rectly violate any postal regulation.[20] Since the application of these remedies is discretionary with government officers, no mandamus would lie to compel them to act.[21] But the existence of these remedies, together with the opportunity of insuring or registering may indicate that Congress did not intend to provide further protection to third parties by allowing suit on a postmaster's bond.

Receivers—Jurisdiction to Appoint as Means of Abating Usury—Use of Receiver to Obtain Evidence—[Minnesota].—An action was brought by a Minnesota county attorney to enjoin the defendant from conducting a small loan business wherein the usury law was allegedly continually violated, and to secure the appointment of a receiver of the defendant's business pendente lite. Usury is not a crime in Minnesota, but civil penalties are attached by statutes which provide that usurious notes may be canceled and any action thereon enjoined,[1] and that usurious interest paid to the lender may be sued for by the borrower, collected by an officer of the court, and remitted, one-half to the borrower, and one-half to the treasurer of the county in which the act of usury was committed.[2] *Held*, the defendant's repeated violation of the statutes constituted an enjoinable public nuisance,[3] a proper ancillary remedy for which was the appointment of a receiver pendente lite of the defendant's business' assets and records. Judgment for the plaintiff affirmed, with two justices dissenting. *State ex rel. Goff v. O'Neil.*[4]

The court granted a receivership of all of the defendant's business assets and records, on the theory that there was threatened impairment of the county's specific claim to usurious interest theretofore paid to the defendant. The legal justification for this holding is not apparent. Ordinarily the remedy of receivership is denied a simple contract creditor[5] in order "to protect . . . . debtor[s] from the too hasty onslaught of . . . . impatient creditor[s]."[6] It seems clear that the state has even less of an interest than that of a simple contract creditor, since it can maintain no direct action against the usurer.[7]

[20] The postmaster was subsequently promoted. Postal Laws and Regulations of 1932, ¶I § 777(2), reads: "Where a person requests delivery to him of mail of another claiming that the addressee has verbally given him authority to receive it, the postmaster, if he doubts the authority, may require it to be in writing, signed and filed in his office." The postmaster might have delivered the mail to the dealer without violating this regulation.

[21] United States ex rel. Chicago G. W. R. v. ICC, 294 U.S. 50 (1935).

[1] Minn. Stat. (Mason, 1927) § 7040.

[2] Minn. Stat. (Mason, 1927) § 7037.

[3] Commonwealth ex rel. Grauman v. Continental Co., 275 Ky. 238, 121 S.W. (2d) 49 (1938); State ex rel. Beck v. Bashan, 146 Kan. 181, 70 P. (2d) 24 (1937); State ex rel. Smith v. McMahon, 128 Kan. 772, 280 Pac. 906 (1929), noted in 30 Col. L. Rev. 125 (1930), 15 Cornell L. Q. 472 (1930), 28 Mich. L. Rev. 939 (1930), 39 Yale L. J. 590 (1930). Contra: People ex rel. Stephens v. Seccombe, 103 Cal. App. 306, 284 Pac. 725 (1930); Means v. State, 75 S.W. (2d) 953 (Tex. Civ. App. 1934). In the instant case the court attempted to distinguish the Stephens and the Means cases.

[4] 286 N.W. 316 (Minn. 1939).

[5] Minn. Stat. (Mason, 1927) § 9389 (1); 1 Clark, Receivers § 180 (2d ed. 1929).

[6] Use of Receiverships to Enforce Restrictive Regulations of Oil Production, 43 Yale L. J. 1156, 1161 (1934).

[7] Minn. Stat. (Mason, 1927) § 7037.

The county attorney further argued that a receivership of the defendant's negotiable instruments was needed in order to protect the makers of the usurious notes from being deprived of their defense of usury by negotiation of the notes. This argument is sound only in a jurisdiction in which a bona fide purchaser of a negotiable instrument takes free of the defense of usury.[8] In a jurisdiction in which a usurious note is "void," on the other hand, a receivership of a usurer's negotiable assets may be necessary to protect persons to whom the usurer might otherwise negotiate the notes for value and without notice of the usury. Whether or not one or the other of the foregoing arguments will be prima facie sufficient to induce a court to appoint a receiver of an alleged usurer's negotiable assets will depend on the view that the court takes of its power to mold equitable remedies to new cases.[9] In jurisdictions denying an injunction by the state against the negotiation of usurious notes a receivership will probably be denied.[10] In jurisdictions in which receiverships have been granted on the broad ground of protecting the public interest,[11] the outcome is doubtful.

Assuming, however, that by statute[12] or as a matter of equity jurisprudence,[13] a state agency has sufficient interest to demand a receivership, it becomes pertinent to inquire whether there is any constitutional objection to granting a receivership on facts analogous to those in the principal case. Mr. Justice Stone, in his dissent,[14] advanced one such objection when he maintained that the principal purpose of the receivership of the defendant's entire business assets and records was to procure evidence in advance of trial. The procuring of evidence might undoubtedly be a purpose of a receivership of a usurer's assets and records, inasmuch as all property in the hands of a receiver is in the custody of the court[15] and inasmuch as all court records are open to the public.[16] Access to the defendant's books and records was not useful to the county in the present case since the county had to make a prima facie showing that the de-

[8] Under statutes similar to Minn. Stat. (Mason, 1927) § 7040, providing that usurious notes may be declared void and any action thereon enjoined, courts reach varying results. Cases holding that a bona fide purchaser may not maintain an action are: Whitaker v. Smith, 255 Ky. 339, 73 S.W. (2d) 1105 (1934); see Woodward v. Madsen, 215 N.Y.S. 279, 127 Misc. 19 (1926); Durgin v. Mercantile Acceptance Co. 167 Minn. 330, 209 N.W. 5 (1926). Cases permitting a bona fide purchaser an action are: Brown v. Guaranty Mortgage Co., 220 Cal. 532, 31 P. (2d) 788 (1934); Connon v. Goebel, 217 Cal. 399, 18 P. (2d) 931 (1933); Guaranty Investment and Loan Co. v. Stephens, 161 Miss. 473, 137 So. 335 (1931); Motor Contract Co. v. Van Volgan, 162 Wash. 449, 298 Pac. 705 (1931); Davenport v. Kendrick, 148 Va. 479, 139 S.E. 295 (1927); Hamilton v. Fowler, 99 Fed. 18 (C.C.A. 6th 1899).

[9] In all states courts are permitted to appoint receivers in accordance with existing equity practice either by statutory provisions similar to Minn. Stat. (Mason, 1927) § 9389 (4), or by the customary equity jurisdiction to administer justice in new types of cases described by Lord Chancellor Cottenham in Taylor v. Salmon, 4 Myl. & C. 134, 141 (Ch. 1838).

[10] 1 Clark, Receivers § 51 (2d ed. 1929).

[11] Cf. Milltown Lumber Co. v. Milltown, 150 Ga. 55, 102 S.E. 435 (1920); Columbian Athletic Club v. State ex rel. Mahan, 143 Ind. 98, 40 N.E. 914 (1895).

[12] Minn. Stat. (Mason, 1927) § 7037.

[13] Note 10 supra.

[14] State ex rel. Goff v. O'Neil, 286 N.W. 316, 321 (Minn. 1939).

[15] Peterson v. Darelius, 168 Minn. 365, 368, 210 N.W. 38, 39 (1926); Sibley County Bank v. Crescent Milling Co., 161 Minn. 360, 361, 291 N.W. 618, 619 (1925).

[16] 2 Clark, Receivers § 768 (2d ed. 1929).

fendant was guilty of usury before the receiver was appointed.[17] Such access would, however, be useful to all persons who had civil claims against the defendant, and conceivably would also assist the state in preparing criminal charges against the defendant. It is suggested, however, that the likely usefulness of a general receivership of the defendant's entire business assets and records was not to procure evidence against the defendant, but to obtain the names of persons who had actions[18] for the recovery of usurious interest and to preserve the status quo pending maintenance of such actions. If these were the purposes of the receivership, it is likely that any argument predicated upon the assumption that the receivership might be used to obtain evidence would fail since any receivership might be so employed.

If one assumes, however, that the court would entertain the objection that the receivership was sought in order to obtain evidence, is such a purpose objectionable on constitutional grounds?

One conceivable objection is that a receivership to obtain evidence would constitute an unreasonable search and seizure. It is desirable that the defendant raise this objection, if at all, at the time when a receivership is proposed rather than at the time when someone seeks to introduce evidence obtained from the receiver since at the latter date the objection would not prevail in a jurisdiction in which evidence obtained by illegal search and seizure is admissible.[19] Moreover in some circumstances the determination that a receivership was proper might preclude the defendant from claiming, in a subsequent criminal proceeding, that it constituted an illegal search and seizure.[20] Whenever raised, the objection would probably not prevail since of the few cases discussing the point a majority has held that evidence obtained by or from a receiver is procured under a color of authority, and therefore by a reasonable search and seizure.[21]

Another objection to the appointment of a receivership is that it might result in a denial of the defendant's privilege against self-incrimination. It has uniformly been held[22] that the privilege against self-incrimination does not constitute a valid objection to the admissibility of evidence obtained from a receiver of the assets of the person raising the objection. The theory behind this ruling is that the defendent was incriminated not by himself but by the receiver. It is submitted, however, that these cases need not be followed when a defendant raises the objection before he has turned his assets and records over to the receiver.

The foregoing discussion demonstrates that if the possible constitutional objections to appointment of a receivership are to be raised at all, it may be necessary that they be raised before the receiver has assumed custody of the defendant's entire assets and records. This circumstance may offer one reason for the reluctance of courts to grant receiverships ex parte.[23] In the event that a defendant is given a hearing prior to ap-

[17] 2 Story, Eq. Jur. § 1252 (14th ed. 1918).

[18] Minn. Stat. (Mason, 1927), § 7037.

[19] 4 Wigmore, Evidence § 2183 (2d ed. 1923).

[20] Cf. United States v. Napela, 28 F. (2d) 898 (D.C. N.Y. 1928).

[21] People v. Bain, 359 Ill. 455, 195 N.E. 42 (1935); Paper v. United States, 53 F. (2d) 184 (C.C.A. 4th 1931); People v. Paisley, 288 Ill. 310, 123 N.E. 573 (1919).

[22] People v. Bain, 359 Ill. 455, 195 N.E. 42 (1935); United States v. Hoyte, 53 F. (2d) 881 (D.C. N.Y. 1931); People v. Paisley, 288 Ill. 310, 123 N.E. 573 (1919).

[23] 1 Clark, Receivers § 82 (2d ed. 1929). The court in the O'Neil case distinguished State ex rel. Claude v. District Court, 204 Minn. 415, 283 N.W. 738 (1939), a case in all respects similar to the O'Neil case except that the receivership was granted ex parte. In the Claude case the

pointment of a receiver he might argue that even if he has not made out a clear case of deprivation of constitutional guaranties, the court might exercise its discretion to deny a receivership when the risk that the latter would constitute a "fishing expedition" outweighs the probability that it will preserve rights which might otherwise be lost.[24]

The objection that a receivership will be employed in order to obtain evidence should seldom lead to denial of the remedy in toto. One intermediate position was recognized by the court in the present case when it suggested that the defendant would be permitted to reacquire papers not directly related to the usurious transactions.[25] Although such a remedy might afford slight protection, the alternative of denying the receiver custody of papers upon a showing by the defendant of their incriminatory character would appear to be practicable.[26] Moreover, a receivership of only the negotiable assets of the defendant could scarcely be said to be sought with the intent of discovering evidence. Although such a receivership could not be justified on the ground that it assisted the state in recovering a share in usurious interest paid to the defendant, it would serve to protect either the interests of makers of usurious notes or the interests of persons who purchase the notes for value without notice of the usury. As a final and perhaps most satisfactory alternative it might be desirable to impound the alleged usurer's paper pending termination of suits establishing the rights of all parties arising from the issuance of such paper. This course would protect the rights of third parties and at the same time protect the defendant from a "fishing expedition." That impounding is a more satisfactory remedy than receivership rests on the assumption that the court can deny access to impounded instruments. It might be desirable that temporary impounding be granted ex parte if such a procedure were necessary to avoid negotiation of notes pending final relief.

Res Judicata—Change in Law as Ground for Vacating Injunction—[Washington]. —The Washington legislature enacted a "compensating tax" law, the tax to be levied upon the use of personal property purchased outside the state but used therein.[1] The trial court, on petition of the Pacific Telephone and Telegraph Company, enjoined the state tax commissioners from collecting the tax on the use of articles purchased by the petitioner "outside this state, when such merchandise is not manufactured, and cannot be purchased, in this state. . . ."[2] The injunction was affirmed by the state supreme court on the ground that the tax statute did not render taxable goods neither manufactured nor purchasable in Washington, and that if it did, it would be unconstitutional as constituting an unreasonable burden on interstate commerce.[3] Subsequently, three developments occurred: (1) the state supreme court reversed itself and on an appeal not involving the interstate commerce question, decided that the tax extended

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court held that the facts did not present an emergency justifying an ex parte order. This error was held to be cured in the O'Neil case by two hearings to show cause.

[24] Cf. FTC v. American Tobacco Co., 264 U.S. 298 (1924); Ellis v. ICC, 237 U.S. 434 (1915).

[25] State ex rel. Goff v. O'Neil, 286 N.W. 316, 321 (Minn. 1939).

[26] Manning v. Mercantile Securities Co., 242 Ill. 584, 70 N.E. 238 (1909).

[1] Wash. L. 1935, c. 180, § 4, pp. 726–8, amended by Wash. L. 1937, c. 191, pp. 943–6.

[2] Quotation taken from opinion of Washington Supreme Court, affirming the injunction, Pacific Tel. & Tel. Co. v. Henneford, 195 Wash. 553, 560, 81 P. (2d) 786, 790 (1938).

[3] Pacific Tel. & Tel. Co. v. Henneford, 195 Wash. 553, 81 P. (2d) 786 (1938).