

# Torts--Wrongful Death--Death of Defendant-- Abatement and Revival (Hunt v. Authier, 169 P.2d 913 (Cal. 1946))

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that their comparative size on such a great scale inevitably increased the power of American, Liggett, and Reynolds to dominate all phases of their industry. As said by the court in *United States v. Swift & Co.*:<sup>24</sup> "Size carries with it an opportunity for abuse that is not to be ignored when the opportunity is proved to have been utilized in the past."

The decision in this case is another landmark in the fight to attain and maintain a truly free and competitive economy. The growth of America can be attributed to a large extent to our competitive system. The fact that "prevention" is better than "cure" is well known. It is far better to keep industry open for competition than to wait until there has been an actual case of exclusion, with resultant damage to the individual excluded as well as to the nation as a whole.

J. E. Y.

**TORTS—WRONGFUL DEATH—DEATH OF DEFENDANT—ABATEMENT AND REVIVAL.**—In December 1943, Ephrem Mounsey killed Dr. Verne Hunt by deliberately shooting him with a revolver. Mounsey thereafter took his own life. Surviving Dr. Hunt were the plaintiffs, who are his widow and three minor children. They filed a claim against Mounsey's estate for \$150,000 for "waste and destruction of their property rights," which was rejected.<sup>1</sup> This action is an appeal by the plaintiffs from the judgment dismissing their cause of action after the defendant's demurrer thereto had been sustained. *Held*, reversed, claim allowed. *Hunt v. Authier*, — Cal. —, 169 P. (2d) 913 (1946).

At common law, all actions or causes *ex delicto* died with the person by whom or to whom the wrong was done,<sup>2</sup> with the possible exception of the survival to the injured person's estate in cases of asportation of and damage to chattels, and against the tort-feasor's estate for wrongs whereby the latter was benefited.<sup>3</sup> Upon the death of the victim, Dr. Hunt, a cause of action for wrongful death arose on behalf of the widow and children under the wrongful death statute and continued to exist until the tort-feasor's death.<sup>4</sup> This action was not brought under the wrongful death statute as such action has been held to abate upon the death of the tort-feasor.<sup>5</sup> However, another section of the code provided that "any person, or the personal repre-

<sup>24</sup> 286 U. S. 106, 116, 76 L. ed. 999, 1006 (1932).

<sup>1</sup> *Hunt v. Authier*, 161 P. (2d) 487 (1945).

<sup>2</sup> *Baker v. Bolton*, 1 Camp. 493, 170 Eng. Rep. 1033 (1808).

<sup>3</sup> (1330) 4 Edw. III, c. 7; (1351) 25 Edw. III, c. 5.

<sup>4</sup> CAL. CODE CIV. PROC. § 377.

<sup>5</sup> *Clark v. Goodwin*, 170 Cal. 527, 150 Pac. 357 (1915).

sentatives of any person, may maintain an action against the executor or administrator of any testator or intestate who in his lifetime has wasted, destroyed, taken, or carried away, or converted to his own use, the *goods or chattels*, of any such person, or committed any trespass on the real estate of such person.”<sup>6</sup> During 1931, the Legislature modified the rule in this section by substituting the word, “property,” for the words, “goods and chattels.”<sup>7</sup> The majority of the court held that this change clearly indicated an intent to place no restrictions or limitations on the types of property, for the injury to which compensation may be recovered from the estate of the wrongdoer; and to make no distinction as to the method by which such destruction or injury is effected.

Under this construction, the murder of the husband by the tortfeasor who immediately committed suicide was an invasion of the property rights of the murdered man's widow and children, and is within the statute, authorizing an action against the executor and administrator of the deceased, who in his lifetime has wasted, destroyed, taken, or carried away, or converted to his use the “property” of the plaintiff.

The dissenting opinion expressed the view that the word “property” as construed in the majority opinion was wholly unwarranted and erroneous; since such construction did violence to the language of the section, to the obvious intention of the Code Commission and the Legislature in proposing and enacting this section, and to the settled rules of construction. The minority opinion also found that the intention of the Code Commission which was created by the statute,<sup>8</sup> was to prepare restatements as would best serve clearly and correctly to express the “existing” provisions of the law and not to embody any substantial changes in the existing law.

The severe common law rule on survival of causes of action in tort has been modified in almost half of the states, including New York, by statutes providing for survival of personal injury actions. The modern trend is definitely toward the view that tort causes of action and liabilities are as fairly a part of the estate of either the plaintiff or the defendant as are contract debts.<sup>9</sup> The California decision seems to be a novel method of following this modern trend.

J. P. AND R. L.

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<sup>6</sup> CAL. CODE CIV. PROC. § 1584.

<sup>7</sup> CAL. PROB. CODE § 574.

<sup>8</sup> Cal. Stats. 1929, c. 750.

<sup>9</sup> See PROSSER ON TORTS (1941) § 103.