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-