

1918

APPELLATE COURT DIVISIONS

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The State of California, in its corporate capacity, may take, by grant, gift, devise, or bequest, any property for the use of the university, and hold the same and apply the funds arising therefrom, through the regents of the university, to the support of the university, as provided in article nine, section [four,] of the constitution;

"7. The regents of the university, in their corporate capacity, may take, by grant, gift, devise, or bequest, any property for the use of the university, or of any college thereof, or of any professorship, chair, or scholarship therein, or for the library, an observatory, workshops, gardens, greenhouses, apparatus, a students' loan fund, or any other purpose appropriate to the university; and such property shall be taken, received, held, managed, and invested, and the proceeds thereof used, bestowed, and applied by the said regents for the purposes, provisions, and conditions prescribed by the respective grant, gift, devise, or bequest;

"8. The regents of the university may invest any of the permanent funds of the university, which are now or hereafter may be in their custody, in productive, unincumbered real estate in this state, subject to the power of the legislature to control or change such investments, excepting such as, by the terms of their acquisition, must be otherwise invested."

Other provisions as to title, management, and disposition of property occur in subdivisions 2 and 5 of section 1432, Political Code, and read as follows: (Provisions proposed to be repealed by Senate Constitutional Amendment No. 20 are printed in italics and included in brackets.)

"Sec. 1432. The powers and duties of the board of regents are as follows:

2. To control and manage the university and its property;

5. To receive, in the name [of the state, or] of the board of regents, [as the case may be,] all property donated to the university;"

ARGUMENT IN FAVOR OF SENATE CONSTITUTIONAL AMENDMENT NO. 20.

Senate Constitutional Amendment No. 20 was proposed by the legislature at the request of the president of the University of California and the regents. It was adopted by the legislature without a dissenting vote. It makes no change in the status of the university or of the regents, faculty or student body, either as to the legislature or the public, or as between themselves. It does not affect the control or management of

the funds of the university or the responsibility of the regents thereon.

It has two purposes: (a) To permit of the adaptation of the details of the internal organization of the university to meet modern-day requirements; (b) to give to the alumni of the university direct representation on the governing body of the university.

As to purpose (a), the constitution now provides that the form of organization and government of the university must be as prescribed by the organic act of 1868 creating the university. The organic act, in turn, prescribes in great detail the internal organization of the university. Many of these details have been outgrown or become obsolete. Under the constitution as it reads at present no change in these details is possible. The internal organization and government of the university is inflexible, not merely in its large features but in much of its detail. Both the regents and faculty have at times been much embarrassed and hampered by this. The proposed amendment will do away with this inflexibility and permit the molding of the detail of the organization of the university to meet its needs as they arise.

As to purpose (b), the amendment will make the president of the Alumni Association of the university a regent by virtue of his office. This will be a formal recognition of the alumni in the governing of the university. It is a recognition which should be made. The alumni on the one hand are of the people of the state and know what is required of the university by the people. On the other hand, they, above all others, know its true character, its needs, its failings, its strength, and, in addition, have an affectionate interest in it. It is to the benefit of both the people and the university that they should have a direct voice in its management.

Other than the changes mentioned, the amendment makes no change whatever in the governing law of the university under which it has been conducted and administered. It was thought well to prescribe in the amendment the method of appointing the regents and their terms of office in order to avoid any question of conflict between the Political Code and the organic act, but the method of appointment and the terms of office prescribed are the same as at present and are those followed ever since the adoption of the Political Code in the early seventies.

A. H. BREX,
State Senator Fifteenth District.
EUGENE J. GARRETT,
State Senator Thirty-fifth District.

APPELLATE COURT DIVISIONS. Senate Constitutional Amendment 45. Amends Section 4 Article VI of Constitution. Divides first and second district courts of appeal each into two divisions of three justices each, present officers and terms of justices unaffected, such justices constituting division one of their respective districts, governor appointing three justices for each division two thereof to serve until successors are elected; requires two justices present to transact business and two to concur in judgment; whenever judge of supreme or appellate court can not act therein authorizes remaining justices thereof to select appellate or superior judge to act pro tempore.

YES
NO

Senate Constitutional Amendment No. 45—A resolution proposing to the people of the State of California an amendment to section four of article six of the constitution of the State of California, relating to the supreme court and district courts of appeal, and providing for two divisions of the district courts of appeal of the first and second appellate districts.

The legislature of the State of California, at its regular session commencing on the eighth day of January, 1917, two-thirds of the members elected to each of the two houses of said legislature voting in favor thereof, hereby proposed an amendment to the constitution of the State of California amending section four of article six thereof as to read as follows:

PROPOSED AMENDMENT.

(Proposed changes in provisions are printed in black-faced type.)

Sec. 4. The supreme court shall have appellate jurisdiction on appeal from the superior courts in all cases in equity, except such as are in justices' courts; also, in all cases at law which involve the title or possession of real estate, the legality of any tax, impost, assessment, rate or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to two thousand dollars; also, in all such probate matters as may be provided by law; also, on questions of law, and in all criminal cases where judgment of death has been rendered; the said court shall also have appellate jurisdiction in all cases, matters and proceedings pending before a district court of

appeal, which shall be heard by the supreme court to be transferred itself for hearing and decision, as hereinafter provided. The supreme 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. Each of the justices shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the supreme court, or before any district court of appeal, or before any judge thereof, or before any superior court in the state, or before any judge thereof.

The state is hereby divided into three appellate districts, in each of which there shall be a district court of appeal.

The courts of appeal for the first and second appellate districts shall each consist of two divisions of three justices each.

The court of the third appellate district shall consist of three justices.

The district courts of appeal as existing immediately prior to the general election of the year one thousand nine hundred eighteen shall not be affected as to the officers or terms of office of the justices thereof by the amendment of this section at that election; and the justices of the district courts of appeal of districts of the first and second districts at the time of said general election shall constitute division one of each of said districts respectively. Each of such divisions shall constitute and shall exercise all of the powers of a district court of appeal.

The first district shall embrace the following counties: San Francisco, Marin, Contra Costa, Alameda, San Mateo, Santa Clara, Fresno, Santa Cruz, Monterey and San Benito.

The second district shall embrace the following counties: Tulare, Kings, San Luis Obispo, Kern, Inyo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside, San Diego and Imperial.

The third district shall embrace the following counties: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, Placer, Solano, Sacramento, El Dorado, San Joaquin, Amador, Calaveras, Stanislaus, Mariposa, Madera, Merced, Tuolumne, Alpine and Mono.

The supreme court, by orders entered in its minutes, may from time to time remove one or more counties from one appellate district to another, but no county not contiguous to another county of a district shall be added to such district.

Said district courts of appeal shall hold their regular sessions respectively at San Francisco, Los Angeles and Sacramento, and they shall always be open for the transaction of business.

The district courts of appeal shall have appellate jurisdiction on appeal from the superior courts in all cases at law in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars, and does not amount to two thousand dollars; also, in all cases of forcible and unlawful entry and detainer (except such as arise in justices' courts), in proceedings in insolvency, and in actions to prevent or abate a nuisance; in proceedings of mandamus, certiorari and prohibition, usurpation of office, contesting elections and eminent domain, and in such other special proceedings as may be provided by law (excepting cases in which appellate jurisdiction is given to the supreme court); also, on questions of law alone, in all criminal cases prosecuted by indictment or information in a court of record, excepting criminal cases where judgment of death has been rendered. The said courts shall also have appellate jurisdiction in all cases, matters, and proceedings pending before the supreme court which shall be ordered by the supreme court to be transferred to a district court of appeal for hearing and decision. The said courts shall

also have power to issue writs of habeas corpus, certiorari, prohibition, and mandamus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the justices thereof shall have power to issue writs of habeas corpus to any part of his appellate district upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the district court of appeal of his district, or before any superior court within his district, or before any judge thereof.

The supreme court shall have power to order any cause pending before the supreme court to be heard and determined by a district court of appeal, and to order any cause pending before a district court of appeal to be heard and determined by the supreme court. The order last mentioned may be made before judgment has been pronounced by a district court of appeal, or within thirty days after such judgment shall have become final therein. The judgments of the district courts of appeal shall become final therein upon the expiration of thirty days after the same shall have been pronounced.

The supreme court shall have power to order causes pending before a district court of appeal for one district to be transferred to the district court of appeal of another district, or from one division thereof to another, for hearing and decision.

The justices of the district courts of appeal shall be elected by the qualified electors within their respective districts at the general state elections; and the term of office of said justices shall be twelve years from and after the first day of January next succeeding their election.

Upon the adoption by the people of this section by amendment at the general election of the year one thousand nine hundred eighteen, the governor shall appoint six persons to serve as justices of the district courts of appeal—three as justices of division two of the first appellate district, and three as justices of division two of the second appellate district—from and after their qualification and until the next general election and qualification of their successors. The justices of divisions two of the first and second appellate districts elected as above provided, shall so classify themselves by lot that one of them shall go out of office at the end of four years, one of them at the end of eight years, and one of them at the end of twelve years, and entry of such classification shall be made in the minutes of said division, signed by the three justices thereof, and a duplicate thereof filed in the office of the secretary of state.

If any vacancy occur in the office of a justice of the district courts of appeal, the governor shall appoint a person to hold office until the election and qualification of a justice to fill the vacancy. Such election shall take place at the next succeeding general state election, as aforesaid; the justice then elected shall hold office for the unexpired term; provided, that whenever the term of office of the justice whose place is filled by appointment is fixed by law to expire on the first Monday of January after the next succeeding general election, then the person so appointed to fill the vacancy shall hold office for the remainder of such unexpired term.

One of the justices of each of the district courts of appeal, and of each division of said courts, shall be the presiding justice thereof, and as such shall be appointed or elected, as the case may be.

The presence of two justices shall be necessary for the transaction of any business by such court except such as may be done at chambers, and the concurrence of two justices shall be necessary to pronounce a judgment.

Whenever any justice of the supreme court is for any reason disqualified or unable to act in a cause pending before it, the remaining justices may select one of the justices of a district court of appeal or a judge of the

... court to act pro tempore in the place of the justice so disqualified or unable to act. Whenever any justice of a district court of appeal or any division thereof, is for any reason disqualified or unable to act in any cause pending before it, the other justices of said court or division may appoint a justice of a district court of appeal of another district or division, or a judge of the superior court who has not acted in the cause in a court below, to act pro tempore in the place of the justice so disqualified or unable to act.

No appeal taken to the supreme court or to a district court of appeal shall be dismissed for the reason only that the same was not taken to the proper court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein as if regularly appealed thereto.

All statutes now in force allowing, providing for or regulating appeals to the supreme court shall apply to appeals to the district courts of appeal so far as such statutes are not inconsistent with this article and until the legislature shall otherwise provide.

The supreme court shall make and adopt rules not inconsistent with law for the government of the supreme court and of the district courts of appeal and of the officers thereof, and for regulating the practice in said courts, and for the distribution of causes between the divisions of said court.

Section four, article six, proposed to be amended, now reads as follows.

EXISTING PROVISIONS.

(Provisions proposed to be repealed are printed in italics.)

Sec. 4. The supreme court shall have appellate jurisdiction on appeal from the superior courts in all cases in equity, except such as arise in justices' courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to two thousand dollars; also, in all such probate matters as may be provided by law; also, on questions of law alone, in all criminal cases where judgment of death has been rendered; the said court shall also have appellate jurisdiction in all cases, matters, and proceedings pending before a district court of appeal, which shall be ordered by the supreme court to be transferred to itself for hearing and decision, as hereinafter provided. 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. Each of the justices shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the supreme court, or before any district court of appeal, or before any judge thereof, or before any superior court in the state, or before any judge thereof.

The state is hereby divided into three appellate districts, in each of which there shall be a district court of appeal consisting of three justices. The first district shall embrace the following counties: San Francisco, Marin, Contra Costa, Alameda, San Mateo, Santa Clara, Fresno, Santa Cruz, Monterey, and San Benito.

The second district shall embrace the following counties: Tulare, Kings, San Luis Obispo, Kern, Inyo, Santa Barbara, Ventura, Los Angeles, San Bernardino, Orange, Riverside and San Diego.

The third district shall embrace the following counties: Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, El Dorado, Solano, Sacramento, El Dorado, San Joaquin, Amador, Calaveras, Stanislaus, Mar-

iposa, Madera, Merced, Tuolumne, Alpine and Mono.

The supreme court, by orders entered in its minutes, may from time to time remove one or more counties from one appellate district to another, but no county not contiguous to another county of a district shall be added to such district.

Said district courts of appeal shall hold their regular sessions respectively at San Francisco, Los Angeles, and Sacramento, and they shall always be open for the transaction of business.

The district courts of appeal shall have appellate jurisdiction on appeal from the superior courts in all cases at law in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars, and does not amount to two thousand dollars; also, in all cases of forcible and unlawful entry and detainer (except such as arise in justices' courts), in proceedings in insolvency, and in actions to prevent or abate a nuisance; in proceedings of mandamus, certiorari, and prohibition, usurpation of office, contesting elections and eminent domain, and in such other special proceedings as may be provided by law (excepting cases in which appellate jurisdiction is given to the supreme court); also, on questions of law alone, in all criminal cases prosecuted by indictment or information in a court of record, excepting criminal cases where judgment of death has been rendered. The said courts shall also have appellate jurisdiction in all cases, matters, and proceedings pending before the supreme court which shall be ordered by the supreme court to be transferred to a district court of appeal for hearing and decision. 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. Each of the justices thereof shall have power to issue writs of habeas corpus to any part of his appellate district upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or the district court of appeal of his district, or before any superior court within his district, or before any judge thereof.

The supreme court shall have power to order any cause pending before the supreme court to be heard and determined by a district court of appeal, and to order any cause pending before a district court of appeal to be heard and determined by the supreme court. The order last mentioned may be made before judgment has been pronounced by a district court of appeal, or within thirty days after such judgment shall have become final therein. The judgments of the district courts of appeal shall become final therein upon the expiration of thirty days after the same shall have been pronounced.

The supreme court shall have power to order causes pending before a district court of appeal for one district to be transferred to the district court of appeal of another district for hearing and decision.

The justices of the district courts of appeal shall be elected by the qualified electors within their respective districts at the general state elections at the times and places at which justices of the supreme court are elected. Their terms of office and salaries shall be the same as those of justices of the supreme court, and their salaries shall be paid by the state. Upon the ratification by the people of this amendment the governor shall appoint nine persons to serve as justices of the district courts of appeal until the first Monday after the first day of January in the year 1907; provided, that not more than six of said persons shall be members of the same political party. At the election in the year 1906 nine of such justices shall be elected as above provided, and the justices of each district court of appeal shall so classify themselves by lot that one of them shall go out of office at the end of four years, one of them at the end of eight years, and one of them at the end of twelve years; an entry of such classification shall be made in the minutes of the court, signed

...the three justices...
 ...the office of the...
 ...any vacancy...
 ...the district courts of Appeal...
 ...shall appoint a person to hold office...
 ...the election and qualification of a justice...
 ...to fill the vacancy; such election shall take place...
 ...at the next succeeding general state election...
 ...the justice then elected shall hold office...
 ...for the unexpired term.

One of the justices of each of the district courts of appeal shall be the presiding justice thereof, and as such shall be appointed or elected of the court. The presence of three justices shall be necessary for the transaction of any business by such court, except such as may be done at chambers, and the concurrence of three justices shall be necessary to pronounce judgment.

Whenever any justice of the supreme court is for any reason disqualified or unable to act in a cause pending before it, the remaining justices may select one of the justices of the district court of appeal to act pro tempore in the place of the justice so disqualified or unable to act.

Whenever any justice of a district court of appeal is for any reason disqualified or unable to act in any cause pending before it, the supreme court may appoint a justice of the district court of appeal of another district, or a judge of a superior court who has not acted in the cause in the court below, to act pro tempore in the place of the justice so disqualified or unable to act.

No appeal taken to the supreme court or to a district court of appeal shall be dismissed for the reason only that the same was not taken to the proper court, but the cause shall be transferred to the proper court upon such terms as to costs or otherwise as may be just, and shall be proceeded with therein as if regularly appealed thereto.

All statutes now in force allowing, providing for, or regulating appeals to the supreme court shall apply to appeals to the district courts of appeal so far as such statutes are not inconsistent with this article and until the legislature shall otherwise provide.

The supreme court shall make and adopt rules not inconsistent with law for the government of the supreme court and of the district courts of appeal and of the officers thereof, and for regulating the practice in said courts.

ARGUMENT IN FAVOR OF SENATE CONSTITUTIONAL AMENDMENT NO. 45.

This amendment to the Constitution, which creates two additional divisions of the District Courts of Appeal to sit at San Francisco and Los Angeles, is submitted to the people of California for their adoption as apparently the only remedy for an intolerable condition of congestion due to no fault of the present appellate tribunals, but to the unprecedented growth of the state in population and wealth and the consequent increase in litigation.

...the delay in the...
 ...the administration of justice...
 ...this amendment is submitted.

Many complaints of this condition have to the legislature, not alone from litigants, but from lawyers whose clients' interests were suffering because of inability to secure a speedy decision of cases in which they were interested.

Because of these complaints, the legislature in 1917 created a joint committee of lawyers and laymen to investigate the situation and report after the legislative recess. A series of meetings was held, at which the entire situation was discussed. It developed that the Supreme Court was far in arrears; in the San Francisco district being about eighteen months behind, and in the Los Angeles district practically three years behind, with its work.

The principal causes of the congestion were the increase in population and the consequent increase in litigation; the increase in the number of classes of "preferential cases"—that is, cases that by either constitutional or legislative authority are given precedence over ordinary litigation—among these being probate and criminal cases, writs of habeas corpus, prohibition and review, and the review of orders of the Railroad Commission and the Industrial Accident Commission. In addition there were the petitions for rehearing of cases decided by the District Court of Appeal, all of which took up the time of the court and compelled the regular litigant to wait for the decision of his case until such time as it might be "reached" upon the calendar.

That such a condition must be remedied will be granted without question. After considering the situation thoroughly, the joint committee decided to advocate the increase of the facilities for the administration of justice and submitted the proposed amendment creating two additional divisions of the District Courts of Appeal of three judges each to sit at San Francisco and Los Angeles and to use the same clerks, offices, chambers, courtrooms and libraries as the present courts, thus minimizing the expense.

The Judiciary committees of both houses approved the proposed amendment and it was adopted practically without objection for submission to the people.

Those who were instrumental in its presentation and adoption believe that it will meet a condition for which a remedy must be provided if justice is to be administered adequately and equitably in this state. Every litigant is entitled to a speedy hearing of his cause without regard to the class of litigation in which he may be engaged. This amendment will, we believe, afford the proper and necessary relief.

WILLIAM KEHOE,
 State Senator First District.
 J. R. THOMPSON,
 State Senator Twenty-fifth District.

BOROUGH GOVERNMENT PERMANENCY. Assembly Constitutional Amendment 2. Amends Section 81 of Article XI of Constitution. Adds provision thereto declaring that whenever a borough is established in a consolidated city and county pursuant to provisions of charter thereof, in connection with annexation of other territory, or otherwise, there shall thereafter be no change in the boundaries or governmental powers of such borough without the consent of a majority of the electors of such borough voting at an election held for that purpose.

YES
NO

Assembly Constitutional Amendment No. 2—A resolution to propose to the people of the State of California to amend section eight and one-half of article eleven of the constitution of the state, relating to city charters and to provisions therein for municipal courts.

Resolved by the assembly, the senate concurring. That the legislature of the State of California, at its regular session commencing on the eighth day of January, one thousand nine hundred seventeen, two-thirds of all the members

elect to each of the two houses of said legislature voting in favor thereof, proposes to the people of said state that section eight and one-half of article eleven of the state constitution be amended to read as follows:

PROPOSED AMENDMENT.

(Proposed changes in provisions are printed in black-faced type.)

Sec. 81. It shall be competent, in all charters framed under the authority given by section eight of this article, to provide, in addition to