justifying expulsion for their violation. *Pratt v. Wheaton* (1866), 40 Ill. 186; *Tanton v. McKenney* (1924), 226 Mich. 245, 197 N. W. 510.

C. S., '30.

CONSTITUTIONAL LAW—DUE PROCESS—TRANSFER TAX—INCLUSION OF INSURANCE IN GROSS ESTATE.—The executor of the estate of a decedent sued in the Court of Claims for a refund of taxes paid on the proceeds of insurance policies in which the insured reserved the right to change the beneficiaries. By the Revenue Act of 1921 (42 Stat. 227), these were included in the gross estate of the decedent. The petition attacked the validity of such tax, claiming first, that the tax was direct, and hence void because not apportioned; and second, that such inclusion in the gross estate effected an increase of tax upon the beneficiaries and those who shared in the remaining estate so as to constitute a deprivation of property without due process of law. On certificate to the United States Supreme Court, *held*, first, that this is a tax on the transfer of the property and, therefore, not subject to the constitutional provision requiring apportionment of direct taxes; and, second, that such inclusion does not constitute a violation of the due process clause. *Chase National Bank v. United States* (1928), 49 S. Ct. 126, 73 L. Ed. (adv.) 114.

A life insurance policy reserving to the insured the right to change the beneficiary does not vest an interest in the named beneficiary, because the insured maintains as complete control of the policy as if he himself were the beneficiary. *Mutual Benefit Life Insurance Co. v. Swett* (1915), 222 F. 200, 137 C. C. A. 640, Ann. Cas. 1917B 298; Re Joseph Greenberg (1921), 271 F. 258, 20 A. L. R. 253. See also Cooley's BRIEFS ON INSURANCE, Vol. VII, p. 6406. Some few cases hold that such a beneficiary's interest is vested, subject to being divested. *Roquemore v. Dent* (1902), 135 Ala. 292 So., 33 So. 178 and *Ellison v. Straw* (1903), 116 Wis. 207 N. W. 92 N. W. 1094 under the Wisconsin statute. But the better and the majority rule does not treat such an interest as analogous to the real property rule of vested rights; rather the interest is treated as contingent. *Fuller v. Linzee* (1883), 135 Mass. 468.

It is true that so much of the Revenue Act of 1919 (40 Stat. 1057), as requires all conveyances of property taking effect in possession and enjoyment only after the transferor's death to be included in the gross estate of the decedent transferor for purposes of taxation, violates the constitutional provision against taking property without due process of law. *Nichols v. Coolidge* (1926), 274 U. S. 531, 52 A. L. R. 1181; *Untermeyer v. Anderson* (1927), 276 U. S. 440. But where a trust had been created before the passage of the statute, reserving to the settlor the power to dispose of the remainder, a tax might be levied under the act on the power or succession, because the death of the settlor freed the remainder, or terminated the power, and this prerequisite to complete succession did not occur until after the enactment of the statute. So long as the privilege of succession has not been completely exercised, it may be taxed. *Saltonstall v. Saltonstall* (1927),

276 U. S. 260; *Nichols v. Cole* (1920), 256 U. S. 222. A power of appointment reserved by the donor leaves the succession incomplete, and the estate may be taxed; the same rule applies if the power of appointment is reserved to another. *Bullen v. Wisconsin* (1915), 240 U. S. 925. As it is the transfer by termination upon death of the power of disposition that is being taxed, there can be no objection to the inclusion of the proceeds of insurance policies together with the other interests transferred by the death of the decedent. *Stebbins v. Riley* (1924), 268 U. S. 137, 44 A. L. R. 1454.

The laws governing the taxation of successions are applicable equally to transfers, when the transferor reserves to himself a general power of appointment. When such power is not exercised, the property passes at the death of the settlor or donor, and such transfer is taxable when it takes place; consequently a law effective prior to the death of the donor, but subsequent to the creation of the deed or policy is not retroactive as to the res or transfer being taxed. *Saltonstall v. Saltonstall, supra; Reinecke v. Northern Trust Co.* (1928), 49 S. Ct. 123, 73 L. Ed. (adv.) 117.

G. N. B., '29.

CONSTITUTIONAL LAW-EXERCISE OF POLICE POWER IN GENERAL STERILIZATION STATUTE.—In an action of mandamus to compel the surgeon of the state hospital for the insane to perform the operation of vasectomy on one of the inmates after a notice and hearing before the board of supervision the defendant, on a motion to quash, put in issue the constitutionality of the sterilization statute. R. S. Kans. 1923, 76-149 to 76-155; Const. U. S. Amend. 14. *Held*, a law relating to sterilization of inmates of certain state institutions is not unconstitutional as exceeding police power, nor as a denial of equal protection, nor as a denial of due process. *State ex rel. Smith v. Schaffer* (1928), 126 Kans. 607, 270 P. 604.

There has always been, since the beginning of time, a guarantee of "due process" of law based, if not upon a written constitution, then upon the rules of natural justice. *Munn v. Illinois* (1876), 94 U. S. 113. But whether or not sterilization of the insane constituted "due process" at common law is unknown. There seems to have been no cases raising such an issue.

The modern trend is in favor of upholding the constitutionality of a sterilization statute such as the one in the principal case, in accord with the holding of that case. *Buck v. Bell* (1927), 274 U. S. 200 is final authority upon the issue under the fourteenth amendment of the federal constitution in all controversies falling within this class of cases. *Smith v. Command* (1925), 231 Mich. 409, 204 N. W. 140, 40 A. L. R. 515 is in accord with the principal case but concerns a statute authorizing the sterilization of all defective persons. The reasons for sustaining a view such as this are obvious when the medical theory that certain kinds of insanity are hereditary is conclusively accepted, or is at least accepted to such an extent as to give rise to a reasonable belief in the mind of the legislature as to its soundness. Said Mr. Justice Holmes in *Buck v. Bell, supra*: "We have seen more