Approved: 1/25/95
Date

MINUTES OF THE Senate Committee on Financial Institutions and Insurance.

The meeting was called to order by Chairperson Dick Bond at 9:07 a.m. on January 24, 1995 in Room 529-S of the Capitol.

All members were present.

Committee staff present: Dr. William Wolff, Legislative Research Department
Fred Carman, Revisor of Statutes
June Kossover, Committee Secretary

Conferees appearing before the committee: Kathleen Sebelius, Insurance Commissioner
James Maag, Kansas Bankers Association
John Grace, Kansas Homes and Services for the Aging
Tom Tunnell, Kansas Grain and Feed Association
Richard Huncker, Kansas Insurance Department
Kathy Taylor, Kansas Bankers Association
Elwaine Pomeroy, Kansas Collectors Association, Inc .

Others attending: See attached list

Senator Lawrence made a motion, seconded by Senator Steffes, to approve the minutes of the meeting of January 19 as submitted. The motion carried.

Kathleen Sebelius, Insurance Commissioner, appeared before the committee to introduce members of her staff who will be working with the committee (Attachment #1), and to outline her legislative program (Attachment #2). Senator Hensley moved to introduce the three bills requested by Commissioner Sebelius. Senator Lee seconded the motion. The motion carried.

In response to the Chairman's question, Commissioner Sebelius advised that Tom Wilder of her office will be the legislative liaison to the committee and either Bruce McAllister or Mrs. Sebelius will handle constituent issues.

The hearing was opened on **SB 22**, which would allow non-profit trade associations which have maintained stable health insurance programs for a period of at least ten years and cover a minimum of 500 persons to establish a self-insurance program. James Maag, Kansas Bankers Association, appeared as a proponent of this legislation and advised that only six or fewer associations would fall within the provisions of the bill (Attachment #3) . Senator Praeger commented that this bill would seem to exempt these organizations from the insurance reform laws which have been enacted. Chairman Bond noted that the premium tax would still be payable by these associations, based on gross premiums collected.

John Grace, Kansas Association of Homes and Services for the Aging, also appeared as a proponent, but requested that the bill be amended to expand the language to include "trade associations that have operated a self-funded workers compensation pool for over 5 years." (Attachment #4)

Tom Tunnell, Kansas Grain and Feed Association, appeared in support of the legislation, saying that the organization he represents would fall within the requirements of the bill. (Attachment #5)

Richard Huncker, Kansas Insurance Department, stated that this legislation may have a fiscal impact on premium tax collection and suggested that some of the language may need to be clarified. Senator Lee questioned what percentage of the total population would be affected; Mr. Huncker answered that approximately 15,000 people would be included in the Bankers Association, and more in other associations.

There were no other conferees and no further questions; the hearing on **SB 22** was closed.

The chairman opened the hearing on **SB 35**, concerning garnishment of funds held by financial institutions. Kathy Taylor, Kansas Bankers Association, appeared as a proponent of this bill and explained its ramifications to the committee. Ms. Taylor also requested two additional amendments. (Attachment #6)

Elwaine Pomeroy, Kansas Collectors Association, appeared before the committee to express his concerns with the language in the bill, stating that it may cause more litigation. (Attachment #7)

MINUTES OF THE Senate Committee on Financial Institutions & Insurance, Room 529-S Statehouse, on January 24, 1995.

Chairman Bond requested that Mr. Pomeroy and Ms. Taylor meet and review Mr. Pomeroy's suggestions with a view to amending the bill as necessary. The hearing on **SB 35** will be continued at a later date.

The committee adjourned at 10:02 a.m. The next meeting is scheduled for January 25, 1995.

SENATE FINANCIAL INSTITUTIONS & INSURANCE COMMITTEE GUEST LIST

DATE: 1-24-95

NAME	REPRESENTING
JEFF SOMNICH	KNOLSI
Sharol Couch	Ks Chiropractic Assn
Chuck Stones	KBA
MIKE LAVIGNE	WILLIS CORROON CORP.
Jim Petrich	Willis Corroon Corp.
Herb Iams	KBA
Charley Young	SFRMC
JIM OLIVER	PIA
BILL SNEED	HIAA
John Grace	KAHSA
John Federico	Pete McGill + Assoc
DAVID ROSS	Ks. Assn. Life Underwriters
LARRY MAGILL	KAIA

Kansas Insurance Department

420 S. W. 9th Street
Topeka, Kansas 66612
(913) 296-3071

Key Department Staff

Robert L. Kennedy, Jr. 296-7804
Assistant Commissioner

Former head of Governmental Affairs for American Family Ins. Grp., Madison, WI; former head of Consumer Assistance Division in the Kansas Insurance Department; former General Counsel of Kansas Board of Tax Appeals

Brian Moline 296-7806
General Counsel

Former General Counsel of the Kansas Corporation Commission; former head of Legal Aid Society in Topeka and Wichita; State Representative, 1966-1971

Tom Wilder 296-7807
Director, Governmental Relations

Former attorney in Sloan, Eisenbarth law firm, Topeka, Kansas; former governmental relations person for state savings and loan association

Senate 7/11 1/24/95
Attachment #1

Kansas Insurance Department

Kathleen Sebelius, Commissioner
420 S.W. 9th
Topeka, Kansas 66612-1678 (913) 296-3071

1995 LEGISLATIVE PROGRAM

FINANCIAL SURVEILLANCE

Modification of Investment Code: The existing statutory authority for investment of funds by insurance companies prohibits investments in repurchase agreements unless those agreements meet certain qualification guidelines. This proposal would amend K.S.A. 40-2a22 and 40-2b24 to allow insurance companies to place their monies in money market mutual funds which invest in repurchase agreements if they meet the definition of qualified investments as set out in the insurance code. Request Senate introduction.

Confidentiality of NAIC Examination Information: The National Association of Insurance commissioners requires that all synopsis of examinations of insurance companies and analysis data ratios which are generated by the NAIC Insurance Regulatory Information system remain confidential. The legislative proposal would amend K.S.A. 45-221 to provide that such information is confidential and shall not be disclosed by the Insurance Commissioner. The change would allow the Department of Insurance to have access to this NAIC information for insurance companies which do business in Kansas. Request House introduction.

AGENTS & BROKERS

Insurance Agent Continuing Education: This legislation would amend K.S.A. 40-240f to change from an annual compliance date for completion of continuing education credits by all insurance agents to a completion date based on the date of birth for each individual agent. Currently, insurance agents licensed in Kansas must complete a certain number of hours of continuing education credits by March 31 of each odd-numbered year. This proposal would allow each agent to complete their credits within a time period based on their date of birth. The change would spread the burden on the Department of monitoring the compliance by agents with their continuing education credits over the course of a year instead of once during the year. Request House introduction.

ACCIDENT & HEALTH

Expansion of Health Insurance Coverage for Late Enrollees: This proposal would amend K.S.A. 40-2209d to allow individual employees in a health benefit plan to enroll in the plan after the initial enrollment period provided they meet certain conditions. Currently, late enrollment is permitted only in small employer benefit plans with less than 51 employee members. Request Senate introduction.

Revision of Definition of Pre-Existing Conditions: This amendment to K.S.A. 40-2203 and K.S.A. 40-2209 would revise the definition of pre-existing conditions for health insurance issued to individuals and to small employer groups to include the same statutory language used for large group policies. Request Senate introduction.

Senate 7141 1/24/95
Attachment #2

LIFE

Acceleration of Life Insurance Benefits: K.S.A. 40-401 permits life insurance companies to include a policy provision which accelerates the payment of life insurance or annuity benefits when the insured in unemployed or disabled. The amendment would allow insurers to accelerate benefits if the policy holder suffers financial hardship. Request House introduction.

FRAUD

Penalties for Certain Fraudulent Insurance Acts: The 1994 legislature passed Senate Bill 677 and it became law effective July 1, 1994. The bill created penalties for certain fraudulent insurance acts specifically providing that "an insurance company shall not be required to provide coverage or pay any claim involving a fraudulent insurance act." Although the overall intent of the statute was approved by the legislature, the statutory language used has potentially far-reaching consequences as a company could conceivably deny coverage or payment to an innocent third party due to fraud committed by the named insured. Equally, insurers may deny or delay payment of claims on the basis of suspected fraud. To remedy this problem the proposed bill requires an insured to be convicted or judicially determined guilty of fraud before insurers may rely on the protection of this statute. Request Senate introduction.

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 24, 1995

TO: Senate Financial Institutions and Insurance Committee
RE: **SB 22** - Health insurance exemption

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the committee in support of **SB 22**. This legislation has been requested by the Governing Council of the Kansas Bankers Association (KBA) for the benefit of its member banks.

The KBA has for over 50 years offered a statewide health insurance program for its members banks. Currently the program is with Blue Cross/Blue Shield of Kansas. They handle all billings and claims for a negotiated retention fee. The Willis Corroon Corporation of Kansas also provides consultation and administrative oversight for the program. The program covers over 6,500 bank employee lives throughout the state and over 15,000 lives in total with total yearly premiums in excess of $29 million. The program had over $10 million in the group contingency/escrow reserves at the end of the 1994 program year (7/31/94).

In today's uncertain health insurance environment the KBA believes it would be prudent to have the alternative of self insurance available for implementation if events warranted such a move. K.S.A. 40-2222 currently grants that authority to a number of associations and we are requesting that a new subsection (f) be added to the statute to allow any nonprofit trade association which has maintained a stable health insurance program for a period of at least 10 years and which provides coverage for a minimum of 500 lives to establish a self insurance program.

We believe the KBA program would certainly match or exceed in size and stability any of the association programs which are currently cited in the statute. Therefore, we would request that the committee recommend **SB 22** favorably for passage.

James S. Maag
Senior Vice President

Senate FI&I 1/24/95
Attachment #3

Office of Executive Vice President • 1500 Merchants National Building
Eighth and Jackson • Topeka, Kansas 66612 • (913) 232-3444
FAX (913) 232-3484

KAHSA
KANSAS ASSOCIATION OF
HOMES AND SERVICES FOR THE AGING

To: Senate Financial Institutions and Insurance

From: John R. Grace
President/CEO

Date: January 24, 1995

RE: Senate Bill 22 - Health Insurance

Thank you for the opportunity to testify regarding Senate Bill 22.

The Kansas Association of Homes and Services for the Aging represents over 150 not-for-profit retirement, nursing and elderly service providers throughout Kansas. KAHSA members provide diverse service to individuals in a variety of settings including over 9,600 nursing facility beds, over 3,900 senior duplexes and apartments and a wide range of community services such as assisted living/personal care, home health care, congregate meals, adult and intergenerational day care.

KAHSA supports SB 22 and we would like to expand the language to include "trade associations that have operated a self-funded workers compensation pool for over 5 years."

KAHSA currently operates a self-funded workers compensation pool for our members and we would like to extend our experience and provide a health insurance option to our members. SB 22 is a step in that direction. KAHSA meets the requirements of being a nonprofit trade association under section 501(c) of the federal internal revenue code and a Kansas corporation. However, the requirement of 10 years of experience with health insurance in *(f)* would continue to prevent our participation in a KAHSA sponsored health insurance program.

As many of you are aware, the cost of providing nursing facility care continues to increase. This is due both to the increasing needs of the frail, elderly that we serve and increasing staff costs which account for, on average, 60-70% of nursing facility costs and include health care and workers compensation expenses.

In an attempt to address these growing costs, KAHSA developed a self-funded workers compensation pool (KAHA Insurance Group - KING) for KAHSA members in 1990. KING has been very successful and has enabled our members to save hundreds of thousands of dollars in workers compensation premiums and significantly reduce job related injuries with preventative programs.

Thank you for the opportunity to address the Committee.

Senate FI&I 1/24/95
Attachment #4

700 SW HARRISON, SUITE 1106
TOPEKA, KANSAS 66603-3759
913-233-7443
FAX: 913-233-9471

Chairman Bond and Members of the Committee, I am Tom Tunnell, Executive Vice President of the Kansas Grain and Feed Association. The KGFA is a state trade association that was founded in 1896 and has as members virtually all companies involved in grain storage, handling and processing in Kansas. One important service our association offers member companies is the opportunity to participate in our group medical/dental program. KGFA supports passage of Senate Bill 22 because simply put, it would allow our group more flexibility in determining the most safe and cost efficient way to insure against potential health/dental care losses of our plan participants.

I do not claim to be a group insurance expert, but representatives from our plan's administrators, Willis Corroon Corporation of Kansas, are here today who are experts and can answer your questions. However, let me first relate a few details regarding the history and current status of our plan which I believe demonstrates a track record of success, and a long-term commitment by the KGFA board of directors to offer an excellent health care insurance product at a competitive cost.

-The plan was organized in 1969;
-Currently has 787 lives covered;
-Annual premium of $3,125,000;
-Over $500,000 in contingency reserve;
-Paid nearly $100,000 in dividends in 1994 and is scheduled to pay over $100,000 in 1995.

Over the 25 plus years our group plan has been in existance it has been closely monitored by a committee comprised of KGFA members. It is under the auspices of this committee that decisions are made regarding the level of health/dental coverage made available to member plan participants, and the deductible and co-pay levels. The committee also reviews the financial performance of the group and determines when premiums should be increased and the amount of each increase. Essentially, our program is already self-directed and with passage of Senate Bill 22 we would have the opportunity to become self-funded.

Senate 7/41 1/24/95
Attachment #5

On the advice and council of Willis Corroon Inc. our group also is serious about health care cost containment and currently participates in a preferred provider program through Preferred Health Care Inc., located in Wichita, Kansas.

Mr. Chairman, I have attached several exhibits which better explain the details of our group plan and would be pleased to respond to your questions or have one of the professionals from Willis Corroon do so. Thank you for this opportunity to testify on Senate Bill 22.

KGFA
EXPERIENCE ANALYSIS
12/93 - 11/94

ALL COVERAGES

Month	Paid Premium	Paid Claims	Loss Ratio
12/93	$251,640.29	$148,340.41	59%
01/94	$250,868.94	$199,168.00	79%
02/94	$259,698.88	$96,852.85	37%
03/94	$256,388.60	$184,580.29	72%
04/94	$254,435.16	$126,067.00	50%
05/94	$256,333.18	$175,922.94	69%
06/94	$258,238.45	$154,809.57	60%
07/94	$259,252.22	$160,280.06	62%
08/94	$267,658.92	$176,799.44	66%
09/94	$264,610.70	$88,069.23	33%
10/94	$273,720.45	$130,008.99	47%
11/94	$272,362.16	$164,400.74	60%
12 Month Totals	**$3,125,207.95**	**$1,805,299.52**	**58%**

MEDICAL ONLY

Month	Paid Premium	Paid Claims	Loss Ratio
12/93	$233,573.06	$142,636.92	61%
01/94	$232,815.67	$192,707.82	83%
02/94	$240,993.01	$90,203.37	37%
03/94	$238,288.44	$177,726.82	75%
04/94	$236,365.10	$116,122.96	49%
05/94	$238,044.88	$168,587.82	71%
06/94	$239,036.67	$148,271.75	62%
07/94	$240,335.59	$154,834.55	64%
08/94	$248,836.27	$170,191.14	68%
09/94	$246,077.77	$81,788.25	33%
10/94	$254,332.76	$117,834.35	46%
11/94	$253,004.16	$158,785.93	63%
12 Month Totals	**$2,901,703.38**	**$1,719,691.68**	**59%**

Includes both Trustmark and The Mutual Group Accounts

WILLIS CORROON
CORPORATION OF KANSAS

WILLIS CORROON

CORPORATION of KANSAS

TRUSTMARK / KGFA DIVIDEND REPORT

MONTH	DIVIDEND BALANCE AT THE START OF THE MONTH	MONTHLY DIVIDEND DISTRIBUTIONS (see attached)	DIVIDEND BALANCE AT THE END OF THE MONTH	MONTHLY INTEREST RATE PAID WCCK	INTEREST EARNED ON BEGINNING BALANCE
Mar-94	110,000.00	29,820.88	80,179.12	3.85%	352.92
Apr-94	80,179.12	12,591.69	67,587.43	3.95%	263.92
May-94	67,587.43	0.00	67,587.43	4.25%	239.37
Jun-94	67,587.43	29,477.49	38,109.94	4.18%	235.43
Jul-94	38,109.94	6,073.62	32,036.32	4.19%	133.07
Aug-94	32,036.32	10,185.96	21,850.36	5.15%	137.49
Sep-94	21,850.36	1,427.78	20,422.58	5.07%	92.32
Oct-94	20,422.58	0.00	20,422.58	5.28%	89.86
Nov-94	20,422.58	0.00	20,422.58	5.32%	90.54

INTEREST EARNINGS TOTAL		1,634.92
CURRENT ENDING DIVIDEND BALANCE	+	20,422.58
TOTAL DIVIDENDS STILL ON DEPOSIT	=	22,057.50

TRUSTMARK LIFE INSURANCE COMPANY

Deposit Account for Kansas Grain and Feed Association

DATE	DESCRIPTION	AMOUNT	BALANCE
06/08/93	TRANSFER OF RESERVE FROM CNA TO TMK	$700,477.00	$700,477.00
08/02/93	TRANSFER OF RESERVE FROM CNA TO TMK	$2,084.00	$702,561.00
12/31/93	INTEREST FOR 1993 @ 8.17%	$32,369.53	$734,930.53
02/01/94	REFUND PAID TO KGFA	$110,000.00	$624,930.53
07/08/94	REFUND PAID TO KGFA	$7,816.21	$617,114.32

07/12/94

Lawmakers Take Notice of Association Health Insurance

As Congress debated health care reform legislation, ASAE members geared up for another threat: Could association health insurance go the way of dinosaurs? Concern grew over certain aspects of proposed health care legislation—particularly provisions that could eliminate association group health insurance. After all, nearly 10 percent of the working population—about 11 million Americans—get their health insurance through associations, ASAE estimates.

ASAE's Insurance Education Committee set out to educate lawmakers that association plans have proven experience in delivering health benefits through purchasing coalitions—precisely what the president has called for in urging employers and individuals to join together and pool their buying power. "Association health plans have been doing that for more than 55 years," testified **David B. Kreidler, CAE,** on ASAE's behalf at

5-6

congressional hearings. "Such plans are uniquely structured to be part of any new or revised health care delivery system," he pointed out.

To further the crusade, ASAE joined **The Association Healthcare Coalition,** Washington, D.C., a newly formed group of 60 associations working to include association group plans in reform legislation. The coalition met with White House officials, including senior health care adviser **Ira Magaziner,** who assured ASAE that qualified association health plans can remain part of the administration's reform package.

By year's end, Congress began to notice association health plans, too. In an encouraging sign, "qualified association plans" were included in both the House and Senate versions of health care legislation. And Representative James **Moran** (D-VA) introduced a resolution in Congress—drafted in part by the coalition—to ensure that bona fide associations "be allowed to offer group health plans to their members, within the context of national health reform."

No health care reform legislation passed this year, but ASAE promises to keep up the crusade next year.

The KANSAS BANKERS ASSOCIATION
A Full Service Banking Association

January 24, 1995

TO: Senate Committee on Financial Institutions and Insurance

FROM: Kathleen A. Taylor, Kansas Bankers Association

RE: SB 35 - Garnishment of funds in financial institutions

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before the Committee on **SB 35**, dealing with the garnishment of funds in financial institutions. These proposed changes would amend several provisions of KSA 60-726 and would make one technical amendment to KSA 61-2013.

Last year, this legislature made several changes to the garnishment law in SB 530. One part of that large bill made some changes to the garnishment law as it relates to funds of the judgment debtor found in financial institutions.

Technical amendment. The need for the suggested technical amendment to KSA 61-2013 was discovered as practicing attorneys were applying these new changes found in KSA 60-726 to limited actions cases. It is believed that the omission of the reference to future amendments to this statute was inadvertent, thus our amendment.

Recouping compliance costs. Prior to the enactment of SB 530, when a financial institution received a garnishment order seeking to attach funds held there, the financial institution had no other way to recoup its costs in complying with the garnishment order, other than to contract with its customer for a fee to cover those costs.

As a result of SB 530, language was included to provide for a statutory administrative fee to be taken out of the defendant's account to defray the costs incurred by the garnishee (financial institution). It is our understanding that this administrative fee was inserted to guarantee that the costs of complying with a garnishment order will be recouped in those cases where the parties (financial institution and customer) have not already contracted for such a fee. **SB 35** inserts language to make that clarification in the statute in subsection (a) of KSA 60-726.

Identifying language. Many times, financial institutions will receive a garnishment order stating a common name. Especially for those larger, urban institutions with many Smiths and Jones's, and also in the case of smaller communities with large families and many Juniors and Seniors, this can be particularly confusing. Unfortunately, such confusion may result in inadvertent garnishment compliance errors.

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Senate F/I 1/24/95
Attachment #6

The 1994 legislature recognized this in requiring further identification of the defendant when it amended the garnishment statute dealing with wage garnishments - KSA 60-717(a)(2) (see attached copy). We are requesting similar identifying information to be included in those garnishment orders to financial institutions. This amendment can be found in subsection (b) of 60-726.

We would today request that our amending language be patterned after that of the wage garnishment language and so offer an amendment to our proposed language so that the garnishment order must include the "defendant's address and tax identification number, if known".

Search for trust assets. It is often unclear upon the fact of the garnishment order, whether or not, the garnishing party is requesting the financial institution to search trust records. We are concerned that if such an intent is not specifically stated, that an institution may be liable to conduct such a search on every order. This requirement would prove to be extremely costly and time consuming, given the small percentage of customers with trust assets. Thus **SB 35** inserts language in subsection (b) which would require a garnishing party to indicate whether trust records are to be searched.

In an effort to prevent this from becoming a blanket request on every garnishment order, we are today requesting that language from subsection (f) be used to require that such a request shall be with the "good faith belief that the garnishee has or will have trust assets of the defendant". That amending language is also attached hereto.

Joint tenancy and multiple garnishments. Our final request for change to this statute comes in the form of a new subsection (f). A problem arises when an individual (defendant) is being garnished, and the financial institution holds an account that is owned in joint tenancy by the defendant and another person or persons. Institutions have struggled for years with this dilemma. Past case law had indicated that the account should be severed in proportionate shares, and only the defendant's proportionate share should be frozen and remitted. (See Walnut Valley State Bank v. Stovall, 233 Kan. 459 (1978))

This approach seemed inconsistent with Kansas law regarding joint tenancy. In Kansas, all joint tenancy owners own the funds together, so that any one joint tenant has access to and can withdraw all the funds at any time. (See KSA 9-1205) It is also inconsistent with the rules regarding IRS levies. (The IRS requires the institution to freeze the entire joint account, even if only one owner has been levied.)

The problem usually escalated as subsequent garnishment orders were received on the same defendant Should the financial institution once again divide the funds proportionately and freeze only a proportionate amount?

Proposed new subsection (f) is intended to take care of this dilemma by stating that the entire account is subject to the garnishment order, so that the garnishee (institution) shall withhold the entire amount sought by the garnishment. It follows then, that upon subsequent garnishment attempts of the same account, the garnishee would again freeze the account in entire amount of the garnishment.

This solution is more in line with Kansas law on joint tenancy and with the rule regarding IRS levies. It does not preclude the other joint tenants from petitioning the court to prove their ownership in the funds, as that remedy is currently available to them.

Suggested Amendments to Subsection (b):

On lines 32 and 33, by replacing the amending language with the following:

"shall include the defendant's address and tax identification number, if known, and"

On line 38 by continuing with the following:

"on good faith belief of the party seeking garnishment that the garnishee has, or will have, trust assets of the defendant."

Sec. 2. K.S.A. 1993 Supp. 60-717 is hereby amended to read as follows: 60-717. (a) *Form.* (1) An order of garnishment, issued independently of an attachment, either prior to judgment or as an aid for the enforcement of a judgment, for the purpose of attaching any property, funds, credits or indebtedness belonging to or owing the defendant, other than earnings, is declared to be sufficient if substantially in the following form:

"In the District Court of _____ County, Kansas, A. B., Plaintiff, vs. C. D., Defendant, and E. F., Garnishee. The State of Kansas to the Garnishee: You are hereby ordered as a garnishee to file with the clerk of the above named court, within 10 days after service of this order upon you, your answer under oath stating whether you are at the time of the service of this order upon you, and also whether at any time thereafter but before you sign your answer, indebted to the defendant, or have in your possession or control any property belonging to the defendant, excluding earnings (compensation for personal services, whether denominated as wages, salary, commission, bonus or otherwise) due and owing the defendant and stating the amount of any such indebtedness and description of any such property. For the purpose of this order, if you are, at the time this order is served upon you, an executor or administrator of an estate containing property or funds to which defendant is or may become entitled as a legatee or distributee of the estate upon its distribution, you are deemed to be indebted to the defendant to the extent of such property or funds. You are further ordered to withhold the payment of any such indebtedness, or the delivery away from yourself of any such property, until the further order of the court. Your answer on the form served herewith shall constitute substantial compliance with this order.

"Failure to file your answer may entitle the plaintiff to judgment against you for the full amount of the claim and costs.

"Witness my hand and seal of the court at _____ in this county, this _____ day of _____, 19____, _____, Clerk of the court, _____ County."

(2) An order of garnishment, issued independently of an attachment as an aid for the enforcement of a judgment and for the purpose of attaching earnings of the defendant~~,~~ *shall include the defendant's address and social security number, if known, the address of the plaintiff's attorney and, except as otherwise provided the amount of the plaintiff's claim against the defendant. If the exact amount of the plaintiff's claim is not known, the order of garnishment shall include an approximate amount of the plaintiff's claim against the defendant. It* is declared to be sufficient if substantially in the following form:

"In the District Court of _____ County, Kansas, A. B., Plaintiff, vs. C. D., Defendant, and E. F., Garnishee. The State of Kansas to the Garnishee: You are hereby ordered as a garnishee to file with the clerk of the above named court, within 40 days after service of this order upon you, your answer under oath stating whether you are indebted to the defendant by reason of earnings (compensation for personal services, whether denominated as wages, salary, commission, bonus or otherwise) due and owing the defendant and stating the amount of any such indebtedness. Computation of the amount of your indebtedness shall be made as prescribed by the answer form served herewith and shall be based upon defendant's earnings for any pay period or periods which end during the 30-day period beginning the day this order is served upon you. You are further ordered to withhold from each payment for earnings due the defendant for any pay period or periods ending during such 30-day period the payment of that portion of defendant's earnings required to be withheld pursuant to the directions accompanying the answer form until the further order of the court. *If you do not receive an order of the court to dispose of earnings withheld from the defendant within 60 days from the date your answer is filed, and your answer is not contested by the plaintiff, you may petition the court for an order allowing you to return withheld funds to the defendant.* Your answer on the form shall constitute substantial compliance with this order.

Defendant _____ *Plaintiff's attorney* _____

Address _____ *Address* _____

_____ _____

Social Security #, if known _____ *Amount of claim* _____

"Failure to file your answer may entitle the plaintiff to judgment against you for the full amount of the claim and costs.

"Witness my hand and seal of the court at _____ in this county, this _____ day of _____, 19____, _____, Clerk of the court, _____ County."

If such order of garnishment is issued at the written direction of the party entitled to enforce the judgment, pursuant to K.S.A. 60-716, and amendments thereto, to enforce (1) an order of any court

REMARKS CONCERNING SENATE BILL 35
SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE
JANUARY 24, 1995

Thank you for giving me the opportunity to appear before your Committee on behalf of Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas, and Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work. In addition to my prepared remarks, I am distributing to you a letter which I received by fax last week from Bruce C. Ward, who is legislative chairman of the Collection Attorneys Association, of Wichita, Kansas.

We would suggest that parts of SB 35 are not clear. For instance, on page 1, lines 23 and 24, it is not clear what is meant by "the parties". The statute being amended in section 1 is a part of the Kansas Code Of Civil Procedure. In the context of the Code Of Civil Procedure, ordinarily "the parties" would refer to plaintiff and defendant. However, we would assume that it was intended by the sentence that is added on lines 23 and 24 that a financial institution and its depositor may enter into a contract for a larger administrative fee. If that is the case, the bill should be amended to specify exactly who is intended to be covered by the words "the parties".

We assume that a financial institution may adopt a schedule of charges, and if the depositor agrees to the posted schedule fees, we do not know why there needs to be legislative action concerning those charges. If it is necessary to have legislation concerning the amount of charges, should there not be a limit on the amount of such charges?

With regard to lines 32 and 33 on page 1, we would suggest that the words "if known" be added after the word "number" on line 33. That would make this statute comparable to the amendment made in 1994 to K.S.A. 60-717.

With regard to lines 37 and 38 on page 1, we are not certain what is meant by the term "trust records". Unless the term "trust records" has a clearly understood

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meaning that we are not familiar with, we would suggest that clarification be made of that term.

On page 2 of the bill, we are quite concerned with the provisions of lines 16 through 23. Some of those concerns are set out on page 2 of the letter to me of Bruce C. Ward which is attached to my remarks. As pointed out by Mr. Ward, this Bill makes significant changes in the current Kansas law. We are concerned that considerable litigation will result from such change. The bill gives immunity to financial institutions, with its provision that the garnishee would not be liable to the joint owners if later it is proven that in fact the account was owned by the other joint owners other than the defendant who was garnished. No such protection is offered in the bill for the plaintiff who had obtained the garnishment.

We feel the legislature should approach such significant changes in Kansas law carefully and thoughtfully. Obviously, it would help collection activity if the entire balance in a joint tenancy account were available for garnishment of any of the persons listed as owners of the joint tenancy account. We therefore are not taking the position that the purpose of the proposed amendment is wrong; we would like to be sure that such a change, if it is to be made, is made properly. We would think that consideration should be given to possible amendments to K.S.A. 58-501, which is the substantive statute dealing with personal property, rather than attempting to deal with significant changes in substantive law in a statute that relates to civil procedure.

Elwaine F. Pomeroy
For Kansas Collectors Association, Inc. and
Kansas Credit Attorneys Association

ments if maker not found within two years. If the person executing the same or his or her assigns cannot be found within two years subsequent to such payment or satisfaction, the register of deeds shall destroy the chattel mortgages or other instruments of writing remaining in his or her office by burning the same in the presence of the county commissioners, a note or list of the instruments to be destroyed having been entered in the index book for chattel mortgages.

History: L. 1895, ch. 170, § 2; April 5; R.S. 1923, 58-320.

58-321. Destruction of mortgages on file five years and not renewed. All chattel mortgages which have expired by reason of being on file five years, and not renewed, may be destroyed by the register of deeds as provided in K.S.A. 58-320, the proper entry having been made of such destruction.

History: L. 1895, ch. 170, § 3; April 5; R.S. 1923, 58-321.

PROPERTY MORTGAGEABLE; FUTURE ADVANCES

58-322.

History: L. 1935, ch. 218, § 1; L. 1937, ch. 266, § 1; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.

CASE ANNOTATIONS

1. Mortgage pledging increase of cattle as security held valid. Stockgrowers State Bank v. Park, 143 K. 293, 295, 54 P.2d 950.

2. Cited; property description in conditional sales contract inadequate as against third party. International Harvester Co. v. Champlin Refining Co., 153 K. 414, 419, 110 P.2d 779.

58-323.

History: L. 1937, ch. 266, § 2; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.

Source or prior law:

L. 1935, ch. 218, § 2.

CASE ANNOTATIONS

1. Cited; property description in conditional sales contract inadequate as against third party. International Harvester Co. v. Champlin Refining Co., 153 K. 414, 419, 110 P.2d 779.

58-324.

History: L. 1937, ch. 266, § 3; Repealed, L. 1965, ch. 564, § 416; Jan. 1, 1966.

Source or prior law:

L. 1935, ch. 218, § 3.

Article 4.—ESCHEATS

58-401.

History: L. 1933, ch. 219, § 1; L. 1965, ch. 343, §1; L. 1976, ch. 145, § 202; Repealed, L. 1979, ch. 173, § 31; July 1.

CASE ANNOTATIONS

1. Cited in holding judgment cannot be affected after term except as provided by civil code. Keys v. Smallwood, 152 K. 115, 118, 102 P.2d 1001.

58-402 to 58-404.

History: L. 1933, ch. 219, §§ 2 to 4; Repealed, L. 1979, ch. 173, § 31; July 1.

58-405.

History: L. 1938, ch. 46, § 1; L. 1949, ch. 309, § 1; L. 1968, ch. 141, § 1; L. 1977, ch. 105, § 18; Repealed, L. 1979, ch. 173, § 31; July 1.

Source or prior law:

L. 1935, ch. 146, § 1.

58-406.

History: L. 1938, ch. 46, § 2; Repealed, L. 1979, ch. 173, § 31; July 1.

Source or prior law:

L. 1935, ch. 146, § 2.

58-407, 58-408.

History: L. 1938, ch. 46, §§ 3, 4; Repealed, L. 1979, ch. 173, § 31; July 1.

Article 5.—REAL OR PERSONAL PROPERTY GRANTED OR DEVISED

(The Property Act of 1939)

Cross References to Related Sections:

Disposition of property in perpetuity for burial purposes, see 12-1419a.

Termination of life estates and estates in joint tenancy, see 59-2286.

Law Review and Bar Journal References:

Remainder interests and related problems prior to 1939, Eugene H. Nirdlinger, 4 J.B.A.K. 117, passim (1935).

Aspects of the law of future interests, William R. Scott, 20 J.B.A.K. 174 (1951).

Recent construction of act, William R. Scott, 24 J.B.A.K. 175, 176, 177 (1955).

58-501. Tenancy in common unless joint tenancy intended, when; exception; joint tenancy provisions. Real or personal property granted or devised to two or more persons including a grant or devise to a husband and wife shall create in them a tenancy in common with respect to such property unless the language used in such

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grant or devise makes it clear that a joint tenancy was intended to be created: *Except*, That a grant or devise to executors or trustees, as such, shall create in them a joint tenancy unless the grant or devise expressly declares otherwise. Where joint tenancy is intended as above provided it may be created by:

(a) Transfer to persons as joint tenants from an owner or a joint owner to himself or herself and one or more persons as joint tenants;

(b) from tenants in common to themselves as joint tenants; or

(c) by coparceners in voluntary partition to themselves as joint tenant.

Where a deed, transfer or conveyance grants an estate in joint tenancy in the granting clause thereof and such deed, transfer, or conveyance has a hebendum clause inconsistent therewith, the granting clause shall control. When a joint tenant dies, a certified copy of letters testamentary or of administration, or where the estate is not probated or administered a certificate establishing such death issued by the proper federal, state or local official authorized to issue such certificate, or an affidavit of death from some responsible person who knows the facts, shall constitute prima facie evidence of such death and in cases where real property is involved such certificate or affidavit shall be recorded in the office of the register of deeds in the county where the land is situated. The provisions of this act shall apply to all estates in joint tenancy in either real or personal property heretofore or hereafter created and nothing herein contained shall prevent execution, levy and sale of the interest of a judgment debtor in such estates and such sale shall constitute a severance.

History: L. 1939, ch. 181, § 1; L. 1955, ch. 271, § 1; June 30.

Judicial Council, 1939: This is G.S. 1935, 22-132, rewritten for clarification and so as to apply to both real and personal property, in harmony with the opinions of our supreme court construing the section. Simons v. McLain, 51 K. 153, 32 P. 919; Boyer v. Sims, 61 K. 593, 60 P. 309; Stewart v. Thomas, 64 K. 511, 68 P. 70; Holmes v. Holmes, 70 K. 892, 79 P. 163; Best v. Tatum, 78 K. 215, 96 P. 140; Withers v. Barnes, 95 K. 798, 149 P. 691; Malone v. Sullivan, 136 K. 193, 14 P.2d 647; Cress v. Hamnett, 144 K. 128, 58 P.2d 61.

Revisor's Note:
Bartlett's Probate Practice, see § 455.

Research and Practice Aids:
Tenancy in Common⇨3.
Hatcher's Digest, Cotenancy § 1; Joint Tenancy § 2; Wills § 131.
C.J.S. Tenancy in Common §§ 7 to 10.
Conveyance by grantor to himself and another as joint tenants, Kansas Probate Law and Practice § 458.
Designating grantees, Kansas Practice Methods § 247.
Designating mortgagee, Kansas Practice Methods § 316.
Devises of realty, Kansas Practice Methods § 580.
History of legislation, Kansas Probate Law and Practice § 456, et seq.

Law Review and Bar Journal References:
Creation without third party prior to 1955 amendment discussed, Joseph W. Morris, 15 J.B.A.K. 241, 243 (1947).
Procedure for termination discussed, J. G. Somers, 1952 J.C.B. 78.
Disadvantages of jointly owned property, James D. Dye, 21 J.B.A.K. 351 (1953).
Foolproof survivorship deed? William R. Scott, 22 J.B.A.K. 128, 130 (1953).
Case of Malone v. Sullivan, 136 K. 193, 14 P.2d 647, mentioned in note on survivorship interests in a joint safe deposit, 3 K.L.R. 368, 370 (1955).
1955-56 survey of real property and future interests, Ferd E. Evans, Jr., 5 K.L.R. 300, 311, 312 (1956).
1956-57 survey of real property and future interests, Ferd E. Evans, Jr., 6 K.L.R. 225, 227, 228 (1957).
Amendment of 1955 quoted and discussed, James D. Dye, 25 J.B.A.K. 334, 335 (1957).
Real estate title standards dealing with joint tenancies, William R. Scott, 7 K.L.R. 180 (1958).
Quoted in comment on language, 1 W.L.J. 498 (1961).
Joint tenancies in bank accounts, 11 K.L.R. 277, 278, 279 (1962).
"Attachment or Garnishment of Jointly Held Bank Accounts," Clarence Koch, 7 W.L.J. 51, 57 (1967).
"Joint Tenancy; Effects Explored," Marvin E. Thompson, 37 J.B.A.K. 83, 84, 85 (1968).
Prior and related statutes mentioned in "Comment on Felonious Killing as a Bar to Intestate Succession," Gary D. Taylor, 8 W.L.J. 128, 132 (1968).
Survey of Kansas law on real and personal property (1965-1969), 18 K.L.R. 427, 439 (1970).
"Does Kansas Need the Uniform Probate Code?" Verne M. Laing, 42 J.B.A.K. 139, 185 (1973).
Discussion of constitutional questions raised in enactments of real property transfer legislation in "Kansas' Marketable Record Title Act," Christel E. Marquardt, 13 W.L.J. 33, 45 (1974).
Survey of property law, Mark Corder and William J. Paprota, 15 W.L.J. 387, 389 (1976).
"Survey of Kansas Law: Real and Personal Property," Deanell R. Tacha, 27 K.L.R. 283, 298 (1979).
"Disclaimer Statutes: New Federal and State Tools for Postmortem Estate Planning," Carolyn A. Adams, 20 W.L.J. 42, 60 (1980).
"Garnishment in Kansas: A Procedural Paradox," Leon B. Graves, 49 J.B.A.K. 129, 133.

CASE ANNOTATIONS

Annotations to L. 1939, ch. 181, § 1:
1. History, purpose and effect of section discussed; conveyance construed. Bouska v. Bouska, 159 K. 276, 279, 280, 153 P.2d 923.

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No. 48,306

WALNUT VALLEY STATE BANK, a Corporation, *Appellant*, v. MERLE J. STOVALL and EMMA M. STOVALL a/k/a EMMA M. MEDLIN, *Appellee*, and TOWANDA STATE BANK, *Garnishee, Defendant.*

(574 P.2d 1382)

SYLLABUS BY THE COURT

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.

Review from the Court of Appeals (1 Kan. App. 2d 421, 566 P.2d 33, filed July 1, 1977). Opinion filed February 25, 1978. Affirmed in part and reversed in part with directions.

Morgan Metcalf, of Coutts, Coutts & Metcalf, of El Dorado, argued the cause and was on the brief for the appellant.

No appearance by the appellee.

The opinion of the court was delivered by

OWSLEY, J.: This is an appeal from an order dissolving a garnishment. The decision of the trial court was affirmed by the Kansas Court of Appeals. See, *Walnut Valley State Bank v. Stovall*, 1 Kan. App. 2d 421, 566 P.2d 33. This court granted review.

Plaintiff first contends the trial court should have dismissed the appeal from the county court to the district court. The basis of the motion to dismiss was the failure to pay the docket fee prior to the hearing of the appeal and failure to provide surety on the appeal bond. Plaintiff also claims prejudicial error in the admission of certain evidence. Each of these points was considered by the court of appeals. The court of appeals concluded they were not grounds for reversal. We adhere to its opinion on these points.

The remaining issue is one of first impression. It involves the right and the extent of the right of a judgment creditor to garnishee a joint tenancy bank account to satisfy a judgment against one of the joint tenants. The court of appeals found such an account may be garnished by the creditor to the extent of the debtor's equitable interest in the account.

The facts relative to this issue are as follows: Plaintiff obtained judgment against defendants Merle J. and Emma M. Stovall.

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Thereafter, the Stovalls were divorced and Emma married Archer B. Medlin. The Medlins established a joint checking account at the Towanda State Bank and each of them signed the bank signature card. Thereafter, and upon application of plaintiff, an order of garnishment was issued to the garnishee, which answered stating that Emma had a checking account with that bank in the amount of $411.52. Three days later, Emma moved to vacate the order of garnishment, which motion was overruled by the county court. Emma appealed to the district court, which heard the matter and entered judgment sustaining the motion to vacate and to set aside the order of garnishment, and assessed cost to plaintiff.

The trial judge issued his opinion letter to counsel, which contained his findings of fact as follows:

"I have read the citations which you gentlemen provided me and find that the garnishment of the bank account held by the Towanda State Bank in the joint account of Archer B. Medlin and Emma Maye Medlin should be set aside. From this ruling it is obvious that I do not reach the same conclusions as the author of the note in the Washburn Law Journal and frankly I was more impressed with the cases set forth at 11 A.L.R. 3, Page 1487 under the section heading of 'Where the Funds in the Act Belong to the Husband Alone.' I feel that this is the situation here and that the funds in said bank account are the property of Mr. Medlin and that the account was established as a joint account for the convenience of Mr. Medlin when he was on the road driving a truck. It is the Court's recollection that it has been at least 6 months since Emma Medlin has been employed and that any loan made by the Liberty Loan Corporation of Hutchinson, Kansas was made primarily to Archer Medlin in March of 1975 and was not in fact made to Emma Medlin."

Through statutory enactment the legislature has sought to limit the creation of joint tenancy agreements unless by clear and convincing evidence the parties to the agreement show the intent to create such an estate. (K.S.A. 58-501). A joint tenancy bank account gives any party on the account a complete power of disposal. Upon death the survivor or survivors take all, even against lawful heirs of the decedent. Financial advisers not versed in the intricacies of the law have convinced many unlearned persons that a joint tenancy agreement is the answer to estate planning. While a joint tenancy has many laudable uses, it is not a panacea. Many injustices have resulted through use of the device. Upon proper showing we have imposed constructive trusts on property in the hands of a surviving joint tenant in order to avoid unintended results. (*Winsor v. Powell,* 209 Kan. 292, 497

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P.2d 292; *Agrelius v. Mohesky,* 208 Kan. 790, 494 P.2d 1095; *Grubb, Administrator v. Grubb,* 208 Kan. 484, 493 P.2d 189.)

We have considered the cases cited at 11 A.L.R.3d 1465 and recognize there is support for the position that none of the funds in a joint tenancy account can be garnished, as well as support for the position that all the funds can be garnished. Any argument in support of either of these positions may be eliminated by reference to K.S.A. 58-501(*c*):

". . . The provisions of this act shall apply to all estates in joint tenancy in either real or personal property heretofore or hereafter created and nothing herein contained shall prevent execution, levy and sale of the interest of a judgment debtor in such estates and such sale shall constitute a severance."

The statute specifically provides the right to levy on personal property to the extent of the "interest of a judgment debtor." We must construe the phrase "interest of a judgment debtor." The court of appeals has stated the phrase means the equitable interest in joint tenancy property. Its affirmance of the trial court's decision is based on the trial court's finding of fact that the judgment debtor had no equitable interest in the joint tenancy account. We do not believe the solution is that simple. We are concerned with the ownership of a joint tenancy bank account between two or more joint tenants and the burden of proof if such ownership is challenged. In *Miller v. Miller,* 222 Kan. 317, 564 P.2d 524, we considered the ownership of a joint tenancy property conveyed by a father to himself, his son, and his daughter-in-law. We said:

"The record establishes that each of the three parties—Jessie, Ima Kaye, and Richard—owned an undivided one-third interest in this tract at the time suit was commenced, and had owned such interests for almost ten years, since the recording of the deed in 1965. Jessie made a gift of one-third interest to his son and of a like interest to his daughter-in-law when the property was acquired. That Jessie paid the entire purchase price is immaterial." (p. 321.)

The statement in *Miller,* "[t]hat Jessie paid the entire purchase price is immaterial," is too broad. It would appear that when a party to a joint tenancy attempts to prove an intent to own joint tenancy property other than equally between the parties the issue of who provided the purchase price would be material. Support for this statement is found in *Schierenberg v. Hodges,* 221 Kan. 64, 558 P.2d 133, where we said:

"It is well established in this jurisdiction that, absent fraud, one spouse may make an *inter vivos* transfer of his or her own personal property to another person

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outright or to himself and another person in joint tenancy without contravening the statutory rights of a surviving spouse under K.S.A. 59-602. *Malone v. Sullivan*, 136 Kan. 193, 14 P.2d 647; *In re Estate of Fast*, 169 Kan. 238, 218 P.2d 184; *Eastman, Administrator v. Mendrick*, 218 Kan. 78, 542 P.2d 347. The plaintiff's deceased spouse may well have lawfully transferred the funds in question; the funds may have come from her earnings, or they may have been accumulated solely by the plaintiff. Such questions have not been litigated or determined. We conclude that the court should not have sustained the motion for summary judgment." (p. 66.)

Severance of the joint tenancy into a tenancy in common between a husband and wife gives rise to a rebuttable presumption of equal ownership; that is, the husband and wife each own one-half of the account. Such a presumption is created on the theory of donative intent. In *Norcross v. 1016 Fifth Avenue Co., Inc.*, 123 N.J. Eq. 94, 196 A. 446 (1938), the court explained the theory in this manner:

"There seems to be abundant legal support to the inference that the opening of an account, wherein each depositor agrees that all the moneys deposited are to belong to the parties as joint tenants, is *prima facie* evidence of donative intent. *New Jersey Title Guarantee and Trust Co. v. Archibald*, 91 N.J. Eq. 82. In the last cited case, the court of errors and appeals, in part, said:

" 'We think that where, as here, moneys belonging originally either wholly to the mother, or in part to her and in part to her daughter, are deposited by them in a bank in their joint names, and at the same time they both sign and deliver to the bank a writing stating that 'This account and all money to be credited to it belongs to us as joint tenants and will be the absolute property of the survivor of us; either and the survivor to draw,' and upon the death of the mother the undrawn moneys belong to the surviving daughter.

. . . . . .

" 'The contract entered into by the bank with the mother and her daughter exhibited a donative purpose from donor to donee (not one merely for use and convenience of the donor) and hence constituted a valid gift.' *Commonwealth Trust Co. v. Grobel*, 93 N.J. Eq. 78; *Commercial Trust Co. v. White*, 99 N.J. Eq. 119; affirmed, 100 N.J. Eq. 561; *Trenton Saving Fund Society v. Byrnes*, 110 N.J. Eq. 617; *Dover Trust Co. v. Brooks*, 111 N.J. Eq. 40; *McGee v. McGee*, 81 N.J. Eq. 190; *Rosecrans v. Rosecrans*, 99 N.J. Eq. 176; *Mendelsohn v. Mendelsohn*, 106 N.J. Eq. 537." (p. 98.)

A similar result has been reached in Michigan. In *Murphy v. Michigan Trust Co.*, 221 Mich. 243, 190 N.W. 698 (1922), the Supreme Court stated:

"We must hold the deposits constituted plaintiffs joint tenants. As joint tenants the ownership of Mr. Murphy is severable for the purpose of meeting the demands of creditors.

"In the absence of proof establishing their contributions toward the deposits

the presumption prevails that plaintiffs were equal contributors thereto and, therefore, equal owners. If the assignee did not want to accept such presumption the way was open to introduce testimony on the subject. We do not, however, have to rest the matter upon such presumption, as all the testimony in the case was to the effect that the principal contributor to the deposits was Mrs. Murphy. We can conceive of no reason why this joint claim for deposits made in the bank should not be allowed, and payment, if any, to Mr. Murphy withheld by order of the court until his contingent liability to contribute as a partner is determined. The joint claim should have been allowed and the right of Mrs. Murphy therein determined as one-half thereof. . . ." (p. 246.)

In accord, *Czajkowski v. Lount*, 333 Mich. 156, 52 N.W.2d 642 (1952); *Sussex v. Snyder*, 307 Mich. 30, 11 N.W.2d 314 (1943); *Darst v. Awe*, 235 Mich. 1, 209 N.W. 65 (1926).

In *United States v. Third Nat. Bank & Trust Co.*, 111 F. Supp. 152, 156 (M.D. Pa. 1953), the court stated:

". . . The attachment of the interest of a joint tenant operates as a severance of the joint ownership, makes them tenants in common and terminates the right of survivorship. Dover Trust Co. v. Brooks, Court of Chancery of N.J., 111 N.J. Eq. 40, 160 A. 890; In re Erie Trust Co., 19 Erie, Pa., 469."

See also, *American Oil Co., Ap., v. Falconer et al.*, 136 Pa. Super. 598, 605, 8 A.2d 418 (1939).

We believe this presumption of equal ownership should prevail in the absence of proof of ownership in some other proportion. Anyone attacking equal ownership should assume the burden of proof. If the debtor can demonstrate that he has an interest less than an equal share of the account the burden is upon him to come forward with such evidence. By the same token the debtor's cotenant may come forward and demonstrate an ownership greater than the interest created by operation of the presumption upon severance. If it is within the power of the creditor-garnisher to demonstrate the debtor has an ownership greater than that of the other cotenant, the garnisher is entitled to claim the greater share upon proper proof.

The trial court found the garnishment must be dissolved because the wife had no interest in the account. Yet the record indicates she wrote nearly all the checks on the account and made numerous deposits, including the proceeds of a $483.18 loan taken out and signed by her and her present husband. The finding of the trial court that Emma Stovall had no interest in the account seems to stem from the fact the garnisher could not prove exactly what her interest was in the account at the time of the

garnishment, rather than from the fact she had absolutely no interest in the account. Without the presumption of equal ownership and applying the rule established by the court of appeals, the garnisher of a joint tenancy account can be defrauded by a debtor and the debtor's cotenants by the act of commingling deposits and withdrawals to the point that no one can determine the origin of the proceeds of the account at the time of garnishment.

We hold that a garnishment upon a joint tenancy bank account severs the joint tenancy, creating a tenancy in common. A rebuttable presumption of equal ownership between the cotenants remains intact. The burden of proof on a claim the account is owned other than equally between the cotenants lies with the party asserting such claim. If married persons wish to avoid the effect of this rule they may maintain their property separate from that of their spouses and receive the protection of K.S.A. 1977 Supp. 23-201, *et seq.*

We reverse the decision of the court of appeals on the issue of garnishment of joint tenancy accounts and remand the case to the trial court with directions to grant a new trial in accord with rules of law established herein.

Affirmed in part and reversed in part with directions.