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an additional amount which will satisfy litigation costs, attorney's fees and the compensation award.⁵⁶

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⁵⁶ This would be statutory *additur* (or *increscitur*), McCORMICK, DAMAGES 82 (1935), which would set a lower limit upon the amount of damages equal to the compensation award, reasonable attorney's fees and costs of litigation.

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RELATIVES' SUPPORT LIABILITY: TWO YEARS AFTER *KIRCHNER*

[The parents, grandparents, and the children of] evere poore, olde, blinde, lame, and impotente Person, or other poore Person not able to worke, being of a sufficient Abilitie, shall at their owne Charges relieve and mantaine every such poore Person, in that Manner and according to that Rate, as by the Justices of Peace of that Countie where such Persons dwell shall be assessed ¹

This ancient poor-law statute of England was substantially adopted as California Civil Code section 206.² However, the state's cause of action cannot be predicated upon the above section alone.³ The California Welfare and Institutions Code establishes liability of financially-able responsible relatives for persons who have received aid from the state.⁴ This liability applies not only to relatives of the indigent, but of the aged,⁵ the feeble-minded,⁶ or the mentally-disordered.⁷ This note will deal with relative's liability for the support of the mentally-disordered.

Section 6650 of the Welfare and Institutions Code imposes joint and several liability on the husband, wife, father, mother, or children, their estates and the estate of the mentally-ill patient for the expenses of a patient's support and maintenance in a state mental hospital. In most jurisdictions the courts have construed similar statutes to require that the state seek compensation first from the inmate himself.⁸ California courts, however, have consistently construed section

¹ An Act to Relieve the Poor, 1597, 39 Eliz. 1, c. 3, § 7; see tenBroek, *California's Dual System of Family Law: Its Origin, Development, & Present Status*, 17 STAN. L. REV. 614 (1965).

² CAL. CIV. CODE § 206 provides: "It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability"

³ County of San Bernardino v. Simmons, 46 Cal. 2d 394, 296 P.2d 329 (1956).

⁴ *Ibid.* See CAL. WELF. & INST'NS CODE §§ 12100-01.

⁵ CAL. WELF. & INST'NS CODE § 12101.

⁶ CAL. WELF. & INST'NS CODE § 5250.

⁷ CAL. WELF. & INST'NS CODE § 6650.

⁸ See, e.g., State *ex rel.* Cromwell v. Panzeri, 76 Idaho 211, 280 P.2d 1064 (1955); State v. Bryan, 105 Kan. 483, 185 Pac. 25 (1919); *In re Rhodes*, 196 Wash. 618, 83 P.2d 896 (1938).

6650 and other similar California support statutes to allow the state to seek compensation first from certain relatives of the inmate.⁹ The validity of the statutes under this construction had been consistently upheld by the California courts¹⁰ until the cases of *Department of Mental Hygiene v. Hawley*¹¹ and *Department of Mental Hygiene v. Kirchner*.¹²

This note will examine *Hawley* and *Kirchner* and the subsequent cases construing them. It will be shown that the careful examination of mental health support liability required by the *Hawley* and *Kirchner* decisions, while not resulting in sweeping changes in California support law, has produced a construction of that law which brings California more closely into line with the law of other jurisdictions.

Hawley and Kirchner: Holdings and Issues

Hawley held that the father of a person confined in a state mental institution pursuant to the administration of the criminal law was not liable for his support and maintenance.¹³ The court emphasized that:

the committed person is held in the state institution not merely because he is (or was) *insane* but because the state, in a proceeding instituted by it, has accused him of crime and *his detention is found to be necessary for the protection of the public*. The fact that here the accused has been found presently insane does not provide a valid basis for sustaining a charge against a person not otherwise liable.¹⁴

Because of the emphasis by the court on the criminal character of the case, the decision had only a limited practical effect.

In *Kirchner*,¹⁵ however, the reasoning of the *Hawley* decision was carried over into involuntary civil commitment. The state sought reimbursement under section 6650 of the Welfare and Institutions Code from the estate of an adult daughter for the expenses of her mother's care and maintenance in a state mental hospital. It was established at the trial that the mother had an estate adequate to meet the expenses of her own support, but the trial court held the daughter's estate liable

⁹ See, e.g., *Department of Mental Hygiene v. Black*, 198 Cal. App. 2d 627, 18 Cal. Rptr. 78 (1961); *Department of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 329 P.2d 689 (1958); *Guardianship of Thrasher*, 105 Cal. App. 2d 768, 234 P.2d 230 (1951); *State Comm'n in Lunacy v. Eldridge*, 7 Cal. App. 299, 94 Pac. 597 (1898).

¹⁰ See, e.g., *Department of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 329 P.2d 689 (1958) and *County of Los Angeles v. Frisbie*, 19 Cal. 2d 634, 122 P.2d 526 (1942) where attacks were based on asserted lack of procedural due process; and *County of Los Angeles v. Hurlbut*, 44 Cal. App. 2d 88, 111 P.2d 963 (1941) and *Kelly v. State Bd. of Social Welfare*, 82 Cal. App. 2d 627, 186 P.2d 429 (1947) where the attacks were based on certain limited claims of discriminatory classification.

¹¹ 59 Cal. 2d 247, 28 Cal. Rptr. 718, 379 P.2d 22 (1963).

¹² 60 Cal. 2d 716, 36 Cal. Rptr. 488, 388 P.2d 720, *cert. granted*, 379 U.S. 811 (1964), *remanded for clarification on jurisdictional grounds*, 380 U.S. 194, *clarified*, 62 Cal. 2d 586, 43 Cal. Rptr. 329, 400 P.2d 321 (1965).

¹³ *Department of Mental Hygiene v. Hawley*, 59 Cal. 2d 247, 28 Cal. Rptr. 718, 379 P.2d 22 (1963).

¹⁴ *Id.* at 255, 28 Cal. Rptr. at 723, 379 P.2d at 27.

¹⁵ 60 Cal. 2d 716, 36 Cal. Rptr. 488, 388 P.2d 720 (1964).

for the expense of her mother's support.¹⁶ On appeal the right of the state to statutorily impose liability on one adult for the support of another adult committed by the state to a mental institution was challenged as a denial of equal protection.¹⁷ The court found the statute to be arbitrary since it allowed the taking of the relatives' assets without first seeking reimbursement from the estate of the inmate.¹⁸ The opinion cited *Hawley* with approval, emphasizing that the purpose of both criminal and civil commitment was the protection of the public from the confined person and his eventual "reclamation as a productive member of the body politic."¹⁹ Thus the court said that

the cost of maintaining the state institutions, including provision of adequate care of its inmates, cannot be *arbitrarily* charged to one class in the society; such assessment violates the equal protection clause.²⁰

There are three common factors in both *Hawley* and *Kirchner*:

- (1) the person sought to be charged was not *otherwise liable* for the support of the inmate, apart from the mental health support statute;²¹
- (2) the state had initiated the commitment proceedings and not the person sought to be charged with liability;
- (3) to some extent both commitments were for the purpose of protecting the public.

Now the question is whether it is necessary that all these factors coexist in order to apply the *Hawley* and *Kirchner* rules to a particular case. Stated in positive terms, the inquiry is whether underlying liability, voluntary commitment or a purpose broader than protection of the public will enable the state to impose liability on responsible relatives. This question is answered in recent cases²² which have narrowed *Hawley* and *Kirchner*.

The Construction of Hawley and Kirchner

In *County of Alameda v. Kaiser*²³ the county sought to recover the cost of medical aid rendered at the defendant's request to her eighteen year old son. The

¹⁶ The trial court apparently relied on *Department of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 329 P.2d 689 (1958), which held that relatives were unconditionally liable under § 6650 of the Welfare & Inst'ns Code.

¹⁷ *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 718, 720, 36 Cal. Rptr. 488, 489, 490, 388 P.2d 720, 721, 722 (1964).

¹⁸ *Id.* at 722, 36 Cal. Rptr. at 492, 388 P.2d at 724.

¹⁹ *Id.* at 720, 36 Cal. Rptr. at 490, 388 P.2d at 722.

²⁰ *Ibid.*

²¹ In *Hawley* the father was not otherwise liable because relatives have no support duty for adult kindred who are confined by the state for purposes of trial or punishment pursuant to the criminal process. Thus, but for the commitment to a mental institution pending trial and the mental health support statute there would have been no grounds for seeking the father's support of his adult son. In *Kirchner* the only possible underlying duty of support was section 206 of the Civil Code. However, it was clear that the mother was not indigent because she had an estate sufficient to meet the expenses of her maintenance by the state.

²² All of the cases save one were decided by the California District Court of Appeals, 1st App. Dist., Div. 1.

²³ 238 Cal. App. 2d 815, 48 Cal. Rptr. 343 (1965).

defendant claimed that her son was an adult and that under *Kirchner* she would not be liable. The court distinguished *Kirchner* by holding that the boy was a minor and upheld the defendant's liability²⁴ under the Welfare and Institutions Code.²⁵ In so doing the court stressed the fact that the parental support of a minor child is a well-settled common law obligation which has long been statutory in California and which is not an unreasonable classification in violation of equal protection of the law.²⁶ This underlying liability apart from the Welfare and Institutions Code provision is another factor which distinguishes the case from *Kirchner*. However, it was further pointed out that "the element of confinement for the protection of society from the mentally-ill, present in *Kirchner*, is not a factor here."²⁷

Although the facts of *Kaiser* are totally dissimilar to *Hawley* and *Kirchner*, the law of the cases is fully compatible. Thus in *Kaiser*, as distinguished from *Hawley* and *Kirchner*, there was a voluntary commitment, underlying liability, and no purpose to protect the public.

In *In re Dudley*²⁸ the three factors present in *Kaiser* were more carefully weighed. The state sought reimbursement, under section 5260 of the Welfare and Institutions Code,²⁹ from a mother for the expenses of care furnished her *adult* daughter in a state home for the mentally-deficient where she was placed at her mother's request. The court, in narrowing the *Hawley* and *Kirchner* principle, said "the law properly requires contribution, within his ability to pay, from a person *otherwise responsible* for the care of a mentally-deficient person."³⁰ The court carefully noted that in *Kirchner* the state attempted to predicate liability solely upon section 6650 and was not successful because the defendant's liability would not have existed absent the statute.³¹ In *Dudley* the state sued for reimbursement under section 5260 of the Welfare and Institutions Code and was successful; notwithstanding section 5260 the defendant was otherwise liable under section 206 of the Civil Code because of the indigency of the daughter.³²

While underlying liability was the main factor used to distinguish *Kirchner*, the *Dudley* court did not hesitate to also point out that the inmate was voluntarily committed.³³ Thus *Dudley*, as *Kaiser*, imposed liability where there was underlying liability, and a voluntary commitment.

The importance of voluntary or involuntary commitment was repudiated in *County of Alameda v. Espinosa*³⁴ where the court held that it did not violate due process or equal protection to impose liability on a father for the expense of maintaining his son in a state mental hospital when placed there by order of the

²⁴ *Id.* at 817-18, 48 Cal. Rptr. at 345.

²⁵ CAL. WELF. & INST'NS CODE § 17300.

²⁶ 238 Cal. App. 2d at 817-18, 48 Cal. Rptr. at 345; see CAL. CIV. CODE §§ 196, 206, 207.

²⁷ 238 Cal. App. 2d at 817-18, 48 Cal. Rptr. at 345.

²⁸ 239 Cal. App. 2d 401, 48 Cal. Rptr. 790 (1966).

²⁹ Now CAL. WELF. & INST'NS CODE § 5250.

³⁰ 239 Cal. App. 2d 401, 403, 48 Cal. Rptr. 790, 791 (1966). (Emphasis added.)

³¹ *Id.* at 412, 48 Cal. Rptr. at 797.

³² *Id.* at 409-10, 48 Cal. Rptr. at 796.

³³ *Id.* at 412, 48 Cal. Rptr. at 796.

³⁴ 243 A.C.A. 685, 52 Cal. Rptr. 480 (1966).

juvenile court.³⁵ Recognizing that *Kaiser* and *Dudley* involved voluntary commitments, the court said that this factor cannot be controlling.³⁶ Instead the court suggested that the true test is whether there is a primary purpose to protect the public or a primary purpose to rehabilitate the individual when the state commits the inmate.³⁷ If the state does commit a person primarily for the purpose of protecting the public, relatives of that person, although they have an underlying liability of support, cannot be required to pay the expenses of his care.³⁸ However, the court said that when a person is "confined for the *dual purpose* of protection of the public at large and his reformation and rehabilitation . . .",³⁹ relatives, if otherwise liable, can be charged for the expenses of his care.⁴⁰ It appears that liability will be imposed whenever there is a purpose to rehabilitate, unless that purpose is combined with a *primary* purpose to protect the public. Thus the *Espmosa* court allowed the state to recover from a relative who had an underlying support liability even though the commitment was involuntary since the commitment was found to be for the purpose of rehabilitating the inmate. *Hawley* was distinguished because it involved an involuntary commitment primarily for the purpose of protecting the public,⁴¹ and *Kirchner* was distinguished because it involved no underlying liability.⁴²

The reasoning of *Espmosa* was further substantiated in *Department of Mental Hygiene v. O'Connor*⁴³ where the state sought to recover from the estate of a husband, the expense of maintaining his wife in a state mental institution.⁴⁴ In holding that *Kirchner* did not apply and that the husband's estate was liable, the court emphasized that in the present case, as in *Dudley*, the person sought to be charged with financial responsibility was liable for the support of the incompetent notwithstanding the statutory liability under section 6650.⁴⁵ As the court pointed out, the nature of this underlying liability arose from the voluntarily contracted marriage and was "not only historic but statutory."⁴⁶

³⁵ *Id.* at 700, 52 Cal. Rptr. at 489; see CAL. WELF. & INST'NS CODE § 903 which provides: "The father, mother, spouse, or other person liable for the support of a minor person, the estates of such persons and the estate of such minor person, shall be liable for the cost of his care, support and maintenance in any county institution in which he is placed, detained, or committed pursuant to the order of the juvenile court. The liability of such persons and estates shall be joint and several liability."

³⁶ 243 A.C.A. at 695-96, 52 Cal. Rptr. at 484-85.

³⁷ *Ibid.*

³⁸ *Id.* at 690, 52 Cal. Rptr. at 483.

³⁹ *Id.* at 700, 52 Cal. Rptr. at 489. (Emphasis added.)

⁴⁰ The court apparently did not consider the clear language of *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 720, 36 Cal. Rptr. 488, 490, 388 P.2d 720, 722 (1964) where it was said: "Whether the commitment is incidental to an alleged violation of a penal statute, as in *Hawley*, or is essentially a civil commitment as in the instant case, the purpose of confinement and treatment or care in either case encompass the protection of society from the confined person, and his own protection . . ."

⁴¹ 243 A.C.A. at 697-700, 52 Cal. Rptr. at 487-89.

⁴² *Id.* at 694, 52 Cal. Rptr. at 485.

⁴³ 246 A.C.A. 12, 54 Cal. Rptr. 432 (1966).

⁴⁴ This action was based on CAL. WELF. & INST'NS CODE § 6650.

⁴⁵ 246 A.C.A. at 16, 54 Cal. Rptr. at 435.

⁴⁶ *Id.* at 15, 54 Cal. Rptr. at 434-35; see CAL. CIV. CODE § 174.

Conclusion

It is clear that all cases which have construed *Hawley* and *Kirchner* have imposed liability on a relative for the expense of supporting a person incurred by a state institution when an underlying liability for support of that person has been incorporated into various California statutes.⁴⁷ When such a liability exists, a valid class discrimination is permitted, and the state by statute can constitutionally extend such liability to cover the expense of maintaining a person in a state hospital for the mentally-ill. The rule apparently is that unless a person is held for the primary purpose of protecting the public, as in a criminal proceeding, the state is entitled to reimbursement only if the person sought to be charged has an obligation of care and support apart from that imposed on him by the mental health support liability statute.

Kirchner does not declare that all liability under section 6650 of the California Welfare and Institutions Code is unconstitutional.⁴⁸ The section is invalid only insofar as it was interpreted as imposing liability on those who would not for any other reason be liable for the support of the inmate. Absent a special relationship, a relative would not be liable for the support of an adult inmate unless that inmate were indigent.⁴⁹ Except in the cases of parent-child and husband-wife, primary support liability apparently rests on the inmate himself or his estate, and all other relatives are only secondarily liable. This result brings California law on mental health support liability closer to the interpretation given to similar statutes by a majority of jurisdictions.⁵⁰ Although this is not a sweeping change in California support law, it does to some extent satisfy early criticisms of the law⁵¹ and partially fulfills the re-evaluation of support liability envisioned by the *Kirchner* court.⁵²

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⁴⁷ See, e.g., CAL. CIV. CODE §§ 174, 196, 206.

⁴⁸ This was expressly recognized in *Department of Mental Hygiene v. O'Connor*, 246 A.C.A. 12, 14, 52 Cal. Rptr. 432, 434 (1966).

⁴⁹ Where the adult inmate is indigent, § 206 of the California Civil Code would provide the necessary underlying liability. See *In re Dudley*, 239 Cal. App. 2d 401, 48 Cal. Rptr. 790 (1966).

⁵⁰ See, e.g., cases cited note 8 *supra*.

⁵¹ See, e.g., *State Comm'n in Lunacy v. Eldridge*, 7 Cal. App. 299, 307, 94 Pac. 597, 600 (1898) (Chief Justice Beaty dissenting); *Department of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 762, 329 P.2d 689, 703 (1958) (dissenting opinion by Justice Schauer).

⁵² *Department of Mental Hygiene v. Kirchner*, 60 Cal. 2d 716, 722, 36 Cal. Rptr. 488, 491-92, 388 P.2d 720, 723-24 (1964).

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