Comment on Recent Decisions

CONSTITUTIONAL LAW—EQUAL PROTECTION—OPERATION TO PREVENT PROCREATION.—Defendant in error as superintendent of a state colony for epileptics and feebleminded was ordered to perform the operation of sexual sterilization upon plaintiff in error, a feebleminded inmate, the daughter of a feebleminded mother and the mother of an illegitimate feebleminded child. The Virginia Statute vests in the superintendent of the state asylums authority to have the operation of sexual sterilization performed upon any patient afflicted with hereditary forms of insanity and imbecility. Plaintiff in error, appearing before the United States Supreme Court by writ of error, contended that the above statute is void under the Fourteenth Amendment as denying due process of law and equal protection of the laws. The Court in upholding the statute held that it was not an infraction of the constitutional rights of mental defectives. *Buck v. Bell* (Va.), not yet officially reported. Reprint U. S. Daily, May 3, 1927, page II, column 6.

The power of the states to compel surgical sterilization of criminals, epileptics, rapists, and feebleminded is a problem of recent origin, resulting from attempts by several states to prevent procreation by offenders and undesirables. The operation of vasectomy for prevention of procreation as authorized by statute has been held valid where the statute requires the operation to be skillfully performed and with no marked degree of physical pain. *State v. Feiling,* 70 Wash. 65. The court in *Smith v. Board of Examiners,* 46 N. J. 38; 88 Atl. 963 repudiated this doctrine by holding that sterilization statutes were based upon a classification bearing no reasonable relation to the object of such police regulation, thus denying to the individuals of the class so selected the equal protection of the laws. In *Davis v. Berry et al.,* 216 Fed. 413 a similar statute to the one in question was declared void as providing cruel and unusual punishment. Those states having such sterilization statutes are Colorado, Connecticut, Indiana, Iowa, New Jersey, New York, Nevada, and Washington. J. R. B. '28.

CRIMINAL LAW—CARRYING CONCEALED WEAPONS.—The accused was found sitting at the wheel of a touring car, while on the floor of the tonneau of the car there lay four loaded firearms. He was arrested for violation of an act providing that: "No person shall carry concealed on or about his person a pistol, revolver, or other firearm." *Held,* that evidence of finding guns on the back floor of an automobile, the accused sitting in the front seat, would not sustain a conviction of carrying concealed weapons about his person. *People v. Niemoth,* (Ill. 1926, 152 N. E. 537).

The apparent conflict on this question is the result of interpretations put by the courts on the words "about his person." Texas holds a weapon to be concealed about the person when it is pushed down behind the cushion of an automobile seat on which the accused is sitting, *Wagner v. State,* 188 S. W. 1001; or when it is lying on the floor of a buggy at the feet of the accused, *De Frien v. State,* 153 S. W. 881; and in Alabama, when it is concealed in a basket carried on the arm of the accused, *Diffey v. State,* 86 Ala. 66; and in Missouri, when it is concealed on the seat of a wagon on which the accused is sitting, *State v. Conley,* 280 Mo. 21. On the other hand, Virginia does not hold a weapon to be concealed about the person when it is carried in a closed saddle-bag, *Sutherland v. Commonwealth,* 109 Va. 834; nor South Carolina, when it is carried in a satchel.

As a general rule it may be said that in order to permit a conviction for viola-

tion of a statute prohibiting the carrying of firearms concealed on or about the person, there must be proof that the firearm is carried in such a manner as to give no notice of its presence, and in such proximity of the accused as to be within his easy reach and under his control and we find the courts of Missouri lenient in determining what constitutes such proof. D. C. J. '28.

HOMESTEAD—OWNER OF A HOMESTEAD INTEREST IS NOT ENTITLED TO OIL PRODUCED FROM THE LAND.—A widow, having a homestead interest in land filed this action to restrain the appellee oil company taking oil from land under a lease executed by the children of the deceased. *Held,* that the widow was not entitled to oil produced or the proceeds thereof, nor to take over and operate the wells during the continuance of the homestead interest, in view of the fact that her right was merely to the use of the surface of the land. *Brandenburg v. Petroleum Exploration et al.,* (Ky. 1927) 291 S. W. 757.

It seems as if the entire decision is predicated upon the construction of the Kentucky Statutes (Sec.) 1707 which provides that homestead rights do not create an estate in land, but only give owner of homestead the right to occupy and use it, free from disturbance by heirs, creditors or others. This, however, is not the general law throughout the country. The courts of Missouri hold that an homestead interest is a life estate. In *West v. McMullen,* 112 Mo. 406, l. c. 411, the court said, "We think the statute vested in the widow and minor children, if any, *an estate for her life,* and during their minority, and not a mere right of occupancy. Decisions upon statutes essentially different from ours throw no light upon the question. But our own decisions and those of the Vermont courts and of New Hampshire, under the act of 1868, determine that the homestead is a life estate in land, and not a mere exemption dependent upon occupancy, and being a vested life estate, the widow may use or rent it out as she may see fit during her life. *Rockhey v. Rockhey,* 97 Mo. 76; *Freund v. McCall,* 73 Mo. 343; *Lake v. Page,* 63 N. H. 318; *Skouten v. Wood,* 57 Mo. 380; *Day v. Adams,* 42 Vt. 516. Again in *Bushnell v. Loomis,* 243 Mo. 371, l. c. 385, the court said, "Our own cases recognize that after the death of the husband and the right of homestead has thereby become consummate, then the wife's right rises to the dignity of an interest or estate in land. *West v. McMullen,* 112 Mo. l. c. 411, *Hufschmidt v. Gross,* 112 Mo. l. c. 656. . . . .Homestead as well as dower are both life estates."

Some of the decisions in other states go further than the Mo. decisions. In the case of *Smith v. Shrieves,* 13 Nev. 303 the court in construing the homestead law of that state held that the surviving spouse had a fee simple estate. To the same effect are the following cases: *In re Bailard,* 178 Cal. 293, 173 P. 170; *Rawlins v. Dade Lumber Co.,* 80 Fla. 398, 86 S. 334 where the court was of the opinion that the surviving spouse took absolutely all the estate or interest that was vested in the deceased homesteader in the homestead property at the time of his death.

After a review of the various decisions of the different states the rule that should be followed in regard to the homestead laws is best stated in 29 Corpus Juris 783 wherein it is said, "The homestead interest depends entirely on organic or statutory provisions nothing like it being known at common law; and there can of course be no greater right in the homestead property than is created by these provisions. Because of the difference in the wording of the homestead laws in the various jurisdictions, the interest created thereby differs widely.

M. W. S. '29.

LOTTERIES—EFFECT ON COLLATERAL TRANSACTION—BAILMENT OF PRIZE BY WINNER.—Plaintiff held a ticket entitling its holder to participate in a drawing for