LIABILITY OF PHYSICIANS FOR STERILIZATION OPERATIONS*

Increasing Number of Such Operations Both in Public Institutions and Private Practice Suggests Importance of Determining the Civil and Criminal Liability, if Any, of Physicians Who Perform Them—Old Legal Principles and Modern Operations—Statutory Prohibitions—Lack of Precedents Bearing on Civil Liability

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In the State of California between 1910 and 1929, six thousand and fifty-five operations have been performed in public institutions of the state designed to prevent reproduction of the human species. Approximately three thousand such operations have been performed in other states during the same period. Generally speaking this practice has been carried on under the express provisions of statutes permitting voluntary sterilizations in some cases and requiring compulsory sterilizations in others. The operations most frequently used for this purpose are that of vasectomy as applied to males and salpingectomy as applied to females. We are assured by the members of the medical profession who have developed these techniques that, unlike castration and spaying, vasectomy and salpingectomy do not desexualize the individual or produce other physical or mental changes except such as may grow out of a realization that the child-producing function has been destroyed. The constitutionality of statutes providing for the sterilization of the unfit has been established in a number of states and by the Supreme Court of the United States. The courts have been more reluctant about conceding the constitutionality of statutes providing for the sterilization of criminals.[1]

In most of the statutes which provide for the sterilization of the unfit in state institutions, there have been incorporated provisions, absolving from civil and criminal liability, those who perform such operations. As yet, none of these provisions have been passed upon by courts of review. Presumably, in order to avoid liability, the provisions of the statutes must be strictly complied with.

We have no records to reveal the number of operations for sterilization which are performed in private practice. That the number is large, there seems to be no doubt. As to the nature of cases in which such private operations are performed, students of the eugenic phases of sterilization declare that persons with physical defects furnish most of them. For instance, in California, a large number of sterilizations among women are the result of tuberculosis. Defective organs such as hearts, livers, or kidneys, which would be apt to fail in the emergency of childbearing, provide the incentive of others. Ordinarily the purpose is therapeutic[2] rather than eugenic, nevertheless there are cases of voluntary private sterilizations where the purpose is to cut off a strain of defective germ-plasm, as in the case of a diagnosis of hereditary insanity or in case of the marriage of two persons each with a pronounced family history of cancer. We may safely assume, no doubt, that in some cases the purpose of the operation is merely to remove danger of pregnancy.

Whatever the motive may be which inspires such an operation and whatever the purpose which is designed to be served, the increasing number of such operations, both in public institutions and in private practice, suggests the importance of determining the civil and criminal liability, if any there be, of physicians who perform them.

Criminal Liability

An operation for sterilization would clearly result in criminal liability in many cases. Death resulting from such a cause, if no justification or excuse were present, would make the perpetrator guilty of a homicide, varying in degree according to the malice and intent in his mind at the time of the act. It is unnecessary to carry our inquiry further on this point. The usual considerations in determining liability for homicide would be pertinent here. Gross negligence, general criminal intent, the fact of being engaged in the commission of another felony, might each be sufficient to supply the element of intent.[3] The main consideration would be that of causation, and death resulting.

In similar manner such an operation might result in liability for mayhem or maiming. This would be clearly true in case of castration because the effect of the operation is to change the entire physical character of the individual.[4] In its earlier development the crime of mayhem was defined as

*Full title of paper is "Civil and Criminal Liability of Physicians for Sterilization Operations."

1. For a full discussion of the law involved in the preceding introductory paragraphs see, "The Law and Human Sterilization" by Otis H. Castle, 53 Reports of Am. Bar Assn. 556.

2. A distinction between eugenical and therapeutic purposes is important under some of the sterilization statutes. (See notes 25, 26, 27, 28 infra.) "Medical" and "therapeutic" are probably synonymous. (See Williams v. Scudder, 102 Ohio State 305, 131 N. E. 481, 483; Gould Med. Dict. (2d ed) p. 1380).

3. *Gross Negligence.* See note 61 L. R. A. 287, 289. See also State v. Reynolds, 42 Kan. 320, 22 Pac. 410, 16 Am. St. Rep. 483 (1889) and note; State v. Hardister, 38 Ark. 605, 42 Am. Rep. 5 (1882).
General Criminal Intent. Clark and Marshall Crimes (3d ed) Sec. 243; State v. Moore, 25 Iowa 128, 95 Am. Dec. 776 (1868); State v. Lodge, 9 Houst (Del) 542, 33 Atl. 312 (1892).
Homicide in Commission of Felony. 1 Hale P. C. 473; 21 Mich. L. Rev. 95. See Clark and Marshall Crimes (3d. ed) 195, and cases collected in 63 L. R. A. 353. At present, Utah is the only state which makes an unlawful sterilization operation a felony. (See note 32 infra.).
In two states unlawful sterilization operations are misdemeanors (notes 30, 31 infra.). Homicide in commission of misdemeanor (63 L. R. A. 379 et seq.).

4. Castration: Bouvier Law Dict. 1 Hawk P. C. 107; Bishop Crim. Law (9th ed.) Sec. 1001.

"when one shall diminish the strength of another's body and weaken him thereby to get his own living and by that means the commonwealth is deprived of the use of one of her members."[5] It was sometimes said that the gist of the offense consisted in the fact that the injured person was less able to fight or to defend himself.[6]

In cases both of homicide and mayhem, even the consent of the person castrated would not serve to excuse the physician, for it is clearly established that consent of the injured person in this type of case does not operate to prevent criminal liability.[7] The rule was well stated by Stephen in his History of English Criminal Law as follows: "No one has the right to consent to the infliction upon himself of death or any injury likely to cause death except in cases of necessary medical operations from which death might result, or to consent to the infliction upon himself of bodily harm amounting to a maim, for any purpose injurious to the public."[8] This rule has been generally followed in the United States.[9] Similar provisions are commonly found in the statutes governing operations to produce abortions.[10] Although no case has been found at the common law where a physician was held criminally liable for performing a castration operation upon a person with his consent, nevertheless criminal liability would seem to be certain in such a case in view of the gist and scope of the crime of mayhem and the attitude of the law toward the effect of consent in such cases. Of course justification or excuse might appear from the facts of the particular case which would absolve the surgeon from criminal liability.[11]

An interesting subject of inquiry is opened up when we attempt to apply these principles of law to the modern sterilization operations of vasectomy and salpingectomy As has been pointed out already they are entirely different from the cruel and despoiling operations known to the common law. It is true that in at least one recent case the use of the modern operations was condemned as constituting cruel and unusual punishment.[12] This decision would seem to have resulted from a misunderstanding of the nature and effect of these operations.[13] Under the provisions of the common law, vasectomy and salpingectomy could hardly constitute mayhem. The elements of "rendering one less able to defend himself" or to "fight for the king" or "less able to earn his own living" are not results of the operations as they are now performed.[14] Unless the courts could find in the common law definitions of the crime of mayhem something to indicate that it was intended to include a prohibition of operations which produced merely an inability to procreate, then there would seem to be no basis for fixing a criminal liability.

Practically all of the states have incorporated into their codes definitions of the crime of mayhem. Under these statutes, the crime is much broader than at common law.[15] The elements of the crime as outlined in these statutes differ considerably. Many require an intent to maim.[16] Two make a "premeditated design" a special element of the offense.[17] Some apparently have departed entirely from the concept of the common law and make the crime consist in the unlawful and malicious removal of a member of a human being or the disabling or disfiguring thereof or rendering it useless.[18] The operations of vasectomy and salpingectomy would render useless the procreative organs, in the sense that they would be no longer useful for purpose of procreation. For the gratification of sex desires,[19] for satisfying the law as to potency,[20] for committing the crime of rape,[21] they would still be useful. In each case the answer might vary according to the point of view of the patient or of the judge.

If the consent of the person were given, it is probable under present day statutes that there would be no liability for mayhem, for consent given would usually warrant the conclusion that malice, a necessary element of the crime, was not present in the mind of the physician. This would not necessarily follow, however, for malice on the part of the operator may exist concurrently with consent on the part of the patient.[22]

No case has been found of much value to the instant discussion for, out of the nine cases[23] reaching the appellate courts of the various states in which mayhems were committed by injuries to the private parts of the male or female, not a single one of the acts complained of was accomplished with the consent of the sufferer. Most of the cases involved castrations. The only one of these cases which approach the problem of the liability of a

5. Bishop Criminal Law, (9th. ed) Sec. 1001, quoting from an old authority, Poulton.

6. I Hawk. P. C. 107; 1 Inst. 107 a, b, in Stephen's Digest (7th ed.) 290.

7. See People v. Clough, 17 Wendell 351, 31 Am. Dec. 303 (1837) for a full discussion, and Rex v. Wright, 1 East P. C. 396, Co. Litt. 127a.

In abortion cases where death results, the homicide is not justifiable. State v. Magnell, 3 Penn. (Del) 307, 51 Al. 606 (1901); State v. Moore, 25 Iowa 128, 95 Am. Dec. 776 (1868). The same is true where death is the result of a duel. Regina v. Barronet, Dears C. C. 51.

8. Stephen Digest of the Criminal Law, Art 291. See Journal Social Hygiene, Vol. 14. No. 3 (March, 1928). Other uses of castration in history, see Sterilization for Human Betterment, by E. S. Gosney and Paul Popenoe, Ch. 2 (1929).

9. Wharton Cr. Law. (11th Ed) Sec. 182; Clark and Marshall Crimes (3d. ed.) Sec. 150. See People v. Clough 17 Wend 351, 31 Am. Dec. 303 (1837). See notes 7 and 10.

10. Abortions committed by the pregnant woman upon herself are punished in most of the state statutes. Cal. Penal Code, Sec. 275; Bender's N. Y. P. C. 1928, Sec. 81; State v. Carey 76 Conn. 342, 56 Atl. 632 (1904). So the consent of the woman is not a defense. State v. Carey supra; State v. Magnell 19 Del. 307, 51 Atl. 606 (1901); Barrow v. State 121 Ga. 187, 48 S. E. 950 (1904); State v. Moore 25 Ia. 128, 95 Am. Dec. 776 (1868); People v. Abbott, 116 Mich. 268, 74 N. W. 529 (1898); Willingham v. State 33 Tex. Cr. 98, 25 S. W. 424 (1894); Smith v. State 33 Me. 48, 54 Am. Dec. 607 (1851).

11. Justification or excuse would be material in showing an absence of wilfulness or malice under the mayhem statutes. Bowers v. State, 24 Tex. App. 542, 7 S. W. 247, 5 Am. St. Rep. 901 (1888); High v. State, 26 Tex. App. 545, 10 S. W. 238, 8 Am. St. Rep. 488 (1888). (See note 60 infra.).

12. Hendricks v. Mickle, 262 Fed. 677, D. C. D. Nev. 1918; Davis v. Berry, 216 Fed. 413, D. C. S. D. Iowa 1914. See also dissenting opinion in Smith v. Command 231 Mich. 409, 204 N. W. 140, 142 (1925).

13. "From the standpoint of pain it is comparable to the extraction of a tooth," Castle, Human Sterilization and the Law. See majority opinion in Smith v. Command, supra nt. 12.

14. Sterilization produces no change in the sexual life; no organs or glands are removed; no feelings are altered. Sterilization for Human Betterment, p. 21.

15. Mere disfigurement was not mayhem at common law. East Crown Law 393; Terrel v. State, 86 Tenn. 523, 8 S. W. 212 (1888). Statutes have included many new inflictions unknown to the common law, State v. Sheldon, 54 Mont. 185, 169 Pac. 37 (1917).

16. U. S. v. Scroggins, Fed. Cas. 16243 (1847); State v. Hair, 37 Minn. 351, 34 N. W. 893 (1887); High v. State, 26 Tex App. 545, 10 S. W. 238, 8 Am. St. Rep. 488 (1888).

17. See note L. R. A. 1916 E 494.

18. Kitchens v. State, 80 Ga. 810, 7 S. E. 209 (1888). A typical mayhem statute is Cal. Pen Cd. Sec. 203. See People v. Wright, 93 Cal. 564, 29 Pac. 240 (1892); State v. Bunyard, 253 Mo. 347, 161 S. W. 756 (1913).

19. Sterilization for Human Betterment, supra., p. 29.

20. Want of power for copulation is impotence; but mere sterility is not. Turner v. Avery, 92 N. J. Eq. 473, 113 Atl. 710 (1921). See also Griffeth v. Griffeth, 162 Ill. 368, 44 N. E. 820 (1896); Kirschbaum v. Kirschbaum, 92 N. J. Eq. 7, 111 Atl. 697 (1920). (Anonymous 89 Ala. 291, 7 So. 100, 18 Am. St. Rep. 116, 7 L. R. A. 425 (1890); Payne v. Payne, 46 Minn. 467, 49 N. W. 280, 24 Am. St. Rep. 240 (1891).

21. Well illustrated by Rudd J., in In re Thomson, 103 Misc Rep 23, 169 N. Y. S. 638, 643 (1918).

22. See notes 4, 5, supra. Note L. R. A. 1916 E. 494, 497. See also Green v. State 151 Ala. 14, 44 So. 194, 125 Am. St. Rep. 17 (1907).

23. Daggs v. State, 15 Okla. Cr. Rep. 127, 175 Pac. 266, (1918); Choate v. Comm., 176 Ky. 427, 195 So. W. 1080, (1917); State v. Sheldon, 54 Mont. 185, 168 Pac. 37, (1917); Col. v. State, 62 Tex. Cr. Rep. 270, 138 S. W. 109 (1911); People v. Schoedde, 126 Cal. 373, 58 Pac. 859 (1899); Kitchens v. State, 88 Ga. 810, 7 S. E. 209 (1888); State v. Fry, 67 Iowa 475, 25 N. W. 738 (1885); Worley v. State, 11 Humph. (Tenn.) 172 (1850); Moore v. State, 4 Chand. (Wis.) 168, 3 Pinney 373 (1851).

physician is the California case in which conspirators hired a veterinary surgeon to perform the operation.[24] In these cases, which involve the use of force and violence upon the complaining witness to effect the operation, we have nothing comparable to a private operation for sterilization by a physician according to modern methods and with consent.

In recent years a few of the states which have adopted sterilization statutes have incorporated therein two types of prohibitory provisions with regard to the performance of non-therapeutic private operations of sterilization.

First, the statutes of Indiana,[25] Utah,[26] Mississippi,[27] and Virginia,[28] make the following provision for therapeutic operations of sterilization:

"Nothing in this act shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this state, by a physician or surgeon licensed in this state which treatment may incidentally involve the nullification or destruction of the reproductive functions."

The Indiana statute makes a further qualification, "provided that such treatment shall be that which is recognized as legal and approved after due process of law."

It will be noted that this type of provision does not make such operation a criminal offense, and no punishment is provided. It is probably at most a provision designed to avoid civil liability except where the operation is non-therapeutic, or possibly even where the physician is unlicensed, or the operation "primarily" (as distinguished from "incidentally") involves the nullification or destruction of the reproductive functions. If the operation did contain any of the above impliedly prohibited circumstances, an attorney might well hesitate to advise a physician that he might safely perform the operation in a state which had such a statute. Especially would this be true in Indiana.[29]

Second, in three states, Iowa,[30] Kansas,[31] and Utah,[32] a direct penal provision is found:

"Except as authorized by this act" (the act refers to the sterlization of the unfit in state institutions,) "every person who shall perform, encourage, assist in, or otherwise promote the performance of either of the operations" (vasectomy and salpingectomy) "for the purpose of destroying the powers of procreation, unless performance of such operation is a medical necessity, shall be guilty of a misdemeanor."

Utah is the only state which incorporates in its acts both of the above provisions. The Michigan sterilization act of 1913 contained substantially the second provision, but the act was held to be unconstitutional on account of other provisions therein contained and when it was reenacted in 1923 and amended in 1925, the provision was omitted.[33]

In those states which have penal provisions regulating liability for performance of such operations without therapeutic or medical justification,[34] liability is determined thereby. Where the state has nothing but a mayhem statute which follows the common law concept, it is very doubtful if the modern operations for sterilization could be classed as criminal. Where the statute speaks in terms of "rendering useless" a member or organ of a human being, there is possibility of a decision either denying or establishing liability. In any event malice seems to be an element essential to criminal liability in such a case.

Even though the physician be not guilty of mayhem, under settled rules of criminal law, if the operation were performed without the patient's consent, it would constitute a criminal assault;[35] likewise if the patient submitted to the operation but was incapable of giving legal consent.[36] If consent were given there would be no liability for an assault and battery,[37] unless of course the act amounted to a breach of the peace,[38] which would be improbable.

Civil Liability

The question of the civil liability of the physician for a privately performed sterilization operation presents an equally interesting problem. Naturally the question is not so difficult where the plaintiff has given his or her consent to the operation as where it has been performed by force and violence, thus constituting an assault and battery under the general principles of the law of torts.[39] Although there are a number of cases involving operations which incidentally resulted in the nullification of the reproductive functions,[40] not a single reported case has been found in which a person who has consented to a sterilization operation has brought suit against the physician. For lack of precedents we are forced to consider analogous situations in the law of torts and to indulge in speculation as to the principles of public policy which may be involved.

We may draw an analogy between the case of an illegal sterilization operation and an illegal abortion, for the courts would undoubtedly treat them in the same class, both illegal operations, prohibited, except in case of therapeutic necessity. Appellate courts of this country have considered nine cases of abortions where suit was brought by or for one who had consented to the operation. In four of the jurisdictions, Federal,[41] Kentucky,[42] Massachusetts,[43] and New York,[44] no recovery was allowed, on the principle that an illegal transaction cannot be made the basis of an action by one who is a party thereto. In five of the jurisdictions, Alabama,[45] Indiana,[46] Maine,[47] Ohio,[48] and Wisconsin,[49] recovery was allowed on the theory that "because of the state's interest, neither party has a right to

24. People v. Schoedde, 126 Cal. 373, 58 Pac. 859 (1899).
25. Indiana Stats. 1927, Ch. 241, Sec. 6.
26. Utah Stats. 1925, Ch. 82, Sec. 6.
27. Mississippi Stats. 1928, Ch. 294, Sec. 6.
28. Virginia Ann. Code 1924, Ch. 46b, Sec. 1095m, (p. 569).
29. Indiana is one of the states in which consent to an abortion is not a bar to civil recovery against the physician by the patient (See note 46, infra.).
30. Iowa Stats. 1924. Code of Iowa 1927. Ch. 168. Sec. 3864. When originally passed in 1915 the section was 2600s (5).
31. Kansas Stats. 1917, Chap. 299, Sec. 7. Revised Stats. 1923, Chap. 76, Sec. 177.
32. Utah Laws of 1925, Chap. 82, Sec. 7.
33. The original Michigan statute enacted in 1913 is found in the Comp. Laws 1915, Ch. 96, Sec. 5180 (5). The new act which omitted the penal provision is found in Stats. 1923, Act 285, Sec. 2, as amended in 1925, Act 71.
34. See note 2 supra.
35. 1 Hawk, P. C. c. 15, Sec. 2.
36. Clark and Marshall Crimes Sec. 219 (3rd Ed.) See also a short discussion on the Right of Sterilization in (1929) 73 Sol. Jour. 258.
37. State v. Beck, 1 Hill (S. C.) 363, 26 Am. Dec. 190 (1833).
38. Commonwealth v. Collberg, 119 Mass. 350, 20 Am. Rep. 328 (1876).
39. Mohr v. Williams, 95 Minn. 261, 104, N. W. 12, 111 Am. St. Rep. 462, 1 L. R. A. (NS) 439 (1905) and note. See also note 26 A. L. R. 1036; 2 Cal. L. Rev. 312; and Rolater v. Strain, 39 Okla. 572, 137 Pac. 196, (1914).
40. In Wells v. VanNort 100 Ohio St. 101, 125 N. E. 910 (1919); Pratt v. Davis, 118 Ill. App. 161, 224 Ill. 300, 7 L. R. A. (NS) 609, 79 N. E. 562 (1906); King v. Carney, 85 Okla. 62, 204 Pac. 270 (1922); see note 52, 53, 54, 55 infra.
41. Hunter v. Wheate, 289 Fed. 604 (C. A. D. C. 1923).
42. Goldnamer v. O'Brien 98 Ky. 569, 36 L. R. A. 715, 33 S. W. 831, 56 Am. St. Rep. 378 (1896). This case is approved in Bigelow on Torts, p. 41.
43. Waclaw Szadiwicz v. Cantor, 154 N. E. 251 (Mass. 1926).
44. Larocque v. Conheim, 42 Misc. 613, 87 N. Y. S. 625 (1904).
45. Hancock v. Hullett, 203 Ala. 272, 82 So. 552 (1919).
46. Martin v. Hardesty, 163 N. W. 610, (Ind. 1928), but see Courtney v. Clinton 18 Ind. App. 620, 48 N. E. 799 (1897).
47. Lembo v. Donnell, 116 Me. 505, 101 Atl. 469 (1917).
48. Milliken v. Heddesheimer, 144 N. E. 264. (Ohio, 1926).
49. Miller v. Bayer, 94 Wis. 123, 68 N. W. 869 (1896).

make any agreement to sacrifice his life or suffer injury to his person, and any such agreement is void."

In those states in which there is no penal provision prohibiting a sterilization operation by the modern methods, the general rule of tort law would seem to apply and the consent of the party to submit to the operation should be a complete shield against civil liability on the part of the operating physician, provided the operation was performed without negligence.[50]

The appellate courts record accounts of a number of operations where the patient was rendered sterile by unauthorized liberties taken by the physician.[51] The leading English case is that of Beatty v. Cullingworth.[52] A double ovariotomy operation was performed upon the plaintiff against her express instructions. She was a single woman, engaged to be married, and when she heard that the double operation had been performed rendering her incapable of reproducing, she broke her engagement, and sued the doctor. The court practically instructed the jury to bring in a verdict for the defendant. The case has been most severely criticized.[53] In a similar case in this country,[54] the plaintiff recovered on an instruction that if the operation performed was different from the one consented to, there could be a recovery. Where no consent is found, the legal problem is not difficult, for as was early laid down, even though consent may be found from circumstances, nevertheless, if an operation is performed upon a person without the patient's consent, express or implied, it is unlawful.[55]

We have still another class of cases, in which the patient has submitted to the operation, but, it is contended, is incapable of giving legal consent; as in the case of a minor or married woman where the consent of the parent or guardian or spouse was not secured. Let us suppose that a woman, in order to remove the dread of pregnancy, goes to a physician and is sterilized without notifying her husband. When the husband learns that the possibility of heirship has been cut off, he brings suit against the doctor. The few cases that have directly considered the point as to the necessity of obtaining the husband's consent[56] agree that if the wife's consent is obtained the consent of the husband is not necessary, provided that she is capable of giving such consent.[57] However, two cases[58] apparently assuming that the husband's consent is necessary, hold that by placing the wife in the physician's care, a husband impliedly consents to such operations as may be found necessary or expedient. No case has been found which questions the right of the husband to have an operation performed upon himself without the consent of his wife, and it is difficult to imagine upon what theory such a right could be contested.

The recent emancipation of woman has rendered the husband less a "head" of the home than he was in years past, but certainly it has not reached the point of making him less than her equal in contemplation of law, and if the husband's consent is not necessary for an operation on the wife, her consent should not be necessary for an operation upon him.

Suppose that a boy or girl in the early teens visits a physician and solicits him to perform an operation, and the physician does so all unknown to the patient's parents who might have been easily notified. The operation is performed with due care. The child, the only male child, has been sterilized, and the father or child, through the father, brings suit against the doctor. The cases would seem to indicate that recovery will be granted independent of negligence where the parent's consent was not obtained[59] unless the factual situation presents a clear case of emergency[60] or, in some cases at least, the operation could be deemed a necessity under the laws of the state allowing minors to contract for necessaries.[61] This general requirement of consent is based on the theory that an operation given without consent is an assault, and that a minor like an incompetent, can only give consent through his parent or guardian.[62] In this enlightened age the obvious difference between the case of the married woman and the case of the minor needs little explanation.[63]

Suppose before marriage a wife is sterilized by a private operation, and does not disclose the fact to her husband at the time of the marriage. He petitions for an annulment on the ground of fraud in the marriage contract. In the only case which can be found in point[64] the court granted the annulment on the ground of fraud, saying:

> "Some women are congenitally, and others traumatically barren. The former may never discover the fact until after a fruitless mariage. But when a woman knows that she has been made barren by a surgical operation she is under a legal duty to disclose the fact to an intended husband, so that, if he then marries her, he will be consenting to the situation that will frustrate his natural hope of posterity, and he would not be heard to repudiate the marriage, which his conduct has rendered unavoidable, although if his knowledge had been acquired subsequent to the ceremony he could have avoided it."

Suppose the sterilization operation were performed the day following the marriage. This would not constitute a ground for divorce even in those states which recognize merely impotency as a ground, for as has been pointed out,[65] impotency imports a total want of the power of copulation and only as necessarily incident thereto a want of conceptive power.

With the rapidly increasing interest in this general subject and the great prevalence of sterilization operations we may well expect that more of these problems will soon find their way into the courts. In the meantime, this brief analysis is offered to suggest the nature of the liability of physicians working in this field.

50. American Law Institute. Restatement of Torts, No. 1, Sec. 75.
51. See note 40 supra.
52. Beatty v. Cullingworth, an unreported case tried before the Queens Bench Division 1896. See note 53.
53. 44 Central Law. J. 153 (1897).
54. Cuthriel v. Protestant Hospital, an unreported Ohio case, cited in the notes to Kinkaid on Torts, Sec. 375.
55. See note 39 supra.
56. Burroughs v. Crichton, 48 App. (D. C.) 596, 602, 4 A. L. R. 1529 (1919) and note, 1531; Janney v. Housekeeper, 70 Md. 162, 170, 14 Am. St. Rep. 340, 2 L. R. A. 587 (1889).
57. Pratt v. Davis, note 40 supra. Burroughs v. Crichton, note 37 supra.
58. McClallan v. Adams, 19 Pick. (Mass.) 333, 31 Am. Dec. 140 (1837); Pratt v. Davis, Note 40 supra.
59. Moss v. Rishworth, 191 S. W. 843 (Tex. 1917), affirmed 222 S. W. 225 (1920). See Browning v. Hoffman, 90 W. Va. 568, 111 S. E. 492 (1922).
60. Luka v. Lowrie, 170 Mich. 122, 136 N. W. 1106, 41 L. R. A. (NS) 290 (1912) at 135. See also Browning v. Hoffman, nt 59 supra.
61. Bishop v. Shurley, 211 N. W. 75, (Mich. 1926).
62. Moss v. Rishworth, Note 59 supra.
63. See Burroughs v. Crichton, supra note 48, and comment at 4 A. L. R. 1533.
64. Turner v. Avery, 92 N. J. Eq. 473, 113 Atl. 710 (1921).
65. See note 20 supra.