

Approved February 18, 1987
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 February 17, 1987 in room 514-S of the Capitol.

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

Committee staff present:

Mike Heim, Legislative Research Department
Gordon Self, Office of Revisor of Statutes

Conferees appearing before the committee:

Senator Alicia Salisbury
John Peterson, Kansas Cemetery Association

Senate Bill 150 - Prearranged funeral agreements; irrevocable provisions.

Senator Alicia Salisbury stated the bill was introduced by the Senate Local Government Committee at the request of cemetery and funeral directors who feel \$2,000 is not enough for funeral costs. She explained the bill will raise the amount that can be in an irrevocable trust from \$2,000 to \$3,000. She said it is unclear how much can be set aside; it can be as much as \$5,000 to \$10,000 in assets. SRS could clarify this matter.

John Peterson, Kansas Cemetery Association, testified although this bill would not have an impact on cemeteries, the association is in support of the bill. He explained the amount of \$2,000 to be irrevocable was set in 1983 and has not been raised since then. Other items of property are exempt, such as a casket. SRS does not require you to sell that.

Following committee discussion of the bill, Senator Feleciano moved to report the bill favorably. Senator Langworthy seconded the motion, and the motion carried.

Senate Bill 187 - Repealing K.S.A. 58-312, relating to liens or security interests on exempt personal property.

Senator Frey, sponsor of the bill, passed out copies of a letter from Richard R. Yoxall, and two statutes, K.S.A. 58-312 and K.S.A. 60-2304, (See Attachments I). He pointed out the letter stated K.S.A. 58-312 invalidates security interests on personal property which is now exempt "by law to resident heads of household from seizure and sale upon any attachment, execution or other process" unless the security interest was given with the joint consent of the husband and wife. Because of the amendment of K.S.A. 60-2304 it is somewhat unclear as to the extent of the application of K.S.A. 58-312. Senate Bill 187 repeals K.S.A. 58-312, relating to prohibition of liens or security interests on exempt personal property without joint consent.

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

The meeting adjourned.

A copy of the guest list is attached (See Attachment II).

LAW OFFICES OF
YOXALL, ANTRIM & YOXALL

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JAMES R YOXALL
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RICHARD R YOXALL

G. L. LIGHT (1886-1950)
AUBURN G. LIGHT (1910-1966)

January 5, 1987

Mr. Bob Frey
412 North Washington
Liberal, Kansas 67901

Re: Legislation

Dear Bob:

I have recently been involved in a lawsuit wherein judgment was obtained in Seward County and real estate of the judgment debtor upon which we desire to levy execution was located in Stevens County. Pursuant to K.S.A. 60-2202 and the Supreme Court case of Needham vs. Young, any executions as to the Stevens County property must be issued from Seward County, wherein the judgment was rendered. Further, pursuant to K.S.A. 60-2410, sale of any land under execution is to be held in the county seat of the county in which the judgment was rendered, or in my case, Seward County. The problem I have is with the language in sub-paragraph (a) of 60-2410 dealing with publication notice. It seems to me it is only logical that we would publish notice in the county in which the real estate is located. However, considering the fact that the executions would be issued out of Seward County and the sale is to be held in Seward County by statute, it seems to me that the language of sub-paragraph (a) could be interpreted as possibly requiring publication in Seward County. You will notice that the language only refers to publication in "the county", without stating whether "the county" refers to the county in which the real estate is located or the county wherein the judgment was rendered and the execution sale may presumedly take place.

Realizing that the statute gives me the authority to request the court's permission to have the sale in Stevens County as opposed to Seward County, I could probably also get an order authorizing the publication notice to be in Stevens County as well; however, it seems to me that the wording of the statute should be revised to clarify this point.

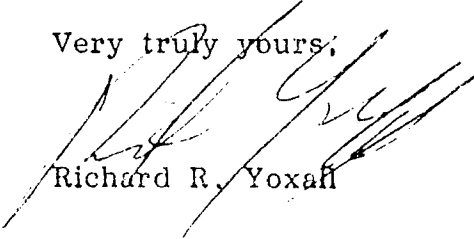
Turning to another statute, which likewise seems to be unclear, K.S.A. 58-312 invalidates security interests on personal property which is now exempt "by law to resident heads of household from seizure and sale upon any attachment, execution or other process" unless the security interest was given with the joint consent of the husband and wife. I believe that statute was probably executed in connection with the prior version of K.S.A. 60-2304, which I believe

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specifically limited the application of 60-2304 to resident heads of household. Because of the amendment of K.S.A. 60-2304, I think it is somewhat unclear as to the extent of the application of 58-312.

✓ Personally I would like to see 58-312 repealed. Essentially 58-312 will require that the husband and wife both execute the security interest on any vehicle because you never know if they have more than two vehicles which vehicle they may claim as exempt in bankruptcy or otherwise.

Very truly yours,



Richard R. Yoxall

RRY/bjb

2-17-87

CHAPTER 176

Senate Bill No. 691

AN ACT concerning exemptions of property from process of law; amending K.S.A. 60-2302, 60-2304 and 60-2308 and K.S.A. 1979 Supp. 60-2301 and repealing the existing sections; also repealing K.S.A. 60-2305.

Be it enacted by the Legislature of the State of Kansas:

Section 1. No person, as an individual debtor under the federal bankruptcy reform act of 1978 (11 U.S.C. 101 et seq.), may elect exemptions pursuant to subsection (b)(1) of section 522 of such federal act.

Sec. 2. K.S.A. 1979 Supp. 60-2301 is hereby amended to read as follows: 60-2301. A homestead to the extent of one hundred and sixty ~~(160)~~ acres of farming land, or of one acre within the limits of an incorporated town or city, or a mobile home, occupied as a residence *by the owner or by the family of the owner, or by both the owner and family thereof*, together with all the improvements on the same, shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon. The provisions of this section shall not apply to any process of law obtained by virtue of a lien given by the consent of both husband and wife, *when that relation exists.*

Sec. 3. K.S.A. 60-2302 is hereby amended to read as follows: 60-2302. Whenever any levy shall be made upon the lands or tenements of a householder whose homestead has not been selected and set apart, such householder, the *householder or householder's spouse, when the marriage relationship exists, or an agent or attorney of the householder* may notify the officer in writing at the time of making such levy, or at any time before the sale, of what the householder regards as the homestead, with a description thereof, and the remainder alone shall be subject to sale under such levy.

Sec. 4. K.S.A. 60-2304 is hereby amended to read as follows: 60-2304. Every person residing in this state, ~~and being the head of a family~~, shall have exempt from seizure and sale upon any attachment, execution or other process issued from any court in this state, the following articles of personal property:

(1) The furnishings, equipment and supplies, including food, fuel and clothing, for the ~~family for a period of one (1) year on hand and person which is in the person's present possession and is~~ reasonably necessary at the principal residence of the ~~family~~ *person for a period of one year.*

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(2) Ornaments of the debtor's person, including jewelry, having a value of not to exceed five hundred dollars (~~\$500~~).

(3) One means of conveyance regularly used for the transportation of the ~~family person~~ or for transportation to and from ~~his or her~~ *the person's* regular place of work.

(4) A ~~family~~ burial plot or crypt.

(5) The books, documents, furniture, instruments, tools, implements and equipment, the breeding stock, seed grain or growing plant stock, or the other tangible means of production regularly and reasonably necessary in carrying on ~~his or her~~ *the person's* profession, trade, business or occupation in an aggregate value not to exceed five thousand dollars (~~\$5,000~~).

Sec. 5. K.S.A. 60-2308 is hereby amended to read as follows: 60-2308. Money received by any debtor as pensioner of the United States within three (~~3~~) months next preceding the issuing of an execution, or attachment, or garnishment process, cannot be applied to the payment of the debts of such pensioner when it is made to appear by the affidavit of the debtor or otherwise that such pension money is necessary for the maintenance of *the debtor's support* or a family support wholly or in part by said pension money. The filing of the affidavit by the debtor, or making proof as above provided, shall be *prima facie* evidence, and it shall be the duty of the court in which such proceeding is pending to release all moneys held by such attachment or ~~garnishee~~ *garnishment* process, immediately upon the filing of such affidavit, or the making of such proof.

Sec. 6. K.S.A. 60-2302, 60-2304, 60-2305, 60-2308, and K.S.A. 1979 Supp. 60-2301 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the official state paper.

Approved April 22, 1980.

Published in the official state paper April 26, 1980.

CHAPTER 177

House Bill No. 2926

AN ACT amending the protection from abuse act; amending K.S.A. 1979 Supp. 60-3102 to 60-3108, inclusive, and 60-3110 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1979 Supp. 60-3102 is hereby amended to read as follows: 60-3102. As used in this act:

(a) "Abuse" means the occurrence of one or more of the following acts between family or household members who reside

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58-309

PERSONAL AND REAL PROPERTY

1923, 58-308; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.

CASE ANNOTATIONS

1. Right of action barred after one year; demand. *Travelers Ins. Co. v. Stucki*, 4 K.A. 424, 427, 46 P. 42.
2. Right to penalty not defeated because register's fees not tendered. *Thomas v. Reynolds*, 29 K. 304, 307.
3. Penalty may be recovered only after demand has been made. *Hall v. Hurd*, 40 K. 374, 375, 19 P. 802; *Wey v. Schofield*, 53 K. 248, 36 P. 333.
4. Right not lost because action delayed until after satisfaction entered. *Hall v. Hurd*, 40 K. 740, 741, 21 P. 585.
5. Right of action under this section is penal in character. *Wey v. Schofield*, 53 K. 248, 36 P. 333; *Frame v. Ashley*, 59 K. 477, 480, 53 P. 474.
6. Mentioned in considering mortgage priority and subrogation rights. *Fourth National Bank v. Hill*, 181 K. 683, 684, 700, 314 P.2d 312.

58-309.

History: G.S. 1868, ch. 68, § 17; R.S. 1923, 58-309; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.

CASE ANNOTATIONS

1. Mortgagee cannot remove property to foreign county to make sale. *Scott v. Davis*, 4 K.A. 488, 494, 44 P. 1001.
2. Mortgagee may maintain replevin after condition broken. *Brookover v. Esterly*, 12 K. 149, 151.
3. Mortgagee liable to mortgagor only for surplusage from sale. *Denny v. Faulkner*, 22 K. 89, 100.
4. Provision "sale without notice after condition broken," may be enforced. *Harris v. Lynn*, 25 K. 281; *Reynolds v. Thomas*, 28 K. 810; *Foy v. Comanche County*, 69 K. 206, 208, 76 P. 859.
5. Parties may agree upon method for disposal of mortgaged property. *Denny v. Van Dusen*, *Adm'r*, 27 K. 437, 440.
6. Section inapplicable to mortgage-foreclosure sale under special execution. *Liberty Savings & Loan Ass'n v. Jones*, 143 K. 422, 426, 54 P.2d 937.
7. Cited; expense of repossessing chattel not lienable under artisan's lien law (58-202). *National Bond & Investment Co. v. Midwest Finance Co.*, 156 K. 531, 537, 134 P.2d 639.
8. Purchaser from mortgagee on default not compelled to accept payment and release mortgage. *Grant v. Stryker*, 156 K. 682, 684, 135 P.2d 534.
9. Mortgagor's waiver of right to redeem held valid. *Fourth National Bank v. Hill*, 181 K. 683, 701, 314 P.2d 312.
10. Chattel mortgage terms held to make notice hereunder unnecessary. *Watkins v. Layton*, 182 K. 702, 705, 324 P.2d 130.
11. Discussed and applied; district court action to establish alleged personal property mortgage constituted demand; probate court jurisdiction. *Shields v. Fink*, *Executrix*, 190 K. 17, 27, 372 P.2d 252.

58-310.

History: G.S. 1868, ch. 68, § 18; R.S. 1923, 58-310; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.

CASE ANNOTATIONS

1. Risk of delay upon mortgagee after mortgagor demands sale. *Bank v. Leslie*, 72 K. 401, 404, 83 P. 984.
2. Mortgagor entitled to have property sold after mortgagee obtains possession. *Snider v. Windsor*, 77 K. 67, 93 P. 600.
3. Possession taken by mortgagee when he deems himself insecure. *Thorp v. Fleming*, 78 K. 237, 242, 96 P. 470.

58-311.

History: G.S. 1868, ch. 68, § 19; R.S. 1923, 58-311; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.

CASE ANNOTATIONS

1. Cited; expense of repossessing chattel not lienable under artisan's lien law (58-202). *National Bond & Investment Co. v. Midwest Finance Co.*, 156 K. 531, 537, 134 P.2d 639.
2. Punitive damage award for failure to account for surplus; affirmed. *Watkins v. Layton*, 182 K. 702, 705, 706, 324 P.2d 130.

58-312. Exempt personal property; joint consent of husband and wife required.

It shall be unlawful for either husband or wife (where that relation exists) to create any lien or security interest other than a purchase money security interest upon any personal property owned by either or both of them, and now exempt by law to resident heads of families from seizure and sale upon any attachment, execution or other process issued from any court in this state, without the joint consent of both husband and wife; and from and after the time when this act shall take effect no agreement creating such a security interest shall be valid unless executed by both husband and wife: *Provided*, That this act shall not be construed to invalidate any such lien or security interest except so far as relates to the exempt property covered thereby.

History: L. 1889, ch. 176, § 1; L. 1901, ch. 103, § 1; R.S. 1923, 58-312; L. 1965, ch. 564, § 410; Jan. 1, 1966.

Research and Practice Aids:

- Husband and Wife* § 169(2).
- Hatcher's Digest*, Exemptions §§ 30 to 35.
- C.J.S. Husband and Wife* § 345.
- Affidavit of ownership attached to chattel mortgage, *Vernon's Kansas Forms* § 4156.
- Designating mortgagor, *Kansas Practice Methods*, §§ 304, 307, 931.
- Signatures and addresses, *Kansas Practice Methods* § 925.

Law Review and Bar Journal References:

- Case in annotation No. 20 below discussed in 1955-56 survey of debtor-creditor law, *F. J. Moreau*, 5 K.L.R. 239, 246, 247 (1956).

