 21	Mfg. Textile Goods	Officer of Defendant	Appraisers
22	Investment Banking	Lawyer	None
23	Mfg. of firearms	Lawyer, Lawyer	Banker, ———, Civil Engineer
24	Operation of ferries	Lawyer, Operation of Ferries	None
25	Manufacture of Felt	President of Defendant	None
26	Manufacture of Motor Vehicle bodies	———	Realtor, Funeral Director, Secretary to Judge
27	Manufacture of polishing wheels	Bank	None
30	Manufacture of pianos	Asst. Secy. of Defendant Lawyer	Musical Instrument, Salesman
31	Bakery	Lawyer	Baker, Yeast Dealer
32	Manufacture of Brass	———, Lawyer	———, ———, Realtor

33	Waterproofing of Textiles	Rubber supplies & chemicals Salesman. Largest creditor of Defendant. Husband of largest creditor. Importer & Exporter.	None
34	Mfg. of Automotive parts	Garageman, Carriage hardware manufacturer	———, ———, Pres. Steel & Tubing
35	Mfg. of auto. parts	———	None
36	Mfg. of Firearms	Brass Founder, Rubber Goods	———, Machinery Mfg.
37	Mfg. of machinery	Iron Foundry, Pres. of Defendant	None
40	Mfg. of Horseshoe calks	Brass Founder, Mfg. of bolts, etc., Lawyer	Mfg. of tools, Auctioneer Tax Collector
41	Lumber business	Salesman	———, ———, Banker
42	Mfg. of machinery	Lawyer	Realtor, Realtor, Realtor
43 & 44	Mfg. & sale of Firearms	———, President of Defendant	None

*——— means that the profession or trade was not ascertained.

The case against the receiver who is not experienced in the particular business involved gains strength in the following data.

Usually one of the first acts of the receiver was to have an attorney for the receiver appointed. In a large number of the cases the receivers were lawyers; but, no matter how small the receivership was, it normally appeared that the lawyer-receiver did not act without independent legal advice. Legal advice is indispensable in any receivership as the legal details are innumerable. Very often other attorneys are necessary. Special counsel were often employed to bring suits for the receiver or to defend suits against him. But so long as the lawyer-receiver did not act without an attorney, the reason for the appointment of a lawyer as receiver becomes less cogent.

Furthermore in most of the cases the decree appointing the receiver authorized him to continue the business. In a few cases the decree ordered him to ascertain the advisability of continuing the business and to report back to the court within a specified time. In only five cases was the business immediately discontinued by the receiver on his appointment. It was seldom that the receiver himself conducted the business where the defendant was a large concern. In several of the cases the receivers in reporting the extent of their work have stated that they visited the plant and talked to the officers as to the conduct of the business. Usually an experienced man was named as agent for the receiver. In the smaller cases the receiver sometimes conducted the business. The one case (#41) the receiver petitioned to be allowed to draw $80 per week salary as he had resigned a lucrative position in order to devote his entire time to the business of the receivership. Table IV shows the type of agents named in those cases in which the receiver reported to the Court that he had employed an agent. Difficulty was met in obtaining this information in many cases. Usually certain officers of the defendant company were continued as agents at the salary which they received prior to the receivership. In one case (#1) the secretary of the defendant corporation was named as agent and was required by the Court to give a bond of $25,000. In another case (#30) the assistant secretary of the defendant was appointed temporary receiver. At the hearing to appoint a permanent re-

ceiver, a large percentage of the creditors opposed his appointment and a lawyer was named as receiver with authority to employ the assistant secretary as his agent, which he did. A question naturally arises—why not merge the offices of receiver and agent wherever possible and appoint as receiver a person who is qualified actively to manage the business? No doubt many practical difficulties present themselves in many cases, e. g., finding a qualified person. Theoretically the whole tone of the receivership would be improved if such were done. The saving in fees alone would seem to be considerable in light of the data set forth in the latter part of this article.

TABLE IV.

Case No.	Type of Business	Profession or Trade of Receiver	Agents
1	Mfg. of Brass	Engineer	Secretary-Treasurer of Defendant named. Supt. of Defendant's two plants continued in charge of plant operations.
4	Real Estate Development	Lawyer, Officer of Defendant	President of Defendant continued. Auditor of Defendant continued.
10	Mfg. of Tools	Lawyer	Pres.-gen'l Mgr. of Defendant continued in charge of manufacturing and sales. Secretary of Defendant continued.
20 & 21	Mfg. of Textiles	Officer of Defendant	Gen'l Mgr. appointed to control of all departments except Receivership funds. Secretary of Defendant appointed to have control and custody of Receivership fund.

23	Mfg. of firearms	Two lawyers	Man experienced in firearms manufacture named Managing Agent and Custodian. Experienced firearms man named Manager of Operations.
30	Mfg. of pianos	Lawyer	Asst-Sec'y of Defendant named
34	Mfg. of Auto parts	Automobile dealer	Production Manager of Defendant continued. Office manager of Defendant continued.

Appraisers were appointed in nearly every case. In the majority of cases three appraisers were appointed. This is apparently in accordance with the bankruptcy practice. However, the necessity of three appraisers in bankruptcy has often been questioned and the desirability of Section 70 (b) of the Bankruptcy Act attacked. It seems that the appraisal could be done by one man fitted by his trade or business well enough in the average case, and certainly well enough by a professional appraisal house in most cases. The appraisal in many cases seemed of little significance in that very often the assets brought much less than the appraisal value on a forced sale. The professions and trades of the appraisers have also been tabulated in Table III, supra. Special masters to determine the validity of claims against the estate were commonly appointed. In liquidations most of the assets were sold at public auction sales and the services of an auctioneer were required. In the great majority of cases the United States Official Auctioneer was named. In several cases accountants were named.

A list of the fees allowed in the cases which have been closed is given in Table V. The fees allowed to receivers and to their attorneys form the largest proportion of the expenses of administration. In one instance (# 20 and 21) the receiver was authorized to pay himself $25,000 per year which he stated in his petition was the amount which he received from the defendant company prior to the receivership. Some idea of the daily compensation received by some of the other officers is given in one case (#26), where the three appraisers received $250. each for 10 days work and the accountant received $600 for 12 days work.

(Table V follows on pp. 22, 23).

TABLE V.

FEES OF OFFICERS.

Case No.	Receivers	Attorneys for Rec'rs	Other Attorneys	Appraisers	Auctioneers	Special Masters	Accts.	Other Officers
1	26,500	82,986.51	2,971.40	4,500	500	2,500	1,000	1,000
2	10,125.73	10,839.64						
3	10,000	37,876.08	13,197.96	500.72		4,000		
9	620.86	300						
10		25,000	10,018.03	2,550	1,025		9,251.81	
12	928.70	1,873.40		450	215	100		
13	2,297.54	1,564.93		600	288.50	650		
14	6,150	7,531.94	4,150	1,500	206.50	310	5,000	6,495.13
18	6,953.50	2,672.76		375	150.20		900	100
19	2,250							
20,	(10,000							
21	(25,000 pr yr.	17,500	54,340.30			3,645.92		5,631.07
23	16,000	16,000	8,253.71	4,500	1,000	1,050	2,500	
24	14,500	7,500						
25	2,000	1,673.77			155.50			
26	11,500	16,536		750			600	
27	1,000	1,000						
30	11,500	10,862.82	159.43	2,000	5% of sale price			1,411.79
31		1,220.03						
32	5,448.78	5,341.95	1,458	600	851.50	560		

34	13,500 in addition to $1,000 per mo.	18,000		1,865	2,262.75	2,300		310.50
36	2,507.50	2,942.79		875	1,000			
41	5,750	650	225	200				
42	2,065	1,500		300				
43, 44	37,453.01	26,224.96	3,275			575		

Table VI gives an idea of the amount of business carried on in some of the cases studied.

TABLE VI.

Case No.	Amount of Business (Total Gross Sales)	Profit or Loss	Amount of Net Operating Profit or Loss
1	$10,649,801.81	Profit	$7,570.25
7	645,964.56	Loss	86,154.69
10	332,106.50	Profit	48,029.82
14	136,875.17	Profit	———
15	Average, $4,500 per week	Loss	———
18	141,951.88	Loss	———
20 & 21	11,589,380.41	Loss	120,084.39
24	204,037.99	Profit	51,957.93
33	———	Loss	28,857.91 (not complete)
34	262,698.03	Profit	———
36	6,797.89	Loss	———
40	193,366.25	Loss	———
41	42,895.18	Profit	———

It will be noted that in some of the cases the conduct of the business resulted in a loss, thus further depleting the assets which at the beginning of the receivership were available for distribution to creditors. It has been said that such operation even at a loss is frequently advantageous to creditors since it often makes possible the sale of a business as a going concern instead of at junk value. In some of the cases studied the receivers gave this as one of their reasons for urging the continuance of the business. In one instance (case #15) the receiver reported that he had continued the business at a substantial loss while he was attempting to find a purchaser. These attempts were unsuccessful and the company finally filed a voluntary petition in bankruptcy. In another (case #10) the receiver's operation of the business from August, 1927 to April, 1928 totalled $332,106.50 with a net profit of $48,029.82. The accountant's report, however, estimated in addition the comparable net profit or loss—that is, a comparison of the profit or loss under the receivership with the probable profit or loss if the receivership did not exist. A comparable net loss of $10,988.53 was indicated. These figures per se may have little significance. Yet annual totals for all districts would constitute an interesting and perhaps pointed commentary on the extent to which the judiciary is fast becoming in a restricted sense an administrative as well as a judicial body.

In the conduct of the receivership the receiver usually found it necessary to issue receivers' certificates in order to pay the expenses of the receivership. These certificates in most of the cases studied were paid in full. In one case, however, the receivers' report showed a payment of only $540.28 to a bank which held over $20,000 of receivers' certificates. In one case (#4) the receiver was authorized to issue the certificates at 95% of par. In several cases the receivers found themselves unable to pay the certificates at maturity and were forced to apply to the Court to extend the date of maturity or to authorize the issue of new certificates in order to raise money to pay off the matured issue. In case #1, $100,000 of receivers' certificates were issued to mature at the end of three months. The date of the maturity of the outstanding certificates was extended for three months twelve times. Gradual payment was made until at the twelfth extension only $25,000 of that issue was outstanding. The number of receivers'

certificates issued, the percentage paid on them and the type of business involved are set forth in Table VII. It will be noted that none of these businesses was a public utility. While it is not shown in the table, none of the issues were contested. In a number of cases certificates were issued for operating purposes and not merely for the preservation of the property. This extensive use of receivers' certificates in private businesses is establishing a precedent which over a period of years may well have an effect on the law of the subject.

TABLE VII.

Case No.	Type of Business	Amount of Receivership Certificates Issued	Percentage Paid on Receivership Certificates
1	Manufacture of brass	$150,000	100%
2	" " taxicabs	25,000	100% (probable)
6	" " compressors	50,000	100% "
7	" " electrical devices	100,000	100% "
10	" " tools	60,000	100%
12	" " paper	1,000	100%
14	" " machinery	25.000	100%
18	Building contractor	10,000	——
19	Manufacture of automobile accessories	10,000	——
20 & 21	Manufacture of textiles	1,886,000	100%
23	" " firearms	20,000	100%
24	Operation of ferries	15,000	100%
26	Manufacture of motor vehicle bodies	50,000	100%
30	Manufacture of pianos	25,000	100%
31	Bakery	10,000	100%
36	Manufacture of firearms	26,758.24	2.02%
40	" " horseshoe calks	49,374.02	100% (probable)
43 & 44	" " firearms	107,500	100%

In the operation of the business the receiver has some advantages which the ordinary business man does not possess. The decree appointing the receiver carries with it an injunction forbidding the creditors, officers or shareholders of the concern in receivership to bring any suit against the receiver or to interfere with him in any way. In fact, in most cases the creditors were quite friendly to the receiver and aided him in the conduct of the receivership. Especially did a creditors' committee, when there was one, work in conjunction with the receiver. In one case the Bondholders Protective Committee negotiated with certain banks and obtained the consent of the banks to take over one and a half million dollars of receivers' certificates when issued. These committees were not commonly appointed except in the larger cases. Creditors' Committees appear in 5 cases; Shareholders' Committees in 3 cases; Bondholders' in 2 and Debentureholders' in one case.

As in the case of the ordinary business man, however, the operation of the business was often adversely affected by circumstances beyond the control of the receiver. Market conditions have turned an operating profit into a loss. In case #10 the receiver reported a net operating profit for the first three months of $38,481.47. The favorable conditions changed and the following month showed a profit of only $18.62 while subsequent operation was at a substantial loss. In case #24 the receiver showed a profit for 1926 of $21,323.34 in the operation of the ferries. The summer of 1927 proved a rainy season and the receiver reported a loss for that year of $1,952.42. Various other problems confronted the receiver in the operation of the business. In case #1 the receiver was faced by a strike of employees. The strike was finally settled with the employees receiving an increase in wages. Usually one of the first acts of the receiver in each case was to cut down the payroll of the business extensively. The presence of these varied problems also argues for the appointment of one as receiver of special training and experience in the particular business.

In spite of the continuation of the business the assets in most cases were sold at prices which were far below the appraisal value. In case #31 the assets were appraised and inventoried at

$144,052.02. These assets were sold for $16,326.98. There was thus a loss on inventory of $127,725.04. In case #42 the assets appraised at $86,286.18 were sold at an appraisal loss of $22,-781.18. In case #32 realty appraised at $92,880 sold for $52,500, while in case #1 part of the assets appraised at about $266,000 was sold at public auction for $78,290.

In several of the cases the assets were sold to one or the other of the parties interested in the case. In four cases the assets were sold to new companies organized by creditors. In one of these cases the Court fixed the "upset" price at $400,000 consisting of $325,000 in cash and the assumption of a mortgage, of $75,000. Another bidder was present. The first bid was the "upset" price. The two bids then continued until the property was sold to the Creditors Committee for $350,000 together with the assumption of a mortgage of $75,000—a total of $425,000. In two cases the property was bought in by the mortgagee; in one case the Bondholders' Protective Committee purchased the assets; and a new company organized by the Debentureholders' Protective Committee purchased the assets in another case. In the cases where a new company was organized by the Creditors' Committee, the creditors participating in this committee usually received part of their claims in cash and part in stock. In cases #43 and 44 the receiver was appointed over nine years ago. The president of the defendant companies was appointed one of two receivers and he organized a new company which secured an assignment of general claims totalling over $600,000 in return for 50% of the claims in cash and 50% in shares of the new company. The two companies in receivership paid a cash dividend of 81¼% which went to the new Company. In October, 1923 this new company went into receivership. Again the president was named one of two receivers and again a new company was formed to take over the assets. The general creditors in this case have received 55% on their claims. As it has turned out, it seems improbable that the creditors have received enough return on their shares to equal the 81¼% dividend which a speedy liquidation would have given them. Many creditors do not join in these committees but take whatever the receivership pays in cash. In case #34 the creditors' committee which purchased

the property represented about 85% of the creditors. The others with claims of $104,972.86 accepted the 46.9% cash dividend.

It is dangerous to draw any conclusions from this short, and in many respects incomplete, study except the most tentative ones. At best it indicates a wealth of material in court records which, if scientifically studied and correlated, promises to furnish valuable data pertaining to the actual administrative problems which the judiciary branch of the government supervises. An accumulation of this data will have at least a three-fold value: it will furnish facts to the bench and the bar which may serve as a basis for improvement in administration; it will make available to students of law material presenting in a graphic fashion the actual operation of this judicial-administrative system; it will open up to sociologists and economists many leads to information of vital concern to their problems. In the latter connection one example will suffice. The relationship of equity receiverships to the whole problem of unemployment and labor turnover is a practically unexplored field. Such a study as this might well serve as a starting point for such an investigation. While this study to date has merely scratched the surface of the whole problem, it serves the purpose of any experiment, i. e., in furnishing a technique for study and in supplying samples of types of data which can be expected to be found in similar studies.