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Constitutional Law--Sterilization (Skinner v. Oklahoma ex rel. Williamson, 315 U.S. 789 (1942))

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tributee has as such no interest, estate or rights in the property which he may subsequently inherit.[5] The husband made a voluntary legacy to his wife, despite her waiver. If the obligation of the waiver suffered impairment it was only because he exercised further testamentary privileges with a condition attached and thereby brought those consequences unwittingly or intentionally upon himself or his estate.[6] The state could have given the right of election to a spouse regardless of a waiver, or it could condition recognition upon acknowledgment as a desirable safeguard.[7] In states in which the subject of descent and distribution is covered by statute, it is generally declared that the right to take by descent, or inherit, is wholly the creature of, and regulated by, statute.[8] The right has been granted by law out of consideration of public policy.[9] The right to take property by descent has been held or declared to be a mere creature of the law and not a natural right.[10]

E. F.

CONSTITUTIONAL LAW—STERILIZATION.—*X* was imprisoned at the Oklahoma State Penitentiary for his participation in an armed robbery. He had once before been sentenced for such a crime and had also been convicted for the theft of chickens. These crimes, all being felonies, the Attorney General of the state, acting under the provisions of the Habitual Criminal Sterilization Act,[1] passed subsequent to the commission of the third conviction, brought proceedings to obtain a judgment to render the felon sterile. Section 195 [2] specifically exempts embezzlers although embezzlement has been defined as a felony by statute in Oklahoma.[3] Though the petitioner was

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[5] Newman v. Dore, 250 App. Div. 708, 294 N. Y. Supp. 499, *aff'd*, 275 N. Y. 371, 9 N. E. (2d) 966, 112 A. L. R. 643 (1937).

[6] Compare with Restatement of Law of Contracts § 45, "A duty under a unilateral or independent contractual obligation is discharged by a manifestation by the obligee to the obligor at or before the time when performance is due of unwillingness to receive the performance when due or of assent to its omission, if the manifestation is not withdrawn before the expiration of a reasonable time after performance becomes due."

[7] See *supra* note 1.

[8] Jones v. Jones, 234 U. S. 615, 34 Sup. Ct. 937 (1914).

[9] Stone v. Elliott, 182 Ind. 454, 101 N. E. 309 (1913).

[10] Magoun v. Illinois Trust etc. Bank, 170 U. S. 283, 18 Sup. Ct. 594 (1898); Dawson v. Godfrey, 4 Cranch 321, 2 L. ed. 634 (U. S. 1808).

[1] OKLA. STAT. ANN. tit. 57, §§ 171 *et seq.;* L. 1935, pp. 94 *et seq* (A habitual criminal is a person who having been convicted two or more times for crimes amounting to felonies . . . is thereafter convicted of such a felony in Oklahoma).

[2] *Ibid.*

[3] OKLA. STAT. ANN. tit. 21, §§ 1704.

given notice and right to defend, the jury's finding of fact was limited to whether the operation could be performed without injury. No opportunity was given the appellant to disprove the presumption that the child of a habitual criminal would have criminal tendencies. The Oklahoma court in upholding the presumption [4] defied the findings of learned medical authorities.[5] On certiorari to the United States Supreme Court, *held,* an unconstitutional denial of the equal protection and due process clauses of the Fourteenth Amendment. *Skinner v. Oklahoma ex rel. Williamson,* 315 U. S. 789 (1942).

Early statutes which provided for the sterilization of the feebleminded, insane, and epileptic inmates of state institutions and failed to provide similar treatment for those similarly afflicted and not in state institutions were declared unconstitutional as denying equal protection of the laws.[6] Apparently irreconcilable are recent decisions holding such enactments reasonable use of the police power in protecting the health, morals, and safety of the community where it has been definitely proven that the traits will in all probability be inherited.[7] However, arbitrary rulings which would make sterilization mandatory for felons performing particular crimes and specifically exempting felons committing offenses of the same degree are void as denial of equal protection.[8] Where the statute provided ample notice by personal service, regular proceedings, opportunity to defend, and the right to appeal it has been held to have complied with the terms of the "due process clause" of the Fourteenth Amendment.[9] An act giving no opportunity to cross-examine the board experts who decided upon the operation, to controvert their opinion, or to establish that he was not in the class designated by the act was declared void for lack of due process.[10] The operation of vasectomy is not held to be cruel and unusual punishment, within the meaning of the Federal Constitution, where the purpose of the act is not punitive, but has for its aim the well being of the community by reason of the ultimate eradication of

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[4] Skinner v. State *ex rel.* Williamson, 189 Okla. 235, 115 P. (2d) 123 (1941).

[5] 1 AM. J. MER. JUR. 253, 255 (1918) (American Neurological Association is opposed to sterilization of criminals, there being no way whatever of predicting the occurrence of this type of character . . . human character is too complex a reaction to be resolved eugenically by any genetic knowledge which we have at the present time).

[6] Osborn v. Thomson, 169 N. Y. Supp. 639, 103 Misc. 23 (1918); Haynes v. Lapier, 201 Mich. 138, 166 N. W. 938 (1918); Smith v. Board of Examiners, 85 N. J. L. 46, 88 Atl. 963 (1913).

[7] State *ex rel.* Smith, 126 Kan. 607, 270 Pac. 604 (1929); Davis, Warden v. Walton, 74 Utah 60, 276 Pac. 921 (1929).

[8] *See* University of Maryland v Murry (Pearson v. Murry), 169 Md. 478, 182 Atl. 590 (1935).

[9] Buck v. Bell, 143 Va. 310, 130 S. E. 516 (1925).

[10] Williams v. Smith, 190 Ind. 526, 131 N. E. 2 (1921).

degeneracy.[11] Because such a statute is not a criminal act its passage after the commission of the crime is not *ex post facto* legislation.[12]

M. J. S.

LABOR UNIONS—LIBEL—LIABILITY OF NEWSPAPER FOR LIBELING UNION.—The plaintiff, Kirkman, president of Local Union Number 3 of the International Brotherhood of Electrical Workers, brought a libel action in the union's behalf, as well as his own against a newspaper and a newspaper syndicate. The defendant published an article denouncing the union officials, charging that they were demanding exorbitant initiation fees from their new members. The publication did not tend to discredit any particular member of the union but tended to injure the union as a whole. The defendant moved to dismiss the case as insufficient in law. The lower court denied the motion and on appeal to the Court of Appeals, held that the plaintiff as resident of the union may maintain an action in behalf of the union as well as for himself. *Kirkman v. Westchester Newspaper, Inc.*, 287 N. Y. 373, 39 N. E. (2d) 206 (1942).

Prior to this decision, unions and other incorporated associations could not sue for libel or slander;[1] nor could any member of the union sue on his own behalf, unless he could prove that he personally was injured.[2] It is usually difficult for an individual member to prove damages[3] for the courts have held that the libelous statements made against the union were not the concern of the member[4] and that the member of a union did not have any property interest in the reputation of the union.[5] Non-profit corporations were permitted to sue for the torts of libel or slander in New York since the middle of the nineteenth century.[6]

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[11] Davis, Warden v. Walton, 74 Utah 60, 276 Pac. 921 (1929); Buck v. Bell, 143 Va. 310, 130 S. E. 516 (1925); State v. Feilen, 70 Wash. 65, 126 Pac. 75 (1912). *But see* Aranoff, *Constitutionality of Asexualization in the United States* (1927) 1 ST. JOHN'S L. REV. 146, 158.

[12] *In re* Clark, 86 Kan. 539, 121 Pac. 492 (1912).

[1] Giraud v. Beach, 3 E. D. Smith 337 (Ct. Com. Pl. N. Y. 1854).

[2] Gross v. Cantor, 270 N. Y. 93, 200 N. E. 596 (1936); Owen v. Clark, 154 Okla. 108, 6 P. (2d) 755 (1931).

[3] Trenton Mutual Life and Fire Ins. Co. v. Perrine, 23 N. J. L. 402 (1852); Thomas v. Moore, [1918] 1 K. B. 555.

[4] Stone, Treas. v. Textile Examiner's Ass'n, 137 App. Div. 655, 123 N. Y. Supp. 460 (1st Dep't 1910); SEELMAN, LIBEL AND SLANDER § 88.

[5] Hays v. American Defense Soc., 252 N. Y. 266, 169 N. E. 380 (1929).

[6] Taylor v. Church, 8 N. Y. 452 (1853); Electrical Board of Trade v. Sheehan, 214 App. Div. 712, 210 N. Y. Supp. 127 (1st Dep't 1925); Peacoch v. Tata Sons, 206 App. Div. 145, 200 N. Y. Supp. 656 (1st Dep't 1923); The Shoe and Leather Bank v. John Thompson, 23 How. Pr. 253 (N. Y. 1863); Vagel v. Bushnell, 203 Mo. App. 623, 221 S. W. 819 (1920).