

January 11, 1980

LB 306

SENATOR JOHNSON: That was 30-624 of the old probate code and did you know that that was held unconstitutional by District Judge Paul White who was our Chief Justice?

SENATOR BEUTLER: What were the grounds of the unconstitutionality?

SENATOR JOHNSON: It says, "In a recent Lancaster District Court case District Judge Paul W. White, in effect, held Section 30-624 unconstitutional, cited that case as Buehler v. Kirby, 1959 decision, Lancaster County, Nebraska. Judge White pointed out that the statute allows a creditor to bring an action in a court of competent jurisdiction but does not define this term. Since the county court is vested by the constitution with the original and by state statute exclusive jurisdiction over probate matters and settlement of claims against the decedent the only court of competent jurisdiction is the county court, the claim being one against the decedent and not a personal claim against the surviving joint owner. It should be brought with any other claim against the estate in the probate court. Judge White stated that as to the right to sue the surviving joint tenant, the statute is contrary to the purposes for which we have probate proceedings. The statute permits a multiplicity of suits against the surviving joint tenant by any and all of the unpaid creditors. Regardless of priorities the unpaid creditor could get a judgement against the surviving joint tenant and the estate would have no opportunity to contest the validity of the claim as against a widow's allowance or items of that nature." It is fairly analagous to what we are talking about here.

SENATOR BEUTLER: Well I have never seen that prior statute, but personally I don't see that this particular statute would be unconstitutional. That was a District Court decision. That was not a Supreme Court decision. Is that right?

SENATOR JOHNSON: Right, no, the issue has never gone to the Supreme Court.

SENATOR BEUTLER: So when you say it is unconstitutional that is the opinion of the District Court Judge in one district.

SENATOR JOHNSON: Of only one judge.

SENATOR BEUTLER: All right. I wouldn't agree with that opinion most certainly and as a matter of equity I don't see