Buffalo Law Review

Volume 24 | Number 2 Article 8

1-1-1975

A Proposal for a Constitutional Innkeepers' Lien Statute

David M. Kohen

A PROPOSAL FOR A CONSTITUTIONAL INNKEEPERS' LIEN STATUTE

INTRODUCTION

When a hotel has the benefit of an innkeepers' lien, it may seize the baggage of a guest who has not paid his bill and hold it or, possibly, sell it. The innkeepers' lien was developed as an equalizing device, given to the medieval innkeeper because of his duty to receive the guest and the guest's baggage and his absolute liability for the safety thereof.[1] Regardless of the validity of the justification,[2] the common law innkeeper had a lien on all types of property which the guest entrusted to him for safekeeping, except the guest's clothes and other possessions on the guest's person. The lien continued until the guest paid the reasonable and just charges of the innkeeper.[3] The absolute liability has long since been abrogated, but the modern day innkeeper continues to enjoy the benefits of a lien on the baggage of his guests. Today, 49 states have enacted statutory liens,[4] while Alaska retains the common law lien.[5] In most states, the definition of "inn" is broad enough to include rooming and boarding establishments and so the term "guests" may include many permanent residents not normally thought of as such. In these establishments the guests' "baggage" might include all of their tangible possessions.

The statutory liens in three states, Illinois, California and New York, have been held unconstitutional[6] but none of the legislatures

1. Klim v. Jones, 315 F. Supp. 109, 120 (N.D. Cal. 1970); Comment, *The Innkeeper's Lien in Missouri,* 36 Mo. L. REV. 431, 433 (1971); Note, *Collins v. Viceroy Hotel,* 61 ILL. B.J. 262 (1973).

2. *See generally* Hogan, *The Innkeeper's Lien at Common Law,* 8 HASTINGS L.J. 33, 43 (1956).

3. Klim v. Jones, 315 F. Supp. 109, 120 (N.D. Cal. 1970).

4. *See* Note, *The Innkeeper's Lien in the Twentieth Century,* 13 WM. & MARY L. REV. 175, 200-01 (1971); Note, *supra* note 1, at 264 n.1.

5. *See* Comment, *Innkeeper's Liens and the Requirements of Due Process,* 28 WASH. & LEE L. REV. 481 n.1 (1971).

6. Collins v. Viceroy Hotel Corp., 338 F. Supp. 390 (N.D. Ill. 1972); Klim v. Jones, 315 F. Supp. 109 (N.D. Cal. 1970); Brooks v. La Salle Nat'l Banks, 11 Ill. App. 3d 791, 298 N.E.2d 262 (1973); Blye v. Globe-Wernicke Realty Co., 33 N.Y.2d 15, 300 N.E.2d 710, 347 N.Y.S.2d 170 (1973). In Kerrigan v. Boucher, 450 F.2d 487 (2d Cir. 1971), which was based on the Connecticut innkeepers' lien statute, the complaint was dismissed on the ground of mootness after the baggage seized had been returned and the guest had departed from the rooming establishment.

in the three states have attempted to examine the doctrine which developed in the innkeepers' lien cases to determine if a statute could provide for an innkeepers' lien which would be constitutional. This Comment will examine the rationales for holding the innkeepers' lien statutes to be unconstitutional and will explore the policy arguments embodied in the statutes. A model statute, based on recent cases, will be suggested to guide states which wish to retain the innkeepers' lien.

I. Constitutionality of Innkeepers' Lien Statutes

The constitutional challenges to the innkeepers' lien statutes have been based on the fourteenth amendment's requirement that there be no deprivation of property without due process of law and on the fourth amendment's prohibition of unreasonable seizures. Only action by the state is subject to these restrictions. This section will first examine whether the requisite state action is present in the execution of an innkeepers' lien. On the assumption that it is, the section will then present the fourth and fourteenth amendment arguments. On the basis that an arguable constitutional issue is raised, the section will conclude with an examination of the ability of the guest to waive his constitutional rights by express contract with the innkeeper.

A. *State Action*

The constitutional limitations of fourth amendment seizures and fourteenth amendment deprivations of property can only be invoked against governmental action. The acts of a private individual are immune from challenges based on failure to obtain a search warrant or failure to exercise due process of law unless the government is involved in some way.[7] Three rationales have been offered to support a finding that the seizure of a guest's possessions is state action:

> 1. the innkeeper's right to possession derives from or is encouraged by a state statute expressing state policy; (State Authorization or Encouragement)
> 2. the execution of a lien is an act traditionally performed by

7. *Cf.* Northrip v. Federal Nat'l Mort. Ass'n, 372 F. Supp 594, 596 (E.D. Mich. 1974).

state officials and therefore the innkeeper is performing a state function; (Public Function)

3. the state aids in enforcement of the lien or gives it legal recognition through the judicial process. (Judicial Enforcement)[8]

Each of these theories will be examined in detail to determine whether any of them justifies the conclusion that the seizure of a guest's baggage by an innkeeper is an act which is sufficiently attributable to the state to authorize judicial intervention.

1. State Authorization or Encouragement. The doctrine of state authorization or state encouragement[9] permitted the court in *Klim v. Jones*[10] to hold the California innkeepers' lien unconstitutional.

> Not only does the [innkeepers' lien law] outline the conditions applicable to the lien in question here, but it is *only* by virtue of [it] that defendant Jones had the power to impose a lien on the plaintiff's belongings, and it is *only* by virtue of [it] that defendant Jones could impose such lien without subjecting himself to the forms of civil liability excluded by [it]. This is not just action against a backdrop of an amorphous state policy, but is instead action encouraged, indeed only made possible, by explicit state authorization.[11]

Similarly, a New York court said in *Blye v. Globe-Wernicke Realty Corp.*:[12]

> [I]t cannot be gainsaid that innkeepers are possessed of certain powers by virtue of section 181 of the Lien Law. By that token, their actions are clothed with the authority of State Law. . . . [a]nd their actions may be said to be those of the State for purposes of the due process clauses.[13]

These cases found state action even though the New York and California laws were merely codifications of an accepted common law

8. *Cf.* Neth, *Repossession of Consumer Goods,* 24 CASE W. RES. L. REV. 7, 55 (1972).

9. For the origin of the state authorization doctrine, see Reitman v. Mulkey, 387 U.S. 369 (1967) (repeal of open housing law). For the limitations of this doctrine, see Jackson v. Metropolitan Edison Co., 95 S. Ct. 449 (1974) (termination of electrical service) and Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972) (private club with liquor license).

10. 315 F. Supp. 109 (N.D. Cal. 1970).

11. *Id.* at 114 (Footnote omitted).

12. 33 N.Y.2d 15, 300 N.E.2d 710, 347 N.Y.S.2d 170 (1973).

13. *Id.* at 20, 300 N.E.2d at 714, 347 N.Y.S.2d at 175.

lien.[14] Under this view, any state affirmatively recognizing, by statute, a right to take possession nonjudicially would, in effect, be sanctioning such action. The taking of the guest's baggage by the innkeeper is construed as an action by the state, and therefore subject to all of the constitutional limitations on the exercise of governmental power.[15] All seizures made while the statute is on the books might be unconstitutional[16] notwithstanding the existence of an antecedent common law right or a right created by private contract.

A series of cases involving self-help repossession by secured creditors have reached contrary conclusions. In a Florida case,[17] the peaceable repossession of an automobile was held to be done, not "under color of state law," but instead, to be authorized simply by the contract which created the security interest. In a California case,[18] the court said:

> The requirement of "State action" can rarely be satisfied when the action is taken by one not a State official. . . . While difficult factual situations have compelled some courts to enunciate extensions of this general rule, in every such case brought to the court's attention, . . . the power exercised was purely of statutory as distinguished from common law or contractual origin.
> [T]he authority to repossess is based on a contractual right which had been judicially prior [*sic*] to the adoption of the statutes in question.[19]

In *Adams v. Southern California National Bank*[20] the court refused to find significant state involvement in the self-help repossession of secured property. The court relied on the self-help provisions of the Uniform Commercial Code which were invoked by the security

14. Comment, *State Action and Waiver Implications of Self-Help Repossession,* 25 MAINE L. REV. 27, 33 (1973).

15. *Id.*

16. *Id.* at 35.

17. McCormick v. First Nat'l Bank, 322 F. Supp. 604 (S.D. Fla. 1971).

18. Oller v. Bank of America, 342 F. Supp. 21 (N.D. Cal. 1972).

19. *Id.* at 23 (citations omitted).

20. 492 F.2d 324 (9th Cir.), *cert. denied,* 95 S. Ct. 325 (1974). *Accord,* Turner v. Impala Motors, 503 F.2d 607 (6th Cir. 1974); Gibbs v. Titelman, 502 F.2d 1107 (3d Cir. 1974); Brantley v. Union Bank & Trust Co., 498 F.2d 365 (5th Cir. 1974); Nichols v. Tower Grove Bank, 497 F.2d 404 (8th Cir. 1974); Bowman v. Chrysler Credit Corp., 496 F.2d 1322 (5th Cir. 1974); Nowlin v. Professional Auto Sales, Inc., 496 F.2d 16 (8th Cir. 1974); James v. Pinnix, 495 F.2d 206 (5th Cir. 1974); Shirley v. State Nat'l Bank, 493 F.2d 739 (2d Cir. 1974); Bichel Optical Laboratories v. Marquette Nat'l Bank, 487 F.2d 906 (8th Cir. 1974).

agreement.[21] Since these provisions had merely codified the prior common law of self-help repossession, the court found that their enactment was not state action authorizing or encouraging the creditors' acts.

There seems to be an almost irreconciliable difference between the self-help repossession cases and the innkeepers' lien cases as to whether a statute which approves a preexisting right, obtained by contract or common law, is action by the state "authorizing" or "encouraging" the exercise of such right. One possibly relevant distinction between the two lines of cases is that repossessions have usually been based on a contract specifically authorizing them or invoking statutory remedies[22] while agreements between innkeepers and guests have usually been silent about the innkeepers' lien. It seems, however, that contracts which merely invoke statutory remedies without detailing what those remedies are, are closer in spirit to contracts which are silent about remedies. In both cases, the allowable remedies have been chosen by the state. The self-help repossession cases have not made this distinction, however. General invocation of statutory remedies has been treated in the same fashion as specific authorization of self-help. In the typical consumer credit situation, where there is a contract of adhesion, the borrower may not be aware that he has given away his right to notice and a hearing by agreeing to all remedies permitted by law. Even if he is so aware, it seems to be specious to say that the law "permits" the remedy but does not "authorize" or "encourage" it. In failing to distinguish between contracts which invoke statutory remedies and contracts which authorize specific remedies, the self-help repossession cases have incorrectly drawn the outer boundaries of the state action concept. Those self-help repossessions specifically authorized by contract may be validly distinguishable from the execution of an innkeepers' lien, although it is at least arguable that the statute still "authorizes" or "encourages" the repossession.

The *Adams* case also relied on the existence of a common law remedy of self-help repossession to distinguish that remedy from state action situations. This, again, is not a valid distinction. When a state chooses to act through its statutes, it freezes the common law. In the

21. CAL. COMM. CODE § 9503 (West 1964).

22. *Cf.* Clark, *Default, Repossession, Foreclosure and Deficiency*, 51 ORE. L. REV. 302 (1972).

face of a conflicting statute, the common law will not be able to evolve to give further protection to individuals which it might have done otherwise. In addition, the state statute will prevent subordinate units of government, such as municipalities, from giving protection against self-help.[23] When the self-help cases have said that a statute does not encourage that which the common law permitted, they have ignored the fact that the common law is a dynamic process, constantly adapting itself to changing circumstances and attitudes. Even if its relevance could be demonstrated, the existence of a common law remedy prior to codification is not a distinction. The innkeepers' lien itself long antedates the United States Constitution and all state statutes.[24] The statutory liens did not enlarge or extend the common law rules.[25] The innkeepers' lien cases have properly ignored the existence of an antecedent common law remedy.

2. Public Function. Another legal theory that has been used[26] to justify a finding of state action in innkeepers' lien and related situations is the notion that execution of a lien is an act traditionally performed by state officials. The court in *Klim* stated: "[The lien law] effectively clothes the California innkeeper with the badge of the sheriff and the robes of the judge."[27] In *Blye* the court reasoned:

> In this State, the execution of a lien, be it a conventional security interest (Lien Law Sec. 207), a writ of attachment (CPLR Art. 62), or a judgment lien (CPLR Art. 52) traditionally has been the function of the Sheriff. On this view, "State action" can be found in an innkeeper's execution on his own lien.[28]

---

23. *Cf.* Greenfield, *Philip Schrag and the Forgotten Washing Machine,* JURIS DOCTOR, Nov. 1974, at 55, 56.

24. J. BEALE, THE LAW OF INNKEEPERS AND HOTELS § 252 n.1 (1906).

25. 13 CARMODY-WAIT 2d § 84:13 (1966). *See generally* Fox v. McGregor, 11 Barb. 41 (N.Y. 1851); BEALE, *supra* note 24, §§ 251, 276, 277; 13 CARMODY-WAIT 2d § 84:19 (1966); Comment, *supra* note 1, at 434.

26. *See* Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U.S. 308 (1968) (shopping center); Evans v. Newton, 382 U.S. 296 (1966) (park); Terry v. Adams, 345 U.S. 461 (1953) (pre-primary election); Shelley v. Kraemer, 334 U.S. 1 (1948) (racially restrictive covenant); March v. Alabama, 326 U.S. 501 (1946) (company town); Smith v. Allwright, 321 U.S. 649 (1944) (primary election). *But see* Lloyd Corp. v. Tanner, 407 U.S. 551 (1972) (shopping center); Evans v. Abney, 396 U.S. 435 (1970) (park).

27. 315 F. Supp. at 123 n.27.

28. 33 N.Y.2d at 20, 300 N.E.2d at 713-14, 347 N.Y.S.2d at 175.

In *Hall v. Garson,*[29] a landlord's lien case, the court said:

> [T]he action taken, the entry into another's home and the seizure of another's property, was an act that possesses many, if not all, of the characteristics of an act of the State. The execution of a lien whether a traditional security interest or a quasi writ of attachment or judgment lien has in Texas traditionally been the function of the Sheriff or constable. Thus [the statute] vests in the landlord and his agents authority that is normally exercised by the state and historically has been a state function.
>
> . . . .
>
> . . . The functional role of the creditor's attorney and debtor's employer in *Sniadach,* even when coupled with the formal role of the clerk who issued the writ, is not significantly different from the role of the landlady here. And here the state action requirement is also met.[30]

The *Adams* case answered the "public function" doctrine of *Hall* and attempted to distinguish it by an historical argument:

> The property seized in [*Hall*] belonged to the tenant, and the action of the landlord was taken pursuant to a Texas statute which vested authority in the landlord that was normally exercised by the State and had historically been a function of the State of Texas. The landlord clearly had invoked state procedures in order to seize the tenant's property. . . . In [these self-help cases], the creditor was seizing property that had been entirely his and that, practically and according to the terms of the contract, the debtor had not yet paid for. Further, a strong case can be made that it is a tradition that repossession is not a state function, and that the creditor was invoking a private remedy rather than a state power which had been delegated to him.
>
> . . . Historians appear to differ over just when the law began to ease with respect to allowing self-help. Based on this history, it does not appear likely that the fourteenth amendment, when written, was intended to eliminate summary self-help in light of the prevailing use of peaceful repossession.[31]

The *Adams* rationale thus offered two distinctions between self-help repossession and the seizure of a tenant's property: first, that

29. 430 F.2d 430 (5th Cir. 1970).

30. *Id.* at 439-40. On the right of a landlord to distrain his tenant's property, see also Gross v. Fox, 349 F. Supp. 1164 (E.D. Pa. 1972).

31. 492 F.2d at 336 (Footnotes omitted).

repossession is historically not a state function; and second, that the repossessing creditor had previously owned the secured property outright and his right to possession was therefore superior to that of the debtor, while the innkeeper never owned the property of the guest.

The problem with the first distinction is that its basic premise is not entirely clear. While self-help had begun to appear by the time the fourteenth amendment was adopted, at the time of drafting the original Constitution repossession was exclusively a function of the state.[32] However, an historical excursion into the common law is most likely irrelevant. The *Blye* court implicitly makes the argument that *today* the execution of liens, in general, is a function of the sheriff. This time frame (that is, now) is probably correct: in developing the "public function" doctrine the courts did not explore the extent of common law governmental activity.[33]

The second distinction offered by the *Adams* case, in addition to not being totally supported by the facts of the case, is also of questionable relevance. Nevertheless, the idea that the creditor has previously owned the property has been thought by the Supreme Court to be important in another context. In *Mitchell v. W.T. Grant Co.*,[34] the Court considered the fact of prior ownership when balancing the interests between debtor and creditor. The *Adams* court, however, clouded the issue by considering this factor relevant to the question of state action, thereby avoiding the harder question of its impact on the due process balance of interests.

The idea, in the innkeepers' lien cases, of looking to the execution of liens in general is probably correct. To hold that one should look only to the execution of innkeepers' liens to determine if such execution is a "public function," would be to emasculate the "public function" doctrine.[35] Alternatively, the argument in the innkeepers' lien cases might be formulated in terms of what action *should be* considered a public function. The courts will treat such "public"

32. Neth, *supra* note 8, at 62.

33. *See* cases cited note 26 *supra.*

34. 94 S. Ct. 1895 (1974).

35. This would be equivalent to saying that an innkeepers' lien cannot be state action because the innkeeper executed it. Following this argument to its logical conclusion would mean that a private park, company town, or shopping center could not involve state action because they are privately owned and a private election could not be state action because it is not run by the government. The *Adams* technique of examining the specific action in question essentially leads to the notion that state action exists only in acts by public officials.

behavior as though it were done by the state and therefore subject to constitutional limitations. It seems likely that execution of a lien, that is, depriving someone of his property to meet the claims of another, *should be* a public function because the decision of a neutral official would be the least prone to cause a dispute. Any type of self-help, with or without an obvious breach of the peace, *should be* a public function because it is the business of the law to settle disputes and private authority to do so is exercised only at the grace of the state. To hold otherwise would permit private individuals to take the law into their own hands and avoid judicial review.

3. Judicial Recognition or Enforcement. There is another possible rationale for a finding of state action, but it has not been argued successfully in any of the innkeepers' lien cases. This rationale is based on the idea that judicial recognition or enforcement of the innkeepers' lien is state action, even though the lien itself might be a purely private arrangement.[36] Judicial enforcement might occur in the form of a judicial sale of the baggage, a deficiency action by the innkeeper or as the innkeeper's defense to a guest's suit for damages or an injunction.[37] The *Adams* case formulated a reply to this argument by noting that the enforcement is not related to the act of seizure. The court also found that most of the cases establishing the doctrine are racial discrimination cases and may be alternatively explained as "public function" cases. Finally, the *Adams* court held that subsequent cases have established that:

> [S]tate enforcement procedures, applied neutrally, will not alone rise to the level of state action absent a showing that a state in applying its law is privy to a private party's discriminatory purpose, or that some significant state power has been delegated to the private organization or individual.[38]

In summary, while the repossession and innkeepers' lien cases seem to agree that judicial enforcement of a lien is not state action, there is an almost irreconcilable difference between them on the issue of whether there is state action in the statutory authorization of the

36. *Cf.* Barrows v. Jackson, 346 U.S. 249 (1953) (damage suit); Shelley v. Kraemer, 334 U.S. 1 (1948) (injunction, revesting of title). *But cf.* Evans v. Abney, 396 U.S. 435 (1970) (reversion of testamentary trust); Bell v. Maryland, 378 U.S. 226 (1964) (criminal trespass).

37. *Cf.* Comment, *supra* note 14, at 34.

38. 492 F.2d at 337 (citations omitted).

lien or in the private performance of a public function. Any attempt to distinguish the two lines of cases on the basis of whether the statutory provision restates the common law or modifies it, would not be satisfactory, even if the relevance of such a distinction could be demonstrated. When a state enacts a statute, it has chosen to act, regardless of whether the same results would have occurred under a common law situation that might not involve state action. Private action is either authorized by that statute or it is not, again regardless of the prior common law situation. Similarly unavailable as distinctions are the length of time private seizure has been allowed and the existence of a security interest in the specific property seized. It remains to be seen whether an innkeeper's seizure based purely on a contract would be considered an action by the state. As a form of self-help, such actions by innkeepers should be subject to judicial review and supervision in order to prevent mistakes and abuses.

The cases might also be distinguished in accordance with the interests involved, but such analysis is more appropriate to the issue of whether or not there was a deprivation of due process than whether or not there was state action. Fixing the boundaries of due process necessarily requires an ad hoc determination of the costs and benefits of the particular procedure.[39] It seems inappropriate, however, to condition all judicial supervision of self-help on an *ex post facto* determination that the individual's interest outweighs society's in a particular case, which would be the result if state action were determined on a balancing of the interests involved.

Constitutional limitations only apply to the exercise of governmental power. Thus in determining the constitutional issue of state action the courts should look directly at the traditional tests and establish the threshold acts which constitute state action and not attempt to balance the interests involved.

B. *Due Process of Law*

1. Requirements of Procedural Due Process. The fourteenth amendment to the United States Constitution provides: "No State shall . . . deprive any person of life, liberty, or property; without due process of law." Procedural due process requires that one be given

39. *See generally* Goldberg v. Kelly, 397 U.S. 254 (1970).

notice and an opportunity to be heard before being deprived of property.[40] The Supreme Court has indicated, in *Sniadach v. Family Finance Corp.*,[41] that even debt collection methods of private individuals must comply with due process requirements, provided, of course, that the requisite state action is present. After *Sniadach,* there was at first some confusion over whether due process considerations were necessary if the property subject to seizure was not a necessity of life. The Supreme Court has determined that the rules of due process must be applied regardless of the importance of the property,[42] although the severity of the deprivation may certainly be relevant to the ultimate outcome of the balancing test. In line with such reasoning, the innkeepers' lien has been declared unconstitutional in three states for failure to provide notice and an opportunity to be heard.[43]

Due process is not an absolute, unyielding standard. The theme that due process requires that all interests be considered runs through all of the cases and the literature.[44] "Even in *Sniadach,* it was admitted that a showing of overriding creditor interest would allow a taking of property without a hearing."[45] In the recent case of *Mitchell v. W.T. Grant Co.*,[46] the Supreme Court indicated that certain factors are relevant to whether a statute authorizing a debt collection procedure is constitutional. Among these are: a security interest in the specific property; seizure and retention of the property by the sheriff; sworn allegations of specific facts; and an opportunity for an early hearing and a damage suit for wrongful use of the procedure. Therefore, in order to assess the due process requirements of a constitutional statute permitting an innkeepers' lien, such interests must be determined and balanced.

2. The Innkeeper's Interest. The innkeeper has an interest in receiving amounts owed him by the guest. The innkeepers' lien furthers this interest by allowing the innkeeper to obtain quasi in rem jurisdiction and by preventing removal, destruction or concealment of the

40. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).
41. 395 U.S. 337 (1969).
42. Fuentes v. Shevin, 407 U.S. 67 (1972).
43. *See* cases cited note 6 *supra.*
44. *Cf.* Hall v. Garson, 430 F.2d 430, 440 (5th Cir. 1970). For a list of cases holding that due process requires a balancing test, see Comment, *supra* note 5, at 485 n.33.
45. Note, *The Innkeeper's Lien in the Twentieth Century,* 13 WM. & MARY L. REV. 175, 184 (1971).
46. 94 S. Ct. 1895 (1974).

guest's baggage.[47] It also encourages payment because of the hardship that the guest suffers when he is deprived of his property.

There is an argument that the lien allows the innkeeper to establish jurisdiction.

> If the innkeeper were required to have a hearing prior to the seizure of a guest's goods, the guest could easily avoid the proceeding 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 traveller 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 or a non-judicial sale after notice will at least partially satisfy the amount owed the innkeeper.[48]

However, none of the innkeepers' lien statutes in question[49] were drawn narrowly enough to serve only these purposes. The court in *Blye* makes this explicit:

> Nor does this statute limit summary seizure to those extraordinary situations necessitating prompt action—e.g., to secure the creditor's interest in obtaining jurisdiction for purposes of bringing a nonpayment suit or in preventing the debtor from removing or concealing his property to prevent future execution on any judgment that might be obtained. . . . The fact is that the statutory scheme does not contemplate the bringing of a nonpayment suit, nor any judicial determination, pre or post seizure, of the validity of the keeper's claim. The statute sweeps broadly and, as a matter of course, permits the unchecked summary seizure of a guest's property without regard to the validity of the particular claim and without regard to whether the particular guest is likely to remove or conceal himself and his property if given notice and opportunity for a hearing.[50]

---

47. *Mitchell* recognized these interests: "The danger of destruction or alienation cannot be guarded against if notice and a hearing before seizure are supplied." 94 S. Ct. at 1900. However, it goes even further: "Wholly aside from whether the buyer, with possession and power over the property, will destroy or make away with the goods, the buyer in possession of consumer goods will undeniably put the property to its intended use, and the resale value of the merchandise will steadily decline as it is used over a period of time." *Id.* at 1900-01.

48. Brief for Intervenor-Respondent at 8, Blye v. Globe-Wernicke Realty Co., 33 N.Y.2d 15, 300 N.E.2d 710, 347 N.Y.S.2d 170 (1973).

49. CAL. CIV. CODE § 1861 (West Supp. 1974); ILL. REV. STAT. chs. 71, 82, §§ 2, 57 (1969); N.Y. LIEN LAW § 181 (McKinney 1966).

50. 33 N.Y.2d at 21, 300 N.E.2d at 714-15, 347 N.Y.S.2d at 176.

A second problem with the argument that the innkeepers' lien is necessary to establish quasi in rem jurisdiction is that it may result in limited practical success. A transient would find it very easy to take all of his possessions and leave the jurisdiction. When the guest is a lodger who stays for significant periods of time there is comparatively insignificant danger that he will leave the state just to avoid paying a lodging bill.[51] However, the fact that the innkeepers' lien would not be able to serve its purpose in some, or even in most, cases is not necessarily a reason for denying it in all instances.

A final point to note about a legitimate innkeeper interest in summary seizure is that, in fact, it was not present in any of the cases holding the lien unconstitutional. All of the cases involved long term residents who were locked out of their rooms and away from their belongings for failure to pay rent. None was threatening to leave the jurisdiction and none was threatening to destroy or conceal his property, although one allegedly was threatening to destroy hotel property.[52] If a statute were drawn narrowly and applied in a case where there was a real danger of the guest leaving the jurisdiction, the innkeepers' lien might be upheld because of the legitimate, overriding creditor interest.

3. Society's Interest. Society may have an interest in the lien other than simply seeing that the innkeeper receives his just charges. At this point, a comparison with consumer credit is useful. Efficient and effective creditor remedies are in the public interest because without them credit would be less available to the public.[53] This argument would extend to the hotel situation only if accommodations in inns do not become scarcer and less available to the public as a result of innkeepers no longer being able to utilize the "lock-out."

Similarly, the cost of hotel accommodations would not be increased by the absence of the innkeepers' lien. In the consumer credit situation the goods (primarily automobiles, but also some major appliances or furniture) are repossessed for leverage, but also have some value and can be sold to pay off at least part of the debt. In the hotel situation the goods are often worthless and no attempt is even made to sell them. They are usually seized simply to pressure the guest into paying the bill. The innkeepers' lien, therefore, succeeds in reducing

51. Klim v. Jones, 315 F. Supp. at 124.
52. Brooks v. LaSalle Nat'l Bank, 11 Ill. App. 3d 791, 298 N.E.2d 262 (1973).
53. Neth, *supra* note 8, at 35.

the total cost of hotel availability only to the extent that guests have paid off solely in order to reclaim their property. Assuming that even this very limited savings is passed on to the public through cost reductions by the innkeeper, it can be said that society has some, albeit very slight, interest in the preservation of the innkeepers' lien. But this interest may be counterbalanced by the fact that it is of questionable desirability to apply economic pressure, in society's name, to allegedly nonpaying roomers or boarders, who might be living a marginal existence or who may have legitimate defenses against payment. In addition, summary seizure reduces the total cost of hotel accommodations only by the amount that the innkeeper would be charged for a hearing if a hearing were held. It is reasonable to assume that this saving is minimal and probably insufficient to justify much inconvenience to the guest. The amount society saves by reason of summary seizure includes the value of property which a hearing would find may not be legitimately seized by the innkeeper. It is not equitable to charge a societal saving to a guest otherwise without fault.

It has been suggested that an innkeeper can require identification or payment in advance to guarantee that he will be paid even if he no longer has a lien on the guest's property.[54] While advance payment might be feasible on a month-to-month basis for long-term guests, it is undesirable and inexpedient for the hotel industry generally.[55] It is contrary to the convenience sought by travelers because of the custom of charging the cost of meals, telephone calls and other items to the guest's bill.[56]

It has been suggested that the possibility of a lien in the future encourages innkeepers to be more flexible in dealing with slow payers.[57] This is highly unlikely, since the only value of the seized property is the pressure it exerts on those who are able to pay but are not doing so. It would be a generous innkeeper indeed who gives this sort of guest a grace period.

It has also been argued that if the statutory lien is struck down, the hotels will try to substitute their own lien system by contract, and that this would afford less protection to the guests than the statute

54. Klim v. Jones, 315 F. Supp. at 124; Blye v. Globe-Wernicke Realty Co., 33 N.Y.2d at 22 n.5, 300 N.E.2d at 715, 347 N.Y.S.2d at 177.

55. N. COURNOYER, INTRODUCTION TO HOTEL AND RESTAURANT LAW 407 (2d ed. 1968).

56. Brief, *supra* note 48, at 9.

57. *Id.* at 9 n.*.

did.[58] This position ignores several important factors. Inns will force their guests to agree to such a lien only if its value justifies its inconvenience. If the statute remains unrepealed, any execution by an innkeeper could be considered to be authorized by it and therefore still invalid.[59] There remains a minimal possibility that the bare contract right to execute the lien could be considered state action under the public function or judicial enforcement doctrines and, again, the execution would be illegal.[60] It seems likely, therefore, that holding the innkeepers' lien statutes unconstitutional does not interfere with a significant societal interest.

4. The Guest's Interest. The interests in favor of the innkeepers' lien must be balanced by the guest's interest in the possession of his property. The *Klim* case provides a catalogue of the evils of the innkeepers' lien.

> . . . [A]ll of the boarder's possessions may be denied him if such possessions are all kept in his lodgings. With the probable exception of motels and inns, in each of the other rooming establishments . . . it is altogether likely that the occupant thereof keeps all his worldly goods there.
>
> . . . [I]t may well result in the loss of a boarder's job . . . [if it] denies the boarder access to his very tools of trade or other means of livelihood . . . [or] personal identification papers, credentials, licenses and the like. . . .
>
> [T]he imposition of the lien may often result in dubious or fraudulent claims being paid by the harried boarder with valid legal defenses being relegated to the dustbin.
>
> [There are] virtually no exemptions from its coverage. . . . [It] thrusts the allegedly defaulting boarder out onto the street without any possessions other than what he can manage to carry on his person.[61]

One writer sees the main problem of self-help in the following manner:

> [T]he mere threat of such action was often enough to force the debtor, who may have needed or very much wanted the continued use of the goods, to capitulate. Even if such cases were uncommon, it is unjust to deny a debtor a hearing merely because most debtors

58. *Id.* at 9.
59. *See* notes 9-24 *supra* & accompanying text.
60. *See* notes 25-39 *supra* & accompanying text.
61. 315 F. Supp. at 122-24.

> are unsuccessful in court and because we want to avoid the expense of determining if he is an exception to the usual result. To do justice in individual cases is perhaps expensive but it seems to me to be the essence of due process.[62]

5. *The Balance.* When all factors were considered, the courts have struck the balance against the innkeepers' lien.[63] No overriding state or creditor interest was found. The guest's interests in possession and use of his property have outweighed the innkeeper's interest in prehearing seizure. In all four recent cases in which innkeepers' lien statutes were challenged, therefore, they were found to be constitutionally invalid because they violated the due process clause of the fourteenth amendment.[64]

C. *The Fourth Amendment*

An additional constitutional challenge is posed by the fourth amendment prohibition against unlawful seizures. The fourth amendment to the United States Constitution provides:

> The right of the people to be secure in their . . . effects, against unreasonable . . . seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the . . . things to be seized.

In its own terms, the fourth amendment could be read as prohibiting an unreasonable seizure of a guest's baggage by the innkeeper. It is not at all clear, however, that the fourth amendment's prohibition applies to seizures made by private individuals.[65] If it applies to such

62. Neth, *supra* note 8, at 34.

63. *See* Collins v. Viceroy Hotel Corp., 338 F. Supp. 390 (N.D. Ill. 1972); Klim v. Jones, 315 F. Supp. at 124; Blye v. Globe-Wernicke Realty Co., 33 N.Y.2d at 22, 300 N.E.2d at 715, 347 N.Y.S.2d at 177.

64. *See* cases cited note 6 *supra.* For an example, which was overruled by *Blye,* of the older line of cases holding the lien constitutional, see Horace Waters & Co. v. Gerard, 189 N.Y. 302, 82 N.E. 143 (1907). For a list of such older cases, see Note, *supra* note 45, at 184.

65. *See generally* Burdeau v. McDowell, 256 U.S. 465, 475 (1921) (fourth amendment only restrains activities of the sovereign authority); Gross v. Fox, 349 F. Supp. 1164 (E.D. Pa. 1972) (fourth amendment applies in landlord's distraint action); McCormick v. First Nat'l Bank, 322 F. Supp. 604, 607 (S.D. Fla. 1971) (fourth amendment applies in repossession case); Sackler v. Sackler, 15 N.Y.2d 40, 43, 203 N.E.2d 481, 255 N.Y.S.2d 83, 85 (1964) (fourth amendment protections applicable only to searches and seizures by government officers and agents); Williams

seizures, there is no need for a finding of state action. But if the interest sought to be protected is freedom from general searches by agents of the government, the fourth amendment's prohibition could be restricted to seizures by government agents, and it is unlikely that the innkeeper's action, while meeting the standards of state action under the tests discussed above, would allow the guest to invoke the amendment's protection.

Since, under the current statutory scheme, an innkeeper would not be able to obtain a warrant[66] the fourth amendment could impose an absolute prohibition on seizures by the innkeeper and the issue might be reduced to simply the existence of a valid waiver. The innkeeper might argue that the courts should infer such a waiver on the ground that the innkeeper's seizure would have been peaceable and on his own premises. On the other hand, one writer has expressed doubts that such a waiver could be implied so easily:

> The party claiming consent in lieu of a proper search warrant carries the heavy burden of showing that the consent was freely, voluntarily, and intelligently given, was unequivocable and specific, and was uncontaminated by duress or coercion, actual or implied. . . . The rights of the individual . . . can also be waived by contract at the time of [entering into the transaction].[67]

These issues are probably moot, however, as the fourth amendment argument has not prevailed in any innkeepers' lien case. In view of the difficult issues presented by the fourth amendment, the question of innkeepers' lien statutes is probably best resolved under procedural due process guidelines.

D. *Express Waiver of Constitutional Rights*

Even if other courts accept the position that the innkeepers' lien is a violation of due process, the possibility remains that guests can

---

v. Williams, 8 Ohio Misc. 156, 221 N.E.2d 622, 626 (Ct. C.P. 1966) (no individual has a greater power than the government itself to make illegal seizures); Comment, *Prejudgement Replevin and Self-Help Repossession,* 17 ST. LOUIS U.L.J. 127, 138 (1972) (fourth amendment does not apply to such seizures by private persons).

66. *But cf.* Guzman v. Western State Bank, 381 F. Supp. 1262, 1265 (D.N.D. 1974), where the court stated that probable cause is the constitutional standard for warrants of attachment.

67. Comment, *supra* note 65, at 139.

waive their constitutionally protected right to notice and a hearing.[68] The waiver must be knowingly and intelligently given.[69] Factors that might be relevant to a determination of knowledge and volition include the presence of bargaining for the contract terms, the equality of bargaining power, the absence of a form contract, the waiver not forming a necessary precondition to obtaining a room and a showing that the guest was actually made aware of the significance of the waiver.[70] Because of the relatively small value of a transient's baggage and because of the competition among hotels to attract transient guests, it is likely that waiver will be requested of long-term guests much more frequently than it will be requested of transients. The relationship of an innkeeper with his long-term guest is very similar to a landlord-tenant relationship. The absence of a genuine equality of bargaining power may result in a holding that waiver by a long-term guest is presumptively unconstitutional. The situation of the transient is distinguishable from that of the long-term guest and from the consumer credit situation[71] because of the much greater bargaining power of the transient. In light of the very limited return that innkeepers can expect from summary seizure of the transient's baggage, the innkeeper would be reluctant to trouble the transient with the red tape necessary to effect a valid waiver. Despite this, or perhaps because of it, the innkeeper and the transient could probably contract for a valid waiver of constitutional rights. The waiver would be valid if the transient guest could retain his rights by paying an additional charge (to indicate bargaining and a meaningful alternative) and if the waiver was set forth in a clause separately signed by the guest.

II. Policy Considerations

Innkeepers may contend that they are free to contract for a lien on the guest's baggage regardless of the constitutionality of the statute and regardless of whether the statute is repealed. It is arguable that such a contract could be considered state action under the public

68. *Cf.* Fuentes v. Shevin, 407 U.S. 67 (1972); Swarb v. Lennox, 405 U.S. 191 (1972); D. H. Overmeyer Co. v. Frick Co., 405 U.S. 174 (1972).

69. Neth, *supra* note 8, at 28.

70. Comment, *supra* note 14, at 38.

71. *See generally* Neth, *supra* note 8, at 29, 58.

function or judicial enforcement theories. If so, seizure of baggage without notice and hearing would continue to constitute a deprivation of due process. If the contract between innkeeper and guest is one of adhesion the courts will be hesitant to find an adequate voluntary waiver.[72] But voluntariness is the standard for the waiver of a constitutional right. If the right to seize baggage arises only from the contract, and state action is not found, there is no violation of a constitutional right and a different standard of awareness may apply, allowing the innkeeper his lien if the contract specifically provides for it.

If the contract is found constitutional and sufficiently specific, it may still be struck down on the basis of unconscionability. "Unconscionability has generally been recognized to include an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party."[73] If all inns were requiring the lien, as would be likely in the residential establishments, then there might be no meaningful choice. If the contract were found to be unconscionable, the guest would be able to apply to court to regain his property, and, possibly, damages.

With all of the attacks that any form of innkeepers' lien is likely to face in the courts, the necessity for having any type of lien should seriously be questioned. It can provide an extremely unhappy situation for the guest while at the same time affording the innkeeper little guarantee of payment. *Klim* explored this issue, promulgating a legislative policy argument as an alternative ground for the decision:

> Although the reasons underlying the need for such lien have largely passed from the scene, the innkeeper in California still retains his older and almost unfettered power under the lien statute. . . . [T]he victim of the lien has no greater rights than he would have had half a millenium ago.
>
> . . . [W]hen the reason behind a rule disappears, so should the rule. . . . Accordingly, to whatever extent a summary procedure was necessary to make the innkeepers' lien equal in scope to his potential liability [for the safety of guest and baggage] has been so reduced as to no longer call for such a draconian approach. . . .[74]

72. Comment, *supra* note 65, at 151.

73. Williams v. Walker-Thomas Furniture Co., 350 F.2d 445, 449 (D.C. Cir. 1965).

74. 315 F. Supp. at 120-21.

Some method of treating the innkeeper-guest relationship, other than the present statutory scheme, might be desirable. The National Consumer Act gives the consumer the right to a hearing before execution on his property which has been pledged as collateral.[75] Such a procedure, in essence, is equivalent to the situation in those states where the innkeepers' lien has been declared unconstitutional but has not been replaced by a valid statute. Following this procedure, however, an innkeeper might be injured in the situation where the guest actually does destroy his baggage or take it out of state.

Another alternative to the current statutory scheme would be to force the innkeeper to elect between seizure of the property and suit against the guest. Some judicial doctrine before the enactment of the Uniform Commercial Code forced an election of remedies between repossession of the collateral and personal judgment, as does the Uniform Consumer Credit Code.[76] Due to the usually insignificant resale value of seized baggage, depriving the innkeeper of a personal remedy would be a very severe step. However, forcing him to pursue the personal remedy, rather than the in rem remedy would not, in most cases, create great hardship.

The main problem with the innkeepers' lien is that, even where it might be constitutionally permitted, such as where it is used to acquire quasi in rem jurisdiction over a transient or to prevent the removal of his property, it has not been used extensively by innkeepers.[77] Where the innkeepers' lien has been used, its purpose has been to lock a long-term resident away from all of his belongings in order to force him to pay his rent. In this situation, the use of the innkeepers' lien is of highly dubious constitutionality. An innkeepers' lien statute should allow prehearing seizure of baggage only when the guest is a transient. When the guest is a long-term resident, the innkeeper should not have any more protection than any landlord would have against his tenant. Before the long-term resident's baggage may be seized, he should have the opportunity to convince a court that the seizure is improper. With these factors in mind, this Comment will conclude by attempting to design an innkeepers' lien statute that

75. National Consumer Act § 5.208 (First Final Draft 1970).

76. Clark, *supra* note 22, at 307, *citing* 2 G. GILMORE, SECURITY INTERESTS IN PERSONAL PROPERTY 1182 (1965). *See* Clark, *supra* note 22, at 331 (discussion of Uniform Consumer Credit Code).

77. *Cf.* text accompanying note 52 *supra.*

would be constitutional, cognizant of the interests of the guest and yet providing protection for the innkeeper in the occasional situation where prehearing seizure may provide his only hope of obtaining payment.

III. Proposed Resolution of Difficulties with Prehearing Seizure

A. *Constitutional Requirements*

Goldberg v. Kelly[78] held that before welfare benefits could be terminated the recipient was entitled to notice detailing the reasons for termination and to a hearing before an impartial decision maker allowing oral argument, cross-examination of adverse witnesses, presence of retained counsel and culminating in a statement indicating the reasons for the finding. It is difficult to reconcile these hearing requirements with the procedure for the *ex parte* "hearing" allowed in *Mitchell v. W.T. Grant Co.*[79]

In that case, the Louisiana sequestration statute authorized a secured creditor to apply to a judge for a consideration of the merits of his allegations. In the proper case the court could direct the sheriff to seize the property. The hearing requirements might be justified on the basis of the nature of the items to be repossessed. If so, in the case of the long-term guest, the nature of the baggage generally seized is essential and, based on that distinction, should require a full-scale hearing. However, especially for the transient whose baggage is not so essential, the other elements of *Mitchell* may be sufficient to sustain the more limited proceeding involved in an *ex parte* order. The elements of *Mitchell* that may turn out to be controlling, as to whether a procedure is constitutional, are the sworn allegations, the early opportunity for the return of the property at a hearing or by posting a bond, and the availability of a damage suit for wrongful seizure.

> [I]t may be taken for granted that some creditors will seek to enlarge the exception [to the general rule requiring notice and a hearing] by alleging falsely or mistakenly that immediate danger exists to the property, where such is not the case, in order to avoid the red-

78. 397 U.S. 254 (1970).
79. 94 S. Ct. 1895 (1974).

> tape of the notice and preliminary hearing. This manipulation will create a line-drawing problem for the courts, but it is not beyond their administrative capacity to distinguish promptly and fairly between those cases in which the creditor is in real danger of being frustrated through the misconduct of the debtor and those in which he is not.[80]

The following proposed statute takes these factors into consideration by allowing prehearing seizure only to establish jurisdiction or to preserve the property for execution on any judgment that might be obtained. The innkeeper must swear to specific factors entitling him to such prehearing seizure and the guest is given an early opportunity to disprove the allegations. If the innkeeper loses at the postseizure hearing, he is liable to the guest for any damage done.

B. *Model Statute*[81]

(a) *Application to Judge.* On application by an innkeeper, a judge may issue an order permitting the innkeeper to seize and hold the baggage of a guest if it can be done without breach of the peace. Breach of the peace shall include fraud, deception, or any action which creates some risk of violence, however slight.[82]

(b) *Seizure by Sheriff.* If the innkeeper includes in his application an allegation that he cannot seize the property without breach of the peace, the judge may issue a writ directing the sheriff to seize the property and hold it for a period of 10 days at which time the sheriff shall release the property to the innkeeper or to such other person as the court may direct.

(c) *Specific Allegations Necessary.* The court shall not issue such order or writ unless it concludes, from facts specifically alleged by the innkeeper, that:

(1) The guest has at some time occupied the premises of the innkeeper; and

(2) The guest has not paid the just charges of the innkeeper; and

80. Hawkland, *The Seed of Sniadach,* CASE & COM., Feb. 1974, at 3, 19.
81. For alternative suggestions, see Note, *supra* note 45, at 185-86.
82. *See* Clark, *supra* note 22, at 311.

(3) No substantial defenses are available to the guest and the innkeeper is likely to prevail on the merits in a trial of the debt; and

(4) The baggage is on the premises of the innkeeper; and

(5) (A) The guest is not subject to the personal jurisdiction of the court; or

(B) There exists a significant likelihood that the guest will:

(i) destroy the property,

(ii) significantly impair the value of the property,

(iii) remove the property from the jurisdiction,

(iv) attempt to conceal the location or existence of the property, or

(v) remove himself from the jurisdiction of the court.

(d) *Conclusory Allegations Insufficient.* The judge may not issue the writ or the order if the innkeeper's allegations are in bare conclusory form.

(e) *Innkeepers' Bond.* Before the order or writ shall be issued the judge shall direct the innkeeper to pay into court security in an amount at least equal to the amount of the debt alleged. This security shall form a fund out of which damages for wrongfully taking or retaining the baggage can be paid to the guest.

(f) *Guest's Bond.* The guest shall be entitled, and the order or writ shall so state, to regain his baggage upon payment into court of security in an amount equal to the value of the debt alleged or the value of the property seized, whichever is lower.

(g) *Hearing Available.* The guest shall be entitled, and the order or writ shall so state, to regain his baggage upon failure of the innkeeper to prove the validity of the debt and the absence of any valid defenses or counterclaims at a hearing conducted for this purpose. The guest may move the court for such a hearing at any time and the hearing shall be held within 10 days of his motion. The innkeeper shall bear the burden of proving his case by a preponderance of the evidence.

(h) *Damage Suit.* If the innkeeper fails to prevail at such a hearing the court may award damages, including reasonable attorney's fees,

to the guest for the wrongful taking and retention of his property. Such damages shall be in an amount that seems just to the court and are payable out of, but are not limited to, the security given by the innkeeper.

(i) *Failure to Comply.* If the innkeeper deprives the guest of his property without obtaining an order under this section the innkeeper shall return the property to the guest and, in addition, shall be liable to the guest for damages in an amount equal to three times the value of the property taken plus reasonable attorney's fees.

(j) *Dissolution of Bonds.* The innkeeper's security shall be returned to him after a ruling in his favor at a hearing on the merits of the debt or, upon his motion, 90 days after the property has been seized and the guest has been served with a copy of the order or writ. In the event that partial payment of the innkeeper's security has been made to the guest, the excess shall be returned to the innkeeper. Security provided by the guest shall be paid to the party who prevails at a hearing on the merits of the debt.

CONCLUSION

This formulation of the statute differs in several significant ways from the sequestration statute upheld in *Mitchell.* For instance, the Supreme Court itself left the question of self-help repossession open.[83] In addition, the *Mitchell* holding was further limited to property with security interests seized and retained by the sheriff. However, the significance of the *Mitchell* holding may possibly be summarized in this statement by the Court:

> [I]t comports with due process to permit the initial seizure on sworn *ex parte* documents, followed by the early opportunity to put the creditor to his proof. The nature of the issues at stake minimizes the risk that the writ will be wrongfully issued by a judge. The potential damage award available, if there is a successful motion to dissolve the writ, as well as the creditor's own interest in avoiding interrupting the transaction, also contribute to minimizing the risk.[84]

83. 94 S. Ct. at 1906 n.14.

84. *Id.* at 1901; *accord,* North Georgia Finishing, Inc. v. Di-Chem, Inc., 95 S. Ct. 719 (1975).

Given the fact that a constitutional innkeepers' lien statute might be possible, it is valid to pose the question of whether it is desirable to resurrect it. The original justification for the lien no longer exists. The value of the lien today, to society in general or to the lodging industry in particular, might, as suggested in the cases, be limited. The costs and benefits of the lien are such that hotels and motels might not find it worthwhile to substitute their own liens or to lobby for a statutory lien. The treatment of boarding and rooming establishments would be more consistent with evolving concepts of landlord and tenant law. It might be desirable to allow innkeepers to establish quasi in rem jurisdiction over persons who are likely to leave the jurisdiction, but there seems to be no reason why innkeepers should be favored over other potential plaintiffs. In short, unless the need for the innkeepers' lien becomes more apparent, it is probably not worth the effort which it would take to breathe life into this late, but unlamented, lien.

DAVID M. KOHEN