

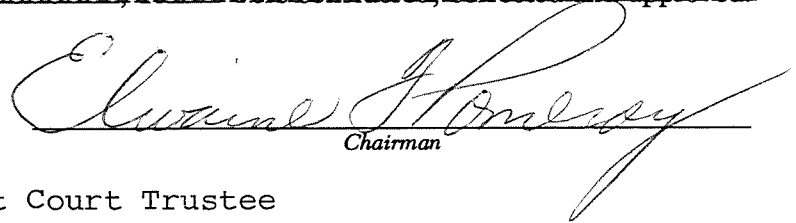
MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 10:00 a. m./~~p.m.~~, on February 1, 1979.

All members were present except: Senators Pomeroy and Gaar

The next meeting of the Committee will be held at 10:00 a. m./~~p.m.~~ on February 2, 1979.

~~These minutes of the meeting held on XXXXXXXXXXXXXXXXXXXXXXXX were considered, corrected and approved.~~



Clarence J. Pomeroy  
Chairman

The conferees appearing before the Committee were:

- Jane T. Roy - Deputy District Court Trustee
- Tom Valentine - Topeka Attorney
- Harold Stones - Kansas Bankers Association
- Jack Euler - Kansas Bar Association

Staff present:

- Art Griggs - Revisor of Statutes
- Jerry Stephens - Legislative Research Department
- Wayne Morris - Legislative Research Department

Senator Steineger presided over the committee meeting, in the absence of the chairman, who was attending a meeting of the Kansas Judicial Council.

Senate Bill No. 74 - Property held in joint tenancy; garnishment.  
Jane Roy testified in support of the bill. A copy of her statement is attached hereto. She stated the bill would operate to the benefit of the Office of the Shawnee County District Court Trustee and the taxpayers of the county.

Tom Valentine testified in support of the bill. A copy of his statement is attached hereto. He stated that recent judicial decisions have created a dangerous situation to all parties concerned in this type of actions. Committee discussion with him followed.

Senate Bill No. 117 - Garnishment authorized for certain temporary orders of support. Jane Roy testified in support of the bill; a copy of her statement is attached hereto. She stated that the bill preserves both judicial discretion and due process. Committee discussion with her followed.

Mr. Valentine testified in support of the bill. Committee discussion with him followed. The committee discussion included contempt proceedings.

Jack Euler, on behalf of the Northeast Kansas Bar Association,  
continued -

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

Minutes of the Senate Committee on Judiciary February 1, 1979.

requested the committee to introduce a bill to provide an additional district judge for the Twenty-second Judicial District. Senator Parrish moved to introduce such a bill and have it referred back to the appropriate committee; Senator Gaines seconded the motion, and the motion carried.

The meeting adjourned.

These minutes were read and approved  
by the committee on 2-20-79.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Judy Terisink	Topeka	KWPC
Tom Valentine	Topeka	
Marvin Umboltz	Topeka	Kan. Credit Union Assn
Charles Henson	Topeka	Kan. Bankers Assn
Harold Stones	"	" " "
Jack Euler	Troy	Kan. Bar Assn.
Jane Roy	Topeka	Deputy District Court Trustee



### THIRD JUDICIAL DISTRICT OF KANSAS

LAURAINE BROOKER, J.D.  
DISTRICT COURT TRUSTEE

JANE T. ROY, J.D.  
DEPUTY DISTRICT COURT TRUSTEE

ROOM 207 • SHAWNEE COUNTY COURTHOUSE • TOPEKA, KANSAS 66603 • (913) 295-4090

My name is Jane Roy and I am here to testify in behalf of the Office of Shawnee County District Court Trustee.

We wish to thank the committee for giving us this opportunity to be heard on Senate Bills # 74 and #117.

S. B. #74 would appear to operate to the benefit of our office and the taxpayers who pay support for many of our clients when the person with the duty of support fails in that duty. The bill purports to allow garnishment of the entire proceeds of an account where joint tenants hold interests and have equal access to all proceeds. This seems appropriate since either tenant in that situation could remove the entire amount from the account. The bill also relieves the bank of responsibility. It appears fair to us in that, it should be the responsibility of the joint account holder to protect his own interests in choosing a joint tenant and not the responsibility of the bank/garnishee or the garnishor. It would also eliminate the necessity of pursuing an action to the Supreme Court to determine contribution.

A careful reading of Senate Bill #117 also indicates that it would benefit our office and the taxpayer. One of the biggest problems in our enforcement of support orders is getting the obligor to understand the duty and comply at the outset so that the obligation is performed in a full and timely manner from the time the initial temporary order is made. It would appear that the discretion of the court in dealing with particular problems pending the final decree is preserved by requiring that the garnishments not issue without proper notice of the support order to the obligor, including notice of the fact that garnishment will follow if it is not paid, and the opportunity for objection to be filed. The pattern of non-payment is often well-set by the time of the decree.

For these reasons we urge further consideration of these bills.

Respectfully submitted,

*Jane T. Roy*  
Jane T. Roy, Deputy  
District Court Trustee

SENATE BILL #74  
February 1, 1979

SENATOR STEINEGER, MEMBERS OF THE COMMITTEE: *This is A complex  
problem which needs Addressing and SB74 does so.*

IN FEBRUARY OF 1978, THE KANSAS SUPREME COURT HANDED DOWN ITS DECISION IN THE CASE OF WALNUT VALLEY STATE BANK v. STOVALL, 223 Kan. 459. THE ISSUE RAISED BY THE CASE WAS THE RIGHT AND EXTENT OF THE RIGHT OF A JUDGMENT CREDITOR TO GARNISH A JOINT TENANCY BANK ACCOUNT TO SATISFY A JUDGMENT AGAINST ONE OF THE JOINT TENANTS.

PRIOR TO THE WALNUT VALLEY CASE, IT HAS BEEN COMMONLY ACCEPTED AMONG THE BAR AND BY THE LOWER COURTS THAT IN A JOINT TENANCY BANK ACCOUNT SITUATION EACH DEPOSITOR HAD COMPLETE AUTHORITY OVER THE ACCOUNT AND UNCONDITIONAL POWER TO WITHDRAW ANY AND ALL PART OF THE ACCOUNT. FURTHER THAT THE BANK WAS OBLIGATED TO PAY ANY PART OR ALL OF THE ACCOUNT TO EITHER DEPOSITER ON DEMAND AND THAT THE CREDITOR OF THE DEFENDANT DEPOSITOR STOOD IN THE SHOES OF HIS DEFENDANT AND WAS ENTITLED TO THE ENTIRE CONTENTS OF THE ACCOUNT.

CONTRARY TO THIS GENERALLY ACCEPTED BELIEF, THE KANSAS SUPREME COURT IN ITS FEBRUARY, 1978, RULING IN THE WALNUT VALLEY STATE BANK CASE PICKED UP ON A LITTLE KNOWN OR OBSERVED SENTENCE AT THE END OF K.S.A. 58-501 AND THE COURT RULED THAT THE GARNISHMENT OF A JOINT TENANCY BANK ACCOUNT SEVERS THE JOINT TENANCY AND CONVERTS THE RELATIONSHIP OF THE PARTIES INTO A TENANCY IN COMMON, CREATING A REBUTTABLE PRESUMPTION OF EQUAL OWNERSHIP BETWEEN THE TENANTS OF THE JOINTLY HELD PROPERTY, PLACING THE BURDEN OF PROOF TO SHOW OTHER THAN EQUAL OWNERSHIP UPON THE PARTY ASSERTING THE CLAIM OF UNEQUAL OWNERSHIP.

THE LANGUAGE RELIED ON BY THE COURT FROM K.S.A. 58-501(c) PROVIDES IN PART "THE PROVISIONS OF THIS ACT SHALL APPLY TO ALL ESTATES IN JOINT TENANCY...AND NOTHING HEREIN CONTAINED SHALL PREVENT EXECUTION, LEVY AND SALE OF THE INTEREST OF THE JUDGMENT DEBTOR IN SUCH ESTATES..." THE COURT ITSELF STATES "THE STATUTE SPECIFICALLY PROVIDES FOR THE RIGHT TO LEVY UPON PERSONAL PROPERTY."

I AM OF THE OPINION THAT THE SUPREME COURT IN ATTEMPTING TO INTERPRET THAT RIGHT HAS SO IMPAIRED THE RIGHT TO LEVY ON JOINT TENANCY BANK ACCOUNTS AS TO HAVE MADE IT DANGEROUS FOR ALL PARTIES. I AM OF THE OPINION THAT THIS WAS IN NO WAY THE SUPREME COURTS INTENTION, NOR DO I BELIEVE THAT IT WAS THE INTENTION OF THE LEGISLATURE TO SO IMPAIR THE REMEDY BY THE ENACTMENT OF K.S.A. 58-501. IF MY INTERPRETATION IS CORRECT, THIS IS MOST

UNFORTUNATE FOR AS A PRACTICAL MATTER WHEN ONE CONSIDERS THE PROPERTY WHICH IS EXEMPT UNDER STATE STATUTE, THE JUDGMENT CREDITOR HAS AS A PRACTICAL MATTER ONLY 2 ASSETS TO PROCEED AGAINST: WAGES, UPON WHICH THERE ARE HEAVY RESTRICTIONS: AND BANK ACCOUNTS.

THE THRUST OF THE UNITED STATES SUPREME COURT DECISION OF SNIADACH v. FAMILY FINANCY RENDERED BY THE UNITED STATES SUPREME COURT IN APRIL OF 1969, WAS THAT THE TAKING OF PROPERTY WITHOUT PRIOR NOTICE AND OPPORTUNITY FOR HEARING CONSTITUTED A TAKING WITHOUT DUE PROCESS OF LAW AS REQUIRED BY THE 14th AMENDMENT. THE SNIADACH DECISION TOOK THE POSITION THAT THE DEFENDANT DURING THE INTERIM PERIOD BETWEEN GARNISHMENT AND THE COURT ORDERING IN FUNDS WAS DEPRIVED OF THE ENJOYMENT OF HIS FUNDS WITHOUT AN OPPORTUNITY TO BE HEARD, AND HENCE THAT THE HOLDING CONSTITUTED A TAKING OF THE PROPERTY WITHOUT PROCEDURAL DUE PROCESS.

THE PROCEDURAL MECHANICS WITH REGARD TO THE GARNISHMENT OF A JOINT TENANCY BANK ACCOUNT ARE THAT FOLLOWING A JUDGMENT BEING RENDERED AGAINST A JUDGMENT DEBTOR AND IT BEING KNOWN FROM THE CLIENT'S RECORDS OR OTHER SOURCES WHERE THE JUDGMENT DEBTOR MAINTAINS A BANK ACCOUNT AND THE JUDGMENT DEBTOR NOT HAVING VOLUNTARILY SATISFIED THE JUDGMENT, THE ATTORNEY FOR THE JUDGMENT CREDITOR FILES A REQUEST FOR NON-WAGE GARNISHMENT WITH THE COURT, REQUESTING THAT A GARNISHMENT ISSUE TO THE NAMED BANK AGAINST THE PROPERTY OF THE CREDITOR'S JUDGMENT DEBTOR. THE INSTITUTION BY STATE STATUTE AND BY THE TERMS OF THE GARNISHMENT ORDER IS BOUND AT ITS JEOPARDY TO IMPOUND ALL FUNDS OF THE JUDGMENT DEBTOR AND HOLD THOSE FUNDS UNTIL FURTHER ORDER OF THE COURT AND IS DIRECTED TO ANSWER THE COURT AS TO ALL FUNDS HELD. THE BANK ANSWERS THE COURT, ADVISING THE FUNDS IT HOLDS IN THE NAME OF THE JUDGMENT DEBTOR, COPIES OF THE ANSWER ARE SERVED BY THE COURT ON THE ATTORNEY FOR THE JUDGMENT CREDITOR, AND UPON THE JUDGMENT DEBTOR. IF THERE IS NO REPLY TO THE ANSWER FILED BY EITHER OF THE NAMED PARTIES WITHIN A 10-DAY PERIOD, CONTROVERTING THE ANSWER, THE ANSWER IS TAKEN AS TRUE AND THE FUNDS ARE SUBJECT TO APPLICATION TO THE JUDGMENT UPON THE ORDER OF THE COURT AT THE BEHEST OF THE JUDGMENT CREDITOR.

UNDER THE INTERPRETATION WHICH HAD BEEN COMMONLY GIVEN TO THE EFFECT OF A GARNISHMENT UPON A JOINT TENANCY BANK ACCOUNT BY THE LOWER COURTS AND BY THE BAR AS A WHOLE, THE EXISTING PROCEDURAL MECHANICS PROVIDED BY STATUTE WORKED WELL AND I AM OF THE OPINION THAT THE SAME WOULD PASS

CONSTITUTIONAL MUSTER. GIVEN THE RULING IN THE WALNUT VALLEY STATE BANK CASE, I AM OF THE OPINION THAT OUR PROCEDURAL MECHANICS ARE WOEFULLY INADEQUATE AND THAT GARNISHMENT UPON A JOINT TENANCY BANK ACCOUNT IS IN ALL PROBABILITY UNCONSTITUTIONAL.

AS THE COUNSEL FOR THE JUDGMENT CREDITOR CANNOT AS A GENERAL RULE KNOW WITH CERTAINTY THAT A DEBTOR'S RELATIONSHIP WITH THE BANK DOES NOT CONTAIN A JOINT TENANCY ACCOUNT, THE SAFE PURSUIT OF THE GARNISHMENT OF BANK ACCOUNTS AS A WHOLE IS ELIMINATED AS A REMEDY.

THE GENERAL BELIEF OF THE BAR SUSTAINED BY THE RULINGS OF THE LOWER COURTS HAD AS PREVIOUSLY NOTED TAKEN THE POSITION THAT IN A JOINT TENANCY BANK ACCOUNT EACH DEPOSITOR GAVE THE OTHER COMPLETE AUTHORITY OVER THE ACCOUNT AND UNCONDITIONAL POWER TO WITHDRAW ALL OR ANY PART OF THE ACCOUNT AND THE BANK WAS OBLIGATED TO PAY ANY PART OR ALL OF THE ACCOUNT TO EITHER DEPOSITOR UPON DEMAND AND THAT THE CREDITOR OF THE DEFENDANT DEPOSITOR STOOD IN THE SHOES OF HIS DEPOSITOR AND AS HIS DEPOSITOR, COULD REACH THE ENTIRETY OF THE ACCOUNT, LIKEWISE SO COULD HIS JUDGMENT CREDITOR. THIS WAS BASED UPON THE FUNDAMENTAL UNDERLYING CONCEPT THAT THE CREATION OF A JOINT TENANCY GAVE THE JOINT TENANT DIMINION OVER THE WHOLE AS TO THE WORLD. AS THE CREATION OF THE JOINT TENANCY GAVE DIMINION OVER THE WHOLE AS TO THE WORLD, IT ALSO GAVE OWNERSHIP TO THE JOINT TENANT OVER THE WHOLE AS TO THE WORLD. IT WAS ONLY BETWEEN THE PARTIES THEMSELVES THAT QUESTIONS OF PROPORTION OF OWNERSHIP COULD ARISE. AS EACH PARTY OWNED THE WHOLE AS TO THE WORLD, NOTICE TO ONE WAS NOTICE TO THE OWNER, AND HENCE CONSTITUTIONALLY SUFFICIENT.

THE INSTITUTION LEVIED UPON IS BOUND BY STATUTE AS PREVIOUSLY NOTED TO HOLD THE ENTIRETY OF THE FUNDS ON DEPOSIT. UNDER THE WALNUT VALLEY STATE BANK CASE, THE INSTITUTION LEVIED UPON PROBABLY SHOULD ONLY BE HOLDING 50% OF THE FUNDS SO LEVIED UPON. IF 50% OF THE FUNDS CONSTITUTE LESS THAN THE AMOUNT TO WHICH THE JUDGMENT CREDITOR IS ENTITLED, THE BANK IS SUBJECT TO A LAWSUIT BY THE JUDGMENT CREDITOR. IF THE FUNDS HELD CONSTITUTE MORE THAN THE PRESUMPTIVE INTEREST CREATED BY THE WALNUT VALLEY STATE BANK CASE, THE LENDING INSTITUTION IS SUBJECT TO A LAWSUIT BY ITS DEPOSITOR. AN ATTORNEY ENGAGING IN ESTATE PLANNING OR PROBATE IS IN JEOPARDY AS IS THE ESTATE IF THERE WAS EVER A GARNISHMENT OR LEVY UPON A BANK ACCOUNT, FOR THOUGH THE ACCOUNT STILL APPEARS TO BE A JOINT TENANCY ACCOUNT IT IS NOT A JOINT

TENANCY ACCOUNT WITH THE RIGHTS ATTENDANT THERETO BECAUSE UNDER THE WALNUT VALLEY STATE BANK CASE IT WOULD APPARENTLY REMAIN FOREVER A TENANCY IN COMMON BANK ACCOUNT WITH THE LEGAL RIGHTS AND CONSEQUENCES FLOWING THEREFROM.

ONCE ONE TAKES THE POSITION AS DONE IN THE WALNUT VALLEY STATE BANK CASE THAT A LEVY UPON A JOINT TENANCY BANK ACCOUNT CONSTITUTES A SEVERANCE CONVERTING THE RELATIONSHIP TO A TENANCY IN COMMON, I AM OF THE OPINION THAT ONE IS CONSTITUTIONALLY BOUND TO GIVE NOTICE PRIOR TO THE TAKING, WHICH IS THE HOLDING OR FREEZING OF THE MONEY UNDER SNIADACH, TO THE OTHER JOINT TENANT, WHOSE NAME AND ADDRESS, LET ALONE HIS EXISTANCE OR POTENTIAL EXISTANCE IS UNKNOWN, TO THE GARNISHING CREDITOR AND HIS COUNSEL AND PROBABLY NOT SUBJECT TO DISCLOSURE BY THE BANK UNDER RULES OF CONFIDENTIALITY. BY SENATE BILL #74 YOU HAVE A VERY GOOD ANSWER WHICH PRESERVES THE CONSTITUTIONALITY OF THE REMEDY OF BANK ACCOUNT GARNISHMENT.

I recommed this bill highly as a very sound bill which solves a very complex ~~partic~~ problem for all parties. This bill retains the remedy for the judgment creditor and protects the institution. It leaves in place the time tested safe guards for hearing before the court and retains the underlying principle of JOINT TENANCY.

~~I rec~~ Thank you



Walnut Valley State Bank v. Stovall

574 P.2d 1382

1. JOINT TENANCY - Bank Account - Garnishment. The garnishment of a joint tenancy bank account severs the joint tenancy and the parties become tenants in common.
2. SAME - Rebuttable Presumption of Equal Ownership. There is a rebuttable presumption of equal ownership between tenants of joint tenancy property.
3. SAME - Bank Account - Burden of Proof to Show Unequal Ownership. The burden of proof on a claim the account is owned other than equally between the cotenants lies with the party asserting such claim.

Sniadach v. Family Finance Corporation of Bay View,  
et al.

395 U.S. 337

1. CONSTITUTIONAL LAW. Summary procedure may meet requirements of due process in extraordinary situations. U.S.C.A. Const. Amend. 14
2. CONSTITUTIONAL LAW. Supreme Court does not sit as a superlegislative body and is not concerned with what philosophy a state should or should not embrace.
3. CONSTITUTIONAL LAW. A procedural rule that may satisfy due process for attachments in general does not necessarily satisfy procedural due process in every case. U.S.C.A. Const. Amend. 14.

4. CONSTITUTIONAL LAW. GARNISHMENT. Absent notice and prior hearing, Wisconsin prejudgment garnishment procedure in which summons is issued at request of creditor's lawyer and lawyer by serving garnishee sets in motion machinery whereby wages are frozen in interim before trial of main suit without any opportunity on part of wage earner to be heard or to tender any defense he might have, whether fraud or otherwise, violated fundamental principles of due process. U.S.C.A. Const. Amend. 14; W.S.A. 267.04(1), 267.07(1), 267.18(2)(a).