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action is brought under article 2315 of the Civil Code by an injured party who then dies, the survivor, if any, designated in article 2315 may be substituted as party plaintiff; and that in all other cases, when a party dies, his heirs, legatees, administrator, or executor may be substituted as parties. It is to be hoped that the proposed article will be adopted, and thereafter will be construed as a legislative overruling of the unfortunate line of cases commencing with the *Chivers* case and extending through the *McConnell* decision. Both the legislative history of the Louisiana rule against abatement, and two of the three lines of decisions construing similar statutory rules in the various American jurisdictions, would call for such a construction. But the only certain way of overturning these unfortunate decisions would be to supplement the proposed article with an amendment to article 2315 of the Civil Code, recognizing rights of action *ex delicto* and *quasi ex delicto* as property rights transmitted to the heirs of the obligee on his death.

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Sufficiency of Indictments Interpretation of Article 227 of the Code of Criminal Procedure

An indictment at common law was required to present the facts of the crime with elaborate detail.[1] This requirement has received considerable criticism[2] and the modern trend has been to limit by statute the detail formerly required in an indictment.[3] Article 235 of the Code of Criminal Procedure provides that all crimes in the Criminal Code may be charged by a "short form" indictment, which contains only a statement of the very

1. See an example in Comment, *Indictment Forms—A Technical Loophole for the Accused*, 6 LOUISIANA LAW REVIEW 461 (1945).

2. See Holtzoff, *Reform of Federal Criminal Procedure*, 12 GEO. WASH. L. REV. 119 (1944); Comment, *Indictment Forms—A Technical Loophole for the Accused*, 6 LOUISIANA LAW REVIEW 461 (1946); Comment, *The Short Form Indictment—History, Development and Constitutionality*, 6 LOUISIANA LAW REVIEW 78 (1944); Note, 47 COLUM. L. REV. 693 (1947).

3. In regard to the short form, see ALI CODE OF CRIMINAL PROCEDURE § 154 (1930); for legislation comparable to article 227 of the Louisiana Code of Criminal Procedure, which sets forth the requisites for the long form indictment, see CAL. PENAL CODE § 958 (Deering 1949); IND. ANN. STAT. § 9-1105 (Burns 1933); MINN. STAT. ANN. § 628.17 (1945); NEV. COMP. LAWS § 10856 (1929); UTAH CODE ANN. § 77-21-8 (1953).

basic elements of the crime, for example, "A.B. murdered C.D."[4] The other elements of the crime are stated in the Criminal Code, and if additional information is desired, it may usually be obtained by a bill of particulars from the district attorney.[5] Many important crimes are not included in the Criminal Code,[6] however, and hence must be charged by the "long form" indictment. Article 227 of the Code of Criminal Procedure provides that the long form indictment "must state every fact and circumstance necessary to constitute the offense, *but it need do no more*, and it is immaterial whether the language of the statute creating the offense, or words unequivocally conveying the meaning of the statute, be used."[7] (Emphasis added.) The article does not purport to authorize an indictment as abbreviated as the "short form," but the trend away from the strict common law requirements indicates that it should not require a statement of minute detail.

In order to determine what detail the jurisprudence has considered necessary, it is helpful to consider the purposes of an indictment. First, it should inform the accused of the nature of the offense with which he is charged; second, it should also inform the court so that the taking of evidence might be regulated; and third, it should be sufficiently definite to support a plea of former jeopardy.[8]

To what extent should an indictment set forth the nature of the crime in order to fulfill these basic purposes? The indictment should state all the essential elements of the crime.[9] Ideas have varied as to what constitutes an essential element. The United States Supreme Court in 1875 noted that where the definition of an offense "includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic

4. LA. R.S. 15:235 (1950). Although the form is brief, the defendant's constitutional right to be informed of the nature of the charge against him (LA. CONST. art. I, § 10) is not abridged. See *The Work of the Louisiana Supreme Court for the 1945-1946 Term—Criminal Law and Procedure*, 7 LOUISIANA LAW REVIEW 288, 296 (1947); Comment, *The Short Form Indictment—History, Development and Constitutionality*, 6 LOUISIANA LAW REVIEW 78 (1944); Ralston, *Sufficiency of the Charge in an Indictment in Louisiana*, 20 TUL. L. REV. 220 (1945).

5. State v. Holmes, 223 La. 397, 65 So.2d 890 (1953) and cases cited.

6. Among these are laws relating to motor vehicles, LA. R.S. 14:207 (1950); the maintenance of a disorderly place, LA. R.S. 14:281 (1950); wire tapping, LA. R.S. 14:322 (1950); false or illegal registration for voting, LA. R.S. 18:222 (1950); and narcotics, LA. R.S. 40:961-984 (1950).

7. LA. R.S. 15:227 (1950).

8. State v. Scheuering, 76 So.2d 921 (La. 1954).

9. See State v. Toney, 205 La. 451, 17 So.2d 624 (1944), relied on in State v. Kelley, 225 La. 495, 73 So.2d 437 (1954).

terms as in the definition; but it must state the species,—it must descend to particulars."[10] On the other hand, one writer in 1945 suggested that article 227 of the Louisiana Code of Criminal Procedure probably was never intended to require more than the language of the statute in charging the crime.[11] If article 227 was meant to be a codification of the Louisiana jurisprudence existing at the time of its adoption,[12] there are decisions prior to the adoption of the Code in 1928 which hold that the language of the statute is not specific enough. For instance, in one case the indictment charged the defendant with keeping a "disorderly house," as the statute was worded.[13] The Louisiana Supreme Court held that this was a mere conclusion of law, saying that " 'there are many kinds of disorder which are not indictable. . . . The proper course is to specify what the disorder is.' "[14] In another case defendant was being prosecuted under a statute which prohibited one's giving of false information when offering to vote.[15] The court found the indictment defective because it neither stated that defendant was a qualified voter nor described the particular election adequately. However, the court has held valid an indictment merely charging the defendant with keeping a "blind tiger,"[16] where the statute had defined a "blind tiger" as a place where alcoholic beverages were sold.

The same problem of stating the essential elements exists also where the crime is charged in language "equivalent" to that of the statute.[17] In one such case the defendant was charged with possessing, with intent to sell or display, certain "indecent" pictures and writings.[18] The statute forbade possession of those which were "obscene, lewd, lascivious, filthy, or sexually indecent."[19] The court found that the language of the indictment was not equivalent to that of the statute. In another decision the indictment stated that the defendants "intentionally maintain

10. United States v. Cruikshank, 92 U.S. 542, 558 (1875).
11. Morrow, *The 1942 Louisiana Criminal Code in 1945: A Small Voice from the Past*, 19 TUL. L. REV. 483, 490 (1945).
12. See Annot., Art. 227, LA. CODE OF CRIM. PROC. OF 1928 ANN. (Adams 1929).
13. State *ex rel.* Etie v. Foster, 112 La. 746, 36 So. 670 (1904).
14. *Id.* at 747, 36 So. at 670.
15. State v. Schwartz, 137 La. 277, 68 So. 608 (1915).
16. State v. Tuggle, 151 La. 1061, 1062, 92 So. 699 (1922).
17. State v. Roth, 224 La. 439, 69 So.2d 741 (1953); State v. Wilson, 173 La. 347, 137 So. 57 (1931); State v. Menard, 150 La. 324, 90 So. 665 (1922); State v. Hainey, 142 La. 407, 76 So. 818 (1917); State v. Hood, 6 La. Ann. 179 (1851).
18. State v. Roth, 224 La. 439, 441, 69 So.2d 741, 742 (1953).
19. *Id.* at 443, 69 So.2d at 743; La. Acts 1950, No. 314, p. 511, amending and re-enacting LA. R.S. 14:106 (1950).

a place . . . to be used habitually as a meeting place for . . . criminals to plan and prepare for the commission of sundry crimes. . . ."[20] It was found not to charge an "illegal or immoral purpose" within the meaning of the statute.

Further examples of elements of crimes which have been held to be essential to the validity of an indictment may be mentioned. Failure to include the element of "breaking" in an attempt to charge the crime of "breaking and entering" was fatal.[21] Likewise, where the fraudulent use of another's name for certain purposes constituted a crime, the indictment which omitted to state defendant's purpose was invalid.[22] The accused persons in another case[23] had caused a child two years of age to become intoxicated and were prosecuted for intentional mistreatment of a minor. The indictment did not state that the defendants were seventeen years or older, an essential element of the crime, and was consequently held void. Also held insufficient was an indictment for resisting an officer which neglected to state that the defendant had knowledge that the person resisted was a law-enforcement officer.[24] Where the sale of intoxicating liquors for beverage purposes was made criminal, a conviction based on an indictment which did not include the essential phrase, "for beverage purposes," was reversed.[25] Failure to allege specific intent has been held to invalidate an indictment.[26] Even where the defendants were charged with breaking and entering "the American Hat Company" with intent to commit larceny, the indictment was found invalid because no mention was made that the American Hat Company was a building or structure.[27]

Another facet of the problem of sufficiency in indictments is that involving the so-called multiple-crime statutes. The statute which prohibits disturbing the peace, for example, lists several ways in which the crime is committed.[28] It has been held that a charge merely of "disturbing the peace" is insufficient. The particular way in which the peace was disturbed must be set forth.[29] A similar result was obtained in a case in which it was

20. State v. Truby, 211 La. 178, 181, 29 So.2d 758, 759 (1947).
21. State v. Gendusa, 190 La. 422, 182 So. 559 (1938).
22. State v. Halaby, 148 La. 553, 87 So. 270 (1921).
23. State v. Toney, 205 La. 451, 17 So.2d 624 (1944).
24. State v. Gros, 216 La. 103, 43 So.2d 232 (1949).
25. State v. Bulloch, 151 La. 593, 92 So. 127 (1922).
26. State v. Quinn, 136 La. 435, 67 So. 206 (1915).
27. State v. McDonald, 178 La. 612, 152 So. 308 (1934).
28. LA. R.S. 14:103 (1950).
29. State v. Morgan, 204 La. 499, 15 So.2d 866 (1943); State v. Verdin, 192 La. 275, 187 So. 666 (1939).

not stated how the defendant had violated the statute prohibiting indecent behavior with juveniles.[30] An indictment was also held inadequate because it failed to distinguish which of the many gambling crimes defendant had committed.[31]

A recent case involving a multiple-crime statute is *State v. Kelley*.[32] In this case the defendant was convicted of violating the voter registration law by submitting false information in his application for registration. The long form indictment had not particularized the false information given. Instead of using the words of the statute, "shall knowingly present" false information, it had charged that the defendant "willfully and unlawfully" gave the false information. The court, in holding the indictment invalid, pointed out that the false information was not set forth, and that the defendant was not charged with having knowingly submitted false information. If the court gave primary consideration to the fact that the word "willfully" was used instead of "knowingly," it may be argued in support of the case that knowledge is an essential element of the crime and therefore must be charged in the indictment. If, on the other hand, the court gave greater weight to the proposition that the false information given should have been expressly set forth, the decision would amount to a partial reversion, at least, to the technical requirements of the early common law.

Justice McCaleb contended in his dissent in the *Kelley* case that a bill of particulars would have amply satisfied the accused's right to be informed of the nature of the charge against him since the defendant was told "what he did and how he did it."[33] The bill of particulars has served this supplemental function in Louisiana in cases in which the indictment lacked details the defendant desired in order to prepare his defense, but stated all the essential elements.[34] Justice McCaleb's position is that the majority of the court has overlooked the difference between the essential elements and the details. It may be noted that if the indictment or information lacks a fundamental element, it cannot be remedied by a bill of particulars, since the prosecution rests solely on the charge as expressed in the indictment and not on the indictment as amended by the bill.[35]

30. State v. Hebert, 205 La. 110, 17 So.2d 3 (1944).
31. State v. Varnado, 208 La. 319, 23 So.2d 106 (1945); *cf.* State v. Kendrick, 203 La. 63, 13 So.2d 387 (1943), criticized in Ralston, *Sufficiency of the Charge in an Indictment in Louisiana*, 20 TUL. L. REV. 220, 227 (1945).
32. 225 La. 495, 73 So.2d 437 (1954).
33. *Id.* at 506, 73 So.2d at 441.
34. State v. Bienvenu, 207 La. 859, 22 So.2d 196 (1945) and cases cited.
35. State v. Long, 129 La. 777, 56 So. 884 (1911).

In conclusion, it might be said that the line between essential elements and those elements which are mere details and can be obtained through a bill of particulars is difficult to define. Because of the fact that a presumption of innocence exists in favor of the defendant,[36] any substantial defect in the indictment should be construed against the state. An indictment must state "every fact and circumstance necessary to constitute the offense," but "it need do no more." If effect is to be given to the latter clause, then it would be undesirable to require a greatly detailed statement of criminal liability in an indictment. The *Kelley* case and the above discussed illustrations clearly indicate that the Louisiana court has been and is today cautious in applying the rather liberal language of article 227. From the jurisprudence can be concluded only that article 227 requires a full and complete statement of the essentials of criminal liability. Uncertainty, however, exists as to how particularized this statement must be. Other states seem to have liberalized the requirements of sufficiency in indictments and it appears that "the trend [is] away from stressing old common-law technical necessities."[37] The position taken by the Louisiana Supreme Court in the *Kelley* case appears inconsistent with this trend, and could, if continued, result in burdening the indictment with a full statement of the details of the crime, a function which can best be served by the bill of particulars.

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Theft Between Spouses in Louisiana

The Louisiana Criminal Code defines the crime of theft as "the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices or representations."[1] The Code also states that an essential element of the crime is "an intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking."[2] The purpose of this comment is to

36. LA. R.S. 15:387 (1950).
37. Kaplan, *Criminal Procedure*, in 1953 ANNUAL SURVEY OF AMERICAN LAW 741, 747.
1. LA. R.S. 14:67 (1950).
2. *Ibid.*