has the word "renunciation" been sufficiently defined. In the latter decisions the courts tend to regard the term as synonymous with "release" whereas those holding the contrary view confuse it with the term "discharge." It is submitted that section 122 has reference neither to a technical release, *i. e.* a release under seal, nor to any method of discharge other than a technical renunciation as that term was understood at common law. Certainly that section cannot properly be held so to limit section 119 as to create a special statute of frauds applicable to the discharge of negotiable instruments.

L. R. C.

CONSTITUTIONAL LAW—EUGENICAL STERILIZATION STATUTES.—The whole subject of sterilization has been much discussed in the present century.[1] State statutes have been passed in response to public opinion, at first containing purely punitive features,[2] but later being in whole or in part eugenical measures, intended not as a penalty for crime but as a protection to society.[3]

The constitutionality of these later eugenical sterilization statutes has been very seriously questioned. It is said that they impose a cruel and unusual punishment; that they do not provide due process of law; that they deny the equal protection of the law; and that they involve an unreasonable exercise of the State police power. The Federal and State constitutions both provide that no cruel or unusual punishment shall be inflicted.[4] However, this clause in the Federal Constitution (Eighth Amendment) does not apply to State legislatures.[5] And the constitutional prohibition against cruel and unusual punishment found in the State constitutions is simply a limitation on the power of the legislatures to fix punishment for

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nois but the court declared that the law merchant governed where the statute did not cover the case. It was also held that § 122 was merely intended to protect the rights of a subsequent *bona fide* holder, a manifestly unsound contention.

[1] LAUGHLIN, EUGENICAL STERILIZATION (1922) is the most complete treatment of the subject. See also, Shartel, *Sterilization of Mental Defectives*, 24 Mich. Law Rev. 1; Kenyon, *Sterilization of the Unfit*, 1 VA. LAW REV. 458; Strode, *Sterilization of Defectives*, 11 VA. LAW REV. 296.

[2] Iowa, Acts 1913, c. 187; Nev. Rev. Laws, § 6293; Wash., Rem. & Bal. Code, § 2287. These statutes provide for sterilization as an additional penalty in cases of rape, habitual criminality, etc., and have been generally held unconstitutional. Williams *v.* Smith (1921), 190 Ind. 526, 131 N. E. 2; Mickle *v.* Henrichs (1918), 262 Fed. 687; Davis *v.* Berry (1914), 216 Fed. 413. But see *contra*, State *v.* Feilin (1912), 70 Wash. 65, 126 Pac. 75, 41 L. R. A. (N. S.) 418, Ann. Cas. 1914B, 512.

[3] For an elaborate discussion of the features of the Michigan act, see Shartel, *op. cit.* note 1.

[4] U. S. Const., Amend. 8; Va. Const., § 9; Mich. Const., Art. II, § 15.

For what constitutes cruel or unusual punishment, see Weems *v.* United States (1910), 217 U. S. 349, 30 Sup. Ct. 544, 54 L. Ed. 793, 19 Ann. Cas. 705; Hart *v.* Commonwealth (1921), 131 Va. 726, 109 S. E. 582, and cases cited; Mickle *v.* Henrichs, *supra*, note 2, and cases cited. See also notes, 19 Ann. Cas. 725; 35 L. R. A. 561; and L. R. A. 1915C, 558.

[5] Weems *v.* United States, *supra*, note 4. See also Smith *v.* Command (Mich. 1925), 204 N. W. 140.

crime; it has no application to the surgical treatment of feeble-minded persons.[6]

It is evident, therefore, that eugenical sterilization statutes, not being penal but purely eugenical and therapeutic, are not open to attack on the ground that they impose a cruel and unusual punishment.[7]

The objection is also raised that these statutes deny due process of law. "Due process of law means that every person must have his day in court, and this is as old as Magna Charta; that some time in the proceeding he must be confronted by his accuser and given a public hearing."[8] An adjudication before a competent and impartial tribunal, with the right of appeal, after reasonable notice to the parties interested, and an opportunity for them to be heard, seems to fulfill all the constitutional requirements.[9]

The Virginia statute and the Michigan statute, both of which have recently been declared constitutional by their respective Supreme Courts,[10] provide for ample notice by personal service, regular proceedings, opportunity to defend, and right of appeal.[11] These statutes were drawn in the light of certain former acts which, failing to provide for notice and a fair hearing, were declared unconstitutional.[12] They are therefore not open to attack from this angle.

The third objection to these statutes is that they deny the equal protection of the laws; in other words, that they represent class legislation.[13] The earliest and leading case on eugenical sterilization was decided on this ground.[14] The New Jersey statute[15] provided for the sterilization of epileptics *confined in the State charitable institutions*. It was held that this was an arbitrary classifi-

[6] Buck *v.* Bell (Va. 1925), 130 S. E. 516; Smith *v.* Command, *supra*, note 5. In the case of In re Thomson (1918), 103 Misc. 23, 169 N. Y. S. 638, it is said: "The operation upon the feeble-minded is in no sense in the nature of a penalty, and therefore whether it is an unusual and cruel punishment is not involved."

[7] But see *contra* the dissenting opinion of Wiest, J., in Smith *v.* Command, *supra*, note 5. That the operation itself is comparatively simple and painless, and in no sense a cruel or unusual punishment, see Buck *v.* Bell, *supra*, note 6; State *v.* Feilin, *supra*, note 2.

[8] Davis *v.* Berry, *supra*, note 2.

[9] Hurtado *v.* California (1884), 110 U. S. 516, 4 Sup. Ct. 111, 28 L. Ed. 232; Hovey *v.* Elliott (1897), 167 U. S. 409, 17 Sup. Ct. 841, 42 L. Ed. 215; Old Wayne Mut. Life Asso. *v.* McDonough (1906), 204 U. S. 8, 27 Sup. Ct. 236, 51 L. Ed. 345; Williams *v.* Smith, *supra*, note 2; Buck *v.* Bell, *supra*, note 6.

[10] Buck *v.* Bell, *supra*, note 6; Smith *v.* Command, *supra*, note 5.

[11] *Supra*, note 3; Buck *v.* Bell, *supra*, note 6.

[12] Williams *v.* Smith, *supra*, note 2; Davis *v.* Berry, *supra*, note 2.

[13] For what is a reasonable classification under the 14th Amendment to the Federal Constitution, see Gulf, etc., R. Co. *v.* Ellis (1897), 165 U. S. 150, 17 Sup. Ct. 255, 41 L. Ed. 666, and cases cited; Lindsley *v.* Nat. Car. Gas Co. (1911), 220 U. S. 61, 31 Sup. Ct. 337, 55 L. Ed. 369, Ann. Cas. 1912C, 160.

[14] Smith *v.* Board of Examiners (1913), 85 N. J. L. 46, 88 Atl. 963. State *v.* Feilin, *supra*, note 2, was decided in 1912, but this case involved sterilization as a punishment.

[15] N. J., Laws 1911, p. 353.

cation and that the statute was therefore unconstitutional.[16] In Michigan an act making the same classification was also held unconstitutional.[17] In 1923 this State adopted a new statute, authorizing the sterilization of *all mentally defective persons*.[18] This later statute was sustained by the Michigan Court.[19]

It is interesting to note that the Virginia Court of Appeals has refused to follow the lead of New Jersey and Michigan, but has within the past few months declared constitutional an act providing for the sterilization of the *inmates of certain State charitable institutions*.[20]

Finally, it is urged against these statutes that they involve an unreasonable exercise of the police power.[21] It is not denied that the State, in acting for the public good, may impose reasonable restrictions upon the natural and constitutional rights of its citizens;[22] but it is urged that these sterilization statutes violate the Constitution, transcend legislative powers, and are unreasonable and void.[23]

The issue is the *reasonableness* of these measures.[24] Is there a grave social danger from the transmission of feeble-mindedness to posterity; and is sterilization an effective means of meeting that danger?[25] These questions cannot at this stage of medical progress be answered with certainty.[26] But "simple doubt of the wisdom or policy of a statute is not decisive against its constitutionality." Every possible presumption is in favor of the validity of an act until overcome beyond rational doubt.[27]

It is respectfully submitted (the question having never been brought before the United States Supreme Court) that the State's

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[16] Smith *v.* Board of Examiners, *supra*, note 14. See also In re Thomson, *supra*, note 6, where a similar statute was held unconstitutional on the same ground.

[17] Haynes *v.* Williams (1918), 201 Mich. 138, 166 N. W. 938, L. R. A. 1918D, 233.

[18] Mich., Acts 1923, No. 285. See *supra*, note 3.

[19] Smith *v.* Command, *supra*, note 5.

[20] Buck *v.* Bell, *supra*, note 6.

[21] See the dissenting opinion in Smith *v.* Command, *supra*, note 5. See also, *supra*, note 1.

[22] Barbier *v.* Connolly (1885), 113 U. S. 27, 5 Sup. Ct. 357, 28 L. Ed. 923; Lawton *v.* Steele (1894), 152 U. S. 133, 14 Sup. Ct. 499, 38 L. Ed. 385; Buck *v.* Bell, *supra*, note 6; Smith *v.* Command, *supra*, note 5.

[23] *Supra*, note 1. See also, *In re* Thomson, *supra*, note 6; Smith *v.* Board of Examiners, *supra*, note 14.

[24] *Supra*, notes 22 and 23. In 1904 a compulsory vaccination statute was upheld as a reasonable police regulation. Jacobson *v.* Massachusetts (1904), 197 U. S. 11, 25 Sup. Ct. 358, 49 L. Ed. 643, 3 Ann. Cas. 765. In the light of this holding it seems probable that the Supreme Court of the United States would sustain the validity of a eugenical sterilization measure such as the Virginia or Michigan act.

[25] See the opinion of McDonald, C. J., at p. 145 in Smith *v.* Command, *supra*, note 5. See also, *supra*, note 1.

[26] *Supra*, note 1.

[27] Eubank *v.* Richmond (1912), 226 U. S. 137, 33 Sup. Ct. 76, 57 L. Ed. 156, 42 L. R. A. (N. S.) 1123, Ann. Cas. 1914B, 192; Adkins *v.* Children's Hospital (1923), 261 U. S. 525, 43 Sup. Ct. 394, 67 L. Ed. 785, 24 A. L. R. 1238.

police power is broad enough to embrace eugenical sterilization legislation, even of such character as that which the Virginia Court has held constitutional.)

R. S. L.

(Richard S. Leffwich)

MORTGAGES—RIGHTS OF BONA FIDE LIENORS IN A VEHICLE WHICH HAS BEEN FORFEITED AS THE RESULT OF A VIOLATION OF PROHIBITION LAWS.—This subject, one of great interest at the present time, falls naturally into two parts: (1) When the vehicle is forfeited to the national government under the provisions of the Volstead Act; and (2) When it is forfeited to a State government under the provisions of a State prohibition law. These are best treated separately.

I.

The Volstead Act, in case of the arrest of a person for transporting intoxicating liquors illegally and the seizure of the automobile or other vehicle in which the liquor was transported, provides:

> "The court upon conviction of the person so arrested shall order the liquor destroyed, and *unless good cause to the contrary is shown by the owner* shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expenses of keeping the property, the fee for the seizure, and the cost of the sale, *shall pay all liens*, according to their priorities, *which are established*, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, *as being bona fide and as having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor* * * *. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property.*" (Italics supplied.)[1]

It is seen, then, that the statute expressly provides for the protection of *bona fide* lienors, which of course includes mortgagees, and the intention of the legislators, drawn from the wording of the statute, seems to be to protect innocent owners and, in fact, the interest in the vehicle of any innocent party, such as the unpaid vendor in a contract of conditional sale. The only interest intended to be forfeited is that of the guilty person or persons. And the statute has been consistently so interpreted by the courts.[2]

The courts allow an owner who is innocent in intent and guilty of no negligence in allowing the vehicle to be used unlawfully to recover the *res*, but compel a mortgagee (as is provided by the statute) and a conditional vendor to take the amount of his debt from the proceeds of the sale of the property. It seems, however, that

[1] National Prohibition Act, tit. II, § 26, Comp. Stat. 1916 (1923 Supp.), § 10,138½ mm.

[2] United States *v.* Sylvester (1921), 273 Fed. 253; Jackson *v.* United States (1924), 295 Fed. 620.