reviewing those horrible and barbarous inflictions, we are reminded of such punishment as that inflicted by the whipping post, the pillory, burning at the stake, breaking on the wheel, drawing and quartering, cutting off the nose, ears, or limbs, or strangling to death. Such were the "cruel and unusual punishments" which disgraced the civilization of the early ages. Is history repeating itself in this new and modern infliction—vasectomy? Vasectomy is an operation painlessly performed in a few minutes, under an anæsthetic, through a skin cut half an inch long and entailing no wound infection, no confinement to bed. As said by one expert, "It is less serious than the extraction of a tooth." Another expert states that he performs it without even administering an anæsthetic; that it requires but about three minutes, and that the subject returns to work immediately, suffers no inconvenience, and is effectively sterilized. In view of these facts, the court says that it "cannot hold that vasectomy is such a cruel punishment as cannot be inflicted upon appellant for the horrible and brutal crime of which he has been convicted." The statute is held constitutional and the judgment affirmed.

Note.—See XVIII Va. Law Reg. 717.

There is also an interesting discussion of this legislation in the December, 1912, number of the "Michigan Law Review," as follows:

Is Vasectomy a Cruel Punishment?—In State *v.* Feilen (Wash. 1912), 126 Pac. 75, the Supreme Court of Washington has upheld the validity of a statute imposing, as a punishment for crime, an operation for the prevention of procreation. The statute provides that whenever any person shall be convicted of statutory rape, or adjudged an habitual criminal, "the court may, in addition to such other punishment or confinement as may be imposed, direct an operation to be performed upon such person, for the prevention of procreation." After conviction for statutory rape upon a female child under 10 years of age, defendant was sentenced to life imprisonment and the judge further directed that the operation known as vasectomy be performed upon him. The court held unanimously that this was not a cruel punishment within the meaning of the constitutional provision.

The constitutional provision against cruel and unusual punishments goes back to Magna Carta. It was incorporated in the Federal Constitution (Amendments, Art. 8), and has a place in one form or another in the constitutions of all the states except Illinois, Connecticut, and Vermont. As the provision in the Federal Constitution does not apply to state but to national legislation, the decision of the Washington Supreme Court in the principal case is final. Pervear *v.* The Commonwealth, 5 Wall. 475, 18 L. Ed. 608; Barron *v.* Baltimore, 7 Pet. 243, 8 L. Ed. 672; U. S. *v.* Cruikshank, 92 U. S. 542; Hurtado *v.* Calif., 110 U. S. 516; Barbier *v.* Connolly, 113 U.

S. 27; In re Kemmler, 136 U. S. 436. In England the clause has been regarded as applying only to those barbarous punishments of the early common law such as drawing and quartering. 4 Blackstone 92, 327, 377. On practically this ground early American cases sustained whipping as a punishment. Com. *v.* Wyatt, 6 Rand. 694; Foot *v.* State, 59 Md. 264; Aldridge *v.* Com., 2 Va. 447. A new method of inflicting the death penalty is not unconstitutional: such as shooting (Wilkerson *v.* Utah, 99 U. S. 130, 25 L. Ed. 345), or electrocution (People ex rel. Kemmler *v.* Durston, 119 N. Y. 569; In re Kemmler, supra; In re Storti, 178 Mass. 549, 60 N. E. 210, 52 L. R. A. 520; State *v.* Tomassi, 75 N. J. L. 739, 69 Atl. 214). Many cases say distinctly that the provision was never intended to hamper the legislature. Whitten *v.* State, 47 Ga. 297; Mo. P. R. R. Co. *v.* Humes, 115 U. S. 512; Garcia *v.* Terr., 1 N. M. 415; People *v.* Smith, 94 Mich. 644. In fact, one case goes so far as to suggest that the provision is now practically obsolete. Hobbs *v.* State, 133 Ind. 404, 32 N. E. 1019, 18 L. R. A. 774.

On the other hand, there is a dictum to the effect that "imprisonment in the State prison for a long term of years might be so disproportionate to the offense as to constitute a cruel and unusual punishment." McDonald *v.* Com., 173 Mass. 322. And imprisonment for 5 years and then to give security to keep the peace for five years for wife-beating was held to be cruel and unusual. State *v.* Driver, 78 N. C. 423.

But however this clause may formerly have appeared to some courts there can be no doubt about its being very much alive since the decision in Weems *v.* U. S., 217 U. S. 349. There the court held, four to two, that the Eighth Amendment does apply as a constitutional prohibition on the legislative power, and that the courts may declare unconstitutional a law imposing a punishment which is clearly out of proportion to the crime. In this case White and Holmes, JJ., filed a strong dissenting opinion which pointed out that the decision gave an entirely new interpretation to the Eighth Amendment.

In the principal case the court says that the discretion of the legislature will not be disturbed by the courts except in extreme cases, and then, as has been said so many times about cases alleged to come under the cruel punishment prohibition, it states that this case does not come under that clause. The court in reaching this decision relies on the fact that the death penalty has not been considered too severe for this crime, whereas vasectomy is an operation which may be painlessly performed in a few minutes under a local anæsthetic. The operation itself consists in litigating and resecting a small portion of the vas deferens. Sterilization is thus brought about. There is no doubt that the case is fully in accord with the best principles of modern preventive criminology and was decided

correctly even under the doctrine laid down in Weems *v.* U. S., supra. The court has been criticised for ignoring the fact that life imprisonment involved such a segregation as would prevent procreation, thereby accomplishing the purpose of the statute. 12 Law Notes, 122. But it is submitted that as the practical possibilities of pardon even for revolting crimes are well known, the court was justified in effectually carrying out the real purpose of the statute and placing the matter beyond recall.

There is, however, one matter that might well have been given some attention in this, the first case on sterilization of criminals to go to a court of last resort. The decision goes on the assumption that some possible pain incident to the operation itself is the only punishment to be discussed and appears to ignore entirely the fact that the power to have children might be a much greater punishment. Castration is often mentioned in the older cases along with quartering, etc., as an example of a cruel and unusual punishment. Were the pain, the loss of sexual enjoyment and the effect on the man's physique, rather than the loss of procreative power, the cruel features of it? The principal case would seem to imply an affirmative answer. It is submitted that this is too important a question to be settled by implication alone. For further discussion of vasectomy and sterilization in general, see 23 Medico-Legal Journal 684, 27 id. 134, 29 id. 92; Pearson's Mag., Nov., 1909.

Attempts to Rescue Imperiled Person.—It is well established, though perhaps not by a uniform line of decisions by all the courts, that when, through the negligence of one person, another is placed in imminent peril of his life, a third person, standing by, who successfully rescues or unsuccessfully attempts to rescue the imperiled person may recover for injuries received by him in the attempt, in an action against the one whose negligence imperiled the life of the rescued person, unless it appear that the attempt to rescue was clearly one of rashness or recklessness under the circumstances presented. Perpich *v.* Mining Co. (Minn.), 137 N. W. 12, 76 Cent. Law Jour. 11, and note. The authorities are practically all collected in a note to Corbin *v.* City of Philadelphia, 49 L. R. A. 715.

In a late Virginia case it was held that to excuse the contributory negligence of the plaintiff in voluntarily risking his own life or safety in attempting to rescue another, the person rescued must have been at the time of the attempt to rescue in imminent danger, and this peril must have been caused by the negligence of the defendant. Wright *v.* Atlantic Coast Line R. Co., 110 Va. 670, 66 S. E. 848.