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The Innkeeper's Lien and Due Process—*Klim v. Jones*

The problems associated with human mobility require constant testing and refining of the principles embodied in our common and statutory law. Furthermore, there has developed an increasing concern for the rights of the economically disadvantaged individual in contemporary America.¹ The compound problems of the mobile poor have been partly resolved by the application of the due process clause of the Fourteenth Amendment to them.²

An example of this trend of individual constitutional protection in a mobile society occurs in *Klim v. Jones*,³ where the court held that taking possession of a traveler's possessions under a statutory innkeeper's lien denied him due process of law. In *Klim* the manager of a hotel approached the plaintiff and requested payment. When the plaintiff denied owing anything the manager locked him out of his room, denying him access to papers and equipment necessary to his employment.⁴ The court held the lien unconstitutional because it failed to provide for a hearing before the manager could deprive the plaintiff of his property.⁵

Even though the innkeeper's lien had its beginning under Roman law⁶ where an absolute duty was imposed upon the innkeeper to insure the safety of the property of his guest,⁷ the common law innkeeper's lien arose

¹ See, e.g., Comment, *Due Process and the Right to a Prior Hearing in Welfare Cases*, 37 *FORDHAM L. REV.* 604 (1969); Note, *Public Landlords and Private Tenants: The Eviction of "Undesirables" From Public Housing Projects*, 77 *YALE L.J.* 988 (1968).

² See, e.g., Comment, *The Constitutional Minimum for the Termination of Welfare Benefits: The Need for and Requirements of a Prior Hearing*, 68 *MICH. L. REV.* 112 (1969); Note, *Public Landlords and Private Tenants: The Eviction of "Undesirables" From Public Housing Projects*, 77 *YALE L.J.* 988 (1968); Note, *Withdrawal of Public Welfare: The Right to a Prior Hearing*, 76 *YALE L.J.* 1234 (1967).

³ 315 F. Supp. 109 (N.D. Cal. 1970).

⁴ The plaintiff, a painter, worked irregularly and was of limited financial means. Everything he owned was locked inside the room. His tools, driver's license, birth certificate, and bank book were among the items detained. *Id.* at 111.

⁵ The court stated as follows:

. . . [T]his court grants plaintiff's motion for summary judgment and declares California Civil Code § 1861 unconstitutional insofar as it fails to provide for a hearing prior to the imposition of the lien pursuant thereto. *Id.* at 124.

⁶ For the historical development of innkeepers dating from the Roman era, see *W. HALE, THE LAW OF BAILMENTS AND CARRIERS* 254 n.1 (1896).

⁷ See *Klim v. Jones*, 315 F. Supp. 109, 119, n.112 (N.D. Cal. 1970), citing *N. COURNOYER, INTRODUCTION TO HOTEL AND RESTAURANT LAW* 7 (1968).

in Medieval England.⁸ The innkeeper was under a duty to take in travelers who might come to his door.⁹ Since the guest, who was usually unfamiliar with the area, had to give custody of his property to a servant or host who was a stranger to him,¹⁰ the innkeeper had the absolute duty of preventing loss and injury to the guest's property.¹¹ Because of this responsibility, an innkeeper acquired a lien upon the property received by him in his capacity as an innkeeper for the reasonable value of the services rendered to the guest.¹² The lien did not confer a right of sale, but only a right to hold the property until the guest made *quantum meruit* payment.¹³ The lien attached as soon as the property was brought on the premises and remained thereon even if the guest wrongfully removed it.¹⁴ Today this lien exists by statute in most states.¹⁵

In *Klim*, the lien was attacked because it did not afford the guest a hearing prior to its imposition. The guest was on notice that his property would be held until payment. Fair notice and the opportunity to be heard

⁸ See M. DOBIE, *LAW OF BAILMENTS AND CARRIERS* § 90, at 241 (1914); R. BROWN, *THE LAW OF PERSONAL PROPERTY* § 102, at 482 (2d ed. 1955). A large amount of traveling developed in England during that time. There were many dangers and hazards encountered by travelers. Roads were very often bad and there were also highwaymen and outlaws with which to contend. It was therefore imperative that the traveler seek shelter and safety along the way both for himself and his property. These dangers were considerably greater at night. See Navagh, *A New Look at the Liability of Inn Keepers for Guest Property Under New York Law*, 25 *FORDHAM L. REV.* 62, 63 (1956).

⁹ See 1 L. JONES, *A TREATISE ON THE LAW OF LIENS* § 498, at 499 (3d ed. 1914); W. HALE, *supra* note 6, § 53, at 274-75; 40 *AM. JUR. 2d Hotels, Motels, etc.* §§ 62-3 (1968).

¹⁰ See Navagh, *supra* note 8, at 63.

¹¹ *Id.* There are exceptions to this rule, however. The innkeeper was not liable where loss occurred by accidental fire, by an act of God or the public enemy, by reason of the inherent nature of the property, and where it was the fault of the guest, or his servant or companion. W. HALE, *supra* note 6, § 54, at 277; R. BROWN, *supra* note 8, § 102, at 483; 40 *AM. JUR. 2d Hotels, Motels, etc.* § 126 (1968).

¹² In return for the obligation imposed upon the innkeeper he is invested with a lien. The most noteworthy characteristic of the lien is that it is not confined to property owned by the guest, but attaches to all property brought with him and in good faith received by the innkeeper as the guest's property. See 1 L. JONES, *supra* note 8, § 498, at 449; *accord*, R. BROWN, *supra* note 8 § 114, at 548; M. DOBIE, *supra* note 8, § 100, at 285; 40 *AM. JUR. 2d Hotels, Motels, etc.* § 187 (1968).

¹³ See 1 L. JONES, *supra* note 9, § 525, at 483; 40 *AM. JUR. 2d Hotels, Motels, etc.* § 191 (1968). A remedy of sale after a certain period is generally provided by statute. See 1 L. JONES, *supra* note 9, § 525, at 483.

¹⁴ See 40 *AM. JUR. 2d Hotels, Motels, etc.* § 189 (1968).

¹⁵ At common law the lien was limited strictly to the innkeepers. See 1 L. JONES, *supra* note 9, § 515, at 462; 40 *AM. JUR. 2d Hotels, Motels, etc.* § 186 (1968). See, e.g., *VA. CODE ANN.* §§ 43-31, 43-34- to -40 (1950).

are the two essential elements of procedural due process.¹⁶ The test applied in the past to determine whether procedural due process has been violated is the traditional "balancing test" wherein public and private interests are weighed.¹⁷ The *Klim* court, following the line of reasoning of the United States Supreme Court in *Sniadach v. Family Finance Corp.*,¹⁸ concentrated its argument on the disastrous effects of the innkeeper's lien upon the individual to whom it was applied.¹⁹ The court felt that no special or

¹⁶ The United States Supreme Court has relied on this principle as early as 1863. See *Baldwin v. Hale*, 68 U.S. (1 Wall.) 223 (1863):

Common justice requires that no man shall be condemned in his person or property without notice and an opportunity to make his defence. *Id.* at 233.

In several other decisions since this one, the Court has held these two requirements to be fundamental characteristics of procedural due process. See, e.g., *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233 (1944):

The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked. *Id.* at 246.

Accord, *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *Best v. Humboldt Placer Mining Co.*, 371 U.S. 334 (1963); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

¹⁷ See, e.g., *Goldberg v. Kelly*, 397 U.S. 254 (1970), where the court remarked:

The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be "condemned to suffer grievous loss" . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication. *Id.* at 262-63; .

Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961):

. . . [C]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the governmental function involved as well as of the private interest that has been affected by the governmental action. *Id.* at 895;

Frank v. Maryland, 359 U.S. 360 (1959):

Application of the broad restraints of due process compels inquiry into the nature of the demand being made upon the individual freedom in a particular context and the justification of social need in which the demand rests. *Id.* at 363;

Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123 (1951):

The precise nature of the interest that has been adversely affected, the manner in which this was done, the reasons for doing it, the available alternatives to the procedure that was followed . . . , the balance of hurt complained of and the good accomplished—these are some of the considerations that must enter into the judicial judgment. *Id.* at 163 (concurring opinion, Frankfurter, J.).

¹⁸ 395 U.S. 337 (1969), noted in 68 MICH. L. REV. 986 (1970); 64 NW. U.L. REV. 750 (1969); 22 VAND. L. REV. 1400 (1969). This case involved a Wisconsin pre-judgment wage garnishment statute which did not afford an evidentiary hearing prior to the retention of a debtor's wages by his employer, the garnishee. The court held that such deprivation of a person's wages was in violation of the principles of due process and therefore unconstitutional. 395 U.S. at 342. The court weighed only the individual's interest in finding that procedural due process was violated.

¹⁹ 315 F. Supp. at 122-24. What the *Klim* court is actually saying is that the innkeeper's lien statute, California Civil Code § 1861, is procedurally defective because it substantively had or could have a disastrous effect upon the plaintiff.

overriding state or creditor interest warranted existence of the lien without procedural guarantees.²⁰ The *Sniadach* decision was primarily concerned with the individual's interest with respect to a pre-judgment wage garnishment statute and did not even consider the needs of the creditor.²¹ The *Klim* court reasoned that the greatest practical impact of the lien was upon such persons as the plaintiff, who were of limited financial means.²² It also cautioned that, as in the principal case, property detained under the lien might be needed by the guest to carry on a livelihood until trial of the issues.²³ Furthermore, there was the possibility of economic coercion, because the innkeeper could detain the guest's property on the basis of dubious, or even fraudulent claims.²⁴

In attempting to reconcile the requisites of procedural due process with those procedures used in pre-judgment attachment, courts have argued that such a detention of a person's property is merely deprivation of the possession or use, and not a defeasance of the title.²⁵ It has also been sug-

²⁰ *Id.* at 124.

²¹ See note 18 *supra*.

²² 315 F. Supp. at 122.

²³ *Id.* at 123.

²⁴ *Id.*

²⁵ See *Byrd v. Rector*, 112 W. Va. 192, 163 S.E. 845 (1932), citing *McInnes v. McKay*, 127 Me. 110, 141 A. 699 (1928), as follows:

If, after having full opportunity to be heard in defense of such claim, a judgment is rendered thereon against the defendant or his property, there has been no lack of due process. In the meantime there has been no deprivation of property. The attachment, *quasi in rem* in nature, has operated only to detain the property temporarily, to await final judgment on the merits of plaintiff's claim. 112 W. Va. at 198, 163 S.E. at 848.

But see *Griggs v. Allegheny County*, 369 U.S. 84 (1962); *United States v. Causby*, 328 U.S. 256 (1946).

Since 1897 only five decisions have been handed down involving the constitutionality of the innkeeper's lien. See *Brown Shoe Co. v. Hunt*, 103 Iowa 586, 72 N.W. 765 (1897). The innkeeper held the salesman's samples as security for the accommodations furnished and the court held that such was not a deprivation of property without due process. See *McClain v. Williams*, 11 S.D. 227, 76 N.W. 930 (1898). The court felt it was unconstitutional to give an innkeeper a lien over goods of a third person not a guest, but which were brought upon the premises by the guest. *But see* note 12 *supra*. The court implied, however, that it was not a violation of due process to impose a lien upon the guest's own property. See *Nance v. Houck Piano Co.*, 128 Tenn. 1, 155 S.W. 1172 (1913). The court stated:

Hotels and boarding houses are public necessities, and the Legislature may give them such reasonable protection as, in its judgment, a sound public policy may demand. If the Legislature believed that keepers of hotels and boarding houses are exposed to fraud and deceit by a fraudulent show of baggage in possession of their guests and patrons, and apparently belonging to them, it is competent for it to provide a lien in their favor for the accommodations received from them

gested that since the withdrawal of the owner's right to possession is only temporary, it does not violate his procedural due process.²⁶ If the owner loses in court, his due process has not been violated, and if he wins, he has only lost possession temporarily, while retaining title the whole time. These arguments did not survive the reasoning in *Sniadach*²⁷ when ap-

upon the strength and credit extended . . . *Id.* at 2, 155 S.W. at 1173.

See *Van Laar v. Marchesini*, 107 Misc. 186, 175 N.Y.S. 456 (1919). The court upheld the lien of the innkeeper to be constitutional but found that due process was violated in giving a boarding house keeper a lien on the goods of a third person brought upon the premises by the guest. Only the innkeeper had a lien at common law. See *Lines Music Co. v. Holt*, 332 Mo. 749, 60 S.W.2d 32 (1933), noted in 22 GEO. L.J. 101 (1933), the most recent case before *Klim* to decide the question of the constitutionality of the innkeeper's lien. The court held that a Missouri statute declarative of the common law innkeeper's lien was not unconstitutional since it did not violate due process of law.

²⁶ *McInnes v. McKay*, 127 Me. 110, 141 A. 699 (1928), *aff'd per curiam*, 279 U.S. 820 (1928). This case's validity as to general attachment is questionable though as Justice Douglas stated in the majority opinion of *Sniadach*:

A procedural rule that may satisfy due process for attachments in general, see *McKay v. McInnes*, 279 U.S. 820, does not necessarily satisfy procedural due process in every case. 395 U.S. at 340.

However, Justice Harlan was unwilling to admit that *McKay* met the essentials of due process. See 395 U.S. at 343 (concurring opinion).

²⁷ The *Sniadach* court cited cases where such summary procedure would meet the requirements of due process in certain extraordinary situations. See *Ewing v. Mytinger & Casselberry Inc.*, 339 U.S. 594 (1950). The seizure of misbranded articles under § 304(a) of the Federal Food, Drug, and Cosmetic Act was allowed without a prior hearing.

In another case a conservator was appointed to take possession of a federal savings and loan association prior to a statutory hearing. The court upheld this summary procedure. See *Fahey v. Mallonee*, 332 U.S. 245 (1947).

In the third exception mentioned by *Sniadach*, which involved the pre-judgment attachment of the property of stockholders in an insolvent bank, the Court said:

As to the lien, nothing is more common than to allow parties alleging themselves to be creditors to establish in advance by attachment a lien dependent for its effect upon the result of the suit. *Coffin Bros. v. Bennett*, 277 U.S. 29, 31 (1928).

The fourth exception involved the pre-judgment attachment of the property of an out of state defendant. See *Ownbey v. Morgan*, 256 U.S. 94 (1921):

. . . [A] property owner who absents himself from the territorial jurisdiction of a State, leaving his property within it, must be deemed *ex necessitate* to consent that the State may subject such property to judicial process to answer demands made against him in his absence, according to any practicable method that reasonably may be adopted. *Id.* at 111.

See note 26 *supra*. Courts other than the *Klim* court, in applying *Sniadach*, have not agreed whether or not it is based strictly on due process principles or only concerned with the particular type of property involved—wages. Compare *Larson v. Fetherston*, 44 Wis. 2d 712, 172 N.W.2d 20 (1969) (applying *Sniadach* to garnishment of property other than wages) with *Terplan Inc. v. Superior Court*, 105 Ariz. 270, 463 P.2d 68 (1969) (refusing to extend *Sniadach* to property other than wages). See also note 34 *infra*.

plied to pre-judgment wage garnishment, nor was the *Klim* court persuaded by them.

Attachment in general serves a dual purpose of conferring jurisdiction upon the court²⁸ and preventing the perpetration of a fraud upon a creditor.²⁹ General attachment is used to seize the debtor's property which is in the debtor's possession.³⁰ Garnishment is a special form of attachment in that it detains the property of the debtor in the possession of a third party, the garnishee.³¹ The majority of garnishment actions would arise where the debtor is already settled within the jurisdiction of the court as the wage earner was in *Sniadach*. Under these circumstances the employee-debtor is not likely to quit his job, pack up, and leave the jurisdiction in order to avoid a garnishment proceeding. Thus post-judgment garnishment would be an effective substitute for the pre-judgment garnishment of wages held unconstitutional in *Sniadach*.

The innkeeper's lien is another specialized form of attachment in that the lien attaches before the innkeeper has actual possession of the guest's property.³² The likelihood of a guest leaving without paying is a threat to the innkeeper. If the innkeeper were required to have a hearing prior to the seizure of a guest's goods, the guest could easily avoid the proceedings by taking his property and leaving the jurisdiction before a hearing was had but after notice of it was given. Since a guest is usually a traveler, there is nothing to prevent his leaving quickly. By allowing the innkeeper to take possession of a guest's property prior to notice and a hearing, jurisdiction is conferred upon the court such that if an *in personam* judgment is not available, an *in rem* judgment against the property detained will at least partially satisfy the amount owed to the innkeeper.³³ For these reasons the innkeeper has a greater necessity to detain his guest's property under the lien without a prior hearing than a creditor has to detain the

²⁸ 6 AM. JUR. 2d *Attachment & Garnishment* § 12 (1963). See Note, *Attachment and Garnishment—Pre-judgment Garnishment—Study and Proposed Revisions*, 9 NATURAL RESOURCES J. 119, 120 (1969); 22 VAND. L. REV. 1400, 1402 (1969).

²⁹ 22 VAND. L. REV. at 1402.

³⁰ *Id.* at 1401.

³¹ *Id.* at 1402. See generally Patterson, *Foreward: Wage Garnishment—An Extraordinary Remedy Run Amuck*, 43 WASH. L. REV. 735 (1968); *Wage Garnishment in Washington—An Empirical Study*, 43 WASH. L. REV. 743 (1967).

³² 40 AM. JUR. 2d *Hotels, Motels, etc.* § 189 (1968).

³³ Unless the innkeeper is allowed to detain the property of his guest, it is impossible to guarantee either the guest's appearance in court or have a source from which to at least partially satisfy the value of the services rendered to the guest by the innkeeper.

property of a debtor in a pre-judgment wage garnishment proceeding. The creditor interest in the innkeeper's lien is therefore a more substantial one. The rationale of *Sniadach* should be limited to the pre-judgment garnishment of wages and not extended into the area of the innkeeper's lien³⁴ as it was in *Klim*.

The *Klim* court suggested payment in advance as an alternative to the innkeeper's lien.³⁵ Such a measure is impractical and contrary to the convenience sought by travelers. To make prepayment effective, one would be required not only to pay in advance for each day he stays, but to pay for his meals and phone calls immediately rather than charge them to his room.

The practical effectiveness of the innkeeper's lien lies in the innkeeper's right thereunder to take possession of a guest's property prior to a hearing of the case in order to prevent the guest from defrauding the innkeeper. The *Klim* decision attempts to take this effectiveness away. Possession or detention of property prior to a hearing is necessary to the effectiveness of general attachment laws and of other possessory liens. If the application of *Sniadach* is not limited to pre-judgment wage garnishment,³⁶ which *Klim* refused to do, the effectiveness of general attachment and of possessory liens on all personal property is left in question.

M. E. B.

³⁴ The following statement of Justice Douglas in the majority opinion of *Sniadach* suggests that the pre-judgment of wages has its own distinct problems which require that it be treated differently than other general forms of attachment.

We deal here with wages—a specialized type of property presenting distinct problems in our economic system. We turn then to the nature of that property and problems of procedural due process. 395 U.S. at 340.

See also note 27 *supra*.

³⁵ 315 F. Supp. at 124.

³⁶ See note 34 *supra*.