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The Short Indictment

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THE SHORT INDICTMENT

Time brings about a change of conditions, whether such change is as to labor-saving machinery, some new scientific theory, or of a refutation or adoption of some legal doctrine or proposition.

The layman presented with the early common law indictment would be so lost in a maze of "thereofs, wherewiths and wherefores" that he would be unable to understand the contents of so sacred a document, for so it was regarded. This verbose instrument was defective if it failed to have a certain number of words, brevity being unknown. The one who produced the longest indictment, filled with "herewiths and therefore" was considered the best pleader of his case. If the purpose of the indictment is to serve the accused, should he be left wondering, after he has read or had read to him a document containing as much as four thousand words, why he is before the tribunal of justice?

The indictment was originally an oral and informal statement by the grand-jury, taken down by the clerk of the court from the lips of the foreman, and recorded on the court rolls. In the time of Edward I, the jury was required by statute to make its presentments in writing, and from that time the indictment acquired a set, formal structure.¹

Because of the judges favoring life in capital cases, they were quick to grasp the advantage of some technical defect and in that way discharge the accused; therefore, the form of the indictment became very important.

On account of this attitude of the courts toward indictments, pleaders in drawing allegations introduced facts which could, by any possibility be deemed essential; if they were useless they would do no harm, and if necessary, their omission would vitiate the indictment. Indictments therefore, became filled with allegations which had been introduced from the sport, the stupidity, or the abundant caution of some pleader, and were retained because there was some risk in omitting and none in retaining them.² Because of this condition, many allegations were introduced and many facts inserted in the indictment which were not needed or necessary to be put in, but were facts

¹ Beale's Criminal Pleading and Practice, p. 80.
² Beale's Criminal Pleading and Practice, p. 81.
and matters that would be and were brought in as evidence during the course of the trial.

Dean Wigmore has the following to report on the case of *People v. Hunt.* The indictment charged plaintiffs in error with the larceny of Fifty-five Dollars of good and lawful money of the United States of the value of $55, and the excuse stated in the indictment for failing to describe the property stolen is that a more particular description of the money was to the grand-jurors unknown. The uncontradicted evidence is that a more particular description of the money alleged to have been stolen was given to the grand jury by the prosecuting witness. He testified before the grand jury that there were five ten-dollar bills and a five-dollar bill. This assignment of error presents the only question which requires our consideration.

A man is charged with larceny; is he guilty? It does not matter, since that is not the issue. The real issue is, Did the grand jurors know more facts than they put down in their indictment? But did that mislead the accused? Was not the reported testimony on record in the trial so plain that he could run no risk of being charged again with the larceny of the same $55? No matter. Was not the recorded testimony so plain that the court could see whether the facts supported the judgment? The question is, Did the indicting jurors (nobody knows who or where they are now) on a certain day know a little more than they told?

Some of the early English indictments are so far-fetched and beyond the sphere of comprehension, they present to the defendant a world of words with no meaning. At least some legal training is necessary to understand what the document purports to be. The following are some of the early English indictments:

> "The Jurors for our Lady the Queen present That H. S. formerly of S in the County of E. Tailor, and W. C. of S. in the County of E. aforesaid, Weaver, on the first day of March in the fourth year of the reign of our Lady Elizabeth, of England, France and Ireland, Queen, Defender of the Faith, at C. in the Parish of S. aforesaid in the County of E. aforesaid, with force and arms in and upon one T. B. in the peace of God and peace of the Queen, took and carried away of the said H. S. the sum of Twenty pounds of good and lawful money of the United States of the value of $20."

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*6 Ill. Law Rev. 411, 96 N. E. 220 (1911).*

*(These indictments were taken from William West's Symbolegraphy.) American Bar Association Journal, article by W. Renwick Riddell, at page 683 (1927).*
of our said Lady the Queen then and there did make an assault and the said H. W. with a certain saleastrum in English called a Welsh Hook of the value of twelve pence which he the said T. B. on the right arm near the right hand then and there felonously struck, giving then and there to the said T. B. a mortal wound of the depth of two inches and the length of five inches of which certain mortal wound the said T then and there instantly died. And so the said H. W. and W. C. at S. aforesaid in the County of E. aforesaid in manner and form aforesaid, the said T. B. feloniously and of their malice aforesaid-thought did kill and murder against the peace of our Lady, now Queen, her Crown and dignity."

"The Jurors for our Lady the Queen present That T. L. formerly of W. in the County of C., Labourer, not having God before his eyes but seduced by instigation of the Devil, on the 30th day of April in the 8th year of the reign of Elizabeth Queen of England about the ninth hour of the said day at W. aforesaid by force and arms and of his malice aforethought in and upon a certain M. being then and there in the Queen’s peace did make an assault and with a certain club of the value of four-pence which then and there he held in his hands he did beat, wound and ill treat. So that the said M. from the said 30th day of April in the year aforesaid till the fifth day of May then next following languished and upon the said fifth day of May the said M. at W. aforesaid of the said beating wounding and ill treating then and there died. And so the said T. the said M. in manner aforesaid, that is to say at W. aforesaid on the day and year aforesaid feloniously and willfully did slay and murder against the peace of our said Lady the Queen, her Crown and dignity."

Both of these indictments used too many words to attain their ends. The form became so stilted that to deviate from that form meant a fatal error. Even with the passing of years, the states of America have done little to do away with such a form. An Iowa case has the following indictment:5 "The Grand Jury of the County of Sioux, and State of Iowa, in name and by the authority of the State of Iowa, accuse James A. of the crime of murder in the first degree, committed as follows: The said James A. at the County Sioux, and State of Iowa, on the 22nd

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day of Aug. 1888 A. D. feloniously, willfully, deliberately, premeditatedly and of his malice aforethought, in and upon one Charles C., then and there being, did make an assault, and that he, the said James A., then and there, with a certain deadly weapon, being a revolver, then and there charged and loaded with gunpowder and one leaden bullet, which said revolver he the said James A., in his hands then and there had and held then and there feloniously, willfully, deliberately, premeditatedly and of his malice aforethought did discharge and shoot off, to, against and upon the said Charles C., and that the said James A., with the leaden bullet aforesaid, out of the revolver aforesaid, then and there by force of the gunpowder aforesaid, by the said James A., discharged and shot off as aforesaid, then and there feloniously, willfully, deliberately, premeditatedly, and of his malice aforethought did strike, penetrate and wound him the said Charles C., in and upon the left side of the belly of him the said, Charles C., giving to him, the said Charles C., then and there, with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the revolver aforesaid by the said James A., in and upon the left side of the belly of him, the said Charles C., one mortal wound of the depth of twelve inches and of the breadth of half an inch, of which said mortal wound the said Charles C., from the 22 day of Aug. A. D. 1888 to the 23 day of Aug. A. D. 1888 aforesaid, at the town of H. in the county and state aforesaid did suffer and languish, and languishing did live. On which said 23 day of Aug. A. D. 1888 aforesaid, in the year aforesaid, in the county and state aforesaid, the said Charles C., of the said mortal wound, died. And so the jurors aforesaid upon their oaths do say that he, the said James A., him the said Charles C., in the manner and form aforesaid, feloniously, willfully, deliberately, premeditatedly and of his malice aforethought, did kill and murder contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State of Iowa.”

Comparing this indictment with the two English indictments, we find that there is very little difference. The wording of all of them could have been diminished threefold and they would yet have conveyed the same meaning, and been much more easily understood. We are all agreed as to the purpose of the indictment, i. e., that it is to acquaint the accused with the
crime with which he is charged. For example, suppose that he is charged with the crime of rape. In order to commit the crime of rape, at common law the male must be over the age of fourteen, and he must carnally know a female person, not his wife without her consent. When he is so charged in the indictment, is it necessary that the indictment acquaint the accused with his own age at the time of the act, and must it further allege that the female person was not his wife? Even though these facts should be alleged or set forth in the indictment, they in no way would aid the accused in preparing himself for his defense.

"In favor of life great strictnesses have been in all times required in points of indictments, and the truth is, that it is grown to be a blemish and inconvenience in the law, and the administration thereof; more offenders escape by the over-easy ear given to exceptions in indictments, than by their own innocence, and many times gross murders, burglaries, robberies and other heinous and crying offenses, escape by these unseemly niceties to the reproach of the law, to the shame of the government, and to the encouragement of villany, and to the dishonour of God."7

There can be no trial,8 conviction,9 or punishment for a crime without a formal and sufficient accusation. In the absence thereof, the court acquires no jurisdiction whatever,10 and if it assumes jurisdiction a trial and conviction are a nullity. But should the formal accusation be so verbose and prolix that the average man would be confused with its meaning? Such formal accusation is to put the accused on notice of the crime he is charged with, and nothing more. The indictment for murder, as found in Ontario, Canada,11 seems far more adequate than the

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6 People v. Trumbley, 252 Ill. 29, 96 N. E. 573 (1911). The court would not support a judgment of conviction because the indictment failed to set forth the accused's age and that the female person was not his wife.
11 American Bar Association Journal, "In the Supreme Court of Ontario. The Jurors for our Lord the King present that A. B. and C. D. murdered E. F. at Toronto on May 27, 1926." "The prisoners knew perfectly well what they were accused of, and if they wanted particulars . . . describing the means whereby (the) offense was committed, all they had to do was to ask for them. Nobody ever did, and it is not likely that anyone ever will, ask for such particulars."
Iowa and the English indictments; this indictment sufficiently charges the accused with the crime. To continue with the long indictments that were in vogue in the sixteenth century is a waste of time and money. Mr. W. R. Riddell says, "While we in Canada long adhered to the old traditions and followed the old forms, we recognize that we were—as we are—too busy and poor to indulge in or pay for frills, and that courts after all are business institutions to determine the rights of the people collectively or individually, and that with the least possible expenditure of time and money. Accordingly when in 1892 we undertook to systematize and codify our Criminal Law and Practice, we cut out what we thought unnecessary, including prolixity of indictments."

The necessity for the meticulous particularity of such information in the indictment and the testing of the sufficiency of such indictment by the technical rules of the common law are of such a nature that they sometimes defeat the right they are supposed to guard by making an indictment so artificial and complex that it can not be understood by the accused.

The long and verbose indictments were necessary in the early criminal cases, for the accused was to rely solely upon the indictment for all the information he was to receive concerning the crime of which he was charged. However, the accused need not rely solely on the indictment today, for he has access to the minutes of the evidence given before the grand jury which will put him on sufficient notice of the nature of the crime in all its details.

In the interpretation of a legal document, the interpreters seek to ascertain the intent with which the document was entered into. If, from the entire document, it is clear what is intended, the instrument is declared to mean just that. In the interpretation of an indictment the effort is not to find out what was intended, but to read out of the instrument the meaning which was obviously intended to be put in.

In Fleming v. State the defendant was convicted of the crime of accepting a deposit in a bank of which he was an officer, the bank being insolvent at the time. According to the indictment he received the deposit "after the bank was insolvent." This could not possibly support a conviction in the mind of the

\[22\] 62 Tex. Cr. App. 653, 139 S. W. 598 (1911).
Texas Court because to say he received it "after the bank was insolvent" is not a sufficient averment that the bank was insolvent at the time he received it.

In *State v. Gallagher* the defendant had been convicted of the crime of perjury, the indictment charging the defendant with having feloniously, "falsely testified in the district court" in that she swore she never had sexual intercourse with one C. H. at any time or place, "whereas in truth and in fact defendant knew that she had sexual intercourse with him at divers times and places." The Supreme Court of Iowa held this indictment insufficient to support the conviction because it failed to aver that she had had intercourse with C. H.

In *Marsh v. State* the defendant was convicted under a statute making it grand larceny to steal "a cow or animal of the cow kind." The evidence disclosed that the defendant stole a steer, whereupon the court declared that the defendant could not be convicted under the statute because a steer is a male and hence not "of the cow kind."

In *Keser v. Commonwealth* D. was convicted under an indictment which charged that she "did unlawfully and wilfully receive and appropriate money and other things of value from M. G., a prostitute, and from the earnings of her prostitution." This conviction was reversed because the indictment failed to aver that the unlawful receiving was "without lawful consideration."

In *State v. Harris* D., who had been convicted of stealing a pair of shoes, was able to have his conviction reversed because the proof showed he stole two shoes, both for the right foot, and hence not a pair.

In *Prichard v. People* the indictment for bigamy was held insufficient to support a conviction in spite of the proof that the defendant had committed the crime, because the indictment

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13 Iowa 378, 88 N. W. 906 (1904), Mr. Justice McClain said, "I do not believe that the interests of justice require a preservation of technical rules of pleading which relate to mere matters of form, and not of substance. . . . I cannot concur therefore, with the majority in the reversal of the case for insufficiency of the indictment."

14 3 Ala. App. 80, 57 So. 387 (1912).


16 3 Har. 559 (Del., 1841).

17 149 Ill. 50, 36 N. E. 193 (1894).
failed to charge that the first wife was living at the time of the second marriage.

In *Lemons v. State* the indictment concluded, "against the peace and dignity of the State of W. Virginia" the conviction was reversed because of this conclusion. The constitution of the state provided the form, "against the peace and dignity of the State of West (and not "W.") Virginia.

"No consideration of the modern sacrifice of justice upon the altar of formalism would be complete without mention of the famous "The" case in Missouri. In *State v. Campbell*, D was convicted on the charge of rape. He appealed, basing his appeal on the ground of the defective conclusion of the indictment—"Against the peace and dignity of State". The Supreme Court of Missouri held it to be a reversible error to omit the word "the" from the conclusion.

In all of the foregoing cases there has been a trial and conviction of the accused—Why? Because the evidence in the case has been so strong, either a preponderance of the evidence or evidence beyond a reasonable doubt, passed upon by twelve competent jurors, but still that was not sufficient to warrant the affirmance of the conviction. In all of these cases there has been a reversal of the conviction because of some slip in the indictment, which in no way misled the accused.

If we retain the same views we will be acting contrary to what Murray, C. J., said: that is, we will continue to maintain the old technical rules and frills which hamper justice instead of aiding it. If we are to administer justice we are to allow the interpreters of the indictment a wider range, and allow them to endeavor to ascertain the meaning and intent of the instrument.

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24 W. Va. 755 (1870).
26 *People v. Aro*, 6 California 207 (1856), Murray, C. J., said, "The main object (of the legislature in the adoption of the criminal code) to be obtained by them was the simplification of practice and pleading in criminal cases by removing the rubbish and unmeaning technicalities resorted to and invented by the judges in England to shield the accused against the rigor of punishment, which though sanctioned by law, was relaxed by the humanity of the bench, and which, so far from accomplishing the end proposed, was found to defeat justice, by permitting the escape of the guilty, rather than protecting the innocent."
We have seen the "indictment" situation as it existed at the early common law, and which is followed at the present time by a majority of the jurisdictions in America. The technicalities have caused reversals of convictions which otherwise would have punished the offender for the crime with which he was charged. A number of the jurisdictions are awakening to the fact, that if justice is to be done, the absurd technicalities must be put back with the "has been" law.

One of the states that has awakened "judicially" to this fact is Illinois, which is aptly pointed out by the case of People v. Graves. The indictment charged that the defendant stole "one Ford radiator, one Chevrolet radiator, and two Dodge radiators". Following the early mode of procedure, the defendant moved for a new trial and in arrest of judgment on the ground that the omission of the word "automobile" in the description made the indictment insufficient. It was held that the indictment was sufficiently certain in that "it is a common practice to designate an automobile part by its generic name in conjunction with the trade name of the car, omitting the word "automobile". . . Few, if any, persons would fail to understand the indictment."

Using this case as a basis for the comparison of the cases cited above, we are met with the bold fact that this case represents a radical change in the judicial attitude. The common law attitude toward indictments was one of extreme technicality and a bar to the administration of justice. The most technical and frivolous objections to indictments have been allowed to prevail in many jurisdictions. The famous "pair of boots" case, the "The" decision and the "W. Virginia" decision are outstanding examples of the extremes of judicial rulings in construing the sufficiency of the indictment.

Under the common law indictments the conviction of the accused could be reversed, if the indictment failed to have a formal conclusion. In a number of the states this common law conclusion was crystallized into a constitutional provision that

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162 N. E. 839 (Ill., 1928).
*State v. Harris, supra, n. 16.
*State v. Campbell, supra, n. 19.
*Lemons v. State, supra, n. 18.
every indictment shall conclude against the peace and dignity of the State.25 Indictments under a statute, in addition to the crystalized conclusion, needed to conclude with "against the form of the specific statute" to show that it is based upon a statute, or it would be held fatally defective as an indictment under the statute.26

Centuries ago when the criminal law was being made by the judges, when the protection afforded by modern constitutional guarantees did not exist, and when there was no appeal from the verdict of a jury, it was necessary that the indictment should set out the specific facts constituting the crime with the greatest particularity to prevent men from being tried and convicted for acts which were not crimes at all. Today, where the procedure so carefully safeguards the defendant, and where each crime is defined by statute and judicial decisions, there is no need for reversals on such frivolous technicalities. If cases are still to be reversed on the mechanical precedents, one may well feel that judicial perversity in the application of technicalities is incurable.

"The need of today is not so much to save offenders from punishment, as to protect society from wrongdoers; therefore it is no longer necessary to provide excuses for reversing convictions of those who are obviously guilty. The safeguarding of the innocent from wrongful conviction still remains. In the early criminal cases the defendant was forced to rely upon the indictment for all the information he was to receive relative to the charge against him, prior to the trial itself. In felony cases, he was originally not entitled to a copy of the indictment nor even permitted to read it himself, but merely to have it read to him. Under such procedure it required the utmost precision in the charge. And if a judge occasionally went further and required the indictment to include some mere evidentiary fact, it was not because this was require by good pleading, but rather because a humane impulse had been forced to crack a piece of judicial machinery which would not yield otherwise to the administration of justice in the particular case."27

25 American Law Institute, Code of Criminal Procedure, No. 1, Sec. 450.
26 McCullough v. Commonwealth, 3 Ky. 95 (1807).
27 14 Iowa Law Review 123.
The indictment need no longer be verbose and prolix for the accused is entitled to the minutes of the evidence given before the grand jury and a bill of particulars. "If the accusation is stated in the simplest possible form . . . (it) would seem to give the defendant all the information he is entitled to under the constitution, (and) all he needs for the proper preparation of his defense."\(^2\)

We have seen that the object and purpose of an indictment is to inform the defendant of the nature of the offense with which he stands charged, and for which he is to be tried. The argument for the support of the early indictment is that the defendant could look only to the indictment to ascertain what the facts are to which he is to answer. The indictment must, therefore, set forth the offense with such degree of certainty as will apprise the defendant of the nature of the particular accusation on which he is to be tried, and as will enable him to plead the indictment and judgment thereon in bar of any subsequent prosecution for the same offense. A general averment that the accused had committed a particular crime named without more specific allegations was insufficient, for no one could know what defense to make to a charge which was uncertain. The defendant would not know what evidence he might be called upon to meet, and could not properly prepare his defense. There would be no way to determine whether the facts given in evidence were the same as those of which he is accused; and an acquittal or conviction under such general accusation, could not be pleaded in bar of another prosecution, for it could not be determined whether the accusations were the same; and so a defendant might be twice punished for the same offense. It was therefore insufficient to charge in an indictment for murder merely that the defendant "did unlawfully' willfully, maliciously, and of his malice aforethought kill and murder" a certain named person, "against the peace and dignity of the commonwealth."

This was well and good in the sixteenth and seventeenth centuries, but today the defendant has a right to demand the nature and particulars of the crime with which he is charged. This right to demand the nature and cause of the accusation would be valueless unless it also included the obligation on the

part of the state to furnish information upon such demand. This right is given to the accused, irrespective of whether the nature of the case requires for a fair trial that he receive that information in writing in the particular case. He must be given specific information even though he knows all the facts and circumstances necessary to assure him a fair trial. The right to be informed of the nature of the accusation means that the charge must specify some offense. The decisions state that a formal charge specifying the offense is an absolute prerequisite to the jurisdiction of the court.\(^{29}\) It cannot be waived by the accused. The constitution provides an absolute requirement—namely, that the charge must contain sufficient matter to identify the offense. The right to be informed of the cause of the accusation means that the charge must specify the transaction which constitutes the offense. If the charge does not contain sufficient averments to identify the transaction and so enable the accused to prepare his defense as to the facts, he has the right to compel the prosecution to furnish him with such information as is desirable for that purpose. This is done by giving him the right to a bill of particulars. At common law the bill of particulars was given to the accused as a matter of grace on the part of the trial court to supplement the information contained in the indictment. The appellate courts will not review the action of the trial court in granting or refusing the bill except in cases of gross abuse of the discretion. The reason was that the indictment was considered as fully identifying both the offense and the transaction constituting the offense. Theoretically, the accused never needed any information not contained in the indictment for a fair trial.\(^{30}\)

The theory as to the objection that the charge was so indefinite (when it failed to be verbose and prolix) that the accused could not plead the record and conviction in bar of another prosecution, which was so firmly imbedded in the common law, has led to more absurd decisions than almost any other. It is chiefly responsible for the rule that the indictment must state all the ingredients of the offense. It is also responsible for those decisions which held that if one is indicted for stealing a white

\(^{29}\) *U. S. v. London*, 176 Fed. 976, "In the absence (of the indictment) the court acquires no jurisdiction whatever."

\(^{30}\) *Sherrick v. State*, 167 Ind. 345, 79 N. E. 193 (1906).
horse belonging to A and the jury finds that the horse which he stole from A was a black one, he must be released. The reason is this—if he afterwards were indicted for stealing the black horse and pleaded that he had once been convicted thereof, he could not prove his plea, because on referring to the first indictment, it would be seen that he was there charged with stealing a white horse. If the man was convicted of stealing A’s horse and served his sentence, no one would ever think of prosecuting him again for stealing the same horse, no matter whether it was called a white horse or a black one in the first indictment. This objection can be eliminated without prejudice to the essential rights of the defendant, and all such rights can be preserved by providing simply that in case of a second indictment the entire proceedings of the first trial may be examined for the purpose of knowing just what was decided. With this elimination there would go one of the reasons for saying that the indictment must contain all the ingredients of the offense. And furthermore, it is the right of the accused to resort to parol testimony to show the subject matter of the former conviction and such practice is not infrequently necessary.

It is obvious that no person can be convicted of murder in the first degree unless it be proved that he killed with deliberate premeditation. It is therefore certain that under the common law rules of pleading, and most definitions of essential elements, deliberate premeditation should be charged in any indictment for murder in the first degree, as an essential element of the offense. An indictment need not allege all the essential elements of the offense in order to be constitutional. The indictment which contains sufficient matter to enable the accused to prepare his defense, is constitutional. In the cases of Newcomb v. State, and State v. Schnell, the courts held that an indict-

32 White v. Com., 9 Bush 178 (1872). It is insufficient to charge in an indictment for murder merely that the defendant “did unlawfully, willfully, maliciously, feloniously, and of his malice aforethought kill and murder” a certain named person, “against the peace and dignity of the Com. of Ky.” Adams Express Co. v. Com., 177 Ky. 499 (1917). And with respect to stating the offense, every material fact and circumstance which serves to constitute the offense charged, must be averred and set forth in the indictment with precision and certainty. If any material fact or circumstance be omitted, the indictment will be bad.
33 24 W. Va. 767 (1884).
ment need only show the nature of the accusation. The cause may be learned by the accused elsewhere, and the proposal is to inform him of the cause by a bill of particulars. In the case of Bartell v. U. S., Day, J., said, "It is elementary that an indictment, in order to be good under the Federal Constitution and laws, shall advise the accused of the nature and cause of the accusation and prepare him for his trial and that after judgment, he may be able to plead the record and judgment in bar of further prosecution for the same offense."

The Massachusetts cases treat the bill of particulars as part of the formal charge, and the indictment and the bill of particulars together are valid if they contain sufficient matter to satisfy the constitutional requirements. Therefore, the indictment, such as is used in Ontario, and the bill of particulars, can be pleaded in bar of another prosecution; and in this manner do away with the long, verbose, early common law indictments by which the accused was not punished but his guilt was "white-washed" with technicalities.

**Present Situation in Kentucky**

The State of Kentucky is still following the old common law form of indictment, whose watchword is "verboseness". It has been repeatedly held by the Kentucky courts, that where the indictment fails to allege the particulars of the offense, such an indictment must fail. The offense of which the defendant is sought to be charged, must be stated; and every material fact and circumstance which serves to constitute the offense charged must be averred and set forth in the indictment, with precision and certainty. If any material fact or circumstance be omitted, the indictment will fail.

In Elliott v. Commonwealth the court said, "It has never been held in any case that certainty in stating the offense

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227 U. S. 427 (1913).
*In the Supreme Court of Ontario, The Jurors for our Lord the King present That A. B. and C. D. murdered E. F., at Toronto on May 27, 1926.* W. Renwick Riddell said, "The prisoners knew perfectly well what they were accused of, and if they wanted particulars ... describing the means whereby (the) offense was committed, all they had to do was to ask for them. Nobody ever did, and it is not likely that anyone ever will, ask for such particulars."
194 Ky. 576 (1922).
charged in an indictment would dispense with the necessity and required certainty in stating the particular circumstances of the offense charged; nor that certainty in stating the particular circumstances constituting the offense charged would dispense with the required certainty in stating the offense of which the defendant is accused."

In *Brooks v. Commonwealth* the court held, "The particular circumstances of suffering and permitting gaming upon the premises of the defendant are with sufficient certainty and directness stated in the indictment; but that does not supersede or dispense with the other requirements, equally imperative, that the indictment shall be direct and certain as to the offense charged."

The holding in *Brooks v. Commonwealth* is supported by the opinions in *Commonwealth v. Tobin*, *Commonwealth v. Castlemo*, *Bennett v. Commonwealth*, and *Commonwealth v. Reynolds*. "To dispense with the necessity of requiring an indictment to be direct and certain as to the offense charged, and the necessity of naming an offense, would be to dispense with a requirement of the statute which is mandatory and to dispense with a necessity to orderly and safe procedure in prosecutions for crimes and misdemeanors."

**Specific Recommendations for Kentucky**

We have seen the object and purpose of the indictment, and the advantages afforded by the short form of indictment. The query in this section is, should Kentucky adopt the short form of indictment, and are there any constitutional or statutory problems involved?

It is the opinion of this writer that the Legislature of Kentucky should pass a statute repealing or amending the present Sections 122 and 124 of the Kentucky Criminal Code, by which the short form of indictment would be adopted. Sections 122 and 124 of the Kentucky Criminal Code read as follows:

Sec. 122. Requisites of and Indictment.—The indictment must contain: The title of the prosecution, specifying the name of the court in

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40 98 Ky. 143 (1895).
41 140 Ky. 261 (1910).
42 8 Ky. L. R. 608 (1887).
43 150 Ky. 604 (1912).
44 4 Ky. L. R. 623 (1883).
which the indictment is presented, and the names of the parties; a
statement of the acts constituting the offense, in ordinary and concise
language, and in such a manner as to enable a person of common
understanding to know what is intended; and with such degree of cer-
tainty as to enable the court to pronounce judgment on conviction,
according to the right of the case.

Sec. 124. Facts concerning which it must be direct and certain.
The indictment must be direct and certain as regards:

- The party charged;
- The offense charged;
- The county in which the offense was committed;
- The particular circumstances of the offense charged if they be
  necessary to constitute a complete offense.

Subsection 4 of Section 124 would apparently lead one to be-
lieve that an indictment not in detailed form is sufficient, but
upon examining the cases\(^4\) it will be found that the courts hold
that it would be insufficient and defective.

It lies within the power of the legislature of the state to
pass an act adopting the short form of indictment, as suggested
by the American Law Institute Code of Criminal Procedure,\(^4\)
as follows:

In the (here state the name of the court) the day of..................
19.... The state (Commonwealth, People) of.................. v. A. B.

The grand jurors of the county of.................., accuse A. B. of
(here state the offense, e. g., murder, assault with intent to kill, poison-
ing an animal contrary to Section 31 of the Penal Code), and
charge that (here the particulars of the offense may be added with a
view to avoiding the necessity for a bill of particulars).

Sec. 159. The indictment may charge, and is valid and sufficient
if it charges the offense for which the accused is being prosecuted in
one or more of the following ways:

1. By using the name given to the offense by the common law or
   by a statute.
2. By stating so much of the definition of the offense, either in
terms of the common law or of the statute defining the offense or in
terms of substantially the same meaning, as is sufficient to give the
court and the accused notice of what offense is intended to be charged.

By this form of indictment, the accused will not be allowed a
reversal of a conviction on some frivolous ground, as has been
pointed out above. By adopting this short form of indictment
by means of a legislative act, the accused cannot bring in a plea
to the effect that the indictment is unconstitutional. There is no

\(^{4}\) Elliott v. Commonwealth, supra, n. 39; Brooks v. Commonwealth,
supra, n. 40; Commonwealth v. Tobin, supra, n. 41; Commonwealth v.
Castleman, supra, n. 42; Bennett v. Commonwealth, supra, n. 43; Com-
monwealth v. Reynolds, supra, n. 44.

constitutional impediment hindering its adoption, and there is no need for a constitutional amendment. Sections 11 and 12 of the Kentucky Constitution read as follows: Sec. 11, "In all criminal prosecutions the accused has the right...to demand the nature and cause of the accusation against him." Sec. 12, "No person for an indictable offense, shall be proceeded against criminally by information, except..." These are the only two sections in the Kentucky Constitution which deal with the indictment.

The Constitution does not provide that the accused must be presented with a long detailed indictment; however, it does provide that the defendant does have the right to "demand the nature and cause of the accusation against him." Therefore, if the accused should be presented with the following indictment,

"The grand jury of Fayette County, in the name and by the authority of the Commonwealth of Kentucky, finds that John Doe murdered Richard Roe in Lexington, May 1, 1930."

he could not enter a plea to quash or demur to the indictment, because of its unconstitutionality. For the constitution provides, inferentially, that if the indictment does not allege the acts constituting the offense, he can demand the nature and cause of the offense, by asking for a bill of particulars.

It may sometimes happen, from the nature of the case, that even a good indictment may fail to particularize the acts relied upon to constitute the offense charged, so as to fully and fairly put the accused upon notice as to what will be attempted to be proved against him on trial, so that he may be prepared to meet it with evidence. This may occur where the charge in the indictment is so general or indefinite as not to disclose the particular acts or transaction which would be asserted against him in the evidence as criminal. But the way of reaching the matter is not by demurrer, but by a bill of particulars.

A motion for a bill of particulars should be accompanied by the affidavit of the party making it, pointing out the particulars desired; but unless a bill of particulars is demanded, there would be no reason for requiring it.

A bill of particulars is not designed to uphold an indictment that is insufficient, but is designed to be used only where the indictment is sufficient upon demurrer, and in furtherance of justice in order to safeguard the constitutional rights of the
accused and to enable him to fully understand the crime and prepare his defense when the charge in the indictment is in general terms.

By adopting the short form of indictment, the constitutional provisions which do not provide that the indictment should contain the acts constituting the offense, will not be violated. It is submitted, therefore, that the Legislature adopt this method of procedure so that the purpose for which the indictment was intended may be carried out in a direct, simple, clear, and understandable manner with justice and fairness to both the accused and the State.

F. J. CARUSO.

"Clary v. Com., 163 Ky. 48 (1915)."
"Bailey v. Com., 130 Ky. 361 (1908)."