

## CHAPTER 576

## RECEIVERS; PROPERTY OF ABSENTEES

**576.01 RECEIVERS, WHEN AUTHORIZED.**

**HISTORY.** G.S. 1866 c. 66 s. 189; G.S. 1878 c. 66 s. 207; G.S. 1894 s. 5351; R.L. 1905 s. 4262; G.S. 1913 s. 7892; G.S. 1923 s. 9389; M.S. 1927 s. 9389.

1. **Appointment, qualification and removal**
2. **Stockholders' disputes**
3. **Actions and claims**
4. **Foreign receivers**
5. **Liquidation**
6. **Fees**
7. **Generally**

**1. Appointment, qualification and removal**

The statute declaring that a mortgage of real property is not a conveyance so that the mortgagee cannot have possession without foreclosure does not abrogate the power of the court to appoint a receiver of such property in an action of foreclosure when necessary to protect equitable rights of the mortgagee. *Lowell v Doe*, 44 M 144, 46 NW 297.

A receiver should not be appointed in an action for partnership dissolution, unless it is necessary in order to protect the property or the interests of the parties. *Albrecht v Diamon*, 125 M 283, 146 NW 1101.

A receivership remedy is merely ancillary to the main cause of action, and not an independent remedy, and can only be resorted to in a pending action brought to obtain specific relief which the court has jurisdiction to grant. *Red River Growers v Gernardy*, 126 M 440, 148 NW 449.

The appointment of a receiver pendente lite is a matter largely in the discretion of the court. A receiver will be appointed for such purpose only under circumstances requiring summary relief or where the court is satisfied there is imminent danger of loss, and no adequate remedy at law. *Bacon v Engstrom*, 129 M 229, 152 NW 264, 537.

Clauses (3) and (4) of section 576.01 do not limit the general equity power of the court as provided in section 316.05 when proper grounds are made to appear. *Northwestern National v Mickelson*, 134 M 422, 159 NW 948.

A receiver may be appointed in an action to foreclose a mechanic's lien. *Northland v Melin*, 136 M 236, 161 NW 407.

While neither insolvency of the mortgagor nor insufficiency of the security, separately or combined, warrant the appointment of a receiver in a suit to foreclose a real estate mortgage, still appointment may be justified if there is an unjustified appropriation of the rents and profits by the mortgagor. *Donnelly v Butts*, 137 M 1, 162 NW 674.

The agreement created the relation of partners or joint adventurers in a joint enterprise, and in an equitable action for dissolution and accounting neither party was entitled to a jury trial, and it is within the discretionary power of the court to appoint a receiver to carry the court's judgment into effect. *Swanson v Lindstrom*, 151 M 19, 185 NW 950.

Jurisdiction over the property gave the trial court power to remove its agent and appoint another without notice to creditors. While the receiver may not appeal from the order removing him, he may do so on the matter of compensation. In transferring property from the old to the new receiver, the rights of both can be

best protected by application to the trial court, and not by appeal. *Twin Cities v Anderson*, 156 M 502, 195 NW 273.

Application by heirs of deceased copartner for the appointment of a receiver properly denied. *Helgeson v Dart*, 162 M 521, 203 NW 229.

The district court has no power to appoint a receiver in supplementary proceedings to collect unearned salary of debtor. *Knott v Hawley*, 166 M 363, 207 NW 736.

Appointment of receiver to collect rents pending foreclosure not justified. *Smith v Ambassador*, 168 M 437, 210 NW 288.

The appointment of a receiver does not affect the rights of parties who dealt with each other in good faith before notice of the appointment. *Merchants National v State Bank*, 172 M 24, 214 NW 750.

Where a receiver in a mortgage foreclosure action has been appointed ex parte, but the owner thereafter moves the court to vacate the order of appointment and fails to appeal from order denying his motion, the propriety or validity of the appointment cannot be questioned in subsequent proceedings. *Windom National v Reno*, 172 M 193, 214 NW 886.

The selection of a receiver lies with the court appointing him. A general creditor, by virtue of the power of equity or by virtue of section 576.01, has a standing before the court equal to that of a judgment creditor who has exhausted his legal remedies as contemplated by section 316.05, except as to the burden of proof. *O'Brien v Bay Lake*, 173 M 495, 217 NW 940.

While the appointment ex parte of a temporary receiver is often a drastic measure, and should be cautiously made, if at all, the propriety of making such an appointment is in a measure within the discretion of the trial court; and in the instant case, the court properly protected (1) minority stockholders against the alleged fraud of the majority; and (2) preferred stockholders with no voting power. *Schmid v Ballard*, 175 M 138, 220 NW 423.

Without proof of the insolvency of the mortgagor or the inadequacy of the security, the non-payment of taxes, not shown to jeopardize the title of the security during the year of redemption, does not warrant the appointment of a receiver in an action to foreclose a mortgage. *Minnesota Loan v Murphy*, 176 M 71, 222 NW 516.

The appointment of the receiver was a judicial declaration of the insolvency of the corporation. *Miller v Ahneman*, 183 M 17, 235 NW 622.

In an action by creditors to reach certain property in the possession of Allison, which property was formerly owned by plaintiffs' debtors, for the appointment of a receiver, and to have Allison adjudged a trustee of the fur farm for the benefit of plaintiffs, the evidence is insufficient, and it was error in the trial court to appoint a receiver. *Asleson v Allison*, 188 M 499, 247 NW 579.

The trial court did not abuse its discretion in refusing to appoint a receiver for debtor's nonexempt property disclosed in an examination in supplementary proceedings. *Ginsberg v Davis*, 191 M 12, 252 NW 669.

Where properties are owned in common, and owners are in a snarl, as in the instant case, the district court has jurisdiction, within its discretion, to appoint a receiver. *Schultz v Brennan*, 195 M 309, 262 NW 877.

The trial court rightfully denied the petition of the mortgagee for the appointment of a receiver pending foreclosure. *House v Anderson*, 197 M 283, 266 NW 739.

A district court has the power to appoint a receiver "ex parte" in cases of extreme emergency. The facts pleaded in this case do not show such an emergency as to warrant the appointment of a receiver to take over the assets of a high-rate loan agency, without a hearing thereon. *State ex rel v District Court*, 204 M 415, 283 NW 738.

The court has jurisdiction of the doings of the receiver appointed pending foreclosure, which jurisdiction continues after the sale; and it was error on the part of the trial court in refusing to grant the motion to require an accounting by the receiver. *Fredin v Cascade Realty*, 205 M 256, 285 NW 615.

In view of the provisions of the usury statutes and the breach of same by the loan agency, the court did not err in retaining the receiver in custody of the evi-

# MINNESOTA STATUTES 1945 ANNOTATIONS

3843

## RECEIVERS; PROPERTY OF ABSENTEES 576.01

dence notes and documents pertaining to defendant's usury business pending the outcome of the trial. *State ex rel v O'Neil*, 205 M 366, 286 NW 316.

Creditor's bill in equity; necessity of judgment at law and return of execution thereon as condition precedent. 15 MLR 593.

In voluntary dissolution under the Minnesota business corporation act. 18 MLR 11.

Right of minority stockholders to have a receiver appointed. 19 MLR 703.

### 2. Stockholders' disputes

Where those in charge of the management of a corporation misapply the corporate assets and divert them to their own private use, a minority stockholder may maintain action to compel restoration, and to restrain such misconduct in the future, and incident to such relief, in a proper case, procure the appointment of a receiver. *Tasler v Peerless Tire Co.* 114 M 150, 174 NW 731.

In this action by a stockholder for the appointment of a receiver, and accounting of the affairs of the corporation and of the stewardship of one of the officers, the trial court rightly appointed a receiver. *Owens v Owens*, 167 M 468, 210 NW 59.

It was error to appoint a receiver where there was no showing of insolvency, no shares of stock issued or subscribed for, and no clear right of recovery on the part of the applicant shown. *Congress Garage v Nelson*, 157 M 224, 195 NW 922.

Showing of controversy between stockholders as to their respective interests and concerning profits alleged to have been appropriated by one of them, but no showing of mismanagement or insolvency does not justify appointment of a receiver. *Owens v Owens*, 161 M 6, 200 NW 845.

In the absence of imminent danger of loss or need of summary relief, a receiver should not be appointed for a solvent corporation on the petition of stockholders owning 31 of the 2,000 shares, even though three of the ten directors, and one of the three liquidating committeemen were indebted to the corporation. *Zwick v Security State Bank*, 186 M 311, 243 NW 140.

### 3. Actions and claims

On an appeal from an order assessing stockholders, it is too late to raise objections to the appointment of the receiver which should have been made in opposition to that appointment or by motion directly attacking it. *Re Southwestern Minnesota Land Co.* 162 M 83, 202 NW 69.

Plaintiff deposited money with the equity cooperative exchange under an agreement that it would hold the same as a bailee or trustee for the purpose of paying margins on trades. \$1,000 was not used for the purpose. This amount was in trust, and the claim against the receiver of the exchange is preferred. *Stabbert v Manohan*, 163 M 214, 203 NW 611.

Since the receiver has no greater right than has the defendant in this receivership proceeding, he cannot assert that the rights of the creditors have intervened to defeat a claim of duress and undue influence. *Winget v Rockwood*, 69 F(2d) 326.

When receivers take over mortgaged real estate for the benefit of their trust estate, they are ordinarily obliged to pay current taxes as they accrue, whether the taxes are mere charges against and liens upon the property, or are the personal obligations of the owners. *Hennepin County v M. W. Savage Co.* 83 F(2d) 453; 299 US 555.

Preferences in prereceivership claims in equity receivership. 15 MLR 261.

### 4. Foreign receivers

A receiver appointed by a Texas court to wind up the affairs of a dissolved Texas corporation to sue in the courts of this state as a matter of comity. His rights are subordinate to those of local creditors. The validity of claims and fees

allowed by the Texas court cannot be questioned in the instant case. *Woodward v Sonnesyn*, 162 M 397, 203 NW 221.

The rule is well settled that courts have no visitatorial powers over foreign corporations. Visitation means the act of examining into the affairs of the corporation, a power belonging exclusively to the state wherein the corporation is created; but in the instant case, the corporation being dead, and the two delinquent officials living in Minnesota and in possession of the assets, which assets are a trust fund for creditors and subject to the rights of creditors, it was error to refuse to appoint a receiver. *Lind v Johnson*, 183 M 241, 236 NW 317.

The management of a foreign corporation having been found diligent, efficient, and honest, mistakes corrected and not liable to be repeated, the business being large, going, and solvent, it is not an abuse of discretion to refuse to appoint a receiver to wind up its business. *Barrett v Smith*, 183 M 431, 237 NW 15.

Appointment of local receiver for a foreign corporation to marshal and distribute corporate assets within the state. 16 MLR 205.

### 5. Liquidation

Although one of the receivers was an officer of the bank who was interested in the purchase of the assets where a large profit was made, there was no actual fraud, and the sale was an advantageous one as the situation appeared at the time of the sale. The trustee in bankruptcy is not entitled to accounting and relief against the receivers. *Skellett v Cascade Fruit*, 157 M 78, 195 NW 770.

When the receiver is selling all the assets for \$26,500 to be paid for by surrender of receiver's certificates in that amount, a bond in the sum of \$10,000 is sufficient. *Sibley Bank v Crescent Mill*, 61 M 360, 201 NW 618.

The court may authorize a receiver to operate a private business temporarily, and in the absence of secured creditors, authorize the receiver to borrow money on receiver's certificates. *Sibley Bank v Crescent Milling Co.* 161 M 360, 201 NW 618.

The receiver is an officer of the court and subject to his control. His possession is the possession of the court. Whatever he does under the order of the court regarding property in his hands is the act of the court. The rule that money paid voluntarily cannot be recovered by the payer does not prevent the court from ordering the receiver to refund money so paid. *Peterson v Darelius*, 168 M 365, 210 NW 38.

Failure to comply with order to convey property to receiver is contempt of court. *Wilkins v Corey*, 172 M 102, 214 NW 776.

Section 511.01, making a chattel mortgage void as to creditors unless recorded, does not apply to general creditors but to such as are armed with process or to a receiver representing creditors and vested with the right to attack. It is not enough that the plaintiff be a receiver, as in the instant case, who has merely succeeded to the property and rights of the debtor. *Munck v Security Bank*, 175 M 47, 220 NW 400.

In this receivership, the evidence is insufficient to sustain the order of the trial court surcharging the receiver's account. *Re Fairmont Auto Co.* 191 M 603, 254 NW 907.

### 6. Fees

The receiver not being appointed under General Statutes 1913, Chapter 90 (inoperative at present), the limitations placed upon fees therein do not apply. The court could therefore allow what the services were reasonably worth. *Lamb v Canton Grain Co.* 158 M 256, 197 NW 487.

An allowance of attorney's fees will not be interfered with in appellate court because in violation of the rules of the district court, nor because the attorneys in question were employed by creditors as well as receiver, there being no showing that the interests of such creditors were not identical with those of the receiver. *Proctor & Gamble v Dry Clnrs.* 171 M 113, 213 NW 550.

# MINNESOTA STATUTES 1945 ANNOTATIONS

3845

RECEIVERS; PROPERTY OF ABSENTEES 576.07

Ordinary duties of receiver are to preserve property during receivership proceedings, and all expenses as well as compensation for his services are payable as a first charge out of the income from the property, if any, or if not, out of the property itself. *Bartlett v Humiston*, 173 M 10, 216 NW 252.

No abuse of discretion in allowance of the fees of receiver's attorney. *Re Hill Furniture Co.* 173 M 619, 216 NW 784; *Todd v Hjermstad*, 185 M 44, 240 NW 110.

The general counsel's services in procuring reduction of taxes were within the services covered by agreement for which attorney was compensated by his regular salary, and he was not entitled to an allowance from receivership estate for those services. *Mitchell v Whitman*, 94 F(2d) 917.

## 7. Generally

The trust deed authorizes the trustee on default to take possession and operate. The "receivers" mentioned are not technical receivers to be appointed by the court, but the receivers of the trustees. *Rice v St. Paul & Pacific*, 24 M 464, 478.

The homestead rights of mortgagors in the mortgaged property are subject, in case of receivership, to the ordinary legal and equitable rights of the mortgagees as such. *Lowell v Doe*, 44 M 144, 46 NW 297.

Default in the payment of instalments of principal due under a mortgage and in payment of taxes and insurance premiums, coupled with cessation of the mortgagor's business and serious neglect and waste in the maintenance of the mortgaged property, justified the appointment of a temporary receiver pending foreclosure for the instalments of principal. *National Guardian v Schwartz*, 217 M 288, 14 NW(2d) 347.

### 576.02 COURT MAY ORDER DEPOSIT OR SEIZURE OF PROPERTY.

HISTORY. G.S. 1866 c. 66 ss. 190, 191; G.S. 1878 c. 66 ss. 208, 209; G.S. 1894 ss. 5352, 5353; R.L. 1905 s. 4263; G.S. 1913 s. 7893; G.S. 1923 s. 9390; M.S. 1927 s. 9390.

Any interest earned by money on deposit with the clerk inures to the person making the deposit and should be paid to him on withdrawal of the deposit. OAG Dec. 16, 1944 (144b-18).

### 576.04 ABSENTEES; POSSESSION, MANAGEMENT, AND DISPOSITION OF PROPERTY.

HISTORY. 1925 c. 262 s. 1; M.S. 1927 s. 8080-1; 1937 c. 27 s. 1.

Laws 1925, Chapter 262, providing a method for the conservation of the property of persons who abscond or disappear is cumulative and not a bar to administration by the probate court upon the estate of one who has been absent for seven years or more under such circumstances as to raise the presumption of death. *Bornemann v Ofsthun*, 175 M 493, 221 NW 876.

### 576.05 WARRANT; SHERIFF TO TAKE POSSESSION OF PROPERTY; FEES AND COSTS.

HISTORY. 1925 c. 262 s. 2; M.S. 1927 s. 8080-2.

### 576.06 NOTICE OF SEIZURE; APPOINTMENT OF RECEIVER; DISPOSITION OF PROPERTY.

HISTORY. 1925 c. 262 s. 3; M.S. 1927 s. 8080-3.

### 576.07 PUBLICATION OF NOTICE.

HISTORY. 1925 c. 262 s. 4; M.S. 1927 s. 8080-4.

# MINNESOTA STATUTES 1945 ANNOTATIONS

## 576.08 RECEIVERS; PROPERTY OF ABSENTEES

3846

### 576.08 HEARING BY COURT; DISMISSAL OF PROCEEDING; APPOINTMENT AND BOND OF RECEIVER.

HISTORY. 1925 s. 262, s. 5; M.S. 1927 s. 8080-5.

### 576.09 POSSESSION OF PROPERTY BY RECEIVER.

HISTORY. 1925 c. 262 s. 6; M.S. 1927 s. 8080-6.

### 576.10 ADDITIONAL PROPERTY; RECEIVER TO TAKE POSSESSION.

HISTORY. 1925 c. 262 s. 7; M.S. 1927 s. 8080-7.

### 576.11 WHERE NO CORPOREAL PROPERTY; RECEIVER; BOND.

HISTORY. 1925 c. 262 s. 8; M.S. 1927 s. 8080-8.

### 576.12 CARE OF PROPERTY; LEASE; SALE.

HISTORY. 1925 c. 262 s. 9; M.S. 1927 s. 8080-9.

### 576.13 USE OF PROCEEDS.

HISTORY. 1925 c. 262 s. 10; M.S. 1927 s. 8080-10; 1937 c. 27 s. 2.

### 576.14 CLAIMS; ADJUSTMENT BY RECEIVER.

HISTORY. 1925 c. 262 s. 11; M.S. 1927 s. 8080-11.

### 576.15 COMPENSATION OF RECEIVER; TITLE OF ABSENTEE LOST AFTER TEN YEARS.

HISTORY. 1925 c. 262 s. 12; M.S. 1927 s. 8080-12.

### 576.16 DISTRIBUTION OF BALANCE OF PROPERTY.

HISTORY. 1925 c. 262 s. 13; M.S. 1927 s. 8080-13.