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.: 24 "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 com-
petitive 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—ABATE-
MENT 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 destruc-
tion of their property rights," which was rejected. 1 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, 2 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. 3 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. 4 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. 5 However, another
section of the code provided that "any person, or the personal repre-

1 Hunt v. Authier, 161 P. (2d) 487 (1945).
3 (1330) 4 Edw. III, c. 7; (1351) 25 Edw. III, c. 5.
5 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 tres-
pass on the real estate of such person." 6 During 1931, the Legisl-
ature modified the rule in this section by substituting the word,
"property," for the words, "goods and chattels." 7 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 wrong-
doer; 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 tort-
feasor 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 ad-
ministrator 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 "prop-
erty" 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, 8 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. 9 The California de-
cision seems to be a novel method of following this modern trend.

J. P. AND R. L.

8 Cal. Stats. 1929, c. 750.
9 See Prosser on Torts (1941) § 103.