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must be indicated in such a manner as to provoke inquiry among those persons affected thereby. A number of our statutes comply with these requisites, but are of woeful composition—redundant and repetitious, laboriously lengthy, and of such complexity as to approach the unintelligible. The modern tradition in drafting statute titles calls for simple, direct language containing a short, concise statement of the object. As has been shown above, there is no constitutional objection in Louisiana to the direct, concise title. Such a title is commendable because of its undeniable worth to the bar, to the bench, and to the laity.

B. NEWTON HARGIS*

THE SHORT FORM INDICTMENT HISTORY, DEVELOPMENT AND CONSTITUTIONALITY

The common law indictment was, and is, in those jurisdictions still using it, a mass of verbose and technical allegations. An accumulation of "to wits," "then and theres," and "aforesaid" has not served to expedite the administration of justice. An accused may be convicted of the offense charged after a full and fair trial upon the merits, and then have the judgment reversed because of a technically insufficient or defective allegation.¹

The complex and technical form of the indictment served a very useful purpose during the period when the rules of criminal procedure were formulated. In the time of Blackstone there were one hundred and sixty capital offenses.² Consequently, many judges were very zealous in searching out and discovering technical insufficiencies in order to prevent injustice in cases where the punishment was grossly excessive in light of the offense committed.³ The prosecutors of that period, to combat this judicial leniency, attempted to formulate indictments which would be unimpeachable. Naturally the charge became highly technical and involved. Another substantial argument for the long form indictment was that the accused was furnished as a basis for his defense only what he could gather from a reading of the indictment to him at the arraignment. He could neither see the indictment nor receive a copy of it.⁴

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1. 4 Blackstone, *Commentaries on the Law of England* (1766-1769) 18.

2. Chitty, *Criminal Law* (3 ed. 1836) 114.

3. Perkins, *Short Indictments and Informations* (1929) 15 A.B.A.J. 292.

4. 1 Chitty, *op. cit. supra* note 2, at 403.

Today, the penalties for lesser crimes have been appropriately reduced, and only a few capital crimes remain.⁵ Also, the accused gets a copy of the indictment. While the practical considerations which gave rise to the intricate and cumbersome common law form of indictment had disappeared, a number of jurisdictions continued to employ it.⁶ "In this day and generation a community which fondly attempts to protect itself against crime by such methods is like a child playing with its toy soldiers."⁷

Use of the long form indictment has often led to ludicrous results. Cases abound where a preponderance of evidence and proof as to the defendant's guilt has been washed aside by a stream of astutely manipulated technicalities. In a Delaware prosecution, a conviction of stealing a pair of shoes was reversed because the proof established the larceny of two shoes both for the right foot and hence not a pair.⁸ A West Virginia court vacated a verdict of guilty because the indictment concluded "against the peace and dignity of the State of W. Virginia," being of the opinion that the word *West* should have been written in full.⁹

Realizing the need for a form of criminal pleading that would remove occasions for such absurdities and at the same time guarantee the accused his rights, the Louisiana legislature, in adopting a modern code of criminal procedure in 1928, authorized short form indictments.¹⁰ Article 235 of the Louisiana Code of Criminal Procedure provides forms of indictment whereby it is sufficient to charge the offense by its statutory name. There is no requisite for furnishing particulars of the crime in the indictment. If the accused desires details regarding the offense, he may call for a bill of particulars prior to arraignment.¹¹ For instance, if the crime is murder, it is sufficient to charge that "A. B. murdered C. D." If "A. B." wants information as to the means of the homicide

5. Louisiana's capital crimes are: Murder—Art. 30, La. Crim. Code of 1942 [Dart's Crim. Stats. (1943) Art. 740-30]; Aggravated Rape—Art. 42, La. Crim. Code of 1942 [Dart's Crim. Stats. (1943) Art. 740-42]; Treason—Art. 113, La. Crim. Code of 1942 [Dart's Crim. Stats. (1943) Art. 740-113].

6. Perkins, *supra* note 3, at 293. Even England, where the long form originated, remedied the situation somewhat by the English Indictment Act of 1915.

7. Note (1911) 1 J. Crim. L. 783.

8. *State v. Harris*, 3 Har. 559 (Del. 1841).

9. *Lemons v. State*, 4 W. Va. 755 (1870). For a full discussion and collection of these cases, see Perkins, *supra* note 3.

10. La. Act 2 of 1928 (La. Code of Crim. Proc. of 1928). The American Law Institute saw fit to adopt the short form at its annual meeting, May 8-10, 1930. See American Law Institute, Code of Criminal Procedure, Official Draft (1930) 69-70, §§ 152, 154.

11. Art. 235, La. Code of Crim. Proc. of 1928.

and further details, he secures the same through a bill of particulars. The Louisiana legislature amended Article 235 in 1944 by adding the provision 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."¹² This amendment has substantially enlarged the scope of Article 235 and all offenses set out in the Criminal Code may now be charged by the short form. The short form of indictment, as can be readily seen, provides a much needed sedative for the nightmares of verbose allegations that have harassed district attorneys in the past. At the same time it minimizes the opportunities of adjudged offenders to escape through the loophole of a technically insufficient indictment. Defense lawyers have not been so happy about the important simplification of indictment forms, and have frequently attacked the sufficiency of short form indictments on the ground that they violated the accused's constitutional right¹³ to be informed of the nature of the charge made against him.

The Supreme Court of Louisiana has had occasion to consider the constitutionality of Article 235 in numerous cases and has uniformly upheld the short form.¹⁴ In *State v. White*¹⁵ the court upheld a short form indictment for murder. Justice Land declared that, "as 'murder' is a word of universal and common meaning, no citizen of average intelligence could fail to understand the significance of a charge of murder preferred against him."¹⁶ In *State v. Capaci*¹⁷ the court overruled defendant's contention that since Article 235 permitted the omission of the words "malice aforethought" in a murder charge, it changed the substantive law and was therefore unconstitutional. The court declared that Article 235 dealt exclusively with pleading and did not purport to affect the substantive law definition of murder. In another Louisiana case an indictment for perjury, challenged

12. La. Act 223 of 1944.

13. U. S. Const. Amend. XIV; U. S. Const. Amend. VI.

14. *State v. Matthews*, 189 La. 166, 179 So. 69 (1938)

15. 172 La. 1045, 136 So. 47 (1931), citing *State v. Abeny*, 168 La. 1135, 123 So. 807 (1929) and *State v. Miller*, 170 La. 51, 127 So. 361 (1930).

16. 172 La. 1045, 1047, 136 So. 47 (1931).

17. 179 La. 462, 154 So. 419 (1934). The defendant contended that since "malice aforethought" is an essential ingredient of the crime of murder, and that there can be no murder without "malice aforethought" the short form of indictment for murder has changed the substantive law, in that it omits to charge that the homicide was committed with "malice aforethought"; and that therefore, Art. 235, La. Code of Crim. Proc. of 1928, is unconstitutional per se. See Note (1941) 15 Tulane L. Rev. 307. See also *State v. Bussa*, 176 La. 87, 104, 145 So. 276, 282 (1932).

as not charging a crime, was held to conform to Article 235 and was therefore sufficient.¹⁸ The omission in a larceny indictment of the name of the owner of money alleged to have been stolen, was not fatally defective, where such information was supplied by a bill of particulars. The court declared that the indictment, supplemented by the bill of particulars, fully complied with the constitutional requirement that the accused shall be informed of the nature and cause of the accusation against him.¹⁹ In a prosecution for forgery under the short form indictment containing additional words "with the felonious intent thereby to defraud, contrary, etc." the indictment was sufficient. The quoted words were evidently treated as surplusage under the provisions of Article 240 of the Louisiana Code of Criminal Procedure.²⁰ Likewise, the words "wilfully and feloniously" in a short form murder charge were held to be unnecessary and were treated as surplusage.²¹ Of course the indictment must contain the allegations required by Article 235. Where a bill of particulars is requested, though it is within the discretion of the judge to refuse, he cannot arbitrarily do so. Abusal of this discretionary power is reversible error. To assure the defendant of his constitutional rights where short forms are employed, the provision of the article authorizing a bill of particulars should be liberally interpreted.²²

Louisiana's progressive and farsighted action in adopting this simplified method of criminal pleading is not an isolated instance. A number of other jurisdictions have enacted similar legislation, and at least one state has adopted the short form by court rule.²³ The constitutionality of the short form has similarly been upheld in these other jurisdictions.

18. *State v. Abeny*, 168 La. 1135, 123 So. 807 (1929). The accused did not even challenge the constitutionality of the form.

19. *State v. Miller*, 170 La. 51, 54, 127 So. 361, 362 (1930). Indictment was in short form, and the court said that "if any defect existed in the charge as returned and filed, that defect was cured at the request of defendant himself."

20. *State v. Ducre*, 173 La. 438, 137 So. 745 (1931).

21. *State v. Capaci*, 179 La. 462, 154 So. 419 (1934). But see *State v. Pinsonat*, 188 La. 334; 177 So. 67 (1937). However, by the express provisions of the 1944 amendment to Art. 235, La. Code of Crim. Proc. of 1928, additional allegations in the short form indictment, inserted to avoid the delays incidental to a bill of particulars, will not vitiate the indictment.

22. *State v. Brooks*, 173 La. 9, 136 So. 71 (1931). In *State v. Ezell*, 189 La. 151, 179 So. 64 (1938), the court declared that the trial judge's refusal of a bill of particulars will only be ground for reversal where there is "manifest error."

23. New Mexico Trial Court Rules, 35-4446 (became effective July 1, 1934) [N.M. Stat. Ann. (1941) § 42-641].

In New York, in the leading case of *People v. Bogdanoff*,²⁴ the indictment charged "murder in the first degree contrary to Penal Law, section 1044."²⁵ The court, although indicating a possible insufficiency in some other cases, held the indictment constitutional.²⁶ A later New York case, citing and discussing *People v. Bogdanoff*, held that so long as the form did not preclude defendant from asserting in some manner every substantial right he had, it was adequate.²⁷

In a prosecution for murder in New Mexico, which by court rule has authorized the short form,²⁸ the court cited *People v. Bogdanoff* to substantiate its statement that the short indictment with provision for a bill of particulars, gave defendant all his constitutional rights.²⁹ To the argument of defendant that the new form created confusion and did not inform the accused, the court replied, "If the short form be denominated chaos and the old archaic form law, then we prefer to divorce the law and take chaos to spouse."³⁰ Two Louisiana decisions holding the short

24. 254 N.Y. 17, 171 N.E. 890 (1930).

25. N.Y. Code of Crim. Proc. (1939) § 295-d.

26. The court said: "It is sufficient here; it might prove insufficient in any case where doubt as to its meaning could exist." There was also a vigorous dissent. *People v. Bogdanoff*, 254 N.Y. 17, 32, 171 N.E. 890, 896 (1930).

27. *People ex rel. Todak v. Hunt*, 275 N.Y. Supp. 115, 118, 153 Misc. 783 (1934). "While the court [in the *Bogdanoff* case] seems disposed to disapprove of the use of the so-called simplified indictment, if I read correctly the opinion, it holds that the essential of an indictment within the meaning of the Constitution (article 1, § 6) is simply 'that a written accusation of a crime must be presented by the grand jury before an accused may be held for trial upon a charge of felony;' that, if the indictment fills only this requirement, the court has jurisdiction, and the details of time, place, and manner of the commission of the crime may be supplied by a bill of particulars. It may be that extraneous evidence may be necessary to show which of several crimes was intended by the grand jury, but the accused should not be heard to complain that a constitutional right has been infringed by the form of an indictment if that form does not preclude the accused from asserting in some manner every substantial right he may have." The defendant in the *Bogdanoff* case made the argument that at times the accused might not choose to request a bill of particulars and that then the record would not show the specific crime for which the defendant had been indicted. The court, answering, said that that might be true, but a voluntary failure to assert a right provided by statute constitutes a weak foundation for a claim that the statute deprives the accused of a constitutional right.

28. New Mexico Trial Court Rules, 35-4446 [N.M. Stat. Ann. (1941) § 42-641].

29. *State v. Roy*, 40 N.M. 397, 413, 60 P.(2d) 646, 655 (1936): "In New Mexico we have provided a simple means of indictment and information by which, and within the Constitution, an accusation can be presented against an accused which sufficiently identifies the charge against the accused, so that his conviction or acquittal may prevent a subsequent charge for the same offense; notify the accused of the nature and character of the crime charged against him to the end he may prepare his defense; and enable the court upon conviction to pronounce judgment according to the right of the case."

30. *State v. Roy*, 40 N.M. 397, 414, 60 P.(2d) 646, 656.

form indictment constitutional were also cited with approval.³¹ Other decisions of the New Mexico Supreme Court give further judicial approval to the short form.³²

The Supreme Court of Rhode Island, which has adopted the short form indictment,³³ held it constitutional, in a prosecution for robbery.³⁴ Regarding its use in a conspiracy charge this same court stated that it could not say beyond a reasonable doubt that it was unconstitutional.³⁵

Where the short form was employed in an indictment for assault, with the added words "and threatened him," the Ohio court held the charge sufficient and the additional words mere surplusage.³⁶ In doing so the court followed Louisiana's view. In another Ohio case, where this form was used, the accused did not even question its constitutionality;³⁷ and other cases in that state discuss it with approval.³⁸

Iowa adopted the short form indictment in 1929,³⁹ and the courts of that state have found no reason to declare it unconstitutional. It was there stated that the short form, together with the provision for bill of particulars, is not subject to the criticism that the constitution has been violated.⁴⁰ In a subsequent opinion the Iowa court similarly held that short form fully protects all the rights guaranteed the accused under the constitution.⁴¹ The Iowa codal section containing the short forms has been cited with apparent approval by the court in other instances.⁴²

In one Utah decision the short form, due to the special circumstances of the case, proved inadequate.⁴³ The charge was

31. *State v. Capaci*, 179 La. 462, 154 So. 419 (1934); *State v. Engler*, 217 Iowa 138, 251 N.W. 88 (1933).

32. *State v. Puckett*, 39 N.M. 511, 50 P.(2d) 964 (1935); *State v. Bogart*, 41 N.M. 1, 62 P.(2d) 1149 (1936).

33. R.I. Gen. Laws (1938) § 3, cl. 5.

34. *State v. Domanski*, 57 R.I. 500, 190 Atl. 854 (1937). "Our decision is that the form for robbery allowed by Public Laws 1932, c. 1954, sec. 1, cl. 5, which was used in the indictment in the case at bar does not violate Article 1, sec. 10 of the Constitution of Rhode Island."

35. *State v. Smith*, 56 R.I. 168, 184 Atl. 494 (1936).

36. *Ohio v. James Meteff*, 14 O.O. 3, 6 O.Su. 312 (1938). "Said counts are sufficient in law." The short form became effective in Ohio on July 21, 1929 [Ohio Gen. Code Ann. (1939) § 13437-6].

37. *Ippolito v. State*, 37 O. App. 571, 174 N.E. 798 (1930).

38. *Ohio v. Whitemore*, 126 O.St. 381, 185 N.E. 547 (1933); *Pierpont v. Ohio*, 49 O. App. 77, 2 O.O. 240, 195 N.E. 264 (1934).

39. Became effective July 4, 1929. Iowa Code (1939) § 13732.33.

40. *State v. Henderson*, 215 Iowa 276, 243 N.W. 289 (1932).

41. *State v. Engler*, 217 Iowa 138, 251 N.W. 88 (1933).

42. *Iowa v. Solberg*, 214 Iowa 333, 242 N.W. 84 (1932); *Iowa v. Long*, 215 Iowa 494, 245 N.W. 726 (1932).

43. *State v. Spencer*, 101 Utah 274, 117 P.(2d) 455 (1941), on rehearing, 101 Utah 287, 121 P.(2d) 912 (1942).

simply perjury without stating the degree of the offense. The court in quashing the indictment said that no crime was charged, and that the forms under the statute⁴⁴ would not be sufficient unless they were modified to include the degree of the crime charged.⁴⁵ The difficulty arose out of the facts that the short form was adopted by Utah in 1935,⁴⁶ and the statute dividing perjury into degrees was not enacted until 1937.⁴⁷ Thus, it is reasonable to assume that with an amendment to the form of indictment for perjury, so as to state the degree of the offense charged, it will be upheld. The leading case in Utah, *State v. Hill*,⁴⁸ declares the short form constitutional. The court stated that the adjudications of all states having similar statutes and constitutional provisions were examined, and that in none of these was the short form held unconstitutional.⁴⁹ Furthermore, two Utah decisions, subsequent to the case first mentioned, cite and discuss the short form provisions with approval.⁵⁰ Thus the preponderance of Utah jurisprudence is clearly in favor of constitutionality.⁵¹

The courts of Michigan, still another jurisdiction having the short form, have never held it unconstitutional, nor does it appear to have even been seriously challenged.⁵² North Dakota, following the lead of the other states, enacted the short form indictment in 1939,⁵³ and Arizona adopted it by rule of court in 1940.⁵⁴ These states probably examined the jurisprudence in other states having the short form indictment very carefully and were satisfied of the constitutionality and reasonableness of this modern form of criminal pleading before they adopted it.

A number of states have statutes substantially the same as the short form, and these have been cited by the courts of the

44. Utah Rev. Stat. Ann. (1933) 105-21-47.

45. *State v. Spencer*, 101 Utah 274, 117 P.(2d) 455 (1941).

46. Utah Rev. Stat. Ann. (1933) § 105-21-47, as amended by Laws of Utah (1935) c. 118.

47. Laws of Utah (1937) c. 134.

48. 100 Utah 456, 116 P.(2d) 392 (1941).

49. *State v. Hill*, 100 Utah 456, 458, 116 P.(2d) 392, 393.

50. *State v. Avery*, 102 Utah 33, 125 P.(2d) 803 (1942); *Utah v. Robbins*, 102 Utah 126, 127 P.(2d) 1042 (1942).

51. As already noted the quashing of the short form indictment in *State v. Spencer*, 101 Utah 274, 117 P.(2d) 455 (1941), was pivoted upon a legislative enactment which came subsequent to the adoption of the short form indictment.

52. *People v. Kaplan*, 256 Mich. 37, 239 N.W. 349 (1931); *People v. Gibbons*, 260 Mich. 96, 244 N.W. 244 (1932); *People v. Ept*, 299 Mich. 324, 300 N.W. 105 (1941).

53. H.B. 301, c. 32, Laws of North Dakota of 1939.

54. Rules of Criminal Procedure, § 186 [Ariz. Rev. Code Ann. (1939) § 44-753]. Became effective April 1, 1940 [Ariz. Rev. Code Ann. (1939) § 44-2551].

various aforementioned jurisdictions in substantiating their declarations of its constitutionality.⁵⁵

In 1944 Louisiana extended the use of the short form to all indictable offenses included in the Criminal Code of 1942. Extensive jurisprudence establishes the constitutionality of the forms provided by the 1928 enactment, and there is every reason to believe, that the 1944 amendment will be similarly construed. The latter accomplishes the same purpose by the same means. The accused may get specific details by a bill of particulars just as he could under the legislation of 1928. The form may be slightly different, but the substance and purpose remain constant.

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OCCUPATIONAL DISEASE COVERAGE UNDER WORKMEN'S COMPENSATION

The theory of the workmen's compensation acts is that industry should bear the loss of workmen and their families occasioned by injuries and death occurring in the employment. At first the acts comprehended only accidental injuries. As industry became more complex there developed an active need for the inclusion of industrial diseases. When the public began to understand and accept the idea of employer liability in the field of industrial accidents the demand grew for such inclusion. The demand has been met differently by the respective jurisdictions. Compensation has been allowed by express legislation in some states, while in others the courts construe the act to comprehend occupational diseases. There are yet a considerable number of states that have made no provision for the coverage of industrial diseases.

The phrase "injury by accident" was taken from the original English Workmen's Compensation Act of 1897.¹ This was at first interpreted rigidly by the English courts to mean only traumatic injuries.² Since *Fenton v. Thorley & Company, Limited*,³ however, the term has been extended by the courts. There compensa-

55. Alabama—Ala. Code (Michie, 1940) tit. 15, § 259; Illinois—Ill. Rev. Stat. Ann. (Smith-Hurd, 1935) c. 38, § 716; New Jersey—N.J. Stat. Ann. (1939) § 2:188; Texas—Tex. Ann. Code Crim. Proc. (Vernon, 1926) art. 409; West Virginia—W.Va. Code Ann. (Michie, 1943) § 6263 et seq.; Wisconsin—Wis. Stat. (1943) § 355.21 et seq.

1. 60 & 61 Vict., c. 37, § 1 (1897).

2. *Steel v. Cammell, Laird & Co., Ltd.* [1905] 2 K.B. 232.

3. [1903] A.C. 443.