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# Criminal Procedure - Constitutionality of Short Form Indictment

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with clarity. Yet the terms "in any way interested" did not specify what type interests were prohibited or how direct an interest would have to be. Thus it seems the court was correct in overturning the statute.

*Chas. A. Traylor, II*

#### CRIMINAL PROCEDURE — CONSTITUTIONALITY OF SHORT FORM INDICTMENT

For years, Louisiana, as many other states, had been plagued by the once useful but now technical and anachronistic long form indictment.<sup>1</sup> In 1928, when the Louisiana Legislature adopted a Code of Criminal Procedure, a short form indictment was provided for in Article 235.<sup>2</sup> The purpose was to eliminate the complex and technical form of the common law charge for the more widely known and re-occurring crimes and to provide an accurate but concise form of indictment.<sup>3</sup> If the accused desired further information concerning the offense charged, he could, prior to arraignment, call for a bill of particulars, which the judge could not arbitrarily refuse to grant.<sup>4</sup>

Immediately after its adoption, the constitutionality of the short form indictment as established in Article 235 was challenged on the ground that it did not inform the accused of the nature and cause of the accusation against him.<sup>5</sup> In all of these cases, the validity of the short form was sustained.<sup>6</sup>

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1. Comment, 6 LOUISIANA LAW REVIEW 461 (1945). The long form indictment developed at a time when many relatively minor crimes carried the penalty of capital punishment. The technical requirements of the long form were used to mitigate this harshness. However, as punishment became less severe, these requirements no longer served this purpose, but to the contrary, provided technical loopholes for the accused. See Note, 17 LOUISIANA LAW REVIEW 232, 233 (1956).

2. LA. R.S. 15:235 (1950). This article provides that "the following forms of indictment may be used in the cases in which they are applicable." For example, in the case of an indictment for attempted murder, the form is: "Attempt . . . . . A.B. attempted to murder C.D."

3. See Bennett, *Louisiana Legislation of 1944*, 6 LOUISIANA LAW REVIEW 16 (1944).

4. LA. R.S. 15:235 (1950). The Louisiana Supreme Court has often said that, when a short form indictment is used, the defendant is entitled of right to a bill of particulars, and the constitutional right to be informed of the nature and cause of the accusation is fully protected thereby. *State v. Leming*, 217 La. 257, 46 So.2d 262 (1950); *State v. Masino*, 214 La. 744, 38 So.2d 622 (1949); *State v. Bessar*, 213 La. 299, 34 So.2d 785 (1948).

There are certain practical limitations on the right of the accused to a bill of particulars. See Comment, 12 LOUISIANA LAW REVIEW 457 (1952). See also Note, 17 LOUISIANA LAW REVIEW 232 (1956).

5. LA. CONST. art. I, § 10, provides that an accused "be informed of the nature and cause of the accusation."

6. See *State v. Holmes*, 223 La. 397, 65 So.2d 890 (1953) (simple burglary);

The short form indictment proved to be such an advance in criminal procedure in Louisiana<sup>7</sup> that the Legislature in 1944 amended Article 235 and provided that the short form could be used for all offenses included in the Criminal Code of 1942.<sup>8</sup> The amendment provided that the indictment would be sufficient if the accused were charged by using the name and article number of the offense committed.<sup>9</sup> Shortly thereafter, the constitutionality of this amendment was attacked in *State v. Davis*.<sup>10</sup> In this case the accused was charged with the crime of gambling, and only the name and article number of the crime were used in the indictment. The accused had requested and received a bill of particulars. The court held that this was sufficient to satisfy the constitutional requirements that the accused be informed of the nature and cause of the offense.

In 1956 the Supreme Court was presented with a situation almost identical to that in the *Davis* case.<sup>11</sup> In *State v. Straughan*,<sup>12</sup> the court held the amendment to Article 235 unconstitutional on the ground that the essential facts necessary to describe the nature and cause of the accusation were not incorporated in the initial charge; the *Davis* case was specifically overruled. The court implied that the accused's right to be informed must be fully satisfied by the allegations in the indictment and could not be partially met by setting forth the details of the crime in the bill of particulars.

The opinion in the *Straughan* case<sup>13</sup> contained such strong

*State v. Nichols*, 216 La. 622, 44 So.2d 318 (1950) (manslaughter); *State v. Chanet*, 209 La. 410, 24 So.2d 670 (1946) (aggravated rape); *State v. Ward*, 208 La. 56, 22 So.2d 740 (1945) (negligent homicide); *State v. Pete*, 206 La. 1078, 20 So.2d 368 (1944) (theft); *State v. Brooks*, 173 La. 9, 136 So. 71 (1931) (embezzlement); *State v. Miller*, 170 La. 51, 127 So. 361 (1930) (larceny).

7. See *The Work of the Louisiana Supreme Court for the 1945-1946 Term—Criminal Law and Procedure*, 7 LOUISIANA LAW REVIEW 165, 296 (1947).

8. LA. R.S. 15:235 (1950): "Provided that in all cases of crimes included in the Criminal Code but not covered by the short forms hereinabove set forth, it shall be sufficient to charge the defendant by using the name and article number of the offense committed."

9. *Ibid.* Accord: ALI, CODE OF CRIMINAL PROCEDURE § 154(1) (1930) generally provides that it shall be sufficient to charge a crime "(a) by using the name given to the offense by the common law or by a statute" and that "(2) [T]he indictment or information may refer to a section or subsection of any statute creating the offense charged therein, and in determining the validity or sufficiency of such indictment or information regard shall be had to such reference."

10. 208 La. 954, 23 So.2d 801 (1945). See Note, 6 LOUISIANA LAW REVIEW 715 (1946). See also Note, 17 LOUISIANA LAW REVIEW 232, 234 (1956).

11. 229 La. 1036, 87 So.2d 523 (1956), 17 LOUISIANA LAW REVIEW 232.

12. *Ibid.*

13. The court in the *Straughan* case stated three criteria for constitutional sufficiency of a charge in an indictment or information: (1) it must inform the court of the exact offense being charged so that the court can properly regulate

language directed against the validity of the short form indictment that it cast doubt upon the validity of the specific short forms under Article 235 as originally written. However, the court stated that it would not overrule the prior cases which upheld the original Article 235.<sup>14</sup> In the 1958 case of *State v. Elias*<sup>15</sup> the Supreme Court appears to have put to rest further speculation on the extent to which the short form may be used. In this case the short form indictment was used to charge attempted murder<sup>16</sup> — an offense for which a specific short form is provided by Article 235. The accused was convicted of attempted manslaughter,<sup>17</sup> and the Supreme Court, without dissent, held that the indictment sufficiently informed the accused of the nature and cause of the accusation. The *Straughan* case was distinguished on the ground that the charge in that case was made under the 1944 amendment to Article 235. The Supreme Court reiterated its ruling that the *ultra-short* forms<sup>18</sup> for all crimes in the Criminal Code as provided for in the 1944 amendment are unconstitutional, but clearly held that the specific short forms for well understood crimes, as provided for in Article 235, are sufficient to meet the requirements of the Constitution.

*Burrell J. Carter*

#### MINERAL RIGHTS — GOOD FAITH USER — WELL DRILLED FOR INCOME TAX PURPOSES

Plaintiffs, owners of an undivided one-half of the minerals, granted an oil and gas lease to an oil company one month before the mineral servitude was to expire by prescription. The com-

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the evidence sought to be introduced, (2) it must inform the accused of the nature and cause of the offense charged so that the accused can properly prepare his defense, and (3) it must be sufficient on its face to support a plea of former jeopardy in the event there is a subsequent attempt to try the accused for the same offense. See also *State v. Ledent*, 230 La. 780, 89 So.2d 299 (1956) (resisting an officer); *State v. McQueen*, 230 La. 55, 87 So.2d 727 (1955) (gambling).

14. 229 La. 1036, 87 So.2d 523 (1956).

15. 234 La. 1, 99 So.2d 1 (1958).

16. The charge in the indictment was that the accused "Attempted to murder Warnest Thibeaux." The court stated: "Certainly, if it is sufficient to charge a defendant in the short form for murder, it is sufficient to charge the short form for an attempt of this same crime." *Id.* at 2, 99 So.2d at 2.

17. Article 386 of the Code of Criminal Procedure, as amended, provides that a verdict of attempted manslaughter is responsive to an indictment for attempted murder. LA. R.S. 15:396, as amended (1950). Article 27 of the Criminal Code provides that "an attempt is a separate but lesser grade of the intended crime." LA. R.S. 14:27 (1950).

18. See note 8 *supra*.