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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 782

JACK T. SKINNER, PETITIONER,

vs.

THE STATE OF OKLAHOMA, EX REL. MAC Q. WILLIAMSON, ATTORNEY GENERAL OF THE STATE OF OKLAHOMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

PETITION FOR CERTIORARI FILED DECEMBER 4, 1941.

CERTIORARI GRANTED JANUARY 12, 1942.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No.

JACK T. SKINNER, PETITIONER,

*vs.*THE STATE OF OKLAHOMA, EX REL. MAC Q.
WILLIAMSON, ATTORNEY GENERAL OF THE
STATE OF OKLAHOMAON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF OKLAHOMA

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[fol. 1]

**IN THE DISTRICT COURT IN AND FOR PITTSBURG
COUNTY, STATE OF OKLAHOMA**

No. 15734

THE STATE OF OKLAHOMA, ex Rel. MAC Q. WILLIAMSON, At-
torney General of the State of Oklahoma, Plaintiff,

vs.

JACK T. SKINNER, Defendant

PETITION—Filed June 12, 1936

Comes now the State of Oklahoma, on relation of Mac Q. Williamson, Attorney General of the State of Oklahoma, and Owen J. Watts, Assistant Attorney General of the State of Oklahoma, and for cause of action against the defendant, alleges and states as follows, to-wit:

That Mac Q. Williamson is the duly elected, qualified and acting Attorney General of the State of Oklahoma, and that Owen J. Watts is the duly appointed, qualified and acting Assistant Attorney General of the State of Oklahoma, and that this action is authorized and brought pursuant to the authority vested in the Attorney General under Chapter 26 of the 1935 Session Laws of the State of Oklahoma.

I

That the said defendant, Jack T. Skinner, is an habitual criminal, he having been convicted three (3) times to final judgment for the commission of crimes amounting to felonies and involving moral turpitude, said cases being separately brought and tried in courts of competent jurisdiction of the State of Oklahoma and the said defendant being sentenced therefor to serve terms of imprisonment in the Oklahoma State Reformatory and the Oklahoma State Penitentiary and that said defendant is now confined in the Oklahoma State Penitentiary at McAlester, Oklahoma, and that said defendant has been convicted in the following cases, to-wit:

(a) Under the name of Jasper Inghram in case No. — in the District Court of Pottawatomie County on or about

the 10th day of June 1926, he was convicted of the crime of Stealing Chickens and thereafter, on or about the 10th day of June 1926, was sentenced by said court to serve a term of eleven (11) months in the Oklahoma State Reformatory at Granite, Oklahoma, and was discharged from said Institution on or about the — day of January, 1927. A copy of the judgment and sentence of the court is hereto attached, marked "Plaintiff's Exhibit A" and made a part of this petition.

(b) As Joe Smith, in the District Court of Nowata County, in case No. —, on or about the — day of March 1929, he was convicted of the crime of Robbery with Firearms and thereafter, on or about the — day of March 1929 was sentenced by said court to serve a term of ten (10) years in the Oklahoma State Reformatory and incarcerated in the said Institution as No. 7085, and was received by said Institution on the — day of March 1929, a copy of the judgment and sentence of the court is hereto attached, marked "Plaintiff's Exhibit B" and made a part of this petition.

[fol. 3] (c) As Jack T. Skinner, in the District Court of Oklahoma County, in case No. 9743, on or about the 15th day of October, 1934, he was convicted of the crime of Robbery with Firearms and thereafter, on or about the 15th day of October 1934 was sentenced by said court to serve a term of ten (10) years in the Oklahoma State Penitentiary at McAlester, Oklahoma, and was incarcerated in said Institution and received there by the Warden of said Institution on the 17th day of October 1934 and was given prison number 30504, a copy of the judgment and sentence of the court is hereto attached, marked "Plaintiff's Exhibit C" and made a part of this petition.

II

That an operation, to-wit, the operation of vasectomy, may be performed upon the said Jack T. Skinner without detriment to the general health of the said Jack T. Skinner and that such an operation, if and when performed upon the said Jack T. Skinner, will have the effect of making him, the said Jack T. Skinner, sexually sterile, and that the welfare of the said Jack T. Skinner and of society

will be promoted by such sexual sterilization of the said Jack T. Skinner, and that upon a final hearing hereon that the court designate and appoint some capable and competent surgeon, duly qualified and licensed under the laws of the State to practice surgery, to perform the operation of vasectomy to render the said Jack T. Skinner sexually sterile.

Wherefore, Premises Considered, it is Prayed that a hearing hereon be had; that the court enter an order ad-[fol. 4] judging said Jack T. Skinner an habitual criminal and authorizing and ordering an operation of vasectomy upon the said Jack T. Skinner to render him sexually sterile and that thereupon the court designate and appoint some capable and competent surgeon, duly qualified and licensed under the laws of this State to practice surgery, to perform the said operation of vasectomy; and to designate and fix the time of said operation not less than twenty (20) days from date of said Judgment, together with any and all other proper relief and for all costs of this action.

The State of Oklahoma, Mac Q. Williamson, Attorney General, (Signed) Owen J. Watts, Assistant Attorney General, Attorney for Plaintiff.

N. B —(Exhibits are not attached to petition.)

[File endorsement omitted.]

[fol. 5] IN DISTRICT COURT OF PITTSBURG COUNTY

SUMMONS AND RETURN

The State of Oklahoma to the Sheriff of Pittsburg County
in said State, Greetings:

You are hereby commanded to notify the defendant Jack T. Skinner, also serve him with copy of plaintiff's Petition. That he has been sued by The State of Oklahoma, ex rel., Mack Q. Williamson, Attorney General of the State of Oklahoma in the District Court sitting in and for said County of Pittsburg, and that unless he answer by the 13th day of July 1936, the petition of said plaintiff against said defendant, filed in District Court, such petition will be taken as true and judgment rendered accordingly.

Suit Brought for Sterilization

If defendant fail to answer judgment will be taken as prayed for in plaintiff's petition for *the sum of \$— with interest at the rate of — percentum per annum from the — day of —, 19—, and an attorney's fee of \$— and cost of suit —.*

You will make due return on this summons on or before the 22nd day of June, A. D. 1936.

Witness my hand and seal of said court affixed at my office in McAlester, Oklahoma, this 12th day of June, A. D. 1936.

Clay C. Jones, Court Clerk, by Homer W. Neece, Deputy. (Seal.)

[fol. 6] STATE OF OKLAHOMA,
Pittsburg County, ss:

I received this summons on the 13th day of June, 1936, at 10 o'clock A. M. and executed the same in my county by delivering a true copy of the within summons with all endorsements thereon to the defendant Jack T. Skinner in person, June 16th, 1936.

H. H. Sherrill, Sheriff, by W. O. Merrill, Deputy.

Received and Filed in District Court Pittsburg County, Oklahoma, Jun. 13, 1936. Clay C. Jones, Court Clerk, by HWN, Deputy. I hereby certify that the within summons is a correct copy of the original summons, with all the endorsements thereon.

H. H. Sherrill, Sheriff, by — — —, Deputy.

[fol. 7] IN DISTRICT COURT OF PITTSBURG COUNTY

[Title omitted]

ANSWER AND PLEA IN BAR—Filed August 12, 1936

Comes now the defendant, Jack T. Skinner, appearing for the purpose of this plea only and for no other purpose, involuntarily and under compulsion denies each, every and all allegations in plaintiff's petition contained except such as may be hereinafter specifically admitted, and without waiving any of his rights in the premises pleads as follows:

1. That the petition herein filed on its face wholly fails to state facts sufficient to charge this defendant with any crime offence or charge that would give the court jurisdiction

over the person of this defendant or empower the court to impose any penalty upon or against this defendant.

2. That the attempted accusation is sought to be made under an Act of the Legislature, wholly void on its *fact*, and in violation of the Constitution of the State of Oklahoma, of the Constitution and laws of the United States of America in general and as most particularly set forth hereinafter.

3. That in each of the cases referred to in the first general [fol. 8] sub-division of the petition under sub-paragraphs (a), (b) and (c), the defendant was informed against, tried and convicted under the laws then in existence and the full penalty of the law imposed in each instance and that no other, further or additional penalty was at said time provided by law for either the first, second or third offence, and that the pretended Act of the Legislature, under the provisions of the Constitution and laws of the State of Oklahoma and the United States of America could not grant or confer power, jurisdiction or authority upon this or any other court to impose further or additional penalties of any kind or character for the commission of this or any other crime prior to the effective date of the said pretended Act of the Legislature, commonly known and referred to as "The Sterilization Act", Senate Bill #14, Chapter 26, Article 1, of the Session Laws of Oklahoma, 1935 as published.

4. The defendant further respectfully denies that the said aforesaid Chapter 26, Article 1, of the Session Laws of Oklahoma, 1935, has or could have application to any so called habitual criminal whose last conviction occurred prior to August 14, 1935, the earliest date upon which said act could have become effective, if valid and constitutional, and your defendant further alleges the facts to be, and as shown by the petition of the plaintiff, that his alleged last [fol. 9] conviction occurred on or about the 15th day of October, 1934, long prior to the passage of said Act of the 1935 Legislature.

5. Defendant pleads his former conviction as set forth in plaintiff's petition, sub-paragraphs (a), (b) and (c) of general Paragraph 1, as set forth on Page 2 of the Petition, in bar of any further penalties which may be imposed by law and any other interpretation or attempted application of said Act of the Legislature would be and constitutes the said

Act of the Legislature as a retroactive law imposing additional penalties than those provided by law and would in effect, become an ex post facto law, expressly prohibited by the Constitution of this State and of the United States.

6. Further pleading his former convictions as a bar to further prosecutions or penalties, the defendant alleges that in each of his said convictions set forth under subparagraphs (a), (b) and (c) above referred to in plaintiff's petition, informations were duly filed in each said cause in the respective courts, and the constitutional requirements and legal procedure pursued by the State of Oklahoma against this defendant in each of said causes and upon judgment of conviction, the full penalty provided by law was assessed and judgments rendered accordingly; that by reason thereof, said judgments have become final and conclusive, and your defendant has satisfied each of the first and second penalties and is now incarcerated at McAlester, [fol. 10] Oklahoma, in the State Penitentiary in accordance with the judgment of the District Court of Oklahoma County in case #9743, serving a sentence of 10 (ten) years, which began on the 15th day of October, 1934, and will expire and be fully satisfied on or about the — day of —, 1940; that each of said judgments having become final and the two first judgments having been satisfied, there remains only the requirements for this defendant to satisfy the remainder of the judgment and sentence in the last case, and, no further, other or additional penalty can ever be imposed therefor, and your defendant expressly pleads his former jeopardy, conviction and sentence as a bar to any further charge of any kind or character growing out of or connected with the commission of any such crime or the conviction therefor.

7. Defendant further expressly pleads that the so-called Senate Bill #14, Chapter 26, Article 1, Oklahoma Session Laws of 1935, as published, in so far as it applies to this defendant or any other person convicted prior to the effective date of said Act, would be and is unconstitutional and in addition to imposing the penalties therein prescribed, would be and constitute a violation of the constitutional rights and guarantees of this defendant and other similarly situated.

8. Defendant further alleges that the so-called Senate Bill #14, Chapter 26, Article 1, Oklahoma Session Laws of 1935,

is wholly unconstitutional and void as being in violation of [fol. 11] the 5th Amendment of the Constitution of the United States, and the provisions of the Constitution of the State of Oklahoma.

9. That the provisions of said pretended Act of the Legislature are violative of Article 8, known as the 8th Amendment of the Constitution of the United States of America, and in violation of the Provisions of the Constitution of the State of Oklahoma.

10. That the said pretended Act of the Legislature in effect results in an arbitrary imposition of penalties without due process of law as defined by the Constitution of the United States and the State of Oklahoma, and the penalties imposed or attempted to be imposed, would result in arbitrarily depriving the defendant of his right to trial by jury and to proceedings generally classified and known as "due process of law" for the protection of the rights and liberties of the people.

11. That said pretended Act of the Legislature is unconstitutional and void for the reason that it is and shows upon its face to be and constitutes arbitrary class legislation, seeking to impose penalties upon individuals in a class of people, in violation of equal protection clause of the Constitution of the United States and of the State of Oklahoma.

12. That the said pretended Act of the Legislature, under and pursuant to which the petition herein was filed, although the same pretends to provide for trial before a court and in certain cases, trial to a jury, yet your defendant respectfully alleges, states and shows that the question of left to be [fol. 12] determined by the court or jury are so limited in extent as to amount to an arbitrary denial of judicial proceedings and an arbitrary imposition by the Legislature of additional punishment or penalties without due process of law, and contrary to the positive provisions of the Constitution of this State and of the United States of America.

13. Your defendant admits that Mac Q. Williamson is Attorney General of the State of Oklahoma, and that Owen J. Watts is the Assistant Attorney General of the State of Oklahoma, duly qualified and acting.

14. That the pretended Act of the Legislature is special and in violation of the provisions of the Constitution of the State of Oklahoma, and does not apply generally as

provided and required by the Constitution and the laws of this State and the Constitution of the United States.

15. That under the language, terms and provisions of Section 3 of said Act, under the facts and allegations set forth in plaintiff's petition, this defendant denies that he is within the class coming under the terms of the provisions of said Act for the reason that he has not been tried and convicted in an action wherein he had been twice or more times convicted to final judgment for the commission of crimes involving moral turpitude, separately brought and tried, and has not twice been convicted to final judgment in a court of competent jurisdiction in this State for the commission of a crime amounting to a felony involving moral turpitude as provided by the terms and provisions of said Act.

16 Wherefore, having answered and denied and inter-[fol. 13] posed his plea defendant demands that in event his plea in bar be denied or over-ruled, that he be granted privilege of trial by jury, and this demand and request is made without waiving any of his constitutional rights otherwise provided for under the Constitution of the State of Oklahoma or of the United States of America.

Wherefore, defendant prays that he go hence free, without further day or date, and that the prayer of plaintiff's petition be denied upon each, every and all the grounds set forth herein, and for all further proper and lawful relief.

Jack T. Skinner, Defendant, by Claud Briggs, His Attorney.

[File endorsement omitted.]

[fol. 14] IN DISTRICT COURT OF PITTSBURG COUNTY

[Title omitted]

GENERAL INSTRUCTIONS OF THE COURT—Filed October 20,
1936

GENTLEMEN OF THE JURY:

I

This is an action instituted by the State of Oklahoma by its attorney general wherein the petition alleges that the defendant herein is an habitual criminal having been convicted three times to final judgment for the commission

of crimes amounting to felonies involving moral turpitude, and that under the judgments and convictions he was sentenced on each of the charges to serve terms of imprisonment either in the State Reformatory or the Oklahoma State Penitentiary, and is now confined in the Oklahoma State Penitentiary at McAlester.

The petition states that the defendant under the name of Jasper Inghram in the district court of Pottawatomie County, Oklahoma, on or about the 10th day of June, 1926, was convicted of the crime of stealing chickens and that thereafter on or about said 10th day of June, 1926, was sentenced by said court to serve a term of eleven (11) months in the Oklahoma State Reformatory at Granite; [fol. 15] that he served said term in said institution and was discharged therefrom.

The petition further states that the defendant as Joe Smith in the district court of Nowata county, in March, 1929 was convicted of the crime of robbery with firearms and was sentenced by said court to serve a term of ten years in the Oklahoma State Reformatory at Granite, Oklahoma, and was received by said institution and served the sentence therein.

The petition further states that the defendant as Jack T. Skinner on or about the 15th day of October, 1934, was convicted of the crime of robbery with firearms in Oklahoma County and on said date was sentenced by said court to serve a term of ten years in the Oklahoma State Penitentiary at McAlester and was incarcerated in said institution, received there by the warden on the 17th day of October, 1934, where he is now confined.

The petition further alleges that the operation of vasectomy should be performed upon the said defendant, that the same can be done without detriment to the general health of said defendant; that the same will have the effect of making him sexually sterile, that the welfare of said defendant and of society will be promoted by such sexual sterilization; that the court appoint a capable and competent surgeon duly qualified and licensed under the law to practice surgery to perform the operation of vasectomy upon the said defendant herein, and furthermore prays for an order directing that this be done

Objected to by defendant

Objection overruled and exceptions allowed.

R. W. Higgins, Judge.

[fol. 16]

II

The defendant in answer and plea in bar pleads certain constitutional objections to the enforcement of the law which will be a matter of consideration by the court, but not by you gentlemen.

The defendant in his answer does not deny the convictions as set forth in the petition, but in his evidence admits it but pleads that the operation requested by the State will be detrimental to his general health and asks at your hands that for that reason that he be not ordered made sterile by forced operation upon him.

Given over objections of defendant. Defendant excepted and exceptions allowed.

R. W. Higgins, Judge.

III

The law that this case is being prosecuted under is provided for in Chapter 26, of the Session Laws of 1935, wherein it is provided that where one having been convicted twice or more times for the commission of crime amounting to felonies involving moral turpitude separately brought and tried either in a court of competent jurisdiction of the State of Oklahoma or any other State of the United States, and is convicted therein to final judgment of a crime amounting to a felony involving moral turpitude and sentenced to serve a term of imprisonment in the [fol. 17] Oklahoma State Penitentiary of the Oklahoma State reformatory, or any other penal institution, now or hereafter established and maintained in the State of Oklahoma, shall be adjudged to be an habitual criminal as herein defined, and shall upon adjudication thereof becoming final, shall be operated upon and be rendered sexually sterile and it shall be the duty of the court to carry out a judgment so found, by appointing a qualified surgeon duly licensed under the laws of the state of Oklahoma, to carry out said judgment and perform the operation known as vasectomy.

Given over objections of defendant to which defendant excepts and exceptions allowed.

R. W. Higgins, Judge.

IV

The defendant upon the stand admits that he has heretofore been convicted separately of the crimes alleged

against him in the petition and has served time either in the State reformatory at Granite or the State Penitentiary at McAlester, and is now serving time in the Oklahoma State Penitentiary at McAlester for the third conviction.

Given over objections of defendant to which defendant excepted and exceptions allowed.

R. W. Higgins, Judge.

[fol. 18]

V

The court instructs you that the crime of stealing chickens and the crime of robbery with firearms are each a felony involving moral turpitude.

Given over objections of defendant, to which defendant excepts and exceptions allowed.

R. W. Higgins, Judge.

VI

The court instructs you that under the law and the evidence herein, the defendant herein is an habitual criminal.

Given over objections of defendant, to which defendant excepts and exceptions allowed.

R. W. Higgins, Judge.

VII

The only issue for your consideration in this case is whether or not the operation and effects thereof of vasectomy will be detrimental to the defendant's general health.

Given over objections of defendant to which defendant excepts and exceptions allowed.

R. W. Higgins, Judge.

[fol. 19]

VIII

If this operation and effects of same is a detriment to the general health of the defendant, then your findings should be in his favor, but on the other hand, if it be not a detriment to his general health your findings should be against him.

Given over objections of defendant and to which defendant excepts and exceptions allowed.

R. W. Higgins, Judge.

IX

The court instructs you that the burden is upon the State to convince your minds by a fair preponderance of the evi-

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dence that the operation and effects thereof will not be detrimental to his general health.

Given over objections of defendant to which defendant excepts and exceptions allowed.

R. W. Higgins, Judge.

X

The court instructs you that should you find from a fair preponderance of the evidence in this case that said operation and effects thereof would not be detrimental to the general health of the defendant, then your findings should be in favor of the State, but on the other hand if you should [fol 20] not so find, then your findings should be in favor of the defendant.

Given over objections of defendant, to which defendant excepts and exceptions allowed.

R. W. Higgins, Judge.

XI

You are the judges of the credibility of the witness- and the weight and value to be given to their testimony. You can take into consideration their demeanor on the stand, their fairness or lack of fairness, their interest, if any in the action, and their opportunity of knowing about the things they testify.

If your verdict be unanimous it need only be signed by your foreman. Nine or more of your number may return a verdict, but if such verdict is returned, then each of you agreeing thereto must sign the verdict.

R. W. Higgins, District Judge.

Given over objections of defendant, to which defendant excepts and exceptions allowed.

R. W. Higgins, Judge.

[File endorsement omitted.]

[fol. 21] IN THE DISTRICT COURT OF PITTSBURG COUNTY

[Title omitted]

DEFENDANT'S REQUESTED INSTRUCTIONS—Filed October 20,
1936

Comes now the defendant, Jack T. Skinner, and requests the court to give the following instructions respectively in order numbered, to-wit:

Requested instruction #1:

You are instructed, gentlemen of the jury, that you should, under the proof, return a verdict in favor of the defendant

Refused by the court, to which refusal, defendant excepts and exceptions allowed.

R. W. Higgins, Judge.

[File endorsement omitted.]

[fol. 22] Requested instruction #2:

You are instructed, gentlemen of the jury that the burden of proof in this case is upon the State to prove every material ingredient of the allegations of its petition beyond a reasonable doubt, and if the plaintiff has failed to satisfy your mind beyond a reasonable doubt, that the defendant can have the operation of vasectomy performed without injury or detriment to his general health, then your verdict should be for the defendant.

Refused by the Court, to which refusal the defendant excepts and exceptions were allowed.

R. W. Higgins, Judge.

[File endorsement omitted.]

[fol. 23] IN DISTRICT COURT OF PITTSBURG COUNTY

ORAL INSTRUCTION GIVEN AT REQUEST OF DEFENDANT

That thereafter, at the request of the Defendant, the Reporter was called into the Court Room and the court gave the following Oral Instruction:

Gentlemen, I have been requested to instruct you on the weight of evidence. You do not weigh evidence necessarily

by the number of witnesses, but you weigh it by the evidence that is most convincing to you of the truth. However, you are the judges of the weight of the evidence and the credibility of the witnesses

[fol. 24] IN DISTRICT COURT OF PITTSBURG COUNTY

VERDICT—Filed October 20, 1936

Interrogatory —

Do you find that the defendant may be sexually sterile by an operation of vasectomy, to be performed upon him without detriment to his general health?

(Answer “Yes- or “No”) Yes.

J. J. Brewen, Foreman.

[File endorsement omitted.]

[fol. 25] IN DISTRICT COURT OF PITTSBURG COUNTY

[Title omitted]

MOTION FOR JUDGMENT NON OBSTANTE VEREDICTO—Filed
October 22, 1936

Comes now the defendant, Jack T. Skinner, and moves the court to set aside the general verdict and finding of the jury herein rendered and to render judgment in favor of the defendant, notwithstanding such verdict, for the following reasons to-wit:

1. That the said finding and verdict of the jury is inconsistent with the facts proven;
2. That the defendant is entitled to judgment both on the facts proven and the pleadings in said cause;
3. That the evidence is wholly insufficient to sustain the [fol. 26] findings in favor of the plaintiff on the issues submitted to the jury;
4. That the Act under which the defendant was tried is unconstitutional and void and the proceedings had herein are in violation of the constitutional rights of the defend-

ant both under the Constitution of the State of Oklahoma,
and the Constitution of the United States of America.

Clay Briggs, John Morrison, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 27] IN DISTRICT COURT OF PITTSBURG COUNTY

[Title omitted]

MOTION FOR NEW TRIAL—Filed October 22, 1936

Comes now the defendant, Jack T. Skinner, and moves the court to vacate, set aside and hold for naught the verdict of the jury herein rendered and to grant the defendant a new trial for the following causes which affect materially the substantial rights of defendant.

1. That the special verdict or finding of the jury is not sustained by sufficient evidence and is contrary to law;
2. That the verdict or special finding of the jury is in disregard of the court's proper instructions;
3. For errors of law occurring at the trial and excepted to by the defendant;
4. Error of the court in over-ruling the objection of the defendant to the taking of any evidence in behalf of plaintiff under the pleadings and issues joined and under the special pleas in bar; to which ruling of the court, the defendant then and there excepted;
5. Error of the court in over-ruling the demurrer of the defendant to the evidence of the plaintiff; to which ruling [fol. 28] the defendant then and there excepted;
6. Error of the court in refusing the peremptory instructions requested by the defendant at the close of all the evidence; to which ruling the defendant duly excepted;
7. For error on the part of the court in over-ruling and disregarding the plea in bar and forcing said defendant to trial in violation of his constitutional rights; to which ruling the defendant duly excepted;

8. For error of the court in requiring the defendant to testify in behalf of the plaintiff over the objection of defendant and to which defendant excepted at the time;

9. Error of the court in refusing to grant the defendant additional peremptory challenges in the empaneling of the jury and in refusing to grant additional challenges upon the demand and request of the defendant and which was excepted to at the time;

10. For errors of law occurring at and during the trial of said cause and excepted to by the defendant;

11. Error by the court in sustaining objections made by the plaintiff to evidence offered on the part of the defendant and excepted to at the time;

12. For error by the court in sustaining objections to competent evidence offered by the defendant; to which ruling defendant at the time excepted;

13. For error on the part of the court in giving instructions numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, & 11, each of which were given over the objection of the defendant, and to the giving of which exceptions were taken at the time;

[fol. 29] 14. Error by the court in the failing to give requested instructions numbers—2 and 3;

15. For error committed by the court in over-ruling the special pleadings set out in the answer and plea in bar herein filed on the 12th day of August 1936, and numbered respectively 1 to 15, inclusive, which are hereby referred to and by reference incorporated herein as fully as if rewritten from said answer and plea in bar and to which ruling by the court the defendant excepted at the time;

16. That the court committed error in holding that the pretended Act of the Legislature was a valid exercise of police power and the penalty imposed is civil in nature and the proceedings a civil proceedings; that the Act of the court in forcing the defendant to trial under the pleadings and procedure invoked and enforced by the court was in violation of the due process of the law provisions of the constitution and said pretended Act was an arbitrary exercise of judicial power by the Legislature, contrary to the

Constitution of the State of Oklahoma and the United States.

Jack T. Skinner, Defendant, Claud Briggs, John Morrison, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 30] IN DISTRICT COURT OF PITTSBURG COUNTY

[Title omitted]

ORDER OVERRULING MOTION FOR NEW TRIAL—Filed July 31, 1937

Now on this 12th day of July 1937, this matter coming on to be considered upon the motion of the defendant for a new trial, and this being one of the regular judicial days of the July 1937 regular term of this court, and the court having considered the said motion in all of its phases and grounds and having heard oral argument presented in behalf of the defendant by his attorney, Claud Briggs, and in behalf of the plaintiff through Owen J. Watts, Assistant Attorney General, both appearing in person and the defendant being in court in his own proper person, the court after due consideration, doth find, order, adjudge, and decree that the motion for a new trial herein filed by the defendant, should be and is in all things overruled, to which ruling by the court, the defendant doth in open court, at the time, excepts, and his exceptions are by the court allowed, and ordered entered in the record;

And, the defendant doth now in open court give notice of [fol. 31] his intention to appeal from the action of this court in overruling said motion for a new trial, and upon agreement between the plaintiff through its attorney and the defendant through his attorney in open court, other and further or additional notice of appeal is waived, and it is ordered that the said defendant be and he is permitted and allowed an appeal as provided by law, and it is so ordered.

R. W. Higgins, Judge.

OK as to form.

Mac Q. Williamson, Atty. Gen., by Owen J. Watts,
Assist. Atty. Gen., Atty. for Plf. Claud Briggs,
Atty. for Defendant.

[File endorsement omitted.]

[fol. 32] IN DISTRICT COURT OF PITTSBURG COUNTY

No. 15734

STATE OF OKLAHOMA ex Rel. MAC Q. WILLIAMSON, Attorney
Gen., Plaintiff,

vs.

JACK T. SKINNER, Defendant

JOURNAL ENTRY OF SENTENCE AND JUDGMENT BY THE COURT
—Filed July 31, 1937

Now, on this 12th day of July 1937, the same being one of the regular days of the 1937 regular term of this court, this cause coming on for final disposition after the court has overruled the defendant's motion for a new trial, as appears or heretofore herein entered, and the plaintiff being present in court by and through Owen J. Watts, Assistant Attorney General of the State of Oklahoma, and the defendant being present and in open court in his own proper person by his attorney, Claud Briggs, the court doth now over the objection of the defendant, find, order, adjudge and decree, as follows;

1. That in accordance with the verdict of the jury herein rendered, the court doth find and order that the defendant is an habitual criminal under, by and pursuant to the provisions of Senate Bill No. 14, being Chapter 26 of the Session Laws of the Oklahoma Legislature of 1935, to which [fol. 33] finding, order, judgment and decree, the defendant doth except and exceptions are by the court allowed;

2. The court doth further find, order, adjudge and decree in accordance with the verdict heretofore herein rendered by the jury, that the defendant may be rendered sexually sterile without detriment of his general health, to which further finding, order judgment and decree the defendant doth except and said exceptions are by the court allowed;

3. And, the Court doth find, order, adjudge, and decree that T. H. McCarley being a duly qualified physician and surgeon, and being a capable and competent surgeon, so qualified and licensed under the laws of this State to practice surgery, and he is by the court appointed to perform the operation of sterilization herein provided for, to which

further finding and order defendant doth except and exceptions are by the court allowed;

4. And, now the court doth further order and decree that Monday the 30th day of August 1937, be and the same is designated and fixed as the time, same being not less than twenty days from the day this judgment is rendered, for the performance of the operation of sterilization upon the defendant, at which time it is ordered that the said defendant submit himself to the operation, and be rendered sexually sterile as provided and contemplated by the provisions of the Act of the Legislature first above mentioned, to which further order and decree the defendant doth except and his exceptions are by the court allowed;

[fol. 34] 5. And, now it is the further judgment, decree, and sentence of this court that the defendant being in the custody of the Warden of the Oklahoma State Penitentiary, that he be retained in the custody of the said Warden of the Oklahoma State Penitentiary, and held in said Oklahoma State Penitentiary until such time as the operation of sterilization, provided for in this judgment, is performed, and a copy of this Order, Judgment and Sentence duly certified by the Clerk of this court shall be sufficient authority, and the Clerk of this court is ordered within ten days hereafter to deliver by mail or otherwise, to the surgeon named and designated in this judgment to perform this operation and sterilization, a copy of this Journal Entry of Judgment, duly certified by said clerk and said certified copy shall be sufficient authority for said surgeon to perform upon the defendant named herein, the sterilization operation specified herein, said operation to be performed at the time specified in the judgment or as soon thereafter as is convenient to the surgeon designated and appointed to perform the same, but without unreasonable or unnecessary delay, and after performing the said operation of sterilization, the said surgeon shall forthwith and without delay certify in writing to this court, that the operation actually and effectively has been performed, and the date and place when and where performed, as in said Act provided and required, to all of which defendant doth except and his exceptions are by the court allowed;

[fol. 35] And, now the defendant, Jack T. Skinner, in person and by his attorney, Claud Briggs, doth give notice in *open* court of intention to appeal and doth appeal to the

Supreme Court of the State of Oklahoma, from the findings, judgment and sentence of this court herein rendered, and the court doth allow an appeal without bond;

And, it is ordered that the said defendant be and he is allowed thirty days from this date within which to prepare and serve transcript of the record or case-made, ten days thereafter be allowed within which time either party *may* suggest amendments thereto, or corrections thereof, said transcript of the record or case-made to be settled and signed by the court upon five days notice to either party, said appeal to be perfected within sixty days after this judgment is rendered, unless for good cause shown this court extend the time within which such appeal may be taken, and, pending the perfection of the appeal herein prayed and allowed by the court, the judgment and sentence rendered and imposed herein shall be and the same is stayed, and the same shall not be executed during or pending appeal and/or until final disposition of this cause in the Supreme Court, and the further order of this court, and it is so ordered.

R. W. Higgins, Judge.

[fol. 36] OK as to form.

Mac Q. Williamson, Atty. Gen., by Owen J. Watts,
Asst. Atty. Gen., Attys. for Plts. Claud Briggs,
Atty. for defendant.

[File endorsement omitted.]

[fol. 37] IN SUPREME COURT OF OKLAHOMA

[File endorsement omitted]

JACK T. SKINNER, Plaintiff in error,

vs.

THE STATE OF OKLAHOMA, ex rel., MAC Q. WILLIAMSON, At-
torney General of the State of Oklahoma, Defendant in
error

PETITION IN ERROR—Filed Oct. 27, 1937

The said Jack T. Skinner, plaintiff in error, complains of the defendant in error, for that the said State of Oklahoma, ex rel Mac Q. Williamson, Attorney General of the State of Oklahoma, at the regular term of the District Court of Pittsburg County, State of Oklahoma, recovered

a judgment by the consideration of said Court against the said Jack T. Skinner, in a certain action then pending in said Court, wherein the said State of Oklahoma, ex rel Mac Q. Williamson, Attorney General, was plaintiff and the said Jack T. Skinner was defendant. The said judgment was rendered and sentence pronounced on the 12th, day of July, 1937, same being one of the regular days of the July, 1937, term of said Court. The original case-made duly signed, attested and filed or a certified transcript of the record of said Court, is hereto attached marked "Exhibit A" and made a part of this petition in error; and the said Jack T. Skinner, avers and alleges that there is error in the said record and proceedings in the following particulars, to-wit:

[fol. 38]

1

That the Court erred in over-ruling a motion of plaintiff in error, for a new trial.

2

That the Court erred in over-ruling plaintiff in error's special pleas in bar of the action to which ruling defendant in error excepted at the time.

3

That the Court erred in over-ruling plaintiff in error's specially interposed plea as to jurisdiction to which defendant in error excepted at the time

4

That the Court erred in over-ruling plaintiff in error's objections to the impanelling of a jury and proceedings at the trial of said cause for the reasons assigned at the time and in the outset or beginning of the trial, to which the defendant in error duly excepted at the time.

5

That the Court erred in allowing only three pre-emptory challenges to jurors whereas plaintiff in error expressly requested five, which request was over-ruled and excepted to at the time.

22

6

That the Court erred in allowing plaintiff in error's counsel to advise and lecture the jury as to matters purely [fol. 39] of law over the objection of defendant in error, to which defendant in error excepted at the time.

7

That the Court erred in admitting incompetent, irrelevant and immaterial evidence offered by the defendant in error in the trial of said cause as to alleged former convictions of plaintiff in error, which were admitted in evidence over the objection of the plaintiff in error and excepted to at the time.

8

That the Court especially erred in admitting "Exhibit C" of defendant in error and other evidence concerning the conviction and sentence of plaintiff in error, for a crime alleged to have been committed prior thereto, the same being the so-called conviction, judgment and sentence upon which defendant in error sought to rely to obtain a verdict, judgment and sentence in this case, all of which occurred and was permitted by the Court over the specific objections of plaintiff in error and excepted to at the time.

9

The Court erred in compelling the plaintiff in error, Jack T. Skinner, to testify for defendant in error, over the protest and objection of the plaintiff in error, in an attempt upon the part of the plaintiff in error in the trial Court to establish material facts, to which the plaintiff in error then and there excepted.

[fol. 40]

10

That the Court erred in permitting the defendant in error to introduce other and additional incompetent, irrelevant, immaterial and prejudicial evidence over the objection of the plaintiff in error and excepted it in each instance at the time.

11

That the Court erred in over-ruling the demurrer of the plaintiff in error, Jack T. Skinner, to the evidence offered

23

on behalf of the defendant in error, in said trial Court, which demurrer was interposed in said Court after the defendant in error had introduced its evidence and rested, to which ruling the plaintiff in error excepted at the time.

12

That the Court erred in refusing to admit competent, relevant and material evidence offered by the plaintiff in error, to which exceptions were taken at the time in each instance.

13

That the Court erred in giving to the jury instructions No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, each of which were given over the objection to the plaintiff in error, and to the — of each the said plaintiff in error excepted at the time.

14

That the trial Court erred in refusing to give plaintiff in error specially requested instructions No. 1 & 2 to which exceptions were taken at the time.

[fol. 41]

15

That the Court erred in admitting and in taking any evidence on the part of the defendant in error, over the objections of plaintiff in error at the time of the commencement of the trial.

16

That the Court erred in not sustaining motion of defendant in error for judgment non-obstante veredicto.

17

That the Court erred in pronouncing and entering sentence and judgment in the 12th day of July, 1937, based upon the verdict of the jury and the proceeding had in said cause, for the reasons and on the grounds set forth in plaintiff in error's original pleadings interposed in bar and objections to the jurisdiction of the Court, and for the further reason set forth in the motion for new trial, to all of which plaintiff in error then and there excepted.

18

That the trial Court erred in the proceedings herein, in that the said proceeding and trial was had and attempted

under an act of the legislature, designated as Chapter 26, Article 1, of the Session Laws of 1935, known as Senate Bill No. 14, in that in so far as the undisputed facts proven in this cause show that by the terms of the said action of the legislature and the application of the same to the undis- [fol. 42] puted facts herein, the said act of the legislature is unconstitutional, void and would be and is violative of the provisions of the Constitution of the State of Oklahoma and the United States of America, specifically prohibiting "cruel and unusual punishment" denying "due process of law", prohibiting the enactment of "ex post facto laws", and the said act is contrary to the further provisions of the Constitution of the State of Oklahoma and the United States of America, providing that "no person shall be twice placed in jeopardy for the same offense", all of which said proceeding, trial, sentence and judgment in this proceeding was had over the specific objection, special pleas interposed and in each instance excepted to at the time.

Wherefore, plaintiff in error, prays that said judgment so rendered may be reversed and the plaintiff in error herein be restored to all rights that he has lost by the rendition of such judgment, and for such other and further relief as the Court may seem proper in the premises.

Claud Briggs, John Morrison, Attorneys for Plaintiff in Error.

[fol. 43] IN SUPREME COURT OF OKLAHOMA

No. 28,299

JACK T. SKINNER, Plaintiff in Error,

vs.

STATE OF OKLAHOMA ex rel., MAC Q. WILLIAMSON, Attorney General, Defendant in Error

OPINION—Filed February 18, 1941

Syllabus

1. Art. 1, Ch. 26, S. L. 1935, 57 O. S. A. 171-195, known as the Habitual Criminal Sterilization Act is a eugenic measure and not a penal law and does not violate Sec. 9,

Art. 2 of the State Constitution prohibiting cruel and unusual punishment, or Sec. 15, Art. 2 of the Constitution, prohibiting the enactment of a bill of attainder or ex post facto law.

2. In determining whether a statute is a reasonable exercise of the police power as against the unlawful infringement of a constitutional right, all presumptions of validity surrounding legislation will be indulged, and such a statute will not be declared unconstitutional unless it appears beyond a reasonable doubt that there is no real or substantial connection between the provisions thereof and the preservation of the public health, safety, morals, or general welfare.

[fol. 44] 3. Where the Legislature had determined a fact as the basis for the enactment of a law under the police power of the state, the Supreme Court is not at liberty to declare the law unconstitutional as an infringement of an inherent or constitutional right unless it appears beyond a reasonable doubt that such findings of fact is clearly erroneous.

4. Art. 1, Ch. 26, S. L. 1935, 57 O. S. A. 171-195, which provides notice and an opportunity to be heard before a court or a jury, and provides that, "if the court or jury, as the case may be, find the defendant to be a habitual criminal, and, that said defendant may be rendered sexually sterile without detriment to his or her general health, then and in that event the court shall render judgment to the effect that said defendant be rendered sexually sterile," "does not deprive the defendant of due process of law because a third finding to the effect that the defendant is the probable potential parent of a child of criminal tendencies is not required, the legislative act being a sufficient finding of such fact.

Appeal from the District Court of Pittsburg County,
Oklahoma

Honorable R. W. Higgins, Judge

Affirmed

Claud Briggs, John Morrison, Oklahoma City, Oklahoma,
for Plaintiff in Error.

[fol. 45] Mac. Q. Williamson, Attorney General; Owen J. Watts, Assistant Attorney General, Oklahoma City, Oklahoma, for Defendant in Error.

HURST, J.:

This action was instituted in the district court by the State of Oklahoma against Jack T. Skinner under the provisions of Ch. 26, Art. 1, S. L. 1935, 57 O. S. A. 171-195, known as the "Oklahoma Habitual Criminal Sterilization Act."

The act was enacted pursuant to the police power of the state. It defines an habitual criminal to mean a person who has been convicted two or more times to final judgment of the commission of crimes amounting to felonies involving moral turpitude, either in a court of competent jurisdiction of this state or any other state, and is thereafter convicted to final judgment in a court of competent jurisdiction of this state of the commission of a crime amounting to a felony involving moral turpitude and sentenced to serve a term of imprisonment in an Oklahoma Penitentiary or Reformatory or any other like penal institution now or hereafter established by the state. Excepted from the act are persons convicted of offenses arising out of the violation of the prohibitory laws, revenue acts, embezzlement, or political offenses.

The act provides that any person adjudged to be such an habitual criminal shall be rendered sexually sterile; if a male, by the operation of vasectomy; and, if a female, by [fol. 46] the operation of salpingectomy.

The act provides that whenever it is brought to the attention of the Attorney General that any person has the status of an habitual criminal as defined by the act, the Attorney General shall commence a proceeding against such person by filing a petition in the district court in the county where he may be found and causing a summon to be issued by the clerk of the court. The act provides the form and contents of the petition and further, that the defendant shall file an answer. It further provides that the cause shall be set for trial any time after the expiration of ten days from the day defendant's answer is filed.

As to the trial, the material provisions are as follows: "And for the trial of such cases, the practice and procedure shall be that now or hereafter provided for in the Code of Civil Procedure of this state, so far as the same may be applicable to and not inconsistent with the provisions of this act." Either party may demand that the questions of fact arising from the issues made by the pleadings be tried to

a jury. "In the event the court or jury, as the case may be, finds the defendant not to be an habitual criminal, as herein defined, the court shall render judgment denying the plaintiff's petition. But if the court or jury, as the case may be, finds the defendant to be such an habitual criminal, and, that said defendant may be rendered sexually sterile without detriment to his or her general health, then and in that [fol. 47] event the court shall render judgment to the effect that said defendant be rendered sexually sterile."

The act further provides for an appeal to this court from the orders and judgment of the trial court. The act contains other provisions, but they have no bearing on the questions presented for determination on this appeal.

In the instant case a proceeding was filed against the defendant, Jack T. Skinner. The matter was submitted to a jury. Defendant, an inmate in the State Penitentiary, at McAlester, admitted that he had been convicted three times,—the first for stealing chickens, and his two subsequent convictions for robbery with firearms. The date of the last conviction was October 15, 1934, which was prior to the passage of the act. Under the provisions of the act, therefore, the only questions to be determined by the jury were (1) whether he was an habitual criminal as defined by the act, and (2) whether he might be rendered sexually sterile without detriment to his general health. Upon this question the parties introduced evidence and the jury found that the general health of the defendant would not be impaired by the operation. Under the findings of the jury the court entered its judgment ordering that the defendant be made sexually sterile, from which judgment the defendant has appealed.

There is ample evidence to support the findings of the jury on the issues left to its determination, and the primary purpose of this appeal is to test the constitutionality of the act.

[fol. 48] 1. It is contended that the act inflicts cruel and unusual punishment in violation of Sec. 9, Art. 2, of the Oklahoma Constitution, and further that the act constitutes a bill of attainder and is an ex post facto law, and is violative of Sec. 15, Art. 2, of the Oklahoma Constitution, and Sec. 10, Art. 1, of the Federal Constitution. These constitutional inhibitions have reference only to punishment for crime. 12 C. J. 1099, 1108; 11 Am. Jur. 1175, 1179. These contentions are, therefore, upon the premise that the

act in question is a penal law, and that sterilization is inflicted as a punishment.

Where the operation of vasectomy is required or authorized in a purely penal statute as a punishment for crime, it has been held to constitute cruel and unusual punishment. See *Davis v. Berry*, 216 Fed. 413; and *Mickle v. Hendricks*, 262 Fed. 687. However, in *State v. Feilin* (Wash.), 126 P. 75, construing a strictly penal statute, the court held that the operation did not constitute cruel and unusual punishment. But whatever may be our views on that question, if the act in question is a purely penal one, we are inclined to think it would be invalid as to defendant as an *ex post facto* law in that at the time defendant committed his last offense and was convicted therefor, the act in question had not yet been passed.

On the other hand, the objections now being urged, are not applicable where the operation of vasectomy is required as a eugenic measure, and not as a punishment. In such [fol. 49] case it is said to be analagous to compulsory vaccination and is non-punitive. In *re Main*, 162 Okla. 65, 19 P. 2d 153; *Smith v. Cammand*, Wayne County Probate Judge, 231 Mich. 409, 204 N. W. 140; *State v. Troutman*, 50 Idaho 673, 229 P. 668; *Davis v. Walton*, 74 Utah 80, 276 P. 921; *Buck v. Bell*, 143 Va. 310, 130 S. E. 516.

Therefore, the decisive question in connection with the determination of these constitutional objections is whether the act under consideration is a penal statute or a eugenic measure.

The rule of construction urged by defendant is that where the language of the statute is clear and unambiguous, there is no room for judicial construction and the words will be applied in their ordinary sense as they are usually understood. But there is nothing in the plain language of the act which classifies it as a penal one. In fact, the language is to the contrary. Therefore, we must look to the legislative intent as manifested from all parts of the act, keeping in mind that whenever reasonably possible, a statute must be so construed as to uphold its validity. 12 C. J. 787.

The act here provides that the procedure as in civil cases shall be applicable. The operation is not required as a part of any judgment of conviction or sentence. In fact, it is applicable to an habitual criminal within the meaning of the act, who may have served his sentence and been released. [fol. 50] We think it was the intention of the legislature

that this act should be a eugenic measure to improve the safety and general welfare of the race by preventing from being born persons who will probably become criminals. Whether they have properly pursued that purpose will be hereinafter discussed, but we think it was the intention that this be in no sense a criminal prosecution.

Defendant argues that the failure to provide a hearing on the question of whether he will likely beget criminal children shows that the Legislature had no eugenic purpose in mind. But that does not negative a eugenic intention, because the omission of such a finding simply shows that the Legislature was satisfied that criminal tendencies in all such persons are inheritable. Defendant further argues that the fact that the act applies to persons of any age and to persons sentenced to life imprisonment and does not provide for the operation at a time when they are about to be released, shows the intention to be penal rather than eugenic. But we do not think so. It is just as reasonable to presume that in passing a eugenic law, the Legislature was mindful of the fact that prisoners may escape, or be pardoned without affording an opportunity for the operation to be administered and did not think it wise in connection with the purpose sought to be accomplished to place age limits upon the law. We must bear in mind that we are not now speaking of the reasonableness of the classification but of the intention of the Legislature, and these matters do [fol. 51] not deny a eugenic purpose.

Our view of this matter disposes of defendant's contention that he was not allowed five preemptory challenges and was required to testify against himself, which objections would be pertinent only in a criminal proceeding.

2. It is next contended that the act violates the due process clause of both the State and Federal Constitutions.

"Due process" has a dual significance, as it pertains to procedure and substantive law. As to procedure it means "notice and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before a competent and impartial tribunal having jurisdiction of the cause." 12 Am. Jur. 267 #573; 16 C. J. S. 1153. In substantive law, due process may be characterized as a standard of reasonableness, and as such it is a limitation upon the exercise of the police power. 6 R. C. L. 433-446; 11 Am. Jur. 998, 1073-1081; 16 C. J. S. 1156.

It is our information that sterilization laws have been passed in at least twenty-seven states, ten of which deal with criminals of various classifications. Several of these acts have been declared valid in test cases, and a few declared unconstitutional for various reasons. See annotations, 40 A. L. R. 862; 87 A. L. R. 242. Thus it is seen that the sterilization of criminals as well as mental defectives as a eugenic measure may be effected under the police power of the state, provided the particular act fulfills the requirements of due process of law in its procedural aspects and the [fol. 52] provisions thereof reasonably appear to bear a real and substantial relation to the public health, safety, morals or some other phase of the general welfare.

The objection here made is that the act does not require a finding by the court or jury that by the laws of heredity, the defendant is the probable potential parent of children with criminal tendencies, and it is argued that the defendant is thereby deprived of a full hearing. This objection really goes to the question of due process in relation to substantive law, rather than procedure. The question is whether the legislation under consideration is a reasonable exercise of the police power in providing that all habitual criminals as therein defined shall be sterilized, for if it is proper to enact such a provision the procedural aspects are satisfied; that is, notice and a hearing on the issue of whether the particular defendant is such an habitual criminal and whether the operation will be detrimental to his health. If such provision is not proper, then the objection is that it is an unreasonable exercise of the police power, and not that the procedure is inadequate.

The determination of the reasonableness of the provisions of the act as an exercise of the police power is based upon the question of fact of whether habitual criminals as defined possess an inheritable tendency to crime which will be passed on to their children, if they are allowed to procreate. If that is true, then the act bears a real relation to the public welfare. If it is not true, the act would encroach [fol. 53] upon the constitutional rights of individuals without justification. In every case, where the court is called upon to decide whether a particular statute is a proper exercise of the police power as against an improper infringement upon constitutional rights, the court must before it can strike down the act decide that the existing facts do not justify the conclusion of the law-making body that the law

which they have enacted bears a real relation to health, safety or public welfare. In a measure the court exercised a supervisory fact-finding power when it declares that an act is or is not a reasonable exercise of the police power. But that supervision has very well defined limitations. The discretion of the Legislature is very great in the exercise of the police power. 11 Am. Jur. 1081; 6 R. C. L. 240. As long as the act does not infringe upon the inherent rights of life, liberty and property, the legislative determination as to the necessity of the regulation and the method employed is conclusive on the courts. 11 Am. Jur. 1083; 6 R. C. L. 241; where the attempted public measure affects constitutional rights the legislative determination of the facts is not conclusive, and it is then that it is the duty of the courts to determine whether the proposed regulation is a proper exercise of the police power. 11 Am. Jur. 1084; 6 R. C. L. 242, 243. But all the presumptions of validity surrounding legislation apply in this situation, and it is presumed "that the legislature has carefully investigated and determined that the interests of the public require such legislation." 11 [fol. 54] Am. Jur. 1089. "It has been frequently stated, in cases where the questions are presented for judicial review, that in order to sustain legislation under the police power, the courts must be able to see that its operation tends in some degree to prevent some offense or evil or to preserve public health, morals, safety, and welfare * * *" 11 Am. Jur. 1087.

We must, therefore, assume that the Legislature had before it statistics, scientific works, and information from which it found as a fact that habitual criminals are more likely than not to beget children of like criminal tendencies who will probably become a burden upon society. 6 R. C. L. 111; 11 Am. Jur. 820. Based upon such a presumptive finding of fact, the legislation was enacted. That determination by the co-ordinate branch of the government having the duty to formulate the public policy of the state must be given great weight by the courts. Every presumption must be indulged in favor of the existence of facts which the Legislature assumed and acted upon, and we are not at liberty to strike down the act unless we can say beyond a reasonable doubt that the Legislature was clearly in error, and was wholly unwarranted and acted arbitrarily, in assuming or determining such facts. 6 R. C. L. 114; 11 Am. Jur. 794, 822; 12 C. J. 798; 16 C. J. S. 280. The authorities go so far

as to say that "if a state of facts which would justify the legislation can reasonably be conceived to exist, the court [fol. 55] must presume that it did exist when the law was passed." *Cuthbertson v. Union Pacific Coal Co.*, 50 Wyo. 441, 62 P. 2d 311. See also 11 Am. Jur. 822. We all know that heredity plays some part in our mental, moral and physical make-up, but no one knows exactly what part it does play. We know that insanity and idiocy are hereditary and have sustained a law providing for the sterilization of such persons. In *re Main*, 162 Okla. 65; 19 P. 2d 153. Some authorities are of the opinion that habitual criminals have a trait of insanity and that such trait is hereditary. In passing the law under consideration the Legislature probably assumed this to be a fact. If such is a fact, the welfare of society dictates that the state shall, in the exercise of its police power, prevent such persons from reproducing their kind.

We think no one would doubt that this court should sustain the present law if it required a third finding to the effect that the accused is the potential parent of offspring with inherited criminal tendencies. But in the very nature of the case, testimony by expert witnesses on this question would be highly speculative and a finding by a jury or court, based upon such testimony, would likewise be speculative. The opinion of the experts would probably be based, in part at least, upon data that was available to, and considered by, the Legislature at the time of enacting the law. If a court or jury can make a finding of fact based upon such speculative evidence, we see no reason why the Legislature [fol. 56] cannot find or assume facts, based upon the same speculative evidence, as a basis for the exercise of the police power.

In *Standard Oil Co. v. Marysville*, 279 U. S. 582, in a unanimous opinion written by Mr. Justice Stone, it is said:

"We may not test in the balance of judicial review the weight and sufficiency of the facts to sustain the conclusion of the Legislative body."

And it was said by Mr. Justice Holmes, in *Otis & Gassman v. Parker*, 187 U. S. 606:

"* * * While the courts must exercise a judgment of their own, it by no means is true that every law is void which may seem to the judges who pass upon it excessive, un-

suited to its ostensible end, or based upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view, as well as for possible peculiar conditions which this court can know but imperfectly, if at all. * * *

See also *Rast v. VanDeman & L. Co.*, 240 U. S. 342, L. R. A. 1917a, P. 421.

True, the laws providing for the sterilization of insane persons and habitual criminals usually provide that there be a finding that the accused is a probable potential parent of offspring that will be insane or criminal, but the fact that other statutes make such provision does not mean that they must do so. For some reason, not known to us and with which we should not concern ourselves, our Legislature [fol. 57] thought such provision not necessary or proper. It may be because it thought such a finding could not be based upon satisfactory proof. The Legislature should be allowed some latitude on this question.

We find nothing in the record that justifies a finding by this Court that the Legislature was clearly and beyond a reasonable doubt in error in assuming facts justifying the act as a proper exercise of the police power. Without such a showing, or unless the legislative determination is plainly contrary to those matters of common knowledge of which the Court may properly take judicial notice, we should not declare the Act unconstitutional. Our knowledge on the subject, which is not a knowledge of law but of science and observation, is not superior to that of members of the Legislature. The courts should be extremely careful not to trench on legislative discretion and power, and thereby violate Sec. 1, Art. 4, of the State Constitution providing for division of the powers of government among the three coordinate branches and that "neither shall exercise the powers properly belonging to either of the others." We must remember that the right to veto or repeal laws is not vested in the courts, and they are not concerned with the wisdom of the law.

3. Finally, the defendant contends that the Act denies him equal protection of the law in violation of the State and Federal Constitutions. The test of equal protection of the law is dependent upon the reasonableness of the classification. 6 R. C. L. 373. The act here applies to all habitual

[fol. 58] criminals as therein defined whether incarcerated in an institution or not. From what we have said above, it appears that the classification is reasonable and, therefore, there is no arbitrary or unlawful discrimination.

Judgment affirmed.

Welch, C. J., Riley, Bayless, Arnold, JJ., concur.
Corn, V. C. J., Osborn, Gibson, Davison, dissent.

[File endorsement omitted.]

[fol 59] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER CORRECTING OPINION—Filed March 17, 1941

It is ordered that that part of the opinion found in lines 15 and 16 from top of page 7 of the typewritten opinion reading as follows:

“40 A. L. R. 862; 87 A. L. R. 242”

be and the same is hereby corrected to read as follows:

“40 A. L. R. 535; 51 A. L. R. 862; 87 A. L. R. 242.”

Dated this the 15th day of March, 1941.

Earl Welch, Chief Justice.

[File endorsement omitted.]

[fol. 60] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

No. 28,229

JACK T. SKINNER, Plaintiff in Error,

v.

THE STATE OF OKLAHOMA, ex Rel. MAC Q. WILLIAMSON,
Attorney General, Defendant in Error

Order Correcting Opinion. See Order Attached

DISSENTING OPINION—Filed February 18, 1941

OSBORN, J. (Dissenting):

Due to the importance of the constitutional question determined by the majority opinion herein, I deem it proper in dissenting thereto to express briefly my reasons for such dissent.

That the field of legislation covered by the Act comes within the proper sphere of legislative action is, I think no longer open to question. *Buck v. Bell*, 274 U. S. 200, 71 L. Ed. 1000, 47 S. Ct. 584; 40 A. L. R. 535; 51 A. L. R. 862; 87 A. L. R. 242; 126 A. L. R. 535 I concede that the Legislature can lawfully provide that one fact shall be prima facie evidence of another fact, if there is some rational connection between them. 12 Am. Jur., p. 248, sec. 552, of Const. Law; 11 Am. Jur., pp. 919, 920, sec. 213, Const. Law. Such legislation must bear some real and substantial relation to the public health, safety, morals or some other phase [fol. 61] of general welfare. *Atlantic Coast Line Ry. Co. v. City of Goldsboro*, 58 L. Ed. 721; *Chicago B. & Q. Ry. Co. v. Illinois*, 50 L. Ed. 596; *Liggett Co. v. Baldrige*, 73 L. Ed. 204; 12 C. J., p. 929, par. 441.

While great weight will be given to the finding by the Legislature of the necessity and propriety of the legislation and the courts will not declare same invalid unless it can be said beyond reasonable doubt that the legislative determination is erroneous, such rule does not apply in all its force when the inherent constitutional rights of citizens are involved. In 11 Am. Jur. 1084, sec. 305, it is said:

“Legislative determination is conclusive upon the courts only within constitutional limits, which leaves open for judicial inquiry all questions as to the actual effect of attempted police measures upon constitutional rights. The reasons for the rule are patent. Since the judicial branch of the government ascertains the validity of all legislation as measured by the Federal and state Constitutions and since the police power is subordinate to the organic law, the broad scope of the power does not place every regulation touching it within legislative competence, because of the power of the courts to determine whether legislative action conflicts with the organic law or is arbitrary and unreasonable and therefore void. Hence, a determination by the [fol. 62] legislature as to what is a proper exercise of the police power is not final and conclusive, but is subject to the supervision of the courts.”

In the Act under consideration the Legislature has, in my judgment, restricted the power of the court in its hearing of applications filed thereunder to unreasonable, illegal and, I may add, unwise lengths, in that it provides: “But

if the court or jury, as the case may be, find the defendant to be such an habitual criminal, and, that said defendant may be rendered sexually sterile without detriment to his or her general health, then and in that event the court shall render judgment to the effect that said defendant be rendered sexually sterile.”

The right to beget children is one of the highest natural and inherent rights, protected by section 7 article 2 of the Constitution of the State and the 14th Amendment to the Constitution of the United States relating to due process. The hearing provided by the Act does not provide for inquiry into any possible criminal traits of the person informed against and requires no finding as to whether or not such traits are transmittable to his posterity, nor whether by accident, disease, age, infirmity or for other reasons such person is reasonably capable of producing offspring, either criminal, degenerate or imbecile, against which the Legislature may legitimately seek to protect society. Herein the Act under consideration substantially differs from the Act under consideration in *In re Main*, 162 Okl. 65, 19 P. (2d) 153, constitutionality of which was upheld by this court with the writer hereof concurring.

Thus it is my view that the Act under consideration deprives persons of constitutional rights without due process of law and offends against the State and Federal Constitutions.

For these reasons I respectfully dissent.

Corn, V. C. J. and Gibson and Davison, JJ.: Concur herein.

[fol. 64]

[File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER CORRECTING DISSENTING OPINION—Filed April 4, 1941

It Is Hereby Ordered, that the Dissenting opinion filed in the above styled and numbered cause on February 18, 1941, be corrected by striking from the third line from the bottom of page one of said opinion the citation “12 C. J., p.

929, par. 441'', and placing in lieu thereof the citation ''16 C. J. S., Constitutional Law, par. 195''.

Dated this the 4th day of April, 1941.

Monroe Osborn, Justice.

[fol. 65] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

PETITION FOR RE-HEARING—Filed May 31, 1941

Comes now Jack T. Skinner, Plaintiff in Error, and respectfully represents to the Court that on the 18th day of February 1941, an Opinion with force and effect of the decree and judgment was rendered by this Court in the above styled and numbered cause affirming a judgment and sentence of the District Court of Pittsburg County, Oklahoma subjecting the plaintiff in error to the penalties provided under what is known as the ''Habitual Criminal Sterilization Act of the State of Oklahoma (Article 1, Chapter 26, S. L. 1935) which said Opinion plaintiff in error alleges to be erroneous and that a rehearing should be granted, the said Opinion withdrawn and the cause reversed and in support thereof, plaintiff in error alleges as follows:

1

That said decision overlooked a question decisive of the cause and duly submitted by counsel, in that in the original petition in error and his briefs and arguments in support thereof, plaintiff in error called attention to the Court to the fact affirmatively shown by the record that the third conviction relied on by plaintiff below, occurred prior to the [fol. 66] enactment of the statute in question; that is to say, the plaintiff in error on the 15th day of October 1934, was convicted and sentenced to serve a term of ten (10) years in the Oklahoma State Penitentiary and the Act in question was passed by the 1935 Legislature and approved by the Governor on May 14th, 1935 without the emergency clause, consequently, did not become effective until the expiration of ninety (90) days after the Session. It would, therefore, be seen that the conviction of plaintiff in error for the last offense occurred seven months prior to the time the Act was passed and more than ten months prior to the effective date

of the Act; that by reason thereof this Act would automatically be and become an ex post facto law if made applicable to the plaintiff in error.

2

That said decision and opinion is in direct conflict with former controlling decisions of this court in that the said decision holds that the Act in question is not a penal law and does not violate section 9, article 2, of the constitution with reference to "cruel and unusual punishment, or section 15, article 2 of the constitution prohibiting enactment of Bill of Attainder or ex post facto law"; that prior decisions of this court, which will be set forth in the brief in support hereof, and which are controlling in the definition of penal statutes, definitely and conclusively establish the said Act to be penal.

3

That the said opinion is further in conflict with the controlling decisions in that the opinion determines that the [fol. 67] Act is an eugenic measure and not a penal statute when upon the force of the Act and from its text there is not the slightest possible remote suggestion that the Act was even intended as an eugenic measure. On the contrary the Act specifically denotes its intent to be a criminal penal measure and by reason of this specific classification from its own text it could not be upheld as constitutional and could only be upheld if and when enacted in such a manner and with such provisions as would entitle the State to impose the penalty of sterilization as a part of the judgment and sentence of conviction on the prosecution of any third or subsequent offense.

4

That in any event regardless of the decision of the Court as to the validity or applicability of the Act in question, those convicted subsequent to its effective date, the Court must, to avoid the ex post facto feature, or retroactive effect, find and determine that the conviction, judgment and sentence imposed on this plaintiff in error must be vacated, set aside and held for naught; that even though the Act be not a criminal or penal Act it would be violative of the constitutional rights of the plaintiff in error to determine that he be subjected to the penalties of the Act for some act committed prior to the passage of the law.

[fol. 68] Wherefore, plaintiff in error prays a rehearing of said cause be granted by the Honorable Court and that on rehearing judgment and sentence of the District Court of Pittsburg County be vacated with directions to dismiss.

Claud Briggs, Attorney for Plaintiff in Error.

This is to certify that I have this date mailed a true and exact copy of the within Petition for Rehearing to Mac Q. Williamson, Attorney General, for Defendant in Error.

Claud Briggs.

Dated this the 31st day of May, 1941.

[File endorsement omitted.]

[fols. 69-70] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed July 8, 1941

Petition for rehearing, denied.

Earl Welch, Chief Justice.

[fol. 71] IN SUPREME COURT OF OKLAHOMA

[Title omitted]

NOTICE OF INTENTION TO APPEAL AND MOTION FOR AN ORDER TO
STAY EXECUTION ON THE MANDATE—Filed July 26, 1941

(Leave Granted to File July 26, 1941)

To the Chief Justice of the Supreme Court of State of
Oklahoma:

Your petitioner Jack T. Skinner, plaintiff in error herein, hereby gives notice of his intention to appeal to the Supreme Court of the United States from the decision and judgment of this Court herein rendered on the 18th day of February 1941, which decision and judgment had the effect of affirming the judgment of the District Court of Pittsburg County, Oklahoma, appealed from herein and from the further order and judgment of this Court denying Petition

for Rehearing rendered and entered herein the 8th day of July, 1941, for the reason that there is drawn into question the validity of certain statutes of the State of Oklahoma, it being the contention of petitioner, as plaintiff in error, that the said statutes are repugnant to the Constitution and laws of the United States, the decision by this Court being in favor of their validity.

[fol. 72] And petitioner, appellant, in good faith intends to perfect an appeal from the decision and judgment in this cause to the Supreme Court of the United States and requests and moves that this Court enter an order directed to the District Court of Pittsburg County, State of Oklahoma, staying execution on the Mandate for such time as this Court shall direct pending the filing of the appeal to the United States Supreme Court and after this appeal is perfected, during the pendency thereof.

Wherefore, Petitioner, appellant, gives notice of appeal, prays for its allowance and requests and moves that execution of the Mandate be stayed pending the perfection of the appeal and upon perfection thereof during the pendency of the same.

Dated this 25 day of July, 1941.

Claud Briggs, John Morrison, Attorneys for Petitioner, Appellant herein.

Service of a copy of the above and foregoing Notice of Appeal and Motion to Stay Execution on Mandate, is hereby acknowledged to have been made on this 25th day of July, 1941.

Mac Q. Williamson, Attorney General of the State of Oklahoma. Attorney for Defendant in Error, Appellee, by Effie Alexander, Secy.

[fol. 73] IN SUPREME COURT OF OKLAHOMA

28,229

JACK T. SKINNER

v.

STATE OF OKLAHOMA

ORDER STAYING PROCEEDINGS—August 5, 1941

Ordered that all proceedings in trial court on execution of mandate be stayed to October 8th, 1941.

Earl Welch, Chief Justice.

[fol. 74] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

MOTION TO STAY JUDGMENT—Filed November 10, 1941

Comes Now the plaintiff in error and respectfully shows to the Court that heretofore a stay of judgment was granted in the above entitled cause pending an application to the Supreme Court for a writ of certiorari; that said application was not made within ninety days, but on the 8th day of October, 1941, the Honorable Justice of the Supreme Court of the United States, Stanley Reed, granted your plaintiff in error sixty days within which to file his application for writ of certiorari. He, therefore, respectfully prays this Honorable Court to grant a further stay of judgment until the 8th day of December, 1941.

Guy L. Andrews, Attorney for Plaintiff in Error.

Service of the above and foregoing motion acknowledged to have been made upon me this 10th day of November, 1941, and consent is hereby given to the entry of the order.

Mac Q. Williamson, Attorney General.

GLA:VR.

[fols. 75-76] [File endorsement omitted]

IN SUPREME COURT OF OKLAHOMA

[Title omitted]

ORDER STAYING JUDGMENT—Filed November 10, 1941

Now on this 10th day of November, 1941, comes on to be heard the application of the plaintiff in error for a stay of judgment until the 8th day of December, 1941, and the Court having seen said application and considered the same doth grant the relief asked for.

It Is Therefore Considered, Ordered and Adjudged that a stay of judgment be had in the above entitled cause until the 8th day of December, 1941, and if an application for writ of certiorari be filed on or before that date, until determina-

tion of such application by the Supreme Court of the United States.

Earl Welch, Chief Justice.

[fol. 77] IN SUPREME COURT OF OKLAHOMA

STIPULATION OF PARTIES TO THE CONTENTS OF THE RECORD
TO BE FILED IN THE UNITED STATES SUPREME COURT AS A
PART OF THE APPLICATION OF PETITIONER FOR WRIT OF CER-
TIORARI—Filed November 10, 1941

Comes Now Jack T. Skinner, by his attorney, Guy L. Andrews, and the State of Oklahoma, by its attorney, Mac Q. Williamson, and stipulate and agree that the contents of the record to be submitted with the Application of the Petitioner for a Writ of Certiorari shall consist of the following records:

1. Petition.
2. Summons, together with the return thereon.
3. Answer and Plea in Bar.
4. General instructions of the Court.
5. Requested instructions of the Court.
6. Oral instructions given at the request of the defendant.
7. Verdict of the jury.
8. Motion for judgment non obstante vere dicto.
9. Motion for new trial.
10. Order overruling motion for new trial.
11. Judgment of the Court.
12. Petition in error filed in the Supreme Court of the State of Oklahoma.
13. Copy of the opinion of the Supreme Court of the State of Oklahoma, and Dissenting Opinion.
14. Petition for rehearing.
15. Order of the Court overruling said petition for rehearing.
- [fol. 78] 16. Application for stay of judgment pending proceedings on appeal.
17. Order staying judgment.
18. Application for additional order staying judgment pending proceedings on appeal.
19. Order upon said second application.
20. A copy of this stipulation.
21. Proper certificate of the Clerk relative to it.

It is Stipulated that the evidence in the case may be omitted and that the parties hereto agree that if the law attacked be held valid the evidence is sufficient to support the verdict of the jury and the judgment of the Court.

Done at Oklahoma City, State of Oklahoma, this 10 day of November, 1941.

Guy L. Andrews, Attorney for Jack T. Skinner.
State of Oklahoma, by Mac Q. Williamson, Attorney General of Oklahoma.

[File endorsement omitted.]

[fol. 79] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 80] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1941

[Title omitted]

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRIT OF CERTIORARI

On consideration of the motion of counsel for petitioner in the above entitled cause, and good cause therefor having been shown,

It is Now Here Ordered that the time within which petition for writ of certiorari may be filed herein be, and the same is hereby, extended for a period of 60 days from this date.

Stanley Reed, Justice of the Supreme Court of the United States.

Dated this 8th day of October, 1941.

[fol. 81] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 12, 1942

The petition herein for a writ of certiorari to the Supreme Court of the State of Oklahoma is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Roberts took no part in the consideration and decision of this application.

(8968)
