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UNDER the California constitution, the California Supreme Court[1] and the California district courts of appeal[2] are given original jurisdiction to issue writs of mandamus.

In light of the existence of original jurisdiction over mandamus proceedings in the California appellate courts, when a writ of mandate[3] is the appropriate judicial proceeding to employ, a litigant should consider the possibilities of filing his petition in one of the California appellate courts rather than in a trial court. The advantages to be gained by so doing are obvious. First, by initiating the action in an appellate court, rather than in a trial court, the benefit of a decision of the appellate court is immediately available without the necessity of taking

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[1] The grant in CAL. CONST. art. VI, § 4 reads as follows:

> The said court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction.

In the case of Hyatt v. Allen, 54 Cal. 353 (1880), it was held that the supreme court was constitutionally invested with jurisdiction to entertain writs of mandamus as original proceedings, such jurisdiction not being limited to cases where the issuance was ancillary to or dependent upon the existence of appellate jurisdiction over the case in the supreme court. *Accord*, Board of Trustees v. State Bd. of Equalization, 1 Cal. 2d 784, 33 P.2d 1 (1934); Dufton v. Daniels, 190 Cal. 577, 213 Pac. 949 (1923), Scott v. Boyle, 164 Cal. 321, 198 Pac. 941 (1912)

[2] The grant in CAL. CONST. art. VI, § 46 reads as follows:

> The said courts shall also have power to issue writs of mandamus, certiorari, prohibition and habeas corpus, and all other writs necessary or proper to the complete exercise of their appellate jurisdiction.

In the case of In the Matter of Davidson, 167 Cal. 727, 141 Pac. 216 (1914), it was held that the grant of original jurisdiction over mandamus proceedings to the district courts of appeal was similar to the grant to the supreme court over such proceedings, and did not depend upon the existence of appellate jurisdiction over the case to which the mandamus proceeding related.

[3] Under CAL. CODE CIV. PROC. § 1084 the writ of mandamus is designated a writ of mandate. In this connection, it should be noted that while the procedure for employing the writ is contained in CAL. CODE CIV. PROC. §§ 1084-97, nothing contained within these sections relates to the jurisdiction of any particular appellate court to issue the writ. This is as it must be, however, for it is settled that the legislature cannot alter the original jurisdiction granted by the constitution to the supreme court or the district courts of appeal. Camron v. Kenfield, 57 Cal. 550 (1881) *But see* Felt v. Waughop, 193 Cal. 498, 504, 225 Pac. 862, 864 (1924), where the court conceded without deciding the issue that the mode and manner of exercising such jurisdiction was subject to regulation by the legislature.

an appeal to that court. Thus, by filing the petition for the writ of mandate as an original proceeding in an appellate court, a final authoritative decision can be more expeditiously and economically obtained than if the filing were made in the trial court and an appeal taken to the appellate court. Furthermore, the value as precedent of a ruling of an appellate court is obviously far more authoritative than a ruling of a trial court, and if future litigation raising the same legal questions is contemplated, this would be a strong factor in favor of filing the petition for the writ of mandate as an original proceeding in an appellate court. Accordingly, if a writ of mandate is to be the judicial vehicle employed, the advantages of employing it as an original proceeding in the appellate courts can readily be appreciated.

If the problem concerning such use were simply one of jurisdiction, then the answer would lie in the constitutional sections previously noted, and the inquiry would be at an end. In point of fact, however, the California appellate courts have established the practice of exercising discretion in determining whether they will assume original jurisdiction in mandamus proceedings. This practice is set out in rule 56 of the Rules on Original Proceedings in Reviewing Courts, promulgated by the California Judicial Council.[4] Thus, the real question is not one of jurisdiction, but rather one of discretion to exercise jurisdiction. Accordingly, the litigant contemplating filing an original proceeding for a writ of mandate in an appellate court must consider first whether his petition satisfies the prerequisites necessary to insure that the appellate court will exercise its discretion to take jurisdiction over the proceeding, and secondly what the effects of the exercise of such jurisdiction are.

The purpose of this article, then, is to consider the rules applicable to the use of mandamus as an original proceeding in the California appellate courts. It does not consider the use of mandamus as an extraordinary means of review in an appellate court of an order of a trial court, nor does it consider the use of mandamus in a proceeding ancil-

[4] Rule 56 provides in pertinent part as follows:

> A petition to a reviewing court for a writ of mandate . . . shall set forth the matters required by law to support the petition, and also the following: (1) If the petition might lawfully have been made to a lower court in the first instance, it shall set forth the circumstances which, in the opinion of the petitioner, render it proper that the writ should issue originally from the reviewing court. . . .

See also 25 CAL. S. BAR J. 137 (1950), where the supreme court enunciated the policy of transferring all original proceedings filed with it to the district courts of appeal, subject to the noted exceptions. The validity of the practice of the appellate courts in excercising discretion over what mandamus proceedings they will entertain was upheld in the case of Brougher v. Board of Public Works, 107 Cal. App. 15, 290 Pac. 140 (1930).

lary to another litigation.[5] Rather, it considers the use of mandamus in the appellate courts as the initial litigative proceeding between the parties involved.

Nature of Discretionary Jurisdiction

In order for a California appellate court to exercise its discretion to take jurisdiction of an original proceeding for a writ of mandate, two fundamental conditions must be satisfied. First, the proceeding must not raise factual issues, but must present solely questions of law. Secondly, the proceeding must be one involving the public interest or welfare rather than one involving strictly private rights. If both of these conditions are met, the proceeding is a prime candidate for disposition as an original action by the appellate courts. It must always be remembered, however, that California appellate courts have discretion in the exercise of jurisdiction over original proceedings in mandamus, and accordingly no hard and fast rules regulating to the manner in which discretion will be exercised can be postulated.

The condition necessitating the absence of factual issues is the easier of the two to understand and satisfy. The reason for its imposition is twofold: (1) an appellate court is not equipped to resolve factual issues raised in an original proceeding before it,[6] and (2) an appellate court cannot take the time to resolve factual questions in cases presented to it for decision.[7] Therefore, this condition is best satisfied by framing the pleadings such that the proceeding is presented to the appellate

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[5] As an example of the former, consider Purcell v. McKune, 14 Cal. 231 (1859) As an example of the latter, consider Tannahill v. Superior Court, 58 Cal. App. 623, 209 Pac. 77 (1922) While both of these cases involved filing of a petition for a writ of mandate in an appellate court, nevertheless in neither case was the mandamus proceeding the first or "original" proceeding in the litigation involved, but rather it was connected in some way with a prior litigation.

[6] Thus, in Robinson v. Moran, 3 Cal. 2d 636, 637, 45 P.2d 206 (1935), jurisdiction of an original proceeding in mandamus was refused for the following reason:

> [W]e are of the opinion that the several issues of fact presented in this proceeding may more readily be determined in the superior court wherein exist facilities for the expeditious disposition of such matters.

To the same effect is Boone v. Kingsbury, 206 Cal. 148, 179, 273 Pac. 797, 811 (1928):

> It is obvious that the pleadings in this proceeding should have been settled and the disputed questions of fact found and determined by the superior court of this state, a tribunal constituted and provided with the appropriate machinery for hearing and determining both questions of fact and law reasonably expeditiously.

See also Roma Macaroni Factory v. Giambastiani, 219 Cal. 435, 27 P.2d 371 (1933); Brougher v. Board of Public Works, 205 Cal. 426, 290 Pac. 140 (1928).

[7] Thus, in Imperial Land Co. v. Imperial Irrigation Dist., 166 Cal. 491, 492, 137 Pac. 234 (1913), jurisdiction of an original proceeding in mandamus was refused for the following reason:

> This court is asked to hear evidence and decide as to the genuineness of the 681 signatures to the election petition, a question which will necessarily require much

court by way of a demurrer to a petition for a writ of mandate. In this manner, no factual issue is presented to the court, but solely questions of law, and the petition qualifies for consideration as an original proceeding in the appellate courts.

The condition that the proceeding must involve the public welfare or interest is far more difficult to understand, and hence it is often difficult to predict when it will be satisfied. It will be helpful to review the situations in which the courts have held that the public welfare or interest was sufficiently involved in the petition presented so that jurisdiction of the original proceeding was taken.

One situation in which the appellate courts have found sufficient public interest to justify taking jurisdiction of original actions is that in which the legal question raised directly affects the rights of a great number of people in addition to those actually involved in the litigation. The rationale is that the avoidance of a multiplicity of lawsuits raising the same legal question and the necessity for a clear rule of law is of sufficient public importance to justify an appellate court in acting in an original proceeding.

Lockhart v. Wolden[8] is an example of this type of case.[9] The court supported its exercise of jurisdiction in this mandamus proceeding for the following reason:

> Any other procedure would involve a multiplicity of suits, for the question as to the right to the exemption here claimed by petitioner applies to other women veterans in California—petitioner alleges there are approximately two thousand—in the same way as to petitioner. Thus this situation appears to be of considerable public importance, and the fact that complete and final relief may be given to this group of taxpayers by the issuance of a single writ further fortifies petitioner's argument supporting the propriety of this particular proceeding.[10]

So also, in *Hollman v. Warren*,[11] the fact that the case directly affected

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more time than we have at our disposal for such matters. The cases which must be decided by this court because no other court has jurisdiction are so numerous that we are unable to take up original proceedings of which there is concurrent jurisdiction, where it is possible to present them to some other competent court.

To the same effect is Jones v. Keyes, 63 Cal. App. 649, 652, 219 Pac. 464, (1923):

> The constant pressure of other business of the court makes it inadvisable that we should encourage the bringing of such proceedings originally in this court, unless it appears that the public interest or fact of inadequacy of the remedy in the superior court justifies us in allowing an exception to the usual practice.

[8] 17 Cal. 2d 628, 111 P.2d 319 (1941).

[9] *But see* Johnson v. Reichert, 77 Cal. 34, 18 Pac. 860 (1888), in which an allegation that one hundred similar cases were pending in the office of the respondent was not sufficient to persuade the supreme court to take jurisdiction of the petition for a writ of mandate.

[10] 17 Cal. 2d 628, 633, 111 P.2d 319, 322 (1941)

[11] 32 Cal. 2d 351, 196 P.2d 562 (1948).

the city and county of San Francisco, "a populous county," was of considerable weight in the court's conclusion that the proceeding was a proper one for the exercise of original jurisdiction by the supreme court.

The rationale that the case involved directly affects many persons is not restricted to a multitude of private persons, however, for in the case of *Voorhees v. Morse*,[12] raising the question of the payment of interest on registered warrants by cities, the court noted in assuming jurisdiction that the question was of great public importance because of its applicability to all cities in the state.

Thus, the necessity of obtaining an authoritative ruling applicable to all persons, public or private, directly affected by a particular legal question is persuasive in convincing an appellate court to take jurisdiction of an original proceeding for a writ of mandate. As might be expected, it is the use of this joint rationale (the avoidance of a multiplicity of lawsuits and the necessity to have a clear rule of law) that has found most frequent application in the area under consideration.

A second situation in which the appellate courts have found sufficient public interest to justify taking jurisdiction of original actions is that involving the validity of the existence of a public agency or district, or the validity of a contract or bond issue of such a public entity. The rationale is that a question relating to the validity of a public district or a public district's bond issue is of sufficient public importance to justify an appellate court in acting in an original proceeding.

Typical of this type of case is *Fairfield-Suisun Sewer Dist. v. Hutcheon*,[13] where the court noted that:

> Original jurisdiction has frequently been exercised by the upper courts in proper cases of this nature. . . . The obvious purpose of the proceeding is to obtain a judgment establishing the validity of the district and its right to issue bonds.[14]

It should be noted that a petition for a writ of mandate filed as an original proceeding in an appellate court is the normal method employed to establish the validity of a questioned issue of public bonds. An interesting case in this general category is *May v. Board of Directors*.[15] That case was a bondholder's action to compel an irrigation district to levy assessments to pay interest on its bonds. In an interest-

[12] 1 Cal. 2d 179, 34 P.2d 153 (1934).
[13] 139 Cal. App. 2d 502, 294 P.2d 102 (1956).
[14] *Id.* at 505, 294 P.2d at 105.
[15] 34 Cal. 2d 125, 208 P.2d 661 (1949).

ing twist, the supreme court upheld jurisdiction because of the importance to the district involved of maintaining its credit in good standing!

Another situation in which the appellate courts have found sufficient public interest to justify taking jurisdiction of original actions is that involving the validity of prospective elections. The rationale is that legal questions concerning an election are of sufficient public importance to justify an appellate court in acting in an original proceeding.

The leading case supporting this basis of jurisdiction is *Perry v. Jordan*,[16] dealing with the validity of a proposed constitutional amendment, in which the court reasoned as follows:

> To preserve the full spirit of the initiative the submission of issues to the voters should not become bogged down by lengthy litigation in the courts, especially where there is a strong temptation to commence proceedings in the superior court by the opponents of a measure to delay its presentation to the electorate. The measure requires a statewide election. That the issues involved under article XXV, and consequently the proposed repeal thereof, are of vital consequence in the state is manifest. They directly affect every taxpayer of the state, which, in effect, means practically every resident of the state. . . . For all these reasons and under all these circumstances, proper public policy demands that this court entertain these proceedings.[17]

So also, in the case of *Garver v. Williams*[18] the imminence of a city charter election in the city of Oakland convinced the district court of appeal to entertain jurisdiction of a mandamus action raising the question of the validity of the election.

A final situation in which the appellate courts have found sufficient public interest to justify taking jurisdiction of original actions is that involving an emergency affecting the public welfare. Where delay in the final disposition of the litigation would be prejudicial to the public welfare because of the emergency, the appellate court has thought itself justified in acting in an original proceeding.

Illustrative of this type of case is *Lindell Co. v. Board of Permit Appeals*,[19] involving the validity of a wartime emergency building ordinance.[20] The court reasoned as follows in accepting jurisdiction:

> This court, in the exercise of its discretion, deemed the questions here involved, by reason of the existent wartime emergency, to present

[16] 34 Cal. 2d 87, 207 P.2d 47 (1949).

[17] *Id.* at 91, 207 P.2d at 49.

[18] 96 Cal. App. 118, 273 Pac. 604 (1929)

[19] 23 Cal. 2d 303, 144 P.2d 4 (1943).

[20] *But see* County of Sacramento v. Hastings, 132 Cal. App. 2d 419, 282 P.2d 100 (1955), holding that no emergency existed to justify the court in exercising its original jurisdiction, and that since the remedy by appeal from a trial court's decision was almost as speedy as the writ proceeding, appeal was an adequate proceeding to get the case before the appellate court.

> matters of such public importance as to warrant the assumption of original jurisdiction in issuing the alternative writ, and thus obviate any delay in the final disposition of this proceeding.[21]

As a final consideration on the subject of discretion to exercise jurisdiction over mandamus proceedings, a litigant should be aware that the exercise of discretion by an appellate court in assuming jurisdiction over an original mandamus proceeding is not a binding election on the court. Thus, if circumstances change after the granting of jurisdiction such that the appellate court considers that the basis for the exercise of jurisdiction no longer exists, it is appropriate for the court to refuse to retain jurisdiction and dismiss the proceeding. For example, in *Noble v. Provident Irrigation Dist.*,[22] the court dismissed a mandamus proceeding of which it had previously taken jurisdiction for the following reason:

> Jurisdiction was taken of this cause without requiring previous action in the superior court, on the representation that an emergency was presented relative to a rice crop growing upon the lands and premises at the date of the filing of the petition.
>
> By reason of the time which has elapsed between the filing of the first petition and the filing and hearing of the amended petition herein, the urgency, if any, has ceased to exist, and the reasons for this court assuming practically the position of a trial court having ceased to exist, it is evident that the questions involved in this action should be first heard and determined in the superior court of the proper county where the facts may be readily ascertained, adjudication had, and also that an accounting may be had, if an accounting becomes proper and necessary.[23]

In brief form, then, the above four criteria are those which the California appellate courts have formulated in determining whether a mandamus proceeding sufficiently affected the public interest to warrant them taking jurisdiction. It may be pointed out that the four noted criteria are not mutually exclusive, and that more often than not two or more of them will be present in one proceeding. Thus, while litigation concerning a bond election falls into the second category, there is also present the last factor of prejudice caused by a delay in resolving the issue, such as delay in completing the public facility to be constructed, increased construction costs, etc. So also, while litigation concerning a prospective election falls into the third category, there is also present the first factor in that the interests of many people are directly concerned.

It should be obvious, then, that the more criteria a litigant can satisfy

[21] 23 Cal. 2d 303, 310, 144 P.2d 4, 8 (1943)
[22] 10 Cal. App. 2d 284, 51 P.2d 896 (1935)
[23] *Id.* at 285-86, 51 P.2d at 896.

in framing his petition for a writ of mandate, the more appealing is his claim for the exercise of original jurisdiction by an appellate court; for a litigant must convince the appellate court to exercise its discretion to take jurisdiction of the proceeding and be the first court to decide the case. If the petitioner does not meet this burden, then even though a writ of mandate is the appropriate judicial proceeding, nevertheless the petition will not be considered in an original proceeding in the appellate courts.

Effect of Discretionary Jurisdiction

There are certain effects that should be considered by a litigant before finally deciding to seek to invoke the discretionary jurisdiction of a California appellate court over an original proceeding in mandamus. These effects spring from the fact that in exercising original jurisdiction over mandamus proceedings, the supreme court, the district courts of appeal and the superior courts[24] act as equal and co-ordinate courts with concurrent jurisdiction. Thus, all three courts in the pyramid of the California court structure stand on the same constitutional footing when exercising original jurisdiction over mandamus proceedings.[25] Through an understanding of the effects of this concurrent jurisdiction, an understanding of the effects of the discretionary jurisdiction of the California appellate courts over original proceedings in mandamus can be achieved.

The first significant effect of discretionary jurisdiction over original mandamus proceedings in the triple-tiered California court structure relates to res judicata. Once jurisdiction is taken over a mandamus proceeding by a particular court, then irrespective of what court or what tier is involved, that court is the only court that has or can have original jurisdiction over the proceeding. Hence, if a petition for a writ of mandate has been filed in a court which has taken jurisdiction, a second proceeding seeking the same relief cannot be prosecuted in another court of concurrent jurisdiction.[26]

[24] California constitution article VI, § 5, grants to the California superior courts jurisdiction over mandamus proceedings.

[25] See Santa Cruz Gap Turnpike Co. v. Board of Supervisors, 62 Cal. 40, 41 (1882): "In issuing writs of mandamus, certiorari, and prohibition, the Supreme Court and the several Superior Courts are peers." See also Goytino v. McAleer, 4 Cal. App. 655, 659, 88 Pac. 991, 992 (1906). "This court and the superior court have concurrent jurisdiction in proceedings in mandamus"; Loveland v. City of Oakland, 69 Cal. App. 2d 399, 405, 159 P.2d 70, 74 (1945) "Yet all three courts in original proceedings have coordinate and concurrent jurisdiction."

[26] People v. County of Tulare, 45 Cal. 2d 317, 289 P.2d 11 (1955); Goytino v. McAleer, 4 Cal. App. 655, 88 Pac. 991 (1906) For an exceedingly rare exception to this rule, see Perry

A fortiori, of course, if the court that has taken jurisdiction of the proceeding has denied the petition on the merits, a second proceeding seeking the same relief cannot be prosecuted in another court of concurrent jurisdiction. The conclusive effect over a mandamus proceeding *qua original proceeding* of the acceptance of jurisdiction by one court was perhaps best discussed in the case of *Cohn v. Isensee*,[27] where a mandamus proceeding was dismissed for the following reason:

> This court and the superior court have coordinate or concurrent jurisdiction to grant an original application for mandate. When a court of competition jurisdiction has adjudicated directly upon a particular matter, the same point is not open to inquiry in a subsequent action for the same cause and between the same parties. The doctrine of estoppel by judgment does not rest upon any superior authority of the court rendering the judgment. Indeed, in the issuance of writs of *mandamus*, this court and the superior court are peers. Unless reversed on appeal, the judgment of the superior court, when final, is a conclusive determination of the rights of the respective parties to the proceeding. It is an adjudication by a competent tribunal. And it is an adjudication by *a* competent tribunal, and not an adjudication by *every* competent tribunal, to which the petitioner for a writ of mandate is entitled. It does not accord with the orderly administration of the law to allow an application for *mandamus* to be made to the superior court, and, failing there, to this court, and, mayhap, to the supreme court, should the petitioner fail here.
>
> Having elected to submit the issue to the superior court petitioners must abide by the judgment of that tribunal unless and until it be reversed on appeal. The superior court having adjudicated the merits of the application, that adjudication is as conclusive upon this court, except on appeal, as upon another superior court.[28]

Of course, even though election is binding on the proceeding as an *original proceeding*, nevertheless there still does exist appellate jurisdiction to review the decision rendered in the original proceeding.[29] But

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v. Jordan, 34 Cal. 2d 87, 207 P.2d 47 (1949), where the circumstances involved were held sufficient to reject the plea in abatement and to permit the taking of jurisdiction of the proceeding. Of course, if an appellate court declines to take jurisdiction of a petition for a writ of mandate, then the petition will be dismissed without prejudice to filing it de novo in another court of concurrent jurisdiction. See, e. g., Imperial Land Co. v. Imperial Irr. Dist., 166 Cal. 491, 137 Pac. 234 (1913). So also, if a trial court refuses to grant a petition for a writ of mandate without passing on the merits of the petition, then the petition can be filed as an original proceeding in another court of concurrent jurisdiction. *In re* Board of Trustees of El Cerrito, 70 Cal. App. 61, 232 Pac. 720 (1924).

[27] 45 Cal. App. 509, 188 Pac. 278 (1920).

[28] *Id.* at 510, 188 Pac. at 279.

[29] In Palache v. Hunt, 64 Cal. 473, 2 Pac. 245 (1884), it was held that the supreme court had appellate jurisdiction over mandamus proceedings. In Timmons v. Joplin, 157 Cal. 15, 106 Pac. 228 (1909), it was held that the district courts of appeal had appellate jurisdiction over mandamus proceedings.

so far as original jurisdiction is concerned, a petition for a writ of mandate is a one-shot proceeding once jurisdiction over the proceeding has been assumed by any court.

Accordingly, as one important effect of the discretionary jurisdiction of California appellate courts over original proceedings in mandamus, the litigant considering filing a petition for mandamus must be aware of the binding effect of his election of court in which the petition is filed, and of the fact that once jurisdiction is accepted, there cannot be a hearing de novo in another court of concurrent jurisdiction over the same proceeding.

The second significant effect of discretionary jurisdiction over mandamus proceedings in the triple-tiered California court structure relates to territorial limitations. This effect is a simple one and need be only briefly considered. While it has been held that a write of mandate issued by any California court may extend throughout the State, and thus that a court taking jurisdiction of an original proceeding in mandamus is not limited to its territorial jurisdiction,[30] nevertheless the courts have made it a general practice, based upon the principles of comity, to limit the exercise of jurisdiction to those proceedings arising within their territorial jurisdiction.[31]

Accordingly, as a second important effect of the discretion of California appellate courts over original proceedings in mandamus, the litigant considering filing a petition for mandamus must be aware of the necessity of selecting a court within the proper territorial limits.

Conclusion

In sum, then, the foregoing are the principles relating to the nature and effect of the discretionary jurisdiction of California appellate courts over original proceedings in mandamus. In order for a mandamus proceeding to qualify for consideration as an original proceeding in the appellate courts, the cardinal point to remember is that the proceeding must directly affect the public interest and must not raise factual issues. If these conditions are satisfied, and if the effects of res judicata and territorial limitations have been considered, then a litigant is well advised to file his petition for a writ of mandate in the appellate courts;

[30] Kings County v. Johnson, 104 Cal. 198, 37 Pac. 870 (1894)

[31] See Older v. Superior Court, 10 Cal. App. 564, 567, 102 Pac. 829, 831 (1909).

> The constitution (section 4, article VI) confers upon the district courts of appeal jurisdiction of issuing writs of mandate, and does not confine the issuance of such writs by such courts within their territorial jurisdiction. But, as a matter of comity, as we have declared, such writs should invariably be applied for the court of the district in which the cause for the writ arises, unless there are shown, as there are here, special circumstances which justify the issuance of the writ by a court of another district.

for the advantages to be gained are tremendous if discretion to accept jurisdiction of the petition as an original proceeding is exercised.

Of course, if jurisdiction is refused, then the litigant has incurred a loss in time and money for no compensating gain.[32] The intelligent litigant, however, will know whether his petition satisfies the conditions discussed above, and will seek an appellate court decision in an original mandamus proceeding only when the conditions are satisfied. In a case in which they are satisfied, therefore, but only in such a case, a litigant makes an intelligent decision in seeking the exercise of original jurisdiction over his mandamus proceeding by a California appellate court.

[32] Time and money may not be the only items lost when an appellate court refuses to take jurisdiction of an original mandamus proceeding. Consider Boone v. Kingsbury, 206 Cal. 148, 179, 273 Pac. 797. 811 (1928), where the litigant also suffered a loss of patience by the supreme court:

> That neither time nor labor have been conserved by permitting any of the petitioners herein to come into this court in the first instance is forcefully illustrated by the elaborate and laborious statement which the many issues and cross-contentions raised by adversary claimants and numerous *amici curiae* have made necessary.