

Approved March 24, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at
Chairperson

10:00 a.m./~~p.m.~~ on March 20, 1986 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Steineger, Talkington and Yost.

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Mary Hack, Office of Revisor of Statutes

Conferees appearing before the committee:

Representative Burt DeBaun
Frances Kastner, Kansas Food Dealers' Association
Jim Kaup, League of Kansas Municipalities
Senator Jim Allen
Jim Yonally, NFIB/Kansas
Bud Grant, Kansas Chamber of Commerce and Industry
Norma Doty, Wabaunsee County Clerk of the Court
Joyce Reeves, Shawnee County Clerk of the Court
Ron Smith, Kansas Bar Association

House Bill 2678 - Small claims procedure; maximum amount of claim;
number of claims.

Staff explained the bill.

Representative Burt DeBaun, sponsor of the bill, testified this bill could best be described as a part of a small business economic development plan. It has been my experience that lawyers generally do not want to handle claims as small as \$1,000. A copy of his testimony and other material is attached (See Attachments I).

Frances Kastner, Kansas Food Dealers' Association, testified the association has always been supporters of expanding the small claims courts permitting plaintiffs to file more claims each year as well as increasing the top limit from \$500 to a higher amount. A copy of her testimony is attached (See Attachment II).

Jim Kaup, League of Kansas Municipalities, testified in support of the bill. He stated the league is trying to encourage cities to utilize the small claims court to collect utility bills, or property damage, to keep down legal expenses for both parties. He stated raising the claims per year from five to ten is more attractive than raising the dollar amount. They prefer to have no limitation on the amount of actions for any public agency.

Senator Jim Allen testified in support of the bill. He said he had a similar senate bill which didn't change the cap. House Bill 2678 increases the number of times you may file a claim from five to ten times in a year.

Jim Yonally, NFIB/Kansas, testified in support of the bill on behalf of 8,000 members. They feel it is a matter of being able to accomplish some justice. The chairman pointed out there was a bill in Labor, Industry and

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m. ~~pm~~ on March 20, 1986.

House Bill 2678 continued

and Small Business Committee that does the same thing as this bill but goes further. Mr. Yonally said the bill speaks to bad checks, and there has been a hearing on the bill.

Bud Grant, Kansas Chamber of Commerce and Industry, testified the Kansas Retail Council is in support of the bill. He stated, if you are attempting to help the small business person, we think five is unreasonably low.

Norma Doty, Wabaunsee County Clerk of the Court, spoke on behalf of the clerks association, and they are concerned with the increase in filings of cases in the court. They are also very concerned with the post judgment actions that will increase because of large amount of judgments. She stated the clerks are concerned with increase of responsibilities from other bills that also will be passed this year that will affect their office. Small business for recovery of money files the highest number of claims. She said this bill will have more affect on urban areas. In response to a question she reported almost 50 percent of filings are under limited actions and they are \$500 or under.

Joyce Reeves, Shawnee County Clerk of the Court, testified she is concerned about the number of filings. Their concern is for the people themselves who are filing the cases in the post judgment actions. She said the clerks find themselves in the situation of having to say, I am sorry I cannot fill out that form. They are also very concerned if the limitation is raised and attorneys are not allowed in small claims that we are putting people into jeopardy. She pointed out the illiteracy factor, and the clerks can't put themselves into the practice of law and tell people how to do it. A committee member inquired at the number of small claims filed? She replied, we have 900 a year in Shawnee County, and of those, 35 filed five claims for the year.

Ron Smith, Kansas Bar Association, testified in opposition to the bill. He stated KBA has serious reservations about the wisdom of expanding the small claims procedure to the point where defendants into litigations that might result in a \$1,000 judgment, plus costs, and all without advice and assistance of an attorney. Copies of his testimony and a court opinion are attached (See Attachments III).

During committee discussion, Joyce Reeves stated it was originally meant to be people vs. people, and it has gotten to be utilities vs. people and land vs. people. She said about 25 percent of their cases never get to court. She said the police department use it as an avenue for neighborhood disputes. When businesses get into court, it becomes more complicated.

House Bill 2941 - District court jurisdiction; relocation of bodies in cemeteries.

The chairman reported Representative Wunsch was in earlier and explained why he had requested the bill be introduced. Committee discussion was held on the bill.

House Bill 2678 - Small claims procedure; maximum amout of claim; number of claims.

Senator Talkington moved to report the bill favorably. Senator Gaines seconded the motion. Following committee discussion, the motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment IV).

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 3-20-86

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
NORMA J. DOTY	DISTRICT COURT WABAUNSEE CO. <i>Alma, Ks.</i>	
FRANCES KASTNER	Ks Food TOPEKA, Ks	Ks Food Dealers
BOB CORANT	TOPEKA	KCC
Earl Nelson	Lawrence	Common Cause / Ks
Don Miller	Topeka	Assoc. Credit Bureau
John R. Rous	Topeka	Clifford Dist Court
Kay Fallis	Topeka	Chief Administrator
George Ruckert	Wichita	Ks RESTAURANT ASSN
Paul Wright	Topeka	Ks Credit Union League
Marjorie Van Buren	Topeka	OJA
Ron Smith	"	Ks Bar Assoc
Jim Kauf	Topeka	League of Municipal
Jim Yonally	Oakland Park	NEIB/Kansas
Burt Wetburn	Legislature	
Ed Bailey	Wichita West	Close-up Kansas
Crystal Carson	Topeka Hayden	Close-up Kansas
Jim Allen	Ottawa	

3-20-86

STATE OF KANSAS

BURT DEBAUN
REPRESENTATIVE, THIRTEENTH DISTRICT
OSAGE AND PART
OF LYON COUNTY
726 S 9TH
OSAGE CITY, KANSAS 66523



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
MEMBER INSURANCE
LABOR AND INDUSTRY
LOCAL GOVERNMENT

March 20, 1986

TO: Senate Judiciary Committee
RE: House Bill #2678 - Relating to small claims procedure
Mr. Chairman and Members of the Committee

HB #2678 was revised by the House Judiciary Committee. Originally it specified the maximum amount be raised from \$500.00 to \$2000.00. The House Committee reduced this amount to \$1000.00. They also raised the docket fee to \$30.00 on claims over \$500.00. The other recommended change, which was not amended, allowed the number of claims to be raised from 5 to 10 per year. Senator Allen had also introduced SB 517 which would raise the frequency to 10 per year.

I believe this bill could best be described as a part of a small business economic development plan. It has been my experience that lawyers generally do not want to handle claims as small as \$1000.00

Judge Ivan O. Poe of Sedgewick Count advised me during a phone conversation on March 17th, that at least 25% of the cases he has heard actually represented amounts of over \$500.00, but had been reduced so they would qualify for small claims court. Thus he does not believe that it will materially affect the case load.

A copy of a letter from Judge Poe, which agrees with this bill, is attached.

Also attached is a news article by a District Court Clerk encouraging the use of the small claims court.

The 3rd attachment is relative data from 2 courts in the 13th district.

Your favorable consideration would be appreciated.

Are there any questions?

S. Jud.
3/20/86
A-I

LAW OFFICES
POE & MADDEN
RIVER PARK PLAZA
SUITE 101 · 707 NORTH WACO
WICHITA, KANSAS 67203

Individual Practitioners

JOHN MADDEN III

316-264 0619

February 21, 1986

OK
3/17/86
11:30 AM
BZ

IVAN O. POE

316-264-0618

Representative Robert S. Wunsch
State Capitol Building
Topeka, Kansas 66612

Re: Small Claims Legislation

Dear Robert:

Thank you for discussing with me the proposed changes in the Small Claims procedure in Kansas.

I hope by the time this letter reaches you, the House Committee will have reported out the bill to raise the jurisdictional limit of the Small Claims Court from \$500.00 to something between \$1,000.00 and \$2,000.00. Also, I hope the amount of claims that can be filed within one year will be raised from five (5) to ten (10).

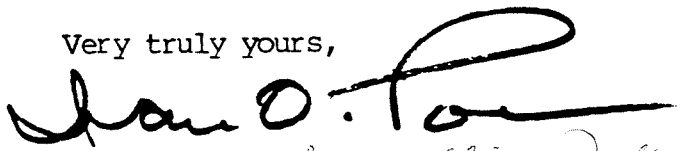
Another matter that we need to give attention to in the Small Claims procedure is the right of the trial judge, after an appropriate hearing following a case or at some post-judgment proceeding, to set a payment schedule binding upon both parties.

Judge Ron MacEnulty has attended the Judges College in Reno, Nevada and has obtained some literature on their Small Claims Courts there. Regrettably, when I talked to him shortly after I talked to you on the 20th of February, 1986, he indicated that his literature had been destroyed in a fire; but, his recollection was that the publication that he had indicated that somewhere between five and ten states already have legislation empowering the trial court judge to set a payment schedule. I was hoping I could give you the name of one or two of the states so that you might obtain a copy of their legislation; but that should not be too difficult for your legislative research people to do if you are, in fact, in accord with our wishes here that some legislation along these lines be introduced.

I will be glad to help in any way that I can. Again, I thank you for talking with me and I thank you for your interest in this area of the court procedure.

Give me a call when you have some time.

Very truly yours,


Ivan O. Poe, *Small Claims Judge*

IOP/ljs
IOP2.21.4

A-I

Small Claims deadline nears

The deadline for filing petitions in Small Claims court for 1985 is Dec. 31, according to Joyce Reeves, clerk of the district court.

Each business or individual may file only up to five Small Claims petitions a year, Reeves said. If you fail for any reason to file the petition by the close of business on Dec. 31, it will count against the five-peti-

tion limit for 1986.

Small Claims petitions are available in Room 305 of the Shawnee County Courthouse.

Reeves said that bad weather stopped some people from filing Small Claims petitions on time last year because they waited until the last day of the year. Reeves recommended filing as soon as possible.

STATE OF KANSAS

BURT DEBAUN
REPRESENTATIVE, THIRTEENTH DISTRICT
OSAGE AND PART
OF LYON COUNTY
726 S 9TH
OSAGE CITY, KANSAS 66523



TOPEKA

HOUSE OF
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COMMITTEE ASSIGNMENTS
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Small Claims Court (1985)

	# of claims	settled prior to hearing	# not found	#not prosecuted	# to court
Osage County	73	25	4	7	37
Lyon County	<u>231</u>	<u>58</u>	<u>6</u>	<u>10</u>	<u>157</u>
Total	304	83	10	17	194

64% of those filed actually went to trial.
27% settled prior to hearing
3% not found
6% not prosecuted



Kansas Food Dealers' Association, Inc.

2809 WEST 47th STREET SHAWNEE MISSION, KANSAS 66205

PHONE: (913) 384-3838

March 20, 1986

SENATE JUDICIARY COMMITTEE

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Winfield

DIRECTOR OF
GOVERNMENTAL AFFAIRS

FRANCES KASTNER

HB 2678

EXECUTIVE DIRECTOR
JIM SHEEHAN
Shawnee Mission

I am Frances Kastner, Director of Governmental Affairs for the Kansas Food Dealers Association. Our membership includes wholesalers, distributors and retailers of food products through out Kansas.

We have always been supporters of expanding the Small Claims Courts permitting plaintiffs to file more claims each year as well as increasing the top limit from \$500 to a higher amount.

HB 2678 addresses both these problems, and while the amount was changed by the House from \$2,000 to \$1,000 as the maximum amount, we still SUPPORT this bill.

We have no objection at all to making the filing fee higher for amounts over \$500 as our members would not take the time to go thru the Small Claims Courts if they did not feel they had an air-tight claim, and the defendant ends up paying the costs if the plaintiff gets a favorable judgement.

We ask for your favorable consideration of this bill, and I appreciate the opportunity of appearing before you today to express our SUPPORT OF HB 2678.

Frances Kastner, Director
Governmental Affairs, KFDA

S. Jud.
3/20/86
A-II



KANSAS BAR ASSOCIATION

1200 Harrison
P.O. Box 1037
Topeka, Kansas 66601
(913) 234-5696

HB 2678

Senate Judiciary Committee

March 20, 1986

Mr. Chairman. Judiciary Committee Members. I am Ron Smith, Legislative Counsel for KBA.

Our Executive Council makes our legislative policy. They have discussed this legislation through the delegation of legislative authority within the Executive Committee of the Council.

KBA has serious reservations about the wisdom of expanding the Small Claims procedure to the point where defendants into litigation that might result in a \$1,000 judgment, plus costs--all without advice and assistance of an attorney.

But there are ramifications that the businessman must be prepared to meet with this bill, too.

On the House side, businessmen indicated that in rural parts of the state, especially, they could not find attorneys to collect smaller debts. I suspect what the problem is that the attorney regularly used by the small town businessman, who ordinarily works by the hour, does not want to collect small debts for the customary contingent fee, and the businessman perhaps doesn't want to divide his legal work between local lawyers. In our major cities, however, there are lawyers who specialize

S. Jud.
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in debt collection, and who can collect a debt in rural county courts on behalf of these businessmen, and do so on the contingent fee basis. The costs to business of such specialty lawyers is not materially different than using a local lawyer.

Sometimes, having a lawyer from "out of town" collecting a debt produces better results.

Chapter 61 courts are also available to the businessman -- without hiring a lawyer.

There are some practical reasons why previous legislatures allow cases with an amount in controversy exceeding \$500 to be brought in Chapter 61 Limited Actions court. For example, KSA 61-2709 allows defendants the right to appeal a small claims judgment de novo. If done, the defendant can get Chapter 61 jurisdiction anyway, which gives him the right to hire an attorney and have a 6-person jury trial. The right of this new trial is granted without posting a bond. A judge that renders a small claims verdict probably will advise the defendant of this right of appeal.

Obtaining the judgment is the least difficult portion of debt collecting. Debtors are sometimes quite sophisticated, and there may be times when that businessman will be glad he has hired an attorney to collect the debt. With wrongful garnishment and abuse of process lawsuits on the rise, the businessman who acts on his own in order to save a legal fee may find himself a defendant in a lawsuit with much graver consequences.

For all these reasons, KBA opposes the bill.

3-20-86
Ron In

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JIMMY C. JONES,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 82-4243
)	
P & K CREDIT UNION and)	
DOUG EASTEPP,)	
)	
Defendants.)	
)	

MEMORANDUM AND ORDER

This is a diversity action brought by the plaintiff, a Texas citizen, against the defendants, a Kansas corporation and a Kansas citizen, for malicious prosecution of a criminal action in Kansas state court. This matter is presently before the court upon defendants' motion for summary judgment. Having carefully reviewed the materials before the court, we are now prepared to rule.

The uncontroverted factual background in this case is as follows. On January 31, 1979, plaintiff Jimmy C. Jones executed a promissory note and was loaned \$20,000.00 for the purpose of purchasing a 1972 Kenworth K-125 water truck. P & K took a security interest in the truck. Plaintiff made payments on the loan from April 4, 1979 until February, 1980. After February, 1980, plaintiff made no payments until June, 1980. On or about June 23, 1980, plaintiff called defendant Doug Eastepp and promised to send \$2,200.00 immediately and another \$1,000.00 within thirty days and \$1,000.00 a month thereafter. On June 26, 1980, plaintiff sent

\$2,200.00 to P & K, but failed to make any more payments. After June 26, 1980, defendant Eastepp made several efforts to locate plaintiff but was unsuccessful. In February, 1981, Eastepp was informed that plaintiff was living in Odessa, Texas. Eastepp then contacted the American Lender's Service Company in Amarillo, Texas, to aid P & K in the repossession of the truck. Prior to May, 1981, American Lender's Service Company contacted plaintiff in Odessa regarding his default on the loan.

On May 6, 1981, Eastepp contacted Mickey Moorman, the Meade County Attorney, concerning Jones. Eastepp told him about his problems with Jones. Based upon the facts stated by Eastepp, Moorman believed that there was probable cause to charge Jones with a violation of K.S.A. 21-3734, impairing a security interest. On May 6, 1981, Moorman prepared an affidavit for Eastepp's signature and filed a criminal complaint. The affidavit read as follows:

On Jan. 31, 1979, P&K Credit Union made a loan on the above truck. Payments were made until June 6, 1980 at which time P&K was unable to locate the said Jimmy Jones. Upon numerous contacts with Mrs. Jones, P&K was unable to locate the truck and has attempted to skip-trace the said Jimmy Jones and the truck. As recently as April, 1981, Jimmy Jones was located at Odessa, Texas, at the above address and he agreed to return said vehicle or properly pay for it. The truck was to be used at Hugoton, Ks. and at no time was Jimmy Jones authorized to take the truck out of the state of Kansas.

On June 1, 1981, plaintiff abandoned the truck in Henderson, Texas and returned the keys to the truck to P & K with a note advising the location of the truck. The truck was subsequently recovered and sold. In February, 1982, at the request of Moorman, Eastepp executed another copy of the affidavit before the Meade County judge in order to meet Texas extradition requirements. Jones

w. arrested and prosecution was initiated by Moorman. On May 3, 1982, the complaint against Jones was dismissed.

In this action, plaintiff contends that the defendants maliciously prosecuted him. He alleges that he was criminally prosecuted at the behest of the defendants without probable cause and with malice. He asserts that the defendants initiated the criminal action to enforce the collection of a civil debt and not with the intent of "punishing crime and bringing a criminal to justice."

In the instant motion, the defendants contend that the uncontroverted facts before the court entitle them to summary judgment in this case because the defendants had probable cause to believe plaintiff had committed a crime and because they relied upon the advice of the county attorney in initiating the criminal complaint. Plaintiff suggests that the key facts on these issues are in dispute and thus summary judgment is inappropriate.

In considering a motion for summary judgment, the court must examine all the evidence in the light most favorable to the opposing party. Mogle v. Sevier County School Dist., 540 F.2d 478 (10th Cir. 1976), cert. denied, 429 U.S. 1121 (1977). The burden is upon the moving party to prove his entitlement to summary judgment beyond a reasonable doubt. Harsha v. United States, 590 F.2d 884 (10th Cir. 1979). If no triable issue of material facts exists, the moving party is entitled to summary judgment as a matter of law. Buell Cabinet Co., Inc. v. Sudduth, 608 F.2d 431 (10th Cir. 1979).

To maintain an action for malicious prosecution in Kansas, plaintiff must prove that (1) the defendant instituted the

proceeding of which complaint is made; (2) that the defendant in so doing acted without probable cause and with malice; (3) that the proceeding terminated in favor of the plaintiff; and (4) that the plaintiff sustained damages. Sampson v. Hunt, 233 Kan. 572, 665 P.2d 743 (1983) (quoting Nelson v. Miller, 227 Kan. 271, 607 P.2d 438 (1980)). The inquiry as to the existence of probable cause is limited to the facts and circumstances that were apparent at the time the prosecution was commenced. Nelson v. Miller, supra; Stohr v. Donahue, 215 Kan. 528, 527 P.2d 983 (1974). Probable cause for instituting a criminal action exists when there are reasonable grounds for suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious or prudent man to believe that the party committed the act of which complaint is made. Barnes v. Danner, 169 Kan. 32, 216 P.2d 804 (1950). The advice of a prosecuting attorney as to the institution of a criminal proceeding, sought and acted upon in good faith, is a complete defense for malicious prosecution, but this is only so when all the facts known to the defendant have been fully and truthfully given to such official. Miller v. Nelson, supra; Messinger v. Fulton, 173 Kan. 851, 252 P.2d 904 (1953).


The court's complete review of the record in this case reveals that summary judgment cannot be granted to the defendants. We find that certain material facts remain in dispute. The question of whether the defendants fully and truthfully provided all of the facts to the Meade County Attorney is a matter for the jury based on the state of the record in this case. Accordingly, defendants'

... on for summary judgment shall be denied.

IT IS THEREFORE ORDERED that defendants' motion for summary judgment be hereby denied.

IT IS SO ORDERED.

Dated this 23rd day of September, 1985 at Topeka, Kansas.


United States District Judge