

Louisiana Law Review

Volume 15 | Number 4
June 1955

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Repository Citation

John M. Shaw, *Abatement of Actions in Louisiana*, 15 La. L. Rev. (1955)
Available at: <http://digitalcommons.law.lsu.edu/lalrev/vol15/iss4/6>

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LOUISIANA LAW REVIEW

LOUISIANA STATE UNIVERSITY LAW SCHOOL
BATON ROUGE 3, LOUISIANA

Subscription per year \$5.00 (Foreign \$5.50)

Single copy \$1.25

VOLUME XV

JUNE, 1955

NUMBER 4

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Comments

Abatement of Actions in Louisiana

At common law, all pending personal actions abated on the death of a party. If the cause of action itself survived, a new action could be commenced by or against the personal representatives of the deceased party.¹ Tort actions did not survive the death of either party.² An action did not lie for the recovery of damages for wrongful death.³ These harsh rules have now been abrogated, wholly or largely, in every common law juris-

1. Annot., 92 A.L.R. 956 (1934).

2. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 949-51 (1941). By statute, however, torts affecting personal property survived the plaintiff in favor of his administrator or executor. This was the only exception to the general rule at early common law.

3. *Higgins v. Butcher*, Yelverton 90, 80 Eng. Rep. 61 (K.B. 1606).

diction. Today all American states have adopted legislation, modeled more or less on Lord Campbell's Act,⁴ providing a right of action for wrongful death.⁵ "Survival statutes," adopted in the great majority of common law jurisdictions, now provide that the cause of action to recover for injuries suffered survives in favor of designated survivors if the injured party dies⁶ and against the personal representatives of the tortfeasor if the latter dies.⁷ Similarly, the rule as to abatement of personal actions on the death of a party has been abrogated by statute in virtually all jurisdictions. Some of these statutes provide that pending actions do not abate, and can be revived by the proper parties if "the cause of action would have survived." The majority of these legislative acts, however, contain no such express reference to survival of actions, and provide that, with certain stated exceptions, pending actions do not abate on the death of a party. These latter statutes have caused considerable difficulty, and have been interpreted in three different ways by the courts. First, some courts have construed them strictly, as being applicable only to pending actions where the cause of action survives. Second, in other jurisdictions they have been construed liberally in an effort to give effect to the legislative intent and have been held to prevent the abatement of all pending actions on the death of a party, save those included within the statutory exceptions. Third, under a similarly liberal construction, but by a somewhat different process of reasoning, other American courts have held that these statutory provisions supplement the statutes providing for the survival of causes of action, and that in rendering the pending action revivable they necessarily render the cause of action survivable.⁸

Under Roman law, the recovery of damages for wrongful death was limited to two narrow sets of circumstances.⁹ On

4. 9 & 10 Vict. c. 93 (1846). This statute only covered injuries sustained by the death.

5. Pound, *Comments on Recent Important Admiralty Cases*, 13 NACCA L.J. 162, 189 (1954).

6. *Ibid.*

7. The statutes of forty-three of the American states now provide for the survival of causes of action against deceased tortfeasors. *Cox v. Roth*, 99 Sup. Ct. 190, 192 (1955).

8. The cases on the subject are collected and analyzed in Annot., 92 A.L.R. 956 (1934).

9. Under the *actio de effusis vel dejectis*, a person occupying a house abutting on a highway was liable for the injury or death of another caused by anything thrown or poured from the house, regardless of fault. DIGEST 9.3.2. Damages could also be recovered for the wrongful or negligent killing of a slave. DIGEST 9.2.23.

the other hand, death played a much lesser role in preventing the enforcement of delictual and quasi-delictual obligations than it played under abatement of actions and survival of causes of actions at common law. Under Roman law, the right of action on all quasi-delicts,¹⁰ and on all delicts¹¹ except *injuria*,¹² on the death of the injured person devolved on his heirs. Originally, these actions could not be brought against the heirs of the wrongdoer;¹³ but this harsh result was mitigated later through the adoption of the rule that the wrongdoer's heirs were liable for his commission of a delict, to the extent that the estate had been enriched thereby.¹⁴ The full extent to which extinction of actions by the death of a party was avoided under Roman law, however, cannot be accurately gauged without taking into account the effect of the *litis contestatio*.¹⁵ Litiscontestatio worked a procedural novation of the right of action and the obligation by the action itself.¹⁶ After *litis contestatio*, the action was not extinguished by the death of the party;¹⁷ and even the *actio injuriarum*, after this stage of the proceeding had been reached, could be continued by or against the heirs of the deceased party.¹⁸

Spanish law of the eighteenth century apparently had not yet developed to the point where it permitted any recovery for wrongful death.¹⁹ The Spanish counterparts of the common

10. DIGEST 47.1.1; INSTITUTES 4.12.pr.

11. GAIUS 4.112.

12. DIGEST 47.10.13.pr.

13. GAIUS 4.112.

14. DIGEST 9.2.23.

15. During the period of the *legis actiones* the *litis contestatio* was that stage of the proceeding at which an issue was arrived at before the *praetor (in jure)*, to be tried *in judicio* by a *judex*. During the formulary period the *litis contestatio* was reached when the *praetor*, after hearing both parties, had drawn up the formula, naming the *judex*, and briefly describing the issue to be tried, and the allegations of the parties. LEAGE, ROMAN PRIVATE LAW 363 (1909); WENGER, INSTITUTES OF THE ROMAN LAW OF CIVIL PROCEDURE 175-90 (Fisk transl. 1940).

16. LEAGE, ROMAN PRIVATE LAW 375 (1909); WENGER, INSTITUTES OF THE ROMAN LAW OF CIVIL PROCEDURE 184 (Fisk transl. 1940).

17. DIGEST 50.17.139.

18. DIGEST 47.10.13.pr. The rules of the Roman law relating to delictual and quasi-delictual actions brought by the heirs of the injured person, or against the heirs of the deceased wrongdoer, and to the continued existence of the action itself after *litis contestatio*, are discussed in Voss, *The Recovery of Damages for Wrongful Death at Common Law, at Civil Law, and in Louisiana*, 6 TUL. L. REV. 201, 212-15 (1932); and Oppenheim, *The Survival of Tort Actions and the Action for Wrongful Death*, 16 TUL. L. REV. 386, 400-04 (1942).

19. In *Hubgh v. New Orleans & Carrollton R.R.*, 6 La. Ann. 495, 496, 54 Am. Dec. 565 (1851), the statement is made that Spanish law did not permit the recovery of damages for wrongful death. Nothing was found in the Spanish law of that period and earlier which indicated that this statement

law rules on abatement of actions and survival of causes of actions had developed through the broadening of the application, rather than the changing, of the basic rules of Roman law. After the death of the injured person, an action could be brought by his heirs to recover damages to his property caused by the wrongful act of the defendant.²⁰ An action to recover damages for a wrongful act could be brought against the heirs who had accepted the succession of the wrongdoer, but recovery was limited to the extent to which the heirs had profited from the wrongful act.²¹ But, as under Roman law, the full extent to which extinction of actions by the death of a party was avoided could not be seen without taking into account the effect of *litis contestatio*. Under Spanish law, no pending action was extinguished by the death of a party after *litiscontestatio*,²² which was now that stage of the proceeding when the defendant answered the plaintiff's petition.²³

Post-revolutionary French law had progressed far enough to permit the solution of all of these problems through the application of the code provisions relating to responsibility for wrongful acts, and the transmission of rights and obligations under the law of successions. The basic article on delictual and quasi-delictual responsibility provided that "every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."²⁴ Under its provisions, the heirs of a person killed through the fault of another could recover the damages which they sustained through his death.²⁵ Further, these heirs could also recover, on the death of the injured person, damages for injuries which he had received through the fault of another.²⁶ Conversely, the heirs who had accepted the

was erroneous. On the contrary LAS SIETE PARTIDAS 7.15.1, 7.15.2, 7.15.3, and 7.9.11 strongly support this position by implication. It is probable that it was not until 1889, when the Código Civil was adopted, that Spanish law permitted a recovery for wrongful death.

20. LAS SIETE PARTIDAS 7.9.11, 7.15.2.

21. *Id.* at 7.15.3.

22. *Id.* at 3.5.23, 7.15.3. See also FEBRERO, *LIBRERIA DE ESCRIBANOS*, parte II, libro III, tomo I, at 130 (1790).

23. LAS SIETE PARTIDAS 3.10.3.

24. CODE CIVIL art. 1382.

25. 6 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS*, n° 549 (2d ed. 1952); 2 SAVATIER, *TRAITÉ DE LA RESPONSABILITÉ CIVILE EN DROIT FRANÇAIS* n° 539 (2d ed. 1951); 4 ZACHARIAE, *LE DROIT CIVIL FRANÇAIS* n° 625, at 17, nn. 10, 11 (Massé et Vergé transl. 1856); *id.* n° 627, at 20.

26. 2 MAZEAUD, *TRAITÉ THEORIQUE ET PRATIQUE DE LA RESPONSABILITÉ CIVILE DELICTUELLE ET CONTRACTUELLE* nos 1900-02 (3d ed. 1939); 6 PLANIOL ET RIPERT, *TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS* n° 658 (2d ed. 1952) 2 SAVATIER, *TRAITÉ DE LA RESPONSABILITÉ CIVILE EN DROIT FRANÇAIS* n° 629 (2d ed. 1951).

succession of the wrongdoer were liable for the damages resulting from his delicts and quasi-delicts.²⁷ A system of law which recognized rights of action and obligations *ex delicto* and *quasi ex delicto* as heritable, and as being transmitted to the heirs who accepted the succession of the obligee and obligor, respectively, needed no procedural rules to prevent the extinction of a pending action by the death of a party.

Even prior to the adoption of the Code of Practice of 1825, the Supreme Court of Louisiana refused to adopt the common law rules of abatement of actions, and applied the Spanish procedural rule that a pending action is not extinguished by the death of a party after answer filed.²⁸ In the twin Codes of 1825, the redactors took every precaution to preclude subsequent jurisprudential recognition of the common law rules of survival of causes of action and abatement of actions. In these respects, French legal theory was utilized in both Codes, with Spanish procedural theory additionally being relied on in the Code of Practice. The basic substantive provision on delictual and quasi-delictual responsibility was taken verbatim from the French Civil Code.²⁹ Rights of action to enforce obligations, on the death of the obligee, were transmitted to his heirs.³⁰ This rule included rights of action to enforce obligations *ex delicto* and *quasi ex delicto*.³¹ Obligations, even those resulting from crimes,³²

27. 2 SAVATIER, TRAITÉ DE LA RESPONSABILITÉ CIVILE EN DROIT FRANÇAIS n° 632 (2d ed. 1951); 2 ZACHARIAE, LE DROIT CIVIL FRANÇAIS n° 384, at 327, n. 2 (Massé et Vergé transl. 1856).

28. Rochon v. Montreuil, 4 Mart.(o.s.) 485 (La. 1816); Lebeau v. Lafon's Executors, 1 Mart.(n.s.) 705 (La. 1823).

29. Art. 2294, LA. CIVIL CODE of 1825, now Art. 2315, LA. CIVIL CODE of 1870. The French original of this article is identical with CODE CIVIL art. 1382.

30. Art. 939, LA. CIVIL CODE of 1825, now Art. 945, LA. CIVIL CODE of 1870: "The second effect of this right [of succession] is to authorize the heir to institute all the actions, even possessory ones, which the deceased had a right to institute, and to prosecute those already commenced. For the heir, in every thing, represents the deceased, and is of full right in his place as well for his rights as his obligations." (Emphasis added.) There is no corresponding article in either the Code Civil or the so-called Louisiana Civil Code of 1808. See, to substantially the same effect as the quoted article, Arts. 22, 23, 113, LA. CODE OF PRACTICE of 1825.

31. Arts. 22, 28, LA. CODE OF PRACTICE of 1825.

32. Art. 25, LA. CODE OF PRACTICE of 1825: "Heirs or universal legatees may be sued for civil reparation of the injury caused by the crimes or misdemeanors of the deceased, whose succession they have accepted, although no action was instituted for that purpose against the deceased during his life, and although neither he nor his heirs have been benefited by such an offense."

The redactors assigned the following reasons for recommending the adoption of the proposed article: "Law 3, tit. 15, Partida 7, gives the right of action against the heirs, for the civil reparation of the crime or misdemeanor committed by the deceased, to whom they succeed, only when the action had been commenced against the deceased, or when the heirs have

could be enforced against the heirs who had accepted the succession of the obligor.³³ "Actions do not abate by the death of one of the parties after answer filed."³⁴ "If after issued joined, either the plaintiff or defendant die, it is not necessary to recommence the action; it continues between the surviving party and the heirs of the one deceased."³⁵ Implicit in the rule against abatement, of course, was the exception as to the strictly personal obligation, "when none but the obligee can enforce the performance, or when it can be enforced only against the obligor."³⁶ The first breach in these civilian rules occurred in *Hubgh v. New Orleans & Carrollton R.R.*,³⁷ where the court refused to allow the recovery of damages by the heirs of the deceased for his wrongful death, despite the fact that the pertinent code provision had been taken verbatim from the corresponding article of the *Code Civil*, which had consistently been interpreted in France as authorizing a recovery for wrongful death. In due course, the legislature overturned this decision by amending the pertinent article to provide for the survival of the right of action if the injured person died³⁸ and to allow the recovery by the designated survivors of the damages which they

profited by the crime. That provision of the law, which is yet in force, seems unjust; for, should any one kill a slave, there is no good reason why the owner of that slave should not recover the value from the heirs of the murderer, who have voluntarily accepted the succession of the deceased, and profited of his wealth, although his property was not increased by his crime. This reasoning induced us to follow the rule laid down by Domat, which gives in all cases this action against the heirs who have succeeded to the person who committed the offence. Domat, part. 1, book 1, tit. 1, sect. 10, No. 3." *Projet of the Louisiana Code of Practice of 1825*, 2 LA. LEGAL ARCHIVES 6 (1937).

33. Arts. 33, 40, LA. CODE OF PRACTICE of 1825.

34. Art. 21, LA. CODE OF PRACTICE of 1825. See also Art. 939, LA. CIVIL CODE of 1825, quoted in note 30 *supra*.

DIGEST 50.17.139; LAS SIETE PARTIDAS 3.5.23; and *Rochon v. Montreuil*, 4 Mart. (o.s.) 485 (La. 1816) are cited as the sources of article 21. *Projet of the Louisiana Code of Practice of 1825*, 2 LA. LEGAL ARCHIVES 5 (1937).

35. Art. 361, LA. CODE OF PRACTICE of 1825.

36. Art. 1992, LA. CIVIL CODE of 1825, now Art. 1997, LA. CIVIL CODE of 1870. For an express recognition of this exception, see Art. 937, LA. CIVIL CODE of 1825, now Art. 943, LA. CIVIL CODE of 1870.

37. 6 La. Ann. 495, 54 Am. Dec. 565 (1851). For excellent discussions of the far-reaching effect of the *Hubgh* case, and of the strict construction of Art. 2315, LA. CIVIL CODE of 1870, which followed in its wake, see Oppenheim, *The Survival of Tort Actions and the Action for Wrongful Death*, 16 TUL. L. REV. 386 (1942); Voss, *The Recovery of Damages for Wrongful Death at Common Law, at Civil Law, and in Louisiana*, 6 TUL. L. REV. 201 (1932).

38. La. Acts 1855, No. 223, p. 270, amending Art. 2294, LA. CIVIL CODE of 1825, by adding "the right of this action shall survive in case of death in favor of the minor children and widow of the deceased or either of them, and in default of these in favor of the surviving father and mother, or either of them, for the space of one year from the death."

sustained from the wrongful death.³⁹ Yet, in *Chivers v. Roger*,⁴⁰ where a survivor brought an action to recover for the wrongful death of his son and died after the case had been tried, the action was held to have abated on the death of the plaintiff. Under a strict construction of the amended code provision, it was held that the action was not transmitted to plaintiff's heirs, despite the rule preventing abatement by the death of a party after answer filed. A legislative reversal of this decision likewise was attempted, when in 1946 an act was adopted providing that "there are no exceptions to the rule that an action does not abate by the death of one of the parties thereto after issue joined therein."⁴¹ In *Gabriel v. United Theatres*, this legislation was swept aside by the court on the ground that it had been repealed impliedly by a subsequent amendment⁴² to article 2315 of the Civil Code—the basic article on delictual and quasi-delictual responsibility.

In *McConnell v. Webb*⁴³ the 1946 act was again considered. The original plaintiff, alleging that the defendant had charged more than the maximum rental allowed under the Federal Housing and Rent Act, sued to recover treble damages. After perfecting an appeal from an adverse judgment, the plaintiff died. His widow, in her capacity of administratrix, filed a motion to be substituted as party plaintiff-appellant. After argument before the Supreme Court, appellee moved to dismiss the appeal on the

39. La. Acts 1884, No. 71, p. 94, amending Art. 2315, LA. CIVIL CODE OF 1870—corresponding to Art. 2294, LA. CIVIL CODE OF 1825—by adding "the survivors above mentioned may also recover the damages sustained by them by the death of the parent or child, or husband or wife, as the case may be."

40. 50 La. Ann. 57, 23 So. 100 (1898). This case has been followed consistently by the courts in Louisiana. *Hardtner v. Aetna Casualty & Surety Co.*, 189 So. 365 (La. App. 1939); *Hebert v. United States*, 39 F. Supp. 267 (E.D. La. 1941); *Bounds v. T. L. James & Co.*, 124 F. Supp. 563 (W.D. La. 1954).

In the *Chivers* case, the court distinguished the earlier case of *Vincent v. Sharp*, 9 La. Ann. 463 (1854), where the plaintiff had died pending appeal from a judgment awarding him damages for injuries sustained through the fault of the defendant. The distinction employed was that in the *Sharp* case the action had been merged into a judgment which, as a property right, was transmitted on his death to his heirs. The *Sharp* case has been followed consistently. *Castelluccio v. Cloverland Dairy Products Co.*, 165 La. 606, 115 So. 796 (1927); *Williams v. Campbell*, 185 So. 683 (La. App. 1938); *Foy v. Little*, 197 So. 313 (La. App. 1939), 15 TUL. L. REV. 135 (1940).

41. La. Acts 1946, No. 239, p. 738. This statute is discussed in *Louisiana Legislation of 1946—Civil Procedure*, 7 LOUISIANA LAW REVIEW 36-38 (1946).

42. 221 La. 219, 59 So.2d 127 (1952), 13 LOUISIANA LAW REVIEW 518 (1953). The court overlooked the fact that La. Acts 1946, No. 239, p. 738, had been incorporated into LA. R.S. 13:3349 (1950), and that this later expression of legislative will should have prevailed over any 1948 legislation. La. Acts 1948, No. 333, p. 808.

43. 76 So.2d 405 (La. 1954).

ground that the district court had dismissed the original plaintiff's suit and as he died subsequently, no cause of action remained. The Supreme Court held that the action abated with the death of the party who instituted it, notwithstanding the provisions of R.S. 13:3349 that "there are no exceptions to the rule that an action does not abate by the death of one of the parties thereto after issue joined therein." In the course of its opinion, the Supreme Court recognized the fact that the 1946 act, held impliedly repealed in the *Gabriel* case, had been incorporated into R.S. 13:3349.⁴⁴ The court concluded, nevertheless, that despite the imperative language of the statute, strictly personal rights and obligations necessarily had to be excepted.⁴⁵ Having reached this conclusion, the court then proceeded to hold, by analogy to a decision⁴⁶ involving statutory damages under the Sherman Anti-Trust Act, that the treble damage provision was penal, and that the claim abated on the death of the plaintiff. Unfortunately the attention of the court was not called to certain federal decisions which probably would have changed the result. The nature of statutory damages has produced conflicting views in the federal courts,⁴⁷ which have attempted to characterize the statutory provisions as either penal or remedial. If penal, the action abates on the death of a party; if remedial, the cause of action survives. Further, in *Murfkan v. Kahn*,⁴⁸ where plaintiff died after instituting suit to recover treble damages under the Federal Housing and Rent Act, the court held the statutory provisions remedial. The action was held not to have abated, and the court permitted the administratrix of his estate to be sub-

44. Art. 21, LA. CODE OF PRACTICE of 1870, and LA. R.S. 13:3349 (1950) were both amended last year, by La. Acts 1954, No. 57, p. 119, and No. 59, p. 121, respectively. The primary purpose of these amendments was to change the rule against the abatement of the action by the death of a party after issue joined to one against abatement by the death of a party after institution of suit. The amendment to article 21, however, indirectly excludes actions to enforce strictly personal rights and obligations from the scope of the article. For a discussion of these amendatory acts, see *Survey of 1954 Legislation—Courts and Judicial Procedure*, 15 LOUISIANA LAW REVIEW 39-42 (1954).

45. Art. 21, LA. CODE OF PRACTICE of 1870, had been so construed in *Succession of Jones*, 120 La. 986, 45 So. 965 (1907); *Succession of Deshotels*, 144 La. 580, 80 So. 883 (1919); and *Succession of Coco*, 183 La. 517, 164 So. 326 (1935); cf. *Johnson v. Levy*, 118 La. 447, 43 So. 46, 9 L.R.A.(N.S.) 1020, 118 Am. St. Rep. 378, 10 Ann. Cas. 722 (1907).

46. *Caillouet v. American Sugar Refining Co.*, 250 Fed. 639 (E.D. La. 1917).

47. For instance, in *Caillouet v. American Sugar Refining Co.*, 280 Fed. 639 (E.D. La. 1917) and *Haskell v. Perkins*, 28 F.2d 222 (D.N.J. 1928), it was held that the statutory damages provision of the Sherman Anti-Trust Act was penal. In *Hicks v. Bekins Moving & Storage Co.*, 87 F.2d 583 (9th Cir. 1937), the court held this provision remedial.

48. 11 F.R.D. 520 (S.D. Fla. 1951).

stituted as plaintiff. The precise point decided, however, is of no great importance, as there are few suits for treble damages under the Housing and Rent Act pending. The feature of *McConnell v. Webb* which provides the greatest cause for concern is its language that "the common law rule to the effect that a personal action for damages for a tort expires at the death of the party who instituted it was adopted in the jurisprudence of this court many years ago and is still adhered to."⁴⁹ Actually, the common law rules of abatement of the action on the death of a party have never been followed in Louisiana; for if they had, a tort action would *always* abate on the death of a party, and the cause of action would *never* survive. What has been adopted by the Louisiana courts has been the same judicial technique which some of the common law courts have employed in the strict and narrow construction of statutes intended to abrogate common law rules of abatement. It is to be hoped that this unfortunate language in the *McConnell* case will not permit the reception of harsh procedural rules from jurisdictions which long ago repudiated them.

In its revision of the Code of Practice, the Council of the Louisiana State Law Institute has recommended changes in the present statutory rules on the subject. Its recommended article⁵⁰ provides that an action does not abate on the death of a party after institution of suit; that the only exceptions thereto are actions to enforce rights and obligations strictly personal, and those clearly provided by subsequent legislation; that when an

49. 76 So.2d 405, 407 (La. 1954).

50. Article 9 of the proposed title on civil actions, as amended by the Council of the Institute on January 15, 1954, reading as follows:

"An action does not abate on the death of a party. The only exceptions to this rule are actions to enforce rights and obligations which are strictly personal, and exceptions provided expressly, or by necessary implication, by statutes adopted hereafter.

"When an action is brought under Article 2315 of the Civil Code by the injured party, upon his death it survives in favor of a survivor designated therein, if there be one, and the latter may be substituted as party plaintiff. Otherwise, when a party to an action dies his heirs, legatees, administrator, or executor, as the case may be, may be substituted as parties."

To anticipate the possible objection that, through its incorporation into the proposed new Code of Practice the legislature did not intend to make any change in the substantive law, the Council of the Institute also recommends the adoption of a special statute, reading as follows:

"An action does not abate on the death of a party after suit has been filed. The only exceptions to this rule are actions to enforce rights and obligations which are strictly personal, and exceptions provided expressly, or by necessary implication, by statutes adopted hereafter.

"The survivors, heirs, legatees, administrator, or executor as the case may be, of the deceased party may be substituted as parties as provided by Article _____ [Civil Actions, Art. 9] of the CODE OF PRACTICE."

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.

John M. Shaw

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 criticism² 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).