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Americans who work abroad. This determination must be made on the basis of foreign policy with regard to nontax considerations, but an attempt should be made to apply the section equally to all Americans who work abroad.

JAMES W. JENNINGS, JR.

INNKEEPERS' LIENS AND THE REQUIREMENTS OF DUE PROCESS

The vast majority of American states have enacted statutory liens¹ giving innkeepers, hotel owners, and boardinghouse keepers² a lien on the baggage and other personal property of their guests³ for charges due. These charges take the form of rent and any other services supplied by the

¹ALA. CODE tit. 33, § 29 (1958); ARIZ. REV. STAT. ANN. § 33-951 (1956); ARK. STAT. ANN. § 71-1111 (Repl. Vol. 1957); CAL. CIV. CODE § 1861 (West Supp. 1971); COLO. REV. STAT. ANN. § 86-1-1 (1963); CONN. GEN. STAT. ANN. §§ 49-68 to -69 (1958); FLA. STAT. ANN. § 713.68 (1969); GA. CODE ANN. § 52-105 (1961); HAWAII REV. STAT. tit. 28, § 507-7 (1968); IDAHO CODE § 39-1826 (1961); ILL. ANN. STAT. ch. 71, § 2 (Smith-Hurd 1959); IND. ANN. STAT. § 37-206 (Repl. Vol. 1949); IOWA CODE ANN. § 583.2 (1950); KAN. STAT. ANN. § 36-201 (1964); KY. REV. STAT. ANN. § 376.340 (1969); LA. CIV. CODE ANN. art. 3233 (West 1952); ME. REV. STAT. ANN. tit. 30, § 2951 (1964); MD. ANN. CODE art. 71, § 4 (Repl. Vol. 1970); MASS. ANN. LAWS ch. 255, § 23 (1968); MICH. STAT. ANN. § 18.301 (1957); MINN. STAT. ANN. § 327.05 (1966); MISS. CODE ANN. § 7157 (1952); MO. ANN. STAT. § 419.060 (1952); MONT. REV. CODES ANN. § 34-103 (1961); NEB. REV. STAT. § 41-124 (1968); NEV. REV. STAT. § 108.480 (1967); N.H. REV. STAT. ANN. § 448.1 (1968); N.J. REV. STAT. § 2A:44-48 (1952); N.M. STAT. ANN. § 61-3-14 (1960); N.Y. LIEN LAW § 181 (McKinney 1966); N.C. GEN. STAT. ANN. § 44A-2 (Supp. 1969); N.D. CENT. CODE § 35-19-01 (1960); OHIO REV. CODE ANN. § 4721.04 (Baldwin 1964); OKLA. STAT. ANN. tit. 15 § 501 (1966); ORE. REV. STAT. ANN. § 87.525 (1969); PA. STAT. ANN. tit. 37, § 71 (1954); R.I. GEN. LAWS ANN. § 34-33-1 (1970); S.C. CODE ANN. § 35-3 (1962); S.D. CODE § 44-11-5 (1967); TENN. CODE ANN. § 64-1701 (1955); TEX. REV. CIV. STAT. § 4594 (1960); UTAH CODE ANN. § 38-2-2 (1966); VA. CODE ANN. § 43-31 (Repl. Vol. 1970); WASH. REV. CODE § 60.64.010 (1970); W. VA. CODE ANN. § 38-11-5 (1966); WIS. STAT. ANN. § 289.43 (1958); WYO. STAT. ANN. § 33-249 (1959).

²These three classes of persons will be referred to as a unit by the term "innkeepers". An innkeeper was one who, at common law, kept an inn for the lodging and entertainment of travelers, their attendants and horses for compensation. Boardinghouses and the keepers thereof were not viewed in the same light at common law as were innkeepers. J. STORY, COMMENTARIES ON THE LAW OF BAILMENTS § 475 (9th ed. 1878). Today, on the other hand, boardinghouse keepers have been given statutory liens on the boarder's property much like those given to innkeepers and hotel owners. *E.g.*, FLA. STAT. ANN. § 713.68 (1969).

³A person attains the status of a guest at an inn or hotel when he requests shelter and is accepted for such purposes by the hotel owner. The length of time one stays at a hotel does not alter the status of "guest" as long as he maintains his transient character. E. C. GODDARD, OUTLINES OF THE LAW OF BAILMENTS AND CARRIERS § 174 (2d ed. C. Cullen 1928).

innkeeper.⁴ The lien arises when the services are furnished,⁵ thus giving the innkeeper the right to immediate possession and the ability to detain the property of the guest until the charges are fully paid.⁶ The statutes creating the innkeepers' liens do not normally give the lienee any right to notice or a hearing before imposition of the lien upon his property.⁷ In addition, the statutes usually allow the innkeeper to execute the lien through public sale without a hearing and after some appropriate notice.⁸

In *Klim v. Jones*,⁹ a federal district court held that the California statute¹⁰ creating innkeepers' liens was unconstitutional as violative of due process since it did not provide for notice or a hearing before the lienee's property was detained.¹¹ Klim, an irregularly employed painter, was a guest at the Junior Tar Hotel in San Francisco. He paid rent on a room of ten dollars per week either in cash or by doing work around the hotel. On the day rent was due, Klim was awakened by Jones, the manager of the hotel, who demanded five dollars which allegedly represented "unpaid" rent. When Klim protested that he had paid his rent in full for the week, Jones padlocked him out of his room. Inside the room were all of Klim's belongings, including his painting tools and identification papers, which were essential in seeking and obtaining employment.

Klim filed a complaint seeking a declaratory judgment that the California statute creating the innkeepers' liens was unconstitutional. The district court found that it had jurisdiction under either federal civil rights legislation¹² or pursuant to federal question jurisdiction.¹³ Following this determination, the court held that because the statute lacked any provision for notice or a hearing prior to detention of the property it was violative of due process and therefore unconstitutional.¹⁴

At common law, an innkeeper was under a duty, subject to a very few

⁴J. STORY, COMMENTARIES ON THE LAW OF BAILMENTS § 475 (9th ed. 1878).

⁵*E.g.*, *People ex rel. Klamt v. Loeffler*, 153 Misc. 781, 276 N.Y.S. 698 (N.Y. City Ct. 1934).

⁶When an innkeeper's lien arises, the lienor is generally given the right to immediately impose the lien upon the property of the guest. This is usually provided for in the statutes by the term "detain". *E.g.*, CONN. GEN. STAT. ANN. § 49-68 (1958).

⁷See note 1 *supra*.

⁸Notice requirements vary from state to state. Generally, if the address or whereabouts of the owner of the property is unknown, notice by publication is required over a stated period of time, usually 10-30 days, before the innkeeper may dispose of the property by public sale. *E.g.*, ARK. STAT. ANN. § 71-1112 (Repl. Vol. 1957).

⁹315 F. Supp. 109 (N.D. Cal. 1970).

¹⁰CAL. CIV. CODE § 1861 (West Supp. 1971).

¹¹315 F. Supp. at 124.

¹²*Id.* at 113-15. Jurisdiction is conferred upon federal district courts to redress any deprivation of rights granted individuals by 42 U.S.C. § 1983 (1964).

¹³315 F. Supp. at 115-17. 28 U.S.C. § 1331 (1964).

¹⁴315 F. Supp. at 124.

exceptions, to admit a traveler and his possessions to the inn.¹⁵ Concurrent with this duty, the innkeeper was considered an extraordinary bailor of the property which a guest brought to the inn,¹⁶ and was held accountable for most damage or loss to that property.¹⁷ To offset this extraordinary liability of the innkeeper, the common law gave him a reciprocal right, commensurate with his duties, in the form of a lien upon the property of his guest for charges due.¹⁸

Unlike the common law which placed extraordinary liability on the innkeeper for the losses his guests might bear, the modern statutes generally set a monetary limit upon the liability of innkeepers for loss or damage to their guests' property,¹⁹ while at the same time retaining a lien capability similar to that provided by common law.²⁰ Most state statutes do not currently provide for a hearing before imposition of an innkeeper's lien, but there is a great diversity of approach among the various jurisdictions.²¹

While these statutes have remained substantially as they were when first enacted, the decisions construing the safeguards necessary to satisfy the requirements of the Fourteenth Amendment due process clause have had a long and involved history in American jurisprudence.²² It is considered basic to procedural due process to give a person notice and an opportunity to be heard before he may be deprived of life, liberty, or property.²³ In *Schroeder v. City of New York*,²⁴ the United States

¹⁵*Perrine v. Paulos*, 100 Cal. App. 2d 655, 224 P.2d 41 (1950); *Vansant v. Kowalewski*, 26 Del. (5 Boyce) 92, 90 A. 421 (1914); *Madden v. Queens County Jockey Club, Inc.*, 296 N.Y. 249, 72 N.E.2d 697, cert. denied, 332 U.S. 761 (1947); *State v. Steele*, 106 N.C. 766, 11 S.E. 478 (1890). See also *Civil Rights Cases*, 109 U.S. 3, 25 (1883).

¹⁶He was so considered by the custom of the realm principally because of the lawless character of the times. It was hoped that by imposing this extraordinary liability the English inns would become places of relative safety for travelers. E.C. GODDARD, *OUTLINES OF THE LAW OF BAILMENTS AND CARRIERS* § 161 (2d ed. C. Cullen 1928).

¹⁷*Id.* at §§ 181-86. Damage or loss for which the innkeeper would not be held accountable was limited to acts of God and other losses similarly beyond his control.

¹⁸*Id.* at § 187.

¹⁹*E.g.*, IND. ANN. STAT. §§ 37-105 to -110 (Repl. Vol. 1949).

²⁰For instance, Alaska has not enacted a statutory innkeeper's lien and apparently follows the common law approach. ALASKA STAT. §§ 01.10.010, 08.56.060 (1962). On the other hand, in two states the statutes go so far as to declare that innkeepers shall have the right to possession of the guest's property and ability to detain when the debt becomes due "without the process of law." HAWAII REV. LAWS tit. 28, § 507-7 (1968); N.J. REV. STAT. § 2A: 44-48 (1952). Finally, South Carolina may be the only state whose statutory lien presently requires a hearing before it may be imposed upon the guest's property. S.C. CODE ANN. § 10-1711 (1962). *But see* S.C. CODE ANN. §§ 35-2 to -3 (1962).

²¹For an interesting collection of cases, see DOWLING & GUNTHER, *CASES AND MATERIALS ON CONSTITUTIONAL LAW* 796-924 (8th ed. 1970).

²²Perhaps the best statement of this proposition by the Supreme Court is:

[T]he Due Process Clause . . . at a minimum . . . require[s] that 3 076

Supreme Court interpreted the notice and opportunity to be heard requirement by saying,

[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.²⁵

Using this interpretation, the Supreme Court in *Sniadach v. Family Finance Corp.*,²⁶ struck down a Wisconsin statute²⁷ permitting prejudgment wage garnishment. Family Finance Corporation brought a garnishment action against Mrs. Sniadach as defendant and her employer as garnishee. The complaint was for \$420 allegedly owing on a promissory note. Service was made on the garnishee and Mrs. Sniadach on the same day and pursuant to the Wisconsin procedure the garnishee reported that it would pay one-half of the wages under its control due to the defendant as a subsistence allowance and retain the remainder subject to the order of the court.²⁸ Mrs. Sniadach then moved to dismiss the garnishment action, claiming that it failed to satisfy due process. The Supreme Court held that absent certain special circumstances which may justify a summary procedure,²⁹ a person must be afforded notice and an opportunity to be heard before his wages may be garnished.³⁰ The *Sniadach* opinion focused upon the specialized property of wages, the deprivation of which may work so great a hardship on the wage earner and his family that due process requires a preliminary hearing before they may be garnished.³¹

deprivation of life, liberty, or property by adjudication be preceded by notice and an opportunity for hearing appropriate to the nature of the case.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).

²⁵371 U.S. 208 (1962).

²⁶*Id.* at 211, quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

²⁷395 U.S. 337 (1969).

²⁸Wis. STAT. ANN. § 267.18 (1958), *formerly* 267.17 (1957).

²⁹395 U.S. at 338. The Wisconsin statutes provide that up to one-half of the wages for one week may be paid to the defendant. Wis. STAT. ANN. § 267.18 (1965), *formerly* 267.17 (1957).

³⁰*Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1950) (seizure of impure foods); *Fahey v. Mallonee*, 332 U.S. 245 (1947) (suspension of bank officers); *Yakus v. United States*, 321 U.S. 414 (1944) (suspension of commodity credit); *Ownbey v. Morgan*, 256 U.S. 94 (1921) (bond requirement for out-of-state defendant); *North American Cold Storage Co. v. Chicago*, 211 U.S. 306 (1908) (destroying impure food); *R.A. Holman & Co. v. S.E.C.*, 299 F.2d 127 (D.C. Cir. 1962) (suspension of exemption from registration requirements).

³¹395 U.S. at 342.

³²Mr. Justice Douglas pointed out that the garnished wages might be unfrozen if the wage earner later won on the merits. But in *Sniadach* it was the deprivation of the wages during the interim period without any opportunity to be heard which made the statute unconstitutional. *Id.* at 339.

Although *Klim* extended the *Sniadach* holding by requiring notice and a hearing prior to imposition of an innkeeper's lien, generally liens of this type have in the past been found not to violate due process.³² In cases in which the necessity for the due process requirements of notice and a hearing have been questioned, the courts have employed a balancing test to weigh the countervailing public and private interests.³³ This test is based on the concept that the nature and extent of the private interest subjected to the summary procedure should be weighed against the competing interests of society which are served by quick and decisive action.³⁴ Although the requirements of due process through use of the balancing test tend to promote the private interest concerned, the requirements may be obviated where an exceptional situation³⁵ is presented.

Even though prejudgment wage garnishment may once have been viewed as an extraordinary situation,³⁶ it is no longer viewed as such because wages constitute special property, the deprivation of which creates unusual hardships.³⁷ In reaching this result, the Supreme Court in *Sniadach* did not explicitly employ the balancing test in deciding whether the Wisconsin statute provided adequate procedures to meet the due process requirements but rather dealt with it summarily saying

[w]here the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing this prejudgment garnishment procedure violates the fundamental principles of due process.³⁸

Sniadach was correctly limited³⁹ to the question of the

³²*E.g.*, *Brown Shoe Co. v. Hunt*, 103 Iowa 586, 72 N.W. 765 (1897); *L.E. Lines Music Co. v. Holt*, 332 Mo. 749, 60 S.W.2d 32 (1933); *Waters & Co. v. Gerard*, 189 N.Y. 302 (1907); *Nance v. O.K. Houck Piano Co.*, 128 Tenn. 1, 155 S.W. 1172 (1913).

³³*E.g.*, *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Hall v. Garson*, 430 F.2d 430 (5th Cir. 1970); *Wasson v. Trowbridge*, 382 F.2d 807 (2d Cir. 1967); *Goliday v. Robinson*, 305 F. Supp. 1224 (N.D. Ill. 1969).

³⁴One often cited opinion has described the balancing test:

[T]o determine in any given case what procedures due process requires, the Court must carefully determine and balance the nature of the private interest affected, and of the government interest involved, taking account of history and the precise circumstances surrounding the case at hand.

Wasson v. Trowbridge, 382 F.2d 807, 811 (2d Cir. 1967).

³⁵*E.g.*, cases cited note 29 *supra*.

³⁶*See also Sniadach v. Family Finance Corp.*, 395 U.S. 337, 343-44 (1969) (Harlan, J., concurring).

³⁷395 U.S. at 340-42.

³⁸*Id.* at 342.

³⁹A good statement of this limitation is,

[t]he Court will not "anticipate a question of constitutional law in advance of the necessity of deciding it." "It is not the habit of the Court to decide questions of a constitutional nature unless absolutely necessary to a

constitutionality of the Wisconsin prejudgment wage garnishment statute,⁴⁰ and therefore did not discuss what forms of property other than wages may be constitutionally protected by notice and a prior hearing. In *Klim* the court found notice and a hearing essential before the personal property of a hotel guest could be seized subject to an innkeeper's lien.

The current approach of the Supreme Court to the problem is evidenced by the recent holding in *Goldberg v. Kelly*.⁴¹ The issue before the court was whether due process required notice and an evidentiary hearing before a state administrative agency could discontinue welfare benefits.⁴² In concluding that due process does require such a procedure, Mr. Justice Brennan, writing for the court, stated:

[t]he 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.⁴³

Thus the Supreme Court, returning to the balancing test,⁴⁴ has added welfare benefits, similar in many ways to wages, to the growing list of property subject to the procedural safeguards announced in *Sniadach*.⁴⁵ Procedural safeguards, under the influence of *Sniadach*, have also been extended to other forms of property,⁴⁶ with particular protection afforded personal property necessary "for ordinary day-to-day living."⁴⁷

While due process has been extended to various forms of property, similar extensions have been created to remedy procedural defects. Because *Sniadach* was limited to the particular factual situation

decision of the case." The Court will not "formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied."

Ashwander v. T.V.A., 297 U.S. 288, 346-47 (1936) (Brandeis, J., concurring) (citations omitted).

⁴⁰Wis. STAT. ANN. § 267.01 *et seq.* (1965).

⁴¹397 U.S. 254 (1970).

⁴²*Id.* The issue has arisen in other cases. *Wheeler v. Montgomery*, 397 U.S. 280 (1970); *Kelly v. Wyman*, 294 F. Supp. 893 (S.D.N.Y. 1968).

⁴³397 U.S. at 262-63.

⁴⁴*Id.*

⁴⁵A court prior to the Supreme Court's determination of *Goldberg* had extended *Sniadach* to cover public assistance payment procedures. *Goliday v. Robinson*, 305 F. Supp. 1224 (N.D. Ill. 1969).

⁴⁶*Leary v. Heard*, 2 Pov. L. Rptr. ¶ 11,199 (Cal. Mun. Ct. 1969) (attachment of bank account); *Jones Press, Inc. v. Motor Travel Services, Inc.*, ___ Minn. ___, 176 N.W.2d 87 (1970) (accounts receivable); *Larson v. Fetherston*, 44 Wis. 2d 712, 172 N.W.2d 20 (1969) (proceeds of airline ticket sales).

⁴⁷*Laprease v. Raymours Furniture Co.*, 315 F. Supp. 716 (N.D.N.Y. 1970). *See Mihans v. Municipal Court*, 7 Cal. App. 3d 479, 87 Cal. Rptr. 17 (1970).

presented,⁴⁸ the Court did not disclose whether summary procedures other than prejudgment garnishment should be reevaluated as to their constitutionality.⁴⁹ In *Klim* the court extended *Sniadach*, declaring notice and a hearing to be procedural prerequisites to the imposition of an innkeeper's lien upon a guest's property.⁵⁰ In *Mihans v. Municipal Court*,⁵¹ the court extended these requirements of procedural due process to the method by which writs of immediate possession are obtained in unlawful detainer actions. The court declared the California unlawful detainer statute⁵² to be constitutionally unsound because, under an alternate procedure provided by the statute, a landlord was able to obtain a writ of immediate possession prior to a hearing.⁵³ It was held that the continued use of rented property, like wages, was of itself a valuable right worthy of constitutional protection.⁵⁴

Utilizing language similar to that of Mr. Justice Harlan's concurring opinion in *Sniadach*,⁵⁵ the court in *Mihans* said that the *ex parte* appearance of the landlord before a judicial officer was not a substitute for the prior hearing compelled by due process because it was not "aimed at establishing the validity, or at least the probable validity"⁵⁶ of the claimed debt.⁵⁷

Because the majority opinion in *Sniadach* made it clear that all summary procedures which have the effect of "taking" property do not necessarily violate due process,⁵⁸ some courts have been quick to hold that *Sniadach's* due process requirements should not be extended to proced-

⁴⁸Note 39 *supra*.

⁴⁹See generally Kennedy, *Due Process Limitations on Creditor's Remedies: Some Reflections on Sniadach v. Family Finance Corp.*, 19 AM. U. L. REV. 158 (1970).

⁵⁰315 F. Supp. at 124.

⁵¹7 Cal. App. 3d 479, 87 Cal. Rptr. 17 (1970).

⁵²CAL. CIV. CODE § 1166a (West 1954).

⁵³7 Cal. App. 3d 479, 484, 87 Cal. Rptr. 17, 20.

⁵⁴*Id.*

⁵⁵395 U.S. at 342-43.

⁵⁶*Id.* at 343.

⁵⁷7 Cal. App. 3d at 488, 87 Cal. Rptr. at 23. In addition courts have extended the procedural requirements of *Sniadach* to welfare discontinuation procedures of administrative agencies. *Wheeler v. Montgomery*, 397 U.S. 280 (1970); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Goliday v. Robinson*, 305 F. Supp. 1224 (N.D. Ill. 1969). Federal agency discharge procedures have also been held to these requirements. *Ricucci v. United States*, 425 F.2d 1252 (Ct. Cl. 1970). These requirements have also been extended to the process of obtaining judgments by anticipatory confessions. *Swarb v. Lennox*, 314 F. Supp. 1091 (E.D. Pa. 1970); *Atlas Credit Corp. v. Ezrine*, 25 N.Y.2d 219, 250 N.E.2d 474, 303 N.Y.S.2d 383 (1970). *Sniadach's* procedural requirements have likewise been extended to the process of obtaining writs of replevin for personal property. *Laprease v. Raymours Furniture Co.*, 315 F. Supp. 716 (N.D.N.Y. 1970).

⁵⁸395 U.S. at 339.

ures beyond the prejudgment garnishment situation.⁵⁹ In *City Finance Co. of Mt. Ranier v. Williams*⁶⁰ the court held *Sniadach* inapplicable to prejudgment garnishment where the defendant debtor in the garnishment action was a non-resident. The majority opinion in *Sniadach* stated that the creditor could easily have obtained in personam jurisdiction over the resident debtor.⁶¹ The court in *City Finance* used this statement in declaring that prejudgment garnishment of a non-resident debtor's property was an extraordinary situation allowing the unusual process of garnishment without notice or a hearing.⁶²

Courts distinguishing *Sniadach* have declined to apply the procedural requirements of that opinion to such other summary procedures as default sales arising from a breach of a conditional sales contract⁶³ and anticipatory confession judgments.⁶⁴ Prior to *Klim*, the California Supreme Court refused to decide whether prejudgment garnishment or attachment of property other than wages violated due process.⁶⁵

Some courts, as well as refusing to extend *Sniadach* to procedures beyond garnishment, have not extended it to forms of property other than wages.⁶⁶ In *Robinson v. Loyola Foundation*,⁶⁷ *Sniadach* was held not to apply to attachment of real property because "[s]uch proceeding does not create the evils nor result in the hardships which often follow the garnishment of wages owed to a worker."⁶⁸ Likewise, other courts have found that due process does not require notice or hearing before

⁵⁹*Brunswick Corp. v. J & P Inc.*, 424 F.2d 100 (10th Cir. 1970) (enforcement of a security interest); *Termplan Inc. v. Superior Court*, 105 Ariz. 270, 463 P.2d 68 (1969) (property other than wages); *Andrew Brown Co. v. Painters Warehouse, Inc.*, 11 Ariz. App. 571, 466 P.2d 790 (1970) (funds in garnishee's hands not wages); *Strutt v. Ontario Savings and Loan Ass'n*, 11 Cal. App. 3d 547, 90 Cal. Rptr. 69 (1970) (foreclosure of mortgage); *Michael's Jewelers v. Handy*, 6 Conn. Cir. 103, 266 A.2d 904 (1969) (garnishment of bank account); *City Finance Co. of Mt. Ranier v. Williams*, 2 Pov. L. Rptr. ¶ 10,388 (D.C. Ct. of Gen. Sess. 1969) (garnishment of non-resident debtor's property); *Robinson v. Loyola Foundation, Inc.*, 236 So. 2d 154 (Fla. App. 1970) (attachment distinguished from levy); *Hehr v. Tucker*, ___ Ore. ___, 472 P.2d 797 (1970) (not prejudgment garnishment).

⁶⁰2 Pov. L. Rptr. § 10,388 (D.C. Ct. of Gen. Sess. 1969).

⁶¹395 U.S. at 339.

⁶²2 Pov. L. Rptr. § 10,388 (D.C. Ct. of Gen. Sess. 1969). See also note 29 *supra*.

⁶³*Brunswick Corp. v. J & P Inc.*, 424 F.2d 100, 105 (10th Cir. 1970).

⁶⁴*Cf. Lebanon Valley Nat'l Bank v. Henning*, 436 Pa. 446, 260 A.2d 462 (1970) (Roberts, J., dissenting).

⁶⁵*People ex rel. Lynch v. Superior Court*, 1 Cal. 3d 910, 464 P.2d 126, 83 Cal. Rptr. 670 (1970).

⁶⁶*Brunswick Corp. v. J & P Inc.*, 424 F.2d 100 (10th Cir. 1970); *Termplan Inc. v. Superior Court*, 105 Ariz. 270, 463 P.2d 68 (1969); *Sackin v. Kersting*, 10 Ariz. App. 340, 458 P.2d 544 (1969); *Michael's Jewelers v. Handy*, 6 Conn. Cir. 103, 266 A.2d 904 (1969); *Robinson v. Loyola Foundation, Inc.*, 236 So. 2d 154 (Fla. App. 1970).

⁶⁷236 So. 2d 154 (Fla. App. 1970).

⁶⁸*Id.* at 159.

garnishment of bank accounts⁶⁹ and notice before foreclosure of mortgages.⁷⁰

Regardless of the specific property or summary procedure involved, the courts apparently have either explicitly or implicitly used a balancing test to determine in each instance whether due process requires notice and a prior hearing.⁷¹ One reason that the balancing test may not be used, or may be used implicitly without actual discussion of it in the opinion, is that the property taken or procedure involved creates such a hardship that the result of a detailed balancing test is obvious to the court.⁷²

Some courts have reached opposite results when confronted with the same procedural question involving like property or summary process.⁷³ However, this may be due to the lack of guidelines in *Sniadach* for a determinative test or the lack of an express balancing test from that opinion.⁷⁴

Another reason for the diverse conclusions based upon similar processes or property forms is the adoption by some courts of the strict due process argument made by Mr. Justice Harlan in his concurring opinion in *Sniadach*.⁷⁵ Courts espousing this approach tend to deemphasize the specific property involved and instead focus upon the necessity of notice and a hearing in advance of any deprivation of the use of the debtor's property.⁷⁶

These cases strongly suggest that when the specific property subjected to the summary process is necessary for the maintenance of health, day-to-day necessities or family welfare, due process will require a hearing prior to any interference with the debtor's right to possession or use.⁷⁷ However, if the property in question does not share these unique qualities, then due process will most likely not protect it where there exists the valid state or creditor interest in having quick, decisive action.⁷⁸

⁶⁹*Termpplan Inc. v. Superior Court*, 105 Ariz. 270, 463 P.2d 68 (1969); *Michael's Jewelers v. Handy*, 6 Conn. Cir. 103, 266 A.2d 904 (1969).

⁷⁰*Strutt v. Ontario Savings and Loan Ass'n*, 11 Cal. App. 3d 547, 90 Cal. Rptr. 69 (1970).

⁷¹See note 38 and accompanying text *supra*. See note 34 *supra*.

⁷²*E.g.*, *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 340-42 (1969).

⁷³*Swarb v. Lennox*, 314 F. Supp. 1091 (E.D. Pa. 1970); *Atlas Credit Corp. v. Ezrine*, 25 N.Y.2d 219, 250 N.E.2d 474, 303 N.Y.S.2d 382 (1970). *Contra*, *Jamerson v. Lennox*, 321 F. Supp. 656 (E.D. Pa. 1970).

⁷⁴395 U.S. at 342.

⁷⁵*Id.* at 342-44.

⁷⁶*E.g.*, *Mihans v. Municipal Court*, 7 Cal. App. 3d 479, 484, 87 Cal. Rptr. 17, 23 (1970).

⁷⁷See *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *Laprease v. Raymours Furniture Co.*, 315 F. Supp. 716 (N.D.N.Y. 1970); *Goliday v. Robinson*, 305 F. Supp. 1224 (N.D. Ill. 1969); *Mihans v. Municipal Court*, 7 Cal. App. 3d 479, 87 Cal. Rptr. 17 (1970); *Jones Press, Inc. v. Motor Travel Services, Inc.*, — Minn. —, 176 N.W.2d 87 (1970).

⁷⁸See *Ewing v. Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1950); *Fahey v. Mallonee*, 332 U.S. 245 (1947); *Termpplan Inc. v. Superior Court*, 105 Ariz. 270, 463 P.2d 68 (1969).