

ized to sell only the equity of redemption in the property mentioned in such decree, mortgage, deed of trust or deed of trust in the nature of a mortgage; and, unless such consent be given such decree and the powers of sale contained in such mortgage, deed of trust or deed of trust in the nature of a mortgage may be executed as if proceedings against the corporation had not been instituted.

Title, powers and liability of receivers.

Sec. 382 of the Code of 1904 held to confer no beneficial title upon a receiver, but merely to vest him with the right of possession for the benefit of those ultimately entitled. A receiver has no right of appeal from an order affecting the distribution of funds among the classes of persons entitled. *Knabe v. Johnson*, 107 Md. 620.

Under the act of 1896, ch. 349, held that where the charter of a bank provides that the stockholders shall be liable to the amount of their respective shares of stock "for all of its debts and liabilities," a receiver of the bank cannot maintain an action to enforce such liability, the same being enforceable by creditors only. *Colton v. Mayer*, 90 Md. 712; *Hughes v. Hall*, 117 Md. 551. *Cf. Hughes v. Hall*, 118 Md. 676.

Under sec. 382, *et seq.*, of the Code of 1904, the receiver of an insolvent corporation has the power to sue a stockholder for the balance due on his subscription (see sec. 77). *Stillman v. Dougherty*, 44 Md. 383.

Where an execution is in the hands of the sheriff before the receiver is appointed, and the levy is made before he takes possession of the property, the receiver (under sec. 382 of the Code of 1904) takes title subject to the execution. *Prentiss Co. v. Whitman Co.*, 88 Md. 243.

Sec. 382 of the Code of 1904, referred to in discussing the liability of a receiver who enters upon demised property for the rent thereof. *Gaither v. Stockbridge*, 67 Md. 237 (dissenting opinion).

A statutory receiver under this section (as it appeared in the Code of 1888) appointed by a Maryland court, can resist in a District of Columbia court a suit to prevent payment to him of a government claim at the suit of a receiver appointed in another state claiming prior right to the fund. State comity. *Phillips v. Noel Construction Co.*, 266 Fed. (Ct. Apps. D. C.) 603.

Preferences; the insolvent law.

On the terms prescribed by sec. 377 of the Code of 1904, corporations other than railroad companies, upon appropriate proceedings in equity, were brought within the operation of a provision of our insolvent system—but not under the system itself—in so far only as respects the preference of one creditor over another, when the corporation was insolvent. Apart from the insolvent laws and the terms of said sec. 377, the mere fact that a debtor is insolvent will not prevent it from securing a pre-existing creditor by giving the latter a priority over other creditors, *if the transaction is bona fide*. How proceedings to avoid a preference must be had. *Mowen v. Nitsch*, 103 Md. 687. And see *Murphy v. Penniman*, 105 Md. 469; *Hodson v. Karr*, 96 Md. 479; *In re Storck Lumber Co.*, 114 Fed. 360.

The fact that a bill which prays the appointment of a receiver and the "winding up" of corporation does not specifically ask for a dissolution of the corporation, held (under secs 376 and 377 of the Code of 1904), not to deprive court of its jurisdiction in a suit to set aside fraudulent preferences. Purpose of said sections. Payments held preferences and set aside. *Clark Co. v. Colton*, 91 Md. 203 (decided in 1900). And see dissenting opinion, page 239.

A prior decree of dissolution is essential to the maintenance of a bill by a receiver to set aside an unlawful preference. Prior to the act of 1896, ch. 349, corporations were not within the provisions of the insolvent law. History of this section. *Hughes v. Hall*, 118 Md. 678.

As to preferences under the insolvent laws, see art. 47, secs. 8, 14 and 22.

Generally.

Under the act of 1896, ch. 349, receivers of corporations are placed on the same basis as trustees in insolvency of natural persons, and the date of filing the bill is the time fixed to determine the status of the parties affected by it. A depositor is entitled to set off the amount of his deposit against the receivers of an insolvent bank. *Colton v. Drivers' Bldg. Assn.*, 90 Md. 93.