1914

MISCARRIAGE OF JUSTICE

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.

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ARGUMENTS IN FAVOR OF SENATE CONSTITUTIONAL AMENDMENT NO. 12.

The decisions of the supreme court of California abound with instances where verdicts of juries and judgments of the lower courts have been reversed for failure to comply with trivial and technical requirements that in no way affect the merits of the action. As a result of such reversals, which usually occur from three to five years after the commencement of the action, the courts are compelled to take up a further three or five or more years of their time in going over the same controversy, often with a practical miscarriage and denial of justice to one of the parties to the action and always to the inconvenience of other litigants. The purpose of Senate Constitutional Amendment No. 12 is to help overcome these unnecessary delays, put an end to such interminable litigation, if possible, and to change the trial of cases from a test of the craftiness, ability and skill of opposing attorneys into an honest endeavor to mete out justice as between the parties. This rule has heretofore been adopted in criminal cases and has been satisfactory. As property is less valuable than life or liberty it should be equally satisfactory in civil cases.

WILLIAM KEHOE,
State Senator First District.

Senate Constitutional Amendment No. 12 is designed to prevent the reversal of civil cases by courts of appeal on purely technical grounds.

In 1911 the writer had the privilege of introducing in the legislature an amendment to the constitution, which provided that in all *criminal* cases, no judgment should be reversed, on appeal, except when such judgment would result in a substantial miscarriage of justice. This amendment was unanimously adopted by both houses of the legislature, was overwhelmingly ratified by the people, and is now known as section 4½ of article VI of the state constitution. The present proposed amendment seeks to extend the same provision to civil cases. It, likewise, was adopted by the unanimous vote of both the senate and assembly.

The purpose of our judicial system is to try cases on their merits. Often this purpose, however, is thwarted by having decisions of the lower courts reversed because certain rules of procedure were broken. In scores of cases appellate judges have reluctantly set aside meritorious decisions on no other ground than that during a long and heated trial, counsel for the successful party committed some technical breach of legal procedure. As Professor Roscoe Pound of Harvard has said: "Our appellate courts do not try the case; they only try the record; they only decide whether all the outworn subordinate rules of the game were carefully followed."

Former President Taft, in speaking of the excessive and unnecessary delay in legal procedure, declared: "There is no subject upon which I feel so deeply as upon the necessity for reform in the administration of both civil and criminal law." As an example of such delay in California it has been shown that for all the cases reported in Vol. 145 of the California Reports, an average of 1003 days, or almost three years, elapsed between the filing of an appeal and the final judgment, while the average time for the completion of a case through all the courts was 2175 days, or almost six years. Much of this delay is occasioned by the number of cases appealed on purely technical grounds. In England, where new trials are not granted on such grounds, the court of appeals, acting for 32,000,000 people, grants only about twelve new trials per year. In contrast to this, in one county alone in the United States, with a population of less than 100,000 there were 38 appeals in one year, of which 17 were reversed for technical errors, which did not go to the merits of the case.

The adoption of the proposed amendment will clothe the appellate courts with power to review all points involved in a case—the facts as well as the law. If the decision of the lower court is found to be substantially correct, that judgment will be affirmed. The incentive for getting error into the record for the sole purpose of securing an appeal being removed, few cases will be appealed and litigants will be saved both delays and expense. It will invest the appellate courts with power to sustain a verdict rendered by a jury when such verdict is in accordance with the facts, even though it violates some archaic rule of procedure that under existing law would require a reversal of the decision.

Since 1911, when the application of this principle to criminal cases was adopted, the appellate courts have repeatedly referred to the increased power granted them to disregard errors not affecting the merits of a case, and by the extension of these powers to civil cases, the machinery of our courts will be materially simplified and substantial justice done to litigants.

A. E. BOYNTON,
State Senator Sixth District.

PLACE OF PAYMENT OF BONDS AND INTEREST.

Senate Constitutional Amendment 13 amending section 13½ of article XI of constitution.

Authorizes any county, municipality, irrigation district or other public corporation, issuing bonds under the laws of the state, to make same and interest thereon payable at any place or places within or outside of United States, and in domestic or foreign money, designated therein.

Senate Constitutional Amendment No. 13, a resolution proposing to the people of the State of California an amendment to section thirteen and one half of article eleven of the Constitution of the State of California, relating to the place of payment of bonds, and the interest thereon, of counties, cities and counties, cities, municipalities, irrigation districts, and other public corporations, and to the money in which such bonds and interest may be made payable.

The legislature of the State of California, at its regular session, commencing on the 6th day of January, in the year one thousand nine hundred and thirteen, two thirds of all the members elected to each of the two houses of said legislature voting thereon, hereby proposes to the qualified electors of the State of California that section thirteen and one half of article eleven of said constitution be amended so as to read as follows:

PROPOSED LAW.

Section 13½. Any county, city and county, city, town, municipality, irrigation district, or other public corporation, issuing bonds under the laws of the state, is hereby authorized and empowered to make said bonds and the interest thereon payable at any place or places within or outside of the United States, and in any money, domestic or foreign, designated in said bonds.

Section 13½, article XI, proposed to be amended, now reads as follows:

EXISTING LAW.

Section 13½. *Nothing in this constitution contained shall be construed as prohibiting the state* or any county, city and county, city, town, municipality, or other public corporation, issuing bonds under the laws of the state, to make said bonds payable at any place within the United States designated in said bonds.