Volume 38 | Issue 3 Article 14

April 1932

Insane Persons--Receivers

Donald F. Black
West Virginia University College of Law

private property for other than public uses is denied, the erection of the screen for other than a highway, or other public purpose would be wrongful.[4] But, regardless of whether the state owned the highway in fee or had only an easement, the screen would violate such abutter's rights as means of access and right of view, which can be interfered with only by reasonable highway regulations.[5]

The anxiety of the state to remove billboards is to be commended, but the means employed to remove them is perhaps not so praiseworthy, inasmuch as it creates two undesirable structures instead of one. A better approach to the difficulty would seem to be by billboard legislation. The modern trend of decisions upon zoning ordinances and billboard legislation would lead one to believe that at least a mild legislative enactment regulating the place and kind of billboards erected and placing a license tax upon the same would be sustained.[6] Courts may still refuse to give verbal support to aesthetic considerations and hunt for fanciful and fictitious grounds to sustain such legislation, but it seems that the time is not far ahead when courts will openly recognize that some obnoxious sights are just as objectionable as obnoxious sounds or odors and will then go the limit in sustaining legislation directed primarily at aesthetic purposes.

—JOHN HAMPTON HOGE.

INSANE PERSONS — RECEIVERS. — July 1, 1931, W. E. Templeman was adjudged of unsound mind and committed to an asylum. From this judgment he appealed. There was a refusal by the proper authority to appoint a guardian for Templeman until the appeal had been decided. Pending its decision his eleven year old daughter, on July 8, 1931, filed a petition to have the court appoint a receiver for her father's estate. She alleged that the insane man's estate was being dissipated and was falling into

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[4] Secombe v. Milwaukee Ry. Co., 23 Wall. 108, 23 L. Ed. 67 (1874); Hentch v. Pritt, 67 W. Va. 270, 57 S. E. 808 (1910).

[5] McCaffrey v. Smith, 41 Hun. (N. Y.) 117 (1886); Hyde v. Minnesota Ry., 29 S. D. 220, 136 N. W. 92 (1912); See DILLON, *op. cit. supra* n. 3, §§ 1126, 1166, 1167, 1245; ELLIOTT: ROADS AND STREETS (4th ed. 1926) §§ 882, 883.

[6] See Goodrich, *Billboard Regulation* (1928) 17 CAL. L. R. 120.

ruin. The court refused to appoint the receiver, two justices dissenting. *Templeman v. Templeman.*[1]

In early English practice idiots and insane persons were the wards of the king, and were cared for through the keeper of his conscience, the chancellor. The chancery courts were accustomed to appoint receivers for the estates of lunatics at that time. This practice prevailed in England and the early American colonies, until by statute the care of lunatics was entrusted to special tribunals.

A few states today provide for the appointment of a receiver for the lunatic's estate in certain special cases.[2] An early Pennsylvania case held, if after inquest to determine the sanity or insanity of a person there is danger of the property being dissipated or lost before a proper committee or guardian can be appointed, the court can appoint a receiver.[3]

The principal case falls squarely within this latter rule, but the court in compliance with statute and *stare decisis,* held that a receiver could not be appointed. The code provided that except in clear and urgent cases receivership should not be resorted to.[4] The decision cited held that the appointment of a receiver being a harsh remedy it should not be resorted to except when the interests of creditors were exposed to manifest peril.[5] The plaintiff not being a creditor nor having any interest in her father's estate was refused her request.

The West Virginia court has held that the county court can appoint a committee to care for the lunatic and his estate, before a final adjudication that such person is insane.[6] This obviates the need for a receiver.

It was the practice for courts of equity to exercise jurisdiction over insane persons prior to statutes making them the wards of special tribunals, and there seems no reason why they should not still exercise this power in situations which are not covered by statute. Protection should be given the insane person's estate *pendente lite.*

As a general rule appointment of a receiver cannot *per se* be the subject of an action at law or a suit in equity. Such ap-

[1] 161 S. E. 261 (Ga. 1931).
[2] In the Matter of Rachel Colvin, 3 Md. Ch. 278 (1851); N. C. CODE ANN. (Michie, 1927) § 2285. See *In re* Hybart, 119 N. C. 359, 25 S. E. 693 (1896).
[3] In the Matter of Kenton, 5 Binn. 613 (Pa. 1813).
[4] GA. CIVIL CODE (1910) § 5477.
[5] Dixon v. Tucker, 167 Ga. 783, 146 S. E. 736 (1929).
[6] Doak v. Smith, 93 W. Va. 133, 116 S. E. 691 (1923).

pointment is provisional and ancillary to the main action. There is some authority, however, that the case of lunatics is an exception to this general rule.[7]

The plaintiff in the principal case would be a proper party in interest, to seek appointment of a guardian for her father, and to request the appointment of a receiver *pendente lite,* as ancillary to the suit for such appointment.[8]

—DONALD F. BLACK.

TAXATION — UNEARNED FIRE INSURANCE PREMIUMS AS DEDUCTIBLE INDEBTEDNESS. — A county assessor refused to deduct $433,721 in unearned premiums in making the return for the assessment of taxes of a domestic fire insurance company. Upon suit by the company to effect such a deduction, the decision of the assessor was upheld by the Board of Equalization and Review, the Circuit Court, and the Supreme Court of Appeals. *Wheeling Fire Insurance Company v. Board of Equalization and Review.*[1]

The point involved is whether the state taxation laws permit a domestic fire insurance company to deduct unearned premiums from its tax return as being within a statute permitting a deduction of any "indebtedness" from the return.[2] On payment to a fire insurance company of unearned premiums, the money becomes the absolute property of that company (on the theory that the entire premium is considered as becoming due and earned when the risk attaches) subject to a double contingency — the option of the policyholder to cancel the contract and call for the unearned premiums at any time, and the possibility of destruction of the insured premises by fire — the occurrence of either at any time creating an obligation to return such premiums.[3]

A state law requiring fire insurance companies to report an-

[7] CLARK ON RECEIVERS (2d ed. 1929) § 51, Price v. Banker's Trust Co., 178 S. W. 745 (Mo. 1915).

[8] State v. Dickman, 175 Mo. App. 543, 157 S. W. 1012 (1913).

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[1] 161 S. E. 427 (W. Va. 1931).

[2] W. VA. REV. CODE (1931) c. 11, art. 5, § 6.

[3] 5 COOLEY'S BRIEFS ON INSURANCE (2d ed. 1927) 4630-4639; 2 *id.* 1736 and cases there cited; VANCE ON INSURANCE (2d ed. 1930) 264-265, 318-324. While the right to cancel cannot exist unless the policy so provides, practically all policies contain a clause giving either party the right to cancel the contract upon a stipulated notice; and if the company cancels, notice of cancellation is ineffective unless accompanied by a tender of the unearned premiums. VANCE, *op. cit. supra,* 778, n. 67 and cases there cited.