tort actions between husband and wife will disturb domestic relations. But see McCurdy, Torts between Persons in Domestic Relation, 43 Harv. L. Rev. 1030, 1033 (1930). Courts convinced that the antiquated rule of immunity between husband and wife is no longer justifiable may indirectly limit its operation by imposing liability upon the master.

Bankruptcy—Quo Warranto—Possession of State Court Receiver Obtained before the Four Month Period—[Federal].—The Brictson Manufacturing Company, a South Dakota corporation, carried on the major part of its business in Nebraska. In 1921 a group of minority stockholders brought a dissolution proceeding in a federal district court in Nebraska, alleging that the corporation was formed to defraud its stockholders. The court thereupon appointed a receiver to take possession of all the assets of the corporation. Although the circuit court of appeals reversed the decision of the district court and subsequently issued two successive writs of mandamus, the district court failed to order the receiver to return the property in his possession to the corporation. *Brictson v. Close*, 280 Fed. 297 (C.C.A. 8th 1921); *Brictson v. Woodrough*, 284 Fed. 484 (C.C.A. 8th 1922); *id.*, 289 Fed. 1020 (C.C.A. 8th 1923). In 1923 the Nebraska attorney-general instituted quo warranto proceedings to oust the Brictson Company from doing business as a foreign corporation in Nebraska. In 1926 the Nebraska supreme court appointed trustees to take possession of the corporation's Nebraska assets, distribute them to the corporation's creditors, and, if the corporation were still solvent, return the balance "to those thereto entitled." *State ex rel. Att'y-Gen'l v. Brictson*, 114 Neb. 341, 207 N.W. 664 (1926). The state court trustees' efforts to obtain this property from the federal receiver culminated in his intervention in the hearing on the receiver's report, upon which the circuit court revised its mandate and ordered the receiver to turn over the assets in his possession to the state court trustees rather than to the corporation. *Brictson Mfg. Co. v. Close*, 25 F. (2d) 794 (C.C.A. 8th 1928). The assets were actually transferred in September, 1929, after the corporation's creditors had filed a petition in bankruptcy against the corporation in August.

The trustee in bankruptcy, Engebretson, made several abortive attempts to obtain the property from the state court trustees before 1933, at which time he unsuccessfully resorted to a summary proceeding in the bankruptcy court. *Marcell v. Engebretson*, 74 F. (2d) 93 (C.C.A. 1934); *cert.* denied, 296 U.S. 579 (1934). The present action is a plenary suit in equity in which Engebretson as plaintiff claimed: (1) that the previous decision determined only that the state court trustees had more than a colorable claim; (2) that the defendants do not hold the property adversely to the corporation; (3) that therefore, as trustee in bankruptcy, he is entitled to this property as property in the constructive possession of the bankrupt. *Held*, the retention of this property by the federal receiver until after the petition in bankruptcy had been filed was wrongful; therefore, these assets were in the constructive possession of the state court trustees from the time of their appointment. This possession being adverse to the corporation and having commenced more than four months before the filing of the petition, the state court acquired jurisdiction to administer these assets free from interference by other courts. *Engebretson v. Marcell*, 84 F. (2d) 315 (C.C.A. 8th 1936), *cert.* denied, Sup. Ct. Serv. 809, no. 210 (Oct. 12, 1936).

Liens obtained by creditors more than four months before the filing of a petition in bankruptcy are not voidable under section 67f of the Bankruptcy Act. 30 Stat. 544,

564 (1898); 11 U.S.C.A. § 107f (1927); 2 Collier, Bankruptcy 1506 (13th ed. 1923). Thus where a creditor's suit in a state court results in the appointment of a receiver who takes possession of property of the bankrupt before the beginning of the four months period, this possession is superior to the claims of the trustee in bankruptcy. *Frazier v. Southern Loan Co.*, 99 Fed. 707 (C.C.A. 4th 1900); 5 Remington, Bankruptcy § 2057 (3d ed. 1923). This result obtains even though the receiver takes possession for the benefit of all creditors who might later intervene, rather than for the particular creditors instituting the suit. *Clements v. Conyer*, 32 F. (2d) 5 (C.C.A. 7th 1929); *Blair v. Brailey*, 221 Fed. 1 (C.C.A. 5th 1915); *Neely v. McGehee*, 2 F. (2d) 853 (C.C.A. 5th 1923). This possession of the state court receiver has been interpreted as an equitable attachment, thus likening it to an ordinary judgment lien. Williston, Effect of a National Bankruptcy Law, 22 Harv. L. Rev. 547, 562 (1909). Where, however, a state court receiver obtains possession of the bankrupt's property more than four months before bankruptcy as a result of a stockholder's bill for dissolution of a corporation, courts have usually required the receiver to transfer property so held to the trustee in bankruptcy. *Bank of Andrews v. Gudger*, 212 Fed. 49 (C.C.A. 4th 1914); *Miller v. Potts*, 26 F. (2d) 851 (C.C.A. 6th 1928); *In re Mullings*, 238 Fed. 58 (C.C.A. 2d 1916). It is to be noted that in none of these cases had any creditors actually filed claims with the receiver appointed to effectuate the dissolution. See *In re Knox Coal Co.*, 50 F. (2d) 248 (D.C. Ind. 1931). Thus in a case in which creditors had actually filed claims with the receiver more than four months before bankruptcy, the court denied the superiority of the claim of the trustee in bankruptcy to this property. *Cohen v. Mirviss Co.*, 178 Minn. 20, 226 N.W. 198 (1929), noted in 14 Minn. L. Rev. 658 (1930).

Several reasons may be suggested for arriving at one result when the receivership is sought by a creditor, and at the opposite result when a stockholder is seeking the appointment of a receiver. It has been argued that a stockholder should not be able to deprive creditors of their right to federal bankruptcy jurisdiction. *Bank of Andrews v. Gudger*, 212 Fed. 49, 54 (C.C.A. 4th 1914). But this argument applies equally to a receivership resulting from a suit by one creditor where other creditors wish to obtain bankruptcy jurisdiction; yet most creditors' receiverships upheld result from a single creditor's suit. Since the state court receiver in any case must pay off creditors before turning over any property to the corporation or its stockholders, it seems clear that any distinction between a creditor's suit and a stockholder's bill for dissolution must be based on the difference in the plaintiffs. This difference cannot be resolved in terms of the adverse nature of the receiver's claim as the test of whether a claim is adverse has been applied primarily to determine whether the bankruptcy court should exercise summary jurisdiction over one asserting a property right. The courts have apparently decided the present question as one of competing jurisdiction rather than one presenting substantial property rights. They have upheld only those receiverships which result from actions brought more than four months prior to bankruptcy by plaintiffs sufficiently hostile to the corporation. See *Griffin v. Lenhart*, 266 Fed. 671, 674 (C.C.A. 4th 1920). Since this can be determined equally well by a summary or plenary proceeding, the court in the instant case properly considered itself bound by its previous decision in the summary proceeding.

Conflict of Laws—Statutory Construction—Tort and Conveyance Aspect of Transfers of Foreign Land—[Federal].—A *foreign* corporation doing business in New York