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vertible statement of public policy.²⁵ Although a particular act may be the result of "pressurized" legislation, designed to change established theories of liability, it should not be so strictly construed as to result in a partial defeat of over-all legislative intent. This anomalous situation created by legislative omission can readily be corrected, not only by legislating, but also by a judicial finding that the clause in question is a contractual limitation that *has been provided for* in the act.

ADMIRALTY—RIGHT OF CREW UNDER "LAY PLAN" TO RECOVER FOR NEGLIGENT INTERFERENCE WITH ADVANTAGEOUS ECONOMIC RELATIONS

Libelants were engaged in fishing under a lay plan¹ as the crew of the Bear. Respondents' boat, the Marsha Ann, collided with and damaged the Bear, necessitating the Bear's return to port and compelling her crew to abandon their fishing venture. The crew libeled the respondents for damages based upon their expectant share of profits under the lay plan. *Held*, the Marsha Ann negligently damaged the Bear, for which her owners were awarded damages;² but the crew sustained only *damnum absque injuria*. *Borcich v. Ancich*, 191 F.2d 392 (9th Cir. 1951), *cert. denied*, 72 Sup. Ct. 293 (1952).³

Collision cases involving the rights of seamen under a lay plan have been rare. It has been held that such seamen may join with their boat owners against an intentional tort-feasor.⁴ Also, where the fish were already caught when the collision occurred recovery was allowed the crew against the negligent boat's owner.⁵ In addition, where the owner of a negligent vessel was also the employer of the crew of the damaged boat, the members of the crew, though under the lay plan, were allowed to sue in their own names for the loss of prospective profits.⁶ However, the courts are divided as to whether a crew on the lay plan may join with the owner

25. *The Irrawaddy*, 171 U.S. 187 (1897); *The Jason*, *supra* note 22.

1. The lay plan is an agreement whereby seamen receive as their compensation a certain share or profit of the proceeds of the voyage (usually fish). In the instant case the crew's collective lay was 68%; whereas the owners' share was 32%. However, the courts are divided as to what kind of interest a crew's lay share represents. Some cases have followed the rule adopted by Lord Avonley in *Wilkinson v. Frasier*, 4 Esp. 182, 170 Eng. Rep. 684 (1802) and regard the shares under the lay plan as wages. See *United States v. Laflin*, 24 F.2d 683, 685 (9th Cir. 1928); *Reed v. Hussey*, 20 Fed. Cas. No. 11,646, at 444 (D.C.S.D.N.Y. 1836); *Lewis v. Chadbourne*, 54 Me. 484, 485 (1865). Some decisions apparently regard the crew's interest under the lay plan as a tenancy in common. *The Columbia* 6 Fed. Cas. 173, No. 3,035 (E.D.N.Y. 1877); *The Mary Steele*, 16 Fed. Cas. 1003, No. 9,226 (D. Mass. 1873).

2. The court awarded damages of \$4,320 as the owners' 32% interest in the prospective catch and \$17,770.67 as a reasonable amount for the cost of repairs.

3. Mr. Justice Black took the unusual position that not only should certiorari be granted, but that the judgment should be reversed.

4. *United States v. Laflin*, 24 F.2d 683 (9th Cir. 1928).

5. *The Mary*, 61 F. Supp. 329 (E.D.N.Y. 1945).

6. *Van Camp Sea Food Co. v. DiLeva*, 171 F.2d 454 (9th Cir. 1948).

against a negligent tort-feasor, after a collision at sea before any fish are caught.⁷

In the instant case the court was aware that recovery for expectant profits has been allowed crews under the lay plan;⁸ but, nevertheless, it chose to follow the decisions holding otherwise.⁹ In addition, the court emphasized the distinctions between the principal case and those cases allowing recovery to crew members on the lay plan. Thus, it pointed out that *United States v. Laflin*¹⁰ involved an intentional tort and that *Van Camp Sea Food Co. Inc. v. DiLeva*¹¹ was "bottomed on its own peculiar facts . . . [in] that the owner of the boat could not be expected, as trustee, to bring an action on behalf of the crew against himself for his own negligence."¹² The decision in the instant case essentially relied upon the opinion of the Supreme Court in *Robins Dry Dock & Repair Co. v. Flint*.¹³ That case held that a time charterer¹⁴ who, unknown to the defendant dry dock company, was under contract to the boat owner, had no cause of action for the loss of his advantageous bargaining position, as a result of the defendant's negligence in repairing the propeller of the ship according to a contract between defendant and the ship owner. The Supreme Court applied the rule that " . . . a tort to the person or property of one man does not make the tort-feasor liable to another merely because the injured person was under a contract with that other unknown to the doer of the wrong."¹⁵

The instant case easily can be distinguished from the *Robins* case. In that case, the defendant dry dock company did not know of the time charterer's agreement with the ship owner, with whom defendant contracted and had paid damages for its negligence before the time charterer had brought suit. Query, can it be said that the captain of a ship that negligently damages another fishing vessel does not know that in all probability the damaged ship's crew is either compensated by wages or the lay plan?¹⁶ In view

7. *The Columbia, The Mary Steele*, *supra* note 1 (joinder permitted). *Contra*: *Taber v. Jenny*, 23 Fed. Cas. 605, No. 13,720 (D. Mass. 1856); *Grozier v. Atwood*, 21 Mass. 234, 4 Pick. 243 (1826) (joinder disallowed).

8. ". . . cases . . . have allowed fishermen to recover for loss of prospective profits." *Borcich v. Ancich*, 191 F.2d 392, 396. See note 7 *supra*.

9. *Taber v. Jenny*, *Grozier v. Atwood*, *supra* note 7.

10. 24 F.2d 683 (9th Cir. 1928).

11. 171 F.2d 454 (9th Cir. 1948).

12. *Borcich v. Ancich*, *supra* note 8, at 398.

13. 275 U.S. 303 (1927).

14. A time charterer is one to whom a ship is let out for hire, the owner retaining possession and control over her navigation. *The Beaver*, 219 Fed. 139, 141 (9th Cir. 1915).

15. *Robins Dry Dock & Repair Co. v. Flint*, 275 U.S. 303, 308 (1927); *Borcich v. Ancich*, *supra* note 8, at 397.

16. Whether employment under the lay plan gives seamen a property interest such as a tenancy in common with the ship owner or is merely the equivalent of wages, see note 1 *supra*. Professor Prosser suggests that recovery should be allowed against a negligent tort-feasor who reasonably should have foreseen that his negligence would interfere with another's advantageous economic relationship. PROSSER, *TORTS* 993 (1941).

of the well-established doctrine that seamen are the wards of admiralty,¹⁷ this court's holding that a negligent tort-feasor owes no duty to seamen employed under the lay plan upon the seas appears to be a harsh and unjustifiably severe rule.

BAIL—GRANT TO SEXUAL PSYCHOPATH

Petitioner's appeal from municipal court conviction of a misdemeanor involving sexual offenses was suspended¹ and petitioner held pending hearing in the superior court to determine whether he was a sexual psychopath. The court denied his application for bail. *Held*, reversed. An alleged sexual psychopath is entitled to bail as a matter of right pending such hearings. *Application of Keddy*, 233 P.2d 159 (Cal. 1951).²

Historically, the granting of bail in both civil and criminal actions was within the discretion of the judge.³ The present "right" to bail is dependent upon statute.⁴ Constitutional provisions generally apply only to criminal cases,⁵ but the right to bail in all civil actions became fixed by early statutory enactment and is now generally assumed.⁶ The Eighth Amendment to the United States Constitution has also been deemed specifically applicable only to criminal cases, but there have been instances when courts have referred to the spirit of the amendment to include civil actions;⁷ this right being unimpaired by the absence of specific legislative authority.⁸

By great weight of authority, psychopathic hearings are independent⁹

17. 4 BENEDICT, ADMIRALTY 282 (6th ed., Knauth, 1940); see discussion by Frank, J. of the doctrine that seamen are the wards of admiralty, in *Hume v. More-McCormack Lines, Inc.*, 121 F.2d 336 (2d Cir. 1941).

1. Upon proper affidavit, criminal proceedings may be suspended and the alleged sexual psychopath brought before the superior court for examination and hearing. CAL. WELFARE AND INSTITUTIONS CODE § 5501 (1949) (as amended).

2. This principle has been twice affirmed: *Ex parte Morehead*, 237 P.2d 335 (Cal. 1951); *Ex parte Rice*, 234 P.2d 180 (Cal. 1951).

3. *Manning v. Williams*, 190 Okla. 65, 120 P.2d 980 (1942).

4. For instance, the CAL. CODE CIV. PROC. ANN. § 486 provides for bail in civil actions as a matter of right. The court in the instant case might have relied upon this Civil Code instead of the California constitutional guarantees.

5. *Espinosa v. Price*, 144 Tex. 121, 188 S.W.2d 576 (1945); *State v. Hutchinson*, 246 Ala. 48, 18 So.2d 723 (1944); *Varholy v. Sweat*, 153 Fla. 571, 15 So.2d 267 (1943).

6. But see *Varholy v. Sweat*, *supra* note 5 (quarantine order is not a criminal proceeding and is not bailable); *Espinosa v. Price*, *supra* note 5 (proceedings under Juvenile Delinquency Act are governed by rules of civil procedure; not constitutional and statutory provisions for bail in criminal cases); *State v. Hutchinson*, *supra* note 5 (constitutional provisions for bail apply only to criminal cases and have no application to one detained on suspicion of being affected with disease).

7. *Mozorosky v. Hulbert*, 106 Ore. 274, 211 Pac. 893 (1923); *State v. Foster*, 84 Wash. 58, 146 Pac. 170 (1915).

8. See *Wright v. Henkle*, 190 U.S. 63 (1902).

9. Trial court loses jurisdiction when proceedings are suspended, to be regained only upon negative determination of psychosis by superior court. *Ex parte Morehead*, *supra* note 2.