1914

EXTRA SESSIONS OF DISTRICT COURTS OF APPEAL

EXTRA SESSIONS OF DISTRICT COURTS OF APPEAL.

Assembly Constitutional Amendment 32 adding section 4a to article VI of constitution.

Authorizes governor to call extra sessions of district courts of appeal; requires such call when requested by chief justice of supreme court or presiding justice of district court of appeal; p vides that governor, chief justice and presiding justice shall each select one of the three judges such sessions from judges of any district court of appeal or superior court who shall serve without further compensation; provides for assignment of causes thereto, jurisdiction thereof, and termination of such sessions.

Assembly Constitutional Amendment No. 32—A resolution to propose to the people of the State of California, an amendment to the constitution amending article VI thereof, by inserting therein a new section to be known as section 4a, providing for the holding of extra sessions of the district courts of appeal, and the selection, designation and appointment of members of any court of appeal or judges of any superior court, to act pro tempore as justices of said district courts of appeal to hold such extra sessions thereof.

The legislature of the State of California, at this fortieth session, commencing on the 6th day of January, 1913, two thirds of all of the members elected to each of the houses of said legislature voting in favor thereof, hereby propose that article VI of the Constitution of the State of California be amended by adding thereto a new section, to be known as section 4a, which section shall read as follows:

PROPOSED LAW.

Section 4a. The governor of the State of California may, and at the request of the chief justice of the supreme court of the State of California shall direct that an extra session or extra sessions of the district court of appeal of any district be held, and upon the request of the presiding justice of the district court of appeal of any district, shall direct that an extra session of such court be held. Each extra session of such court of appeal of any district shall be held by three judges who may be justices of the court of appeal of other districts of the State of California, or judges of any superior court within the state, one of whom shall be selected by the governor of the State of California, another by the chief justice of the supreme court of the State of California, and the other by the presiding judge of the court of appeals of the particular district in which the extra session is, or extra sessions are to be held. Said justices and judges so selected shall be justices pro tempore of said courts of appeal for the purpose of holding such extra session or sessions of said court. More than one extra session of the court of appeal of any particular district may be held at one time; provided, that each section shall be held by three justices pro tempore consisting of justices of the district courts of appeal of other districts, or judges of the superior court, selected as hereinabove set forth. During any extra session of the district courts of appeal, the presiding justice of the district court of appeal of such district may sit during such extra session with the said justices pro tempore holding such extra session, or he may designate one of the said justices pro tempore so holding said session, to act during such extra session as presiding justice thereof; provided, however, that whenever the presiding justice of the district court of appeal of such district shall so sit during such extra session with said other justices pro tempore holding such extra session, the concurrence of the three justices pro tempore holding such session, or of two of said justices and such presiding justice of the district court of appeal of such district, shall be sufficient to pronounce a judgment of said district courts of appeal of said district in any of the appeals, actions, proceedings or matters heard by, or submitted to such extra session of said court or the justices thereof. The presiding justice of the court of appeal of the district in which any such extra session is being held or to be held shall have power to assign causes and appeals pending in said court to such extra session, for consideration and decision. Said extra session of said district court of appeal and the said justices pro tempore holding the same, shall have jurisdiction to determine all causes, appeals, proceedings and matters that shall be so assigned to them for consideration and decision during such extra session, with like force and effect as though such causes, appeals, proceedings and matters had been heard by, submitted to and determined by the duly elected, qualified and acting justices of said district court of appeal of the district in which such extra session is, or extra sessions are being held, or by such court. No justices pro tempore of the court of appeal of any district shall be qualified to participate upon the hearing of any cause in which, or in any proceeding in which he has acted as judge in any other court. No justices pro tempore of any court of appeal of any district shall receive any compensation for acting as such, other than that attached to the office which he holds at the time of his selection as such justice pro tempore, but shall be entitled to his actual expenses. Whenever any justice pro tempore of the supreme court is for any reason disqualified or unable to act in a cause pending before it, or any extr session thereof, the governor or justice by wh he has been selected shall forthwith select soi other justice of the district court of appeal or judge of the superior court to act in his place. At any time after the causes and matters which shall have been assigned to such extra session of any district court of appeal or the justices pro tempore thereof, shall have been finally determined, the supreme court of the State of California, by an order entered upon its minutes, may terminate such extra session or extra sessions.

ARGUMENT IN FAVOR OF ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 32.

The proposed amendment does not in any respect change or modify any of the existing constitutional provisions, but merely supplements those relating to the supreme court and district courts of appeal by conferring upon them such additional authority as will enable them, only, however, when the exigencies of the situation require, and then at practically no expense, to speedily dispose of pending litigation, to the incalculable benefit of the litigant.

The great length of time intervening between the commencement of an action and its final termination by the supreme court, without any fault on its part, has caused frequent complaint and brought about severe criticism of the judicial system. In many cases this delay has worked great hardship upon the parties, and ofttimes results in a miscarriage of justice. This is particularly true of the litigant whose entire substance is involved in the litigation.

As the state becomes more populous litigation increases. While the creation of additional trial judges permits this litigation to be rapidly d posed of in the lower court, it increases the b dens of the appellate courts without provic any remedy for their relief.

If this constitutional amendment is adopted a method will be devised, practically without expense to the state, by which the increased number of appeals will be rapidly taken care of and ally concluded with little delay.

The supreme court has the right, which it frequently exercises, to transfer appeals pending before it, to the district courts of appeal. If extra sessions of the district courts of appeal are held, the supreme court can transfer to such district courts of appeal much of the litigation then pending before it, so that when one or two extra sessions are held, no valid reason will exist why all pending litigation in the supreme court, not actually under submission at the time such extra sessions are held can not be readily disposed of so that at the termination of such extra sessions a case will appear for argument upon the next calendar called by it, after the filing of the transcript on appeal. When this is accomplished, no further necessity will exist for the holding of any extra session of the district courts of appeal until either court gets behind in its work.

The determination of litigation by an extra session of the court of appeal does not deprive the litigant of having such appeal finally passed upon by the supreme court, because, as we all know, the litigant is entitled to apply to the supreme court for a rehearing, which rehearing will of course be granted in the event the decision of the court of appeal is incorrect.

JAMES J. RYAN,
Assemblyman Twenty-third District.

ARGUMENT AGAINST ASSEMBLY CONSTITUTIONAL AMENDMENT NO. 32.

The reasons why Assembly Constitutional mendment No. 32 should not be adopted are iefly enumerated as follows:

First—The principal objection to this amendment is that it is not needed. Investigation of the records of the courts of appeal, for the past ten years, shows that the calendars are cleared regularly in remarkably short time, and that there is absolutely no congestion in these courts. Inquiry made of those justices of the courts of appeal who are available to the writer indicated that the justices themselves do not consider extra sessions at all necessary.

Second—The extra sessions provided for by this amendment would necessarily have to be presided over by judges called from the superior courts, which courts, at the present time in most counties, are already congested and need the attention of all their judges. Justices of courts of appeal of one district would not be called to preside in extra sessions in another district, because where congestion exists in one district now, sufficient cases are transferred to an uncongested district to relieve the situation. If there is sufficient regular business to justify any considerable number of extra sessions, a new district should be provided instead.

Third—The method provided for calling these extra sessions is unsafe and ill-advised. Any one of five officials can compel the holding of an extra session, while the supreme court, only, has power to adjourn it.

Fourth—It is questionable whether a judge of the superior court could act as such, and at the same time sit in extra session as justice of the courts of appeal. It is practically certain he could not sit in trial and also sit upon appeal in the same case, particularly in cases where motions for new trial had been denied in the lower court, and came up before the same judge for hearing on appeal. Another question would arise as to the power of the regularly elected justices of a district court of appeal to grant or deny a rehearing of a case decided in extra session, for the amendment states that the decisions of extra sessions shall have "like force and effect as though such causes * * * had been * * * determined by the duly elected * * * justices."

Fifth—This amendment would have the effect of creating further congestion in the superior courts, and would not be of material relief to the supreme court. A readjustment of the classes of cases that should properly come up on appeal in the supreme court, or in the courts of appeal, would relieve the congestion in the supreme court without creating congestion in the superior courts.

Sixth—The language of this particular amendment is very confusing in parts, particularly its reference to justices pro tempore of the "Supreme Court," when the context clearly indicates that it means "Court of Appeal," and also where the word "section" is used in one place, but evidently intended the word "session."

For the above mentioned reasons, the writer believes this amendment should be defeated.

H. STANLEY BENEDICT,
Assemblyman Sixty-third District.

MISCARRIAGE OF JUSTICE.

Senate Constitutional Amendment 12 amending section 4½ of article VI of constitution.

Omits from present section word "criminal," thereby providing that no judgment shall be set aside or new trial granted in any case, civil or criminal, for misdirection of jury or improper admission or rejection of evidence, or for any error as to any matter of pleading or procedure, unless after examination of entire cause, including the evidence, court is of opinion that error complained of resulted in miscarriage of justice.

Senate Constitutional Amendment No. 12, a resolution to propose to the people of the State of California an amendment to the constitution of said state, by amending section four and one half of article six thereof, relating to appeals.

The legislature of the State of California, at its regular session commencing on the sixth day of January, in the year one thousand nine hundred thirteen, two thirds of all the members elected to each of the two houses of said legislature voting in favor thereof, hereby proposes an amendment to the Constitution of the State of California, by amending section four and one half of article six thereof, to read as follows:

PROPOSED LAW.

Section 4½. No judgment shall be set aside, or new trial granted, in any case, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

Section 4½, article VI, proposed to be amended, now reads as follows:

EXISTING LAW.

Section 4½. No judgment shall be set aside, or new trial granted in any *criminal* case on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, after an examination of the entire cause including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

These