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Mental Health - Care and Support of Disordered Persons - Liability of Relatives - Equal Protection

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logically have accepted the reasonable grounds test for arrest, thereby validating the revocation.[19] In refusing to do so, the implied consent statute has been rendered useless as an instrument for the promotion of highway safety, and the legislature is left to cure what this court could have prevented.

LELAND HAGEN

MENTAL HEALTH—CARE AND SUPPORT OF DISORDERED PERSONS—LIABILITY OF RELATIVES—EQUAL PROTECTION—The California Department of Mental Hygiene, pursuant to statute,[1] presented a claim to intestate's estate for the support of intestate's mother who was an inmate in a mental institution. Defendant administratrix disallowed the claim and appealed from an adverse judgement in Superior court. The Supreme Court *held* that a statute which imposes upon one adult, because of a family relationship, a duty to support another adult, who is confined in a mental institution, is arbitrary and unreasonable and thus violates the equal protection clause of the Fourteenth Amendment. *Department of Mental Hygiene v Kirchner*, 36 Cal. Rpts. 488, 388 P.2d 720.

At common law the state undertook the care and custody of idiots and lunatics and of their estates.[2] There was no duty upon parents to support their adult children[3] or upon children to support their parents.[4] Nor was there a duty upon a wife to support her husband.[5] The first statute appearing in this area was 43 Eliz. C.2 § 7 (1601)

A large majority of the states have statutes which are comparable to the California statute involved in the principal

19. *Compare* N.D. CENT. CODE § 29-06-15. "Arrest without a warrant.—A peace officer, without a warrant, may arrest a person. 1. For a public offense, committed or attempted in his presence " *with* Smith v. Hubbard, 253 Minn. 215, 91 N.W.2d 756 (1958), wherein the court adopted the reasonable grounds test even though the arrest statute is the same as North Dakota's.

1. CAL. WELFARE AND INST'NS. CODE ANN. § 6650 (West 1956) "The husband, wife, father, mother or children of a mentally ill person or inebriate shall be liable for his care, support and maintenance in a state institution of which he is an inmate. "

2. 2 ODGERS, COMMON LAW OF ENGLAND, 1381 (2d Ed. 1920).

3. Murrah v. Bailes, 255 Ala. 178, 50 So. 2d 735 (1951).

4. Duffy v. Yordi, 149 Cal. 140, 84 Pac. 838 (1906).

5. Hagert v. Hagert, 22 N.D. 290, 133 N.W 1035 (1911).

case.[6] These statutes have withstood attacks on various grounds: due process,[7] class legislation,[8] invalid taxation,[9] and equal protection.[10] Some states, however, have required that their statutes be strictly construed.[11] The principal case appears to be the first under these support laws to consider whether "equal protection" forbids the imposition of any statutory duty upon individuals, as opposed to the general public, to support their insane "relatives"

The equal protection clause of the Fourteenth Amendment does not preclude the states from creating reasonable classes for purposes of legislation.[12] All that is required is that the classification be not arbitrary but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation.[13]

Considering the validity of "poor laws",[14] which are closely analagous to the statutes in question,[15] courts have held that the difference upon which the classification is based is a natural one, embracing the strong moral obligation to care for the unfortunate members of one's own family [16] Their rationale has been that since the general purposes of "poor laws" are the relief of the poor[17] and the protection

6. *E.g.*, OHIO REV. CODE ANN. § 5121.06 (Baldwin supp. 1957) NEB. REV. STAT. § 83-352 (1943). Some states get the same effect as the California statute by incorporating their "poor laws" into their mental health laws, *e.g.*, MISS. CODE ANN. §§ 7357 (poor law), 6909-13 (mental health). A few states have no analagous statutes: Arizona, Missouri, New Mexico, Florida, Oklahoma, Hawaii (?).

7. Beach v. Government of District of Columbia, 320 F.2d 790 (D.C. Cir. 1963), *cert. denied*, 84 S. Ct. 351 (2) (1963).

8. *In Re* Ideman's Commitment, 146 Ore. 13, 27 P.2d 305 (1933)

9. Kough v. Hoehlec, 413 Ill. 409, 109 N.E.2d 177 (1956) held that the charge imposed was not a tax, *cf.* McKenna v. Roberts County, 72 S.D. 250, 32 N.W.2d 687 (1948).

10. Dept. of Mental Hygiene v. McGilvey, 50 Cal. Rptr. 742, 329 P.2d 689 (1958). There the question was whether it was a denial of equal protection to hold "relatives" primarily liable in cases of mental inmates and only secondarily liable in cases involving other institutions. In Kough v. Hoehler, *supra* note 9, the question was whether the state could create liability in cases of civil commitments without also creating it in cases of criminal commitments.

11. *E.g.*, *In Re* Boles Estate, 316 Pa. 179, 173 A. 664 (1934) *In Re* Mangan's Will, 83 N.Y.S.2d 393 (1948).

12. Ferguson v. Skrupa, 372 U.S. 720 (1963).

13. Power Co. v. Saunders, 274 U.S. 490 (1927).

14. *E.g.*, GA. CODE ANN. § 23-2302 (1935) "The father, mother, or child of any pauper if sufficiently able, shall support such pauper."

15. See notes 1, 6, 14, *supra*. See note 20, *infra*.

16. People v. Hill, 163 Ill. 186, 46 N.E. 796 (1896). The statute under attack provided, "that every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters of such poor person" ILL. REV. STAT. C. 107 § 1 (1895).

17. *E.g.*, State Bd. of Child Welfare v. P.G.F., 57 N.J.S. 370, 154 A.2d 764 (1959).

of the public purse,[18] the existence of a family relationship provides an adequate basis for relieving the general public of the duty to support these persons, and for placing the burden upon those naturally and morally obligated to carry it.[19] It would appear that similar logic is applicable where "relatives" are required to support insane persons.[20]

The United States Supreme Court has said that the presumption of constitutionality of a statute should be overcome only by the most explicit demonstration that the classification is unreasonable and arbitrary;[21] that the burden should be upon the one attacking the legislation to negative every conceivable basis which might support it.[22]

North Dakota follows the majority of the states in requiring that "relatives" of an insane person may be held liable for the support of that person while he is an inmate in a mental institution.[23] Like most states, North Dakota also has a "poor law" [24] There appears to be no case law having a significant bearing on the question under discussion.[25]

It would seem that this subject is one for determination by the legislatures, not the courts. For the courts to say that a family relationship with its natural moral obligations does not provide a rational basis for classification appears inconsistent with the prevailing view that state statutes in equal protection cases should be interpreted, insofar as

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18. *E.g., In Re* Cook, 22 Misc. 479, 198 N.Y.S.2d 582 (1960).

19. *See* People v. Hill, *supra* note 16 Mallatt v. Luihn, 206 Ore. 678, 294 P.2d 871 (1956)). Wells v. Wells, 227 N.C. 614, 44 S.E.2d 31 (1947) held, without relying on any statute, that a father is morally and legally obligated to support his adult son who is a pauper by reason of a mental deficiency

20. *Cf.,* Beach v. Government of District of Columbia, *supra* note 7, wherein the court held valid a District of Columbia statute, D.C. CODE ANN. § 21-318 (1951), which is similar to the California statute in question. The Court relied heavily on People v. Hill, *supra* note 16 in holding the statute was not unreasonable. Although the attack was made on due process grounds the holding is germane because the legislative power over the District of Columbia is analagous to the police power of the states. Lansburg v. District of Columbia, 11 App. C.C. 512 (1897). In Bolling v. Sharpe, 347 U.S. 497 (1954) it was said that in many cases the due process clause of the Fifth Amendment has the same effect upon congressional power over the District of Columbia as the equal protection clause of the Fourteenth Amendment has upon the states. *Accord, e.g.,* State v. Bateman, 110 Kan. 546, 204 Pac. 682 (1922) *In Re* Idleman's Commitment, *supra* note 8 State v. Webber, 163 Ohio St. 598, 128 N.E.2d 3 (1955).

21. Madden v. Kentucky, 309 U.S. 83 (1940).

22. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911).

23. N.D. CENT. CODE § 25-09-04 (Supp. 1963) " 'responsible relative' shall mean the patient's spouse, father, mother or children." Under a prior statute, North Dakota allowed the counties to seek reimbursement from "relatives" N.D. CENT. CODE § 25-08-26 (1960).

24. N.D. CENT. CODE §§ 50-01-19, 50-01-20 (1960).

25. *But cf.* Bismarck Hospital v. Harris, 68 N.D. 374, 280 N.W 423 (1938).

possible, to be predicated upon legitimate legislative considerations.

LYNN CROOKS

COURTS—OVERRULING OF PREVIOUS DECISION—EFFECT—Plaintiff sued to cancel a conditional sales contract and promissory note made in 1960 for the purchase of a house trailer The contract was made in compliance with the Nebraska Installment Sales Act[1] in effect at that time. (Before this suit was instituted the "Sales Act" was declared unconstitutional by the *Elder v Doerr*[2] decision.) The Nebraska Supreme Court held that the finance charges, computed in the sales contract, were in excess of the interest allowable by the Nebraska Istallment Loan Act.[3] Therefore, they canceled the contract and note, ordered the defendant to return the payments which he had received under the contract and also to deliver an unencumbered title for the trailer to the plaintiff. Two Justices, in separate concurring opinions, said that since this was a new rule of law conflicting with previous opinions of this court, and since a great number of important financial transactions had been consummated relying on the past decisions, this decision should be applied only prospectively *Lloyd v Gutgsell*, 175 Neb. 775, 124 N.W 2d 198 (1963)

A judicial decision is generally thought not to *make* law but to *declare* law as it always existed.[4] Under this view a decision is necessarily applied retroactively, and declares that prior inconsistent holdings never were the law.[5] We can readily see that this "declaratory" concept of law can produce serious hardship when contract rights, acquired in reliance on the prior decision, are interfered with by the new decision.[6]

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1. Neb. R. R. S. § 45-301 to 312 (1960).
2. 175 Neb. 483, 122 N.W.2d 528 (1963).
3. Neb. R. R. S. § 45-114 to 158 (1960).
4. Ross v. Board of Freeholders, 90 N.J.L. 522, 102 Atl. 397 (1917) Landers v. Tracy 171 Ky 657, 188 S.W 763 (1916) Falconer v. Simmons, 51 W Va. 172, 41 S.E. 193 (1902).
5. Legg's Estate v. Commissioner, 114 F.2d 760 (4th Cir. 1940) Center School Township v. State, 150 Ind. 168, 49 N.E. 961 (1898).
6. The instant case is an example of a contract made on what was thought to be the law prior to the Elder v. Doerr decision, *supra* note 2. The seller is