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Reversal of Criminal Cases in the Supreme Court of California, The

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THE REVERSAL OF CRIMINAL CASES IN THE SUPREME COURT OF CALIFORNIA[1]

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I. EXPLANATORY

How many criminal cases are reversed by the Supreme Court of California? Does the increasing number of cases appealed indicate an increase of crime in this state? Has the percentage of reversals decreased substantially in the past 76 years? If so, what has caused the decrease? Would a study of the grounds for reversal indicate the need of any further changes in practice or the desirability of any particular reform?

Believing that an answer to the foregoing questions would be interesting as well as valuable, a study has been made of all criminal cases reversed from the date of the organization of the Supreme Court to the present day.[2]

Statistical studies of crime are viewed, now-a-days, with justifiable skepticism.

"The statistics of crime," says Sutherland,[3] "are known as the most unreliable and most difficult of all statistics." And, according to another writer:[4]

> "Any criminal statistics that can possibly be gathered relate to a part only, and doubtless to a minor part, of the whole volume of crime, and there is no possible means of learning whether the magnitude of that known part varies in a direct or indirect ratio to the rest of the volume."

We are aware also that statistics are sometimes used to bolster up conclusions already formed rather than as material from which to make deductions.

We would like therefore to make clear at the outset:

1. That the material used as the basis of this study is definite in form, viz., the printed reports of the California Supreme Court, and can be checked accurately;

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[1]The detailed study of cases involved in this survey was made by Mr. Selig. Both writers assume responsibility for statements and conclusions. The article is reprinted here from the S. Calif. Law Rev., II (Oct., 1928), 21-52.

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[2]1850-1926; cases in the District Courts of Appeal are included subsequent to the establishment of these courts in 1904.

[3]E. H. Sutherland, *"Criminology,"* p. 32.

[4]E. Smith, *"Statistics of Crime,"* Rep. of Amer. Prison Assn. (1911), p. 328.

2. That the study was not made to support any preconceived notions or reforms. The actual facts are presented herewith or in the appendix. Certain phenomena are explained and some conclusions are drawn by us as a matter of interest. Any reader is free to substitute other explanations and draw different conclusions if the material presented warrants.

The material covered in this study is confined to cases reversed on appeal. Criminal cases affirmed are therefore omitted except to obtain the percentage. Also omitted, are cases coming before the Supreme Court in the first instance, such as applications for writs of habeas corpus,[5] writs of mandate and prohibition. These were omitted in order to confine the study to a homogeneous field; viz., the extent to which the highest court directly reverses the action of the trial court.

Table I will show that 3,236 criminal cases have been affirmed and 1,202 reversed. The material in the tables for the years 1850 to 1900 was obtained by a page to page examination of the first 129 volumes of the California Supreme Court Reports. For the years 1900 to 1926 we have relied mainly on the biennial reports of the Attorney-General (after checking for accuracy and to see if the tabulation was made upon the same basis as made in this study for the earlier years).

II. Historical Introduction

Originally a part of Mexico, California was annexed to the United States in 1848. The Spanish law was then part and parcel of the California law. By Act of Legislature on April 13, 1850, it was provided that "the common law of England shall be the rule of decision in this state." On September 9, 1850, California was admitted to statehood.

The Supreme Court of California was, for the first 55 years, practically the sole court of appeal in criminal matters. Under the Constitution of 1849 it was composed of one chief justice and two associate justices. Two more associate justices were added in 1864. By the Constitution of 1879 the Supreme Court was given its present membership; viz., one chief justice and six associate justices. But as the work increased it was found that seven men were insufficient. In 1884 three Supreme Court Commissioners were appointed to hear appeals. In 1887 this number was increased to five. To preserve the

[5]During the early years the habeas corpus cases are almost as numerous as the criminal cases on appeal.

constitutionality of their decisions the ultimate disposal of every appeal was by "the Court."

With the establishment of the District Courts of Appeal in three appellate districts came the abolition of the Commissioners and a cutting down of the appellate jurisdiction of the Supreme Court. The District Courts of Appeal were established in 1904, and wtih them in existence the appellate power of the Supreme Court was limited to reviewing alleged errors in law where the defendant had been convicted and the penalty was death. Of course, they also heard criminal matters on petitions for rehearing from the District Courts of Appeal, and on the applications for the writs extraordinary.

With this brief summary by way of introduction to the historical background we proceed to state some of the results of this study.[6]

III. General Survey

During the period 1850-1926 4,438 criminal appeals were decided. Of this number 2,695, or a little more than 60 per cent, were decided after 1900. On the basis of these figures one might immediately conclude that there has been a great increase of crime in the past twenty-five years. This conclusion would seem to be further strengthened by the fact that 1,090 cases, or almost 25 per cent of all the criminal appeals taken, were decided in the six years from 1921 to 1926.

The fallacy of such a deduction is evident, however, when one glances at the types of crimes recorded in the early years and those in the twentieth century, and bears in mind the great increase in population in later years. For instance, in the decade 1850-1859 the cases reveal but twenty different crimes; in the next decade but twenty-eight distinct offences were noted; from 1870-1879 the different kinds of crimes numbered thirty; and in the decade 1880-1889 the number was increased to fifty. From 1900 to 1926 we note no less than seventy-five distinct offences. During this period 154 appeals were from convictions of offences concerning liquors and drugs; 49 were from convictions of the statutory offence for illegal practice of medicine; 21 concerned violations of the Motor Vehicle Act; 25 concerned violations of the juvenile court laws; 46 were cases of conviction of the crime of syndicalism. We see such unfamiliar offenses as violations of the Auto Bus Transportation Act, and Cor-

[6]For interesting comment on history of early California law, see O. K. McMurray, *"Seventy five Years of California Jurisprudence."* (1925) Calif. Bar Assn. Rep., pp. 68-92; and W. W. Morrow, I Calif. Juris., pp. XII-L.

porate Securities Act; violations of the fishing laws; issuing a fictitious check; issuing a check without funds; burning insured property; concealing property in fraud of creditors; carrying a concealed weapon; lewd and lascivious conduct; lewd acts upon a child; and many others.

The foregoing statistics of criminal appeals clearly show that there has been an increase in crime in one sense; viz., new criminal statutes have been passed and there have been numerous violations of them. They are, however, insufficient to show any considerable increase in crime generally.

Of the 4,438 appeals taken, 1,202, or 27.07 per cent, were reversed. In this number are included a few cases which were actually affirmances, but were affirmances of an order granting a new trial. In substance, these are reversals because the effect is to require the work of trial to be done again. Likewise, among the 3,236 affirmances are some cases which are reversals of order granting new trials. In substance, these are affirmances as no new trial is required.

TABLE I

SHOWING THE NUMBER OF CASES AFFIRMED AND REVERSED AND THE PERCENTAGE OF CASES REVERSED, BY DECADES

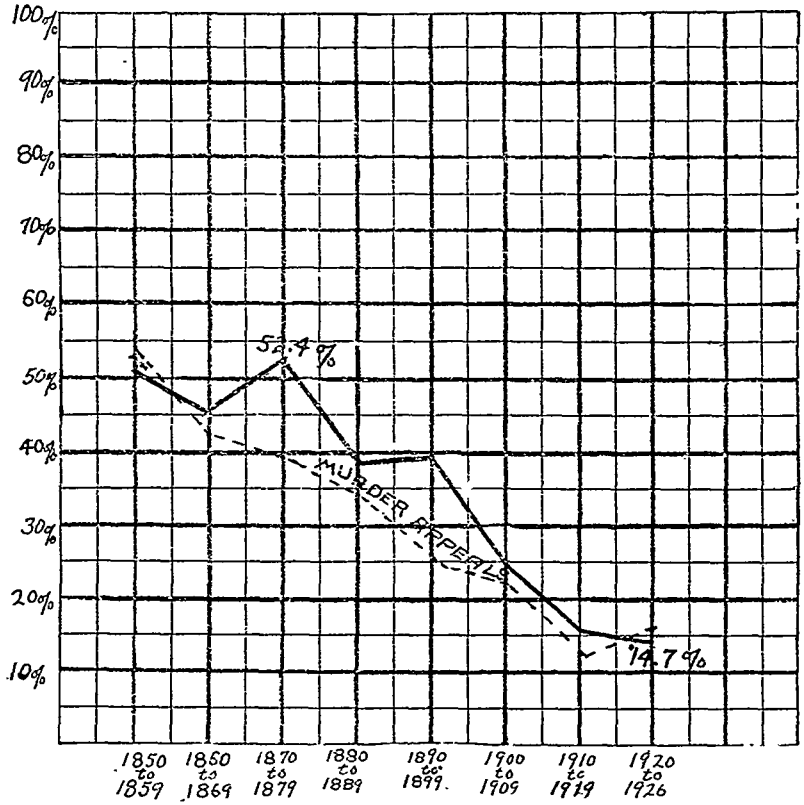
Years	*Number Affirmed*	*Number Reversed*	*Per Cent Reversed*
1850-1859	56	57	50.5
1860-1869	115	96	45.5
1870 1879	124	137	52.4
1880-1889	322	200	38.3
1890-1899	389	247	38.9
1900-1909	407	135	24.9
1910-1919	894	169	15.9
1920-1926	929	161	14.7
Totals	3,236	1,202	27.07%

Mean Average Percentage of Reversals—35.1%.

TABLE II

SHOWING THE PERCENTAGE OF REVERSALS BY DECADES AND THE COMPARATIVE PERCENTAGE OF REVERSALS AS BETWEEN THE TOTAL NUMBER OF APPEALS AND THE APPEALS IN MURDER CASES

The percentage of reversals in the first forty years was alarming, particularly in the decade 1870-1879, when 52.4 per cent of the cases were reversed. In fact, down to 1900 the percentage of cases reversed was well over one-third of the cases appealed, the lowest percentage being 38.3 per cent in the period 1880-1889. The average mean percentage for the first fifty years was 45.1 per cent, while the average mean for the entire period under consideration was 35.1 per cent. Since 1900 the average has been only 18.8 per cent reversals.



Let us glance for a moment at the results in murder appeals. Practically every murder conviction (especially where the death penalty has been imposed) is appealed.

TABLE III

SHOWING THE NUMBER OF MURDER CASES AFFIRMED AND REVERSED, AND THE PER CENT REVERSED, BY DECADES

Years	*Number Affirmed*	*Number Reversed*	*Per Cent Reversed*
1850-1859	22	25	53.2
1860-1869	41	32	42.4
1870-1879	53	35	39.7
1880-1889	90	47	34.3
1890-1899	91	31	25.4
1900-1909	120	35	22.5
1910-1919	235	34	12.6
1920-1926	123	32	15.1

Mean Average Percentage—30.6%.

From the foregoing tables and graph it will be seen that the percentage of reversals in murder cases closely approximates the percentage of reversals in all cases.

This may be said to be fairly true of all the crimes, as will be seen from the tables of crimes found in Appendix "A." The percentage of reversals does not seem to be greatly affected by the type of crime.

IV. Reversals Specially Considered

During the first fifty years, the California Reports disclose some 728 reversals in criminal cases, of which 605, or 83.1 per cent, were reversed because of procedural errors in the trial court. The remaining 123, or 16.9 per cent, were reversed on appeal because the court below had committed error in the substantive criminal law.[7]

The particular types of procedural errors can be classified roughly under four main heads; viz., 1. evidentiary matters; 2. pleadings; 3. the jury and jurors (including errors in the instructions to the jury); 4. miscellaneous errors, concerning mainly the court administration and jurisdictional matters.

TABLE IV

Showing Number of Cases Reversed, Classified According to Types of Error

Period	*Substantive*	*Procedural*	*Evidence*	*Pleading*	*Jury*	*Miscellaneous*
1850-1859	10	47	7	15	17	8
1860-1869	18	78	32	8	19	19
1870-1879	23	114	42	21	26	25
1880-1889	42	158	59	28	46	25
1890-1899	30	208	75	34	55	44
Totals	123	605	215	106	163	121

Since many cases involve two or more of the four classes of procedural errors, the division of cases in the table above was made on the basis of the error which was most prominent.

We will now proceed to consider each type of error separately.

A. Evidentiary Matters.

From 1850 to 1899 215 cases were reversed because of errors committed in admitting or refusing to admit certain evidence. This number represents 35.5 per cent of the cases reversed for procedural errors and 29.5 per cent of the total number of cases reversed. A few of these cases will be referred to as justification for certain conclusions later made.

Mr. Justice Baldwin, who made some very timely remarks in his short stay on the Supreme Bench,[8] said, in *People* v. *Williams*,[9] re-

[7] A reversal on the ground that the evidence is insufficient to justify the conviction is herein considered a "substantive error."

[8] Justice Baldwin served on the Court from 1861 to 1864. The number of justices was increased in 1864, and with the change an entire new court came in.

[9] 18 Calif. 187 (1861).

versing a conviction of murder on the ground that it was fatal error to rule out certain testimony:

"Whenever there is any doubt of the question, or rather whenever the evidence proposed by the defense, is not plainly inadmissible, it is better to let it go in, since in nine cases out of ten, a single equivocal fact, of doubtful bearing on the case, would have no effect upon the judgment of the jurors, who are usually disposed to pass and do pass upon the general merits."

Again Chief Justice Wallace, in *People* v. *Valencia,*[10] quotes from Justice Baldwin in *People* v. *Williams,*[10a] supra:

"In capital cases almost every case is appealed. We do not complain of this, even when the grounds of appeal do not present a plausible reason for the reversal of the judgment, since a natural sense of responsibility in the counsel in whose hands the life of a fellow-being is confided may well influence him to exhaust every legal resource to save his client from the last penalty of the law. But still it is important that the laws be enforced, so as to render as certain as possible the conviction of those guilty of their infraction. With every disposition on the part of judges to do this, the effort frequently fails because something is done or omitted which contravenes some arbitrary or technical right of the prisoner.

"A question proper in itself is asked a witness, and the court refuses to allow the answer; if answered the reply would possibly be worth little or nothing to the defense, yet for this error we are bound to reverse a judgment which would have been the same whether the question were answered or not."

In *People* v. *Benson,*[11] a prosecution for arson, a witness for the prosecution was asked certain questions on cross examination which were calculated to show that the witness had a bias or prejudice against the person conducting the cross examination. Counsel in charge of the prosecution objected to the questions and the court sustained the objections. On appeal the case was reversed on the ground that the questions were allowable. Said the Court:

"In this connection we cannot forbear again to call attention, as we have heretofore frequently done, to a practice so often pursued by District Attorneys, of interposing technical objections to the admission of evidence, which if admitted would not, in a large majority of cases, seriously weaken the case for the prosecution, and yet, if wrongly excluded would compel a reversal of the judgment. This case affords a striking example of the evils of such practice . . . Prosecuting officers (thus) frequently obstruct the course of justice . . . and we especially commend to their attention and to that of trial courts the observations of Mr. Justice Baldwin

[10]43 Calif. 533 (1872).
[10a]18 Calif. 187 (1861).
[11]52 Calif. 380 (1877).

in delivering the opinion of the Court in *People* v. *Williams,* 18 Cal. 193, and which are quoted with approbation in *People* v. *Devine,* 44 Cal. 460."

It is thus too often true that eager prosecutors are responsible for reversals. This defect, unfortunately can not be cured wholly by legislation. However, it can be corrected to a great extent by the election of more learned judges and more skillful prosecutors. A legislative remedy is discussed later.

A striking illustration of this "diligence" on the part of prosecuting officers appears in the case of *People* v. *Lee Chuck,*[12] a murder conviction. Certain evidence was clearly incompetent. The assistant district attorney, however, urging the admissibility of the evidence, set out and commented upon the disputed evidence at length. Though the jury should have been sent out of the courtroom they were not. Counsel for the prisoner objected four times to such practice. He said in one objection:

"I protest now, in the name of justice, that the district attorney be not allowed to proceed in the manner in which he does. It is improper testimony, and an illegitimate manner to produce the testimony before the jury."

The case was reversed in the upper court, needless to say. Mr. Justice Works, in the course of his opinion said:

"We have been called upon many times to caution, sometimes to rebuke, prosecuting officers for the over-zealous performance of their duties. They seem to forget that it is their sworn duty to see that the defendant has a fair and impartial trial and that he be not convicted except by competent and legitimate evidence. . . . We make due allowance for the zeal which is the natural result of such a legal battle as this, and for the desire of every lawyer to win his case; but these should be overcome by the conscientious desire of a sworn officer of the Court to do his duty and not go beyond it.

"We regret to say that the assistant district attorney seems to have failed in this instance to apply this salutary check to his conduct. The evidence he was seeking to have admitted was clearly incompetent. What was said was not only an argument in favor of its admission, but as to its effect. . . . The Court was appealed to time and time again to prevent it but declined to do so."[13]

It would be both useless and tedious to go through the various errors committed in matters of evidence in each of the 215 cases in which they occur. Some, needless to say, can never occur again,

[12]78 Calif. 317, 20 Pac. 719 (1889).

[13]See also similar remarks by Mr. Justice Sharpstein in *People* v. *Furtado,* 57 Calif. 345, another murder case. The same error was committed in *People* v. *Wells,* 100 Calif. 459, 34 Pac. 1078 (1893), and the conviction reversed.

as for instance, allowing a Chinese to testify against a white person. The law which once forbade this and which was the source of many errors, has long since been abrogated. Many of the errors are not solely characteristic of the criminal law but occur in civil cases as well; among these are the rules of privileged communications, of admissions, and of dying declarations.

Suffice it to say that a detailed study of the above cases will convince any unbiased student of the law that many improvements in the rules of evidence can and should be made. The most frequent error, however, is the one which we have referred to and its correction is in part a problem in the proper selection of prosecuting officers and discerning judges.

A thing which courts rarely do, and which it would be extremely wise to compel them to do, in spite of any inconvenience which might result therefrom, is to send the jury from the courtroom when any dubious evidence is offered, or when any arguments for or against the admissibility of evidence are being made.

A law should be passed permitting this wherever it seems advisable to the trial court and requiring it on motion of counsel for either side.

B. Pleadings.

One hundred and six, or 14.5 per cent, of all criminal cases reversed by the California Supreme Court were reversed because of errors connected with pleadings. Many of this number constituted appeals by the State from orders sustaining a demurrer or quashing the indictment or information. In such cases the reversal would be caused by the upper court finding that the indictment or information was sufficient, and ordering the trial to proceed. The other type of error herein concerned is the defective pleading, where on appeal by the defendant the appellate court finds the pleading fatally defective in one or more respects. These errors often go to the substantive law involved, as a failure to set out all the elements of the crime in an indictment for perjury.

Many of the reversals on this ground, particularly in the early years, seem the mental product of an over-critical Supreme Court; or perhaps, a result of the strictness with pleadings which existed at common law.

Perhaps the outstanding example of this insistence upon indictments and informations being thoroughly correct in every detail is the case of *People* v. *St. Clair*,[14] where it was held that an indictment

[14]55 Calif. 524 (1880); 56 Calif. 406 (1880) (on rehearing).

charging "entry into a stable with intent to commit *larcey*" failed to describe any offense. The California Penal Code Section 960, which was enacted in 1872 and was based on a similar provision in the Criminal Practice Act, enacted in 1851,[15] provided as follows:

> "No indictment shall be deemed insufficient, nor shall the trial, judgment, or other proceedings thereon be affected by reason of any defect or imperfection in matters of form *which shall not tend to the prejudice of the defendant.*" (Italics ours.)

This section was amended in 1880 (the date of the St. Clair Case), to include informations.

Can it be said, with any amount of reason, that the defendant was prejudiced in his substantial rights by the misspelling of a word? Can it be said that any counsel would not be able to discern the crime for which the defendant was indicted? It is indeed difficult to see how the appellate court could, in the face of the provision cited, find such an indictment insufficient.

A still earlier case, *People* v. *Schwartz*,[16] involved an indictment for "Arson with intent to defraud an insurance company." The indictment was held insufficient because it failed to state whether the company was a corporation or a partnership. Again, in *People* v. *Bogart*,[17] where defendant was indicted for grand larceny, the court said that if the owner of the property (the Wells Fargo & Company) was a partnership the indictment must name the partners; if a corporation, it must state that it is a corporation. Inasmuch as it failed to do either the indictment must fail as insufficient.

In none of these cases does the Court refer to Section 960 of the Penal Code or Section 247 of the Criminal Practice Act. It is true that the St. Clair case cites Section 1258 of the Penal Code,[18] but it finds, as a matter of law, that such a defect as there occurred must have affected the defendant in his substantial rights.

Fortunately, the later cases show a more progressive attitude. *People* v. *McDonnell*,[19] although it does not cite Section 960, holds that an indictment for counterfeiting notes of the Bank of England is not rendered insufficient for failure to allege the incorporation of the bank.

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[15]Sts. of 1851, p. 239, sec. 247.
[16]32 Calif. 161 (1867).
[17]36 Calif. 245 (1868).
[18]Sec. 1258 reads: "After hearing the appeal, the Court must give judgment without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties."
[19]80 Calif. 285, 22 Pac. 190 (1889).

The recent tendency of the California Courts is to be liberal in construing pleadings. By Statute, accusation is no longer confined to the indictment. By Penal Code Section 951 as amended in 1927, indictments and informations may both be very simple in form. There is no longer much to be asked for in the way of reform of pleadings.

We think the words of Dr. Elliot,[20] though he was a layman rather than legal student, are particularly pertinent:

"An indictment need only have that degree of accuracy which will enable a sensible man to understand what is charged against the accused."

Whereas, reversals due to errors in pleadings constituted 32 per cent of all reversals in the decade 1850 to 1859, similar errors accounted for but 16 per cent of all reversals in the period from 1890 to 1899.

C. The Jury and Instructions.

The jury system, like the rest of the law, is constantly developing, constantly sloughing off defects, most of which have attached to it during its centuries of development. Perhaps no feature of the Anglo-American system of jurisprudence has been criticized as much as the jury system.

The jury is particularly important in this field—the field of criminal procedure—because the overwhelming majority of criminal prosecutions are tried before a jury. Through a series of changes and long years of development the jury has become, and is today, the trier of fact in every case in which it sits. In a trial for criminal libel, it even has the right, in California, to determine the law as well as the facts.[21]

The finding of the ultimate facts in every jury trial is the exclusive province of this body of men. To this end it is expressly forbidden to the Court to charge the jury as to matters of fact.[22] It is easy to see how many problems can arise concerning this exclusive province of the jury and invasions thereof.

Another problem concerns the jury itself, its constituency, its conduct, how ti is impanelled. The cases reveal many errors committed under this head.

Another problem is the matter of instructions to the jury; instructions which not only invade that exclusive province of the jury as triers of fact, but which in their substance tend to or do mislead

[20]Elliot, C. W., *"Popular Dissatisfaction with the Administration of Justice,"* (1913) 25 Green Bag 65.
[21]See Calif. Pen. Code, secs. 251 and 1125.
[22]See Calif. Const., Art. VI, sec. 19.

the jury in reaching their verdict. Instructions depend largely upon the peculiar capabilities of each trial judge, for it is he who must decide which instructions must be refused and which allowed; and what instructions he must give on his own initiative.

All these problems have given rise to many errors of such substantial character as to warrant the reversal of convictions. Again, as in other types of error, many of these defects have been obviated by subsequent legislation.

People v. *Dick*[23] was a case of conviction for murder. The Supreme Court reversed and remanded the case because the trial judge had made the fatal error in his charge to the jury of assuming a material fact as proved. The case was evidently retried, for we find it again before the Supreme Court the next year.[24] Here again it was reversed and remanded. The Judge had charged the jury as follows:

"The first question for your decision is this: Was Simpson murdered? In determining that question, *the Court thinks you can have no hesitation whatever.*" (Italics ours.)

In other words, on retrial the Court fell into the very same error as it did at the first trial.

We should like once again to quote from Mr. Justice Baldwin on this subject. The following statement is contained in *People* v. *Ah Fung,*[25] which reversed a conviction for murder on the ground that an instruction to the effect that the jury has no right to weigh with other evidence the apparent absence of motive on the part of the defendant, was erroneous. Justice Baldwin said:

"We call attention again to what we said in *People* v. *Bealoba,* as to charges to the jury in capital cases. An elaborate charge, covering many pages of paper, written often in haste, and embracing a variety of suggestions and propositions, must embody, in many cases, errors which will vitiate a conviction; for in such cases it is necessary that the law should be given with entire accuracy. A few plain, simple propositions, clearly stated, give the jury a more satisfactory understanding of the principles involved than pages of general dissertation; while it is next to impossible to avoid saying something in the course of a long and elaborate charge, like that before us, upon which the criticism of acute lawyers may not be successfully exercised."

Again, in *People* v. *Gibson,*[26] Justice Baldwin said:

"We suggest that it is better, as a general rule, for the judges to instruct the jury in capital cases, in only a few plain principles of law,

[23] 32 Calif. 213 (1867).
[24] 34 Calif. 663 (1868).
[25] 17 Calif. 377 (1861).
[26] 17 Calif. 283 (1861).

when charges are not asked by counsel. A long complicated charge, extending over many pages of paper, is calculated rather to confuse than enlighten them as to the law, and besides furnishes matter from which appeals may be taken, and not unfrequently with success, when on the whole case the verdict was right."

In *People* v. *Fong Ching*[27] the defendant was being tried for offering a bribe. There were thirty-nine assignments of error in this case, but it was reversed on the ground that the Court had assumed a material fact as proved in a charge to the jury as follows:

"It is not a crime in this state to encourage a witness to be truthful, *but neither is it among the recognized customs of this country to subsidize the personal integrity of our citizens in order to prevent them from lapsing into falsehood and perjury.*"

A very frequent error occurs throughout the cases in the giving of a mistaken charge as to the amount of evidence necessary to convict and in violation of the doctrine of "reasonable doubt," a rule peculiar to the criminal law.

The case of *People* v. *Brown*[28] is an example of this. The erroneous charge in that case was:

"You are not legally bound to acquit the defendant, because you may not be entirely satisfied that the defendant and no other person committed the offense."

There has been, even in the latest cases, a thorough misunderstanding of what constitutes a reasonable doubt. In *People* v. *Bemmersley*[29] the court charged the jury that a reasonable doubt was "such a doubt as would induce a man of reasonable firmness and judgment to act upon it in matters of importance to himself." In *People* v. *Gosset*,[30] the Court, after telling the jury that a mere preponderance of the evidence was not sufficient said:

"And on the other hand, it is not required that the inculpatory facts shall be incompatible with the innocence of the accused."

This was held to be clearly erroneous. In *People* v. *Messersmith*,[31] the Court told the jury that insanity "must be proved beyond a reasonable doubt" and then proceeded to read to it a Supreme Court decision which obviously held that insanity need only be proved by a preponderance. In *People* v. *Dilwood*,[32] the Court charged the jury to find their verdict by the superior number of probabilities.

[27] 78 Calif. 169, 20 Pac. 396 (1889).
[28] 56 Calif. 405 (1880).
[29] 57 Calif. 575 (1881).
[30] 93 Calif. 641, 29 Pac. 246 (1892).
[31] 57 Calif. 575 (1881).
[32] 94 Calif. 89, 29 Pac. 420 (1892).

The fault here, it seems obvious, lies largely with the trial judge. And it seems that the remedy is to obtain a better type of judge, or to have the legislature define "reasonable doubt," so that the judge may tell the jury, in the language of the legislature, the definition of this bothersome term. Fortunately in 1927, Penal Code Section 1096 was amended to give a statutory definition of reasonable doubt, and it was provided in a new section (1096a) that the trial court may read the statutory definition, which will be deemed sufficient without further explanation or comment.

More than a few states have removed the obstacle imposed by the California Constitution, Article VI, Section 19, by allowing the judge to comment on the facts.[33] And why not? In the great majority of cases it is the judge who is the more competent to judge the facts. The present practice is a mere historical relic, dating back to a time when the jury and not the judge was most familiar with the facts of a particular case. At that time a jury was chosen because it *knew* the facts of the case.

But today how can it be said that there is any particular magic in giving to the jury the absolute and exclusive right to judge the facts? On this subject the reader is referred to the able argument of Mr. E. R. Sunderland.[34] As shown by Mr. Sunderland the modern English practice is to allow the judge to advise the jury with respect to matters of fact. And the propriety of the practice is so well recognized that there are few cases to be found where it has been questioned.

According to Mr. Sunderland the movement to prevent judges from commenting on the evidence was American in origin and "indigenous to the South." It was nearly fifty years before the first northern state, Illinois, "took it up." Further observations in the same article reveal that "while considerably less than half the states have enacted legislation on this subject, the courts in about half of the remaining states have by judicial decision adopted the same restriction, so that the rule is now actually in force in two-thirds of the American jurisdictions."

Because of the number of reversals in this state on this ground, the views of Mr. Sunderland are of interest. He says:

[33]This was permitted by the Ohio Const. of 1914, and see arguments in 11 Journal of Criminal Law and Criminology 351; 5 Journal of Criminal Law and Criminology 923. Also in Calif. Bar Assn. Proc. (1910), pp. 17-21; (1911), pp. 162-6; (1916), pp. 297-8; (1919), pp. 92 and 194; (1921), p. 210; (1926), pp. 185 and 247.

[34]E. R. Sunderland, *"The Inefficiency of the Jury,"* (1915) 13 Mich. Law Rev. 302.

"But aside from the obvious advantage which the jury would gain from the impartial advice of the judge based upon his experience, skill, and technical training, the full recognition not only of the right but the duty of the judge to advise the jury on the facts, would produce amazing results in diminishing the costs, delays, and technicalities of jury trials."

Some of the advantages set out are: (1) It would reduce the time, strain and scandal in impanelling juries; (2) It would facilitate the introduction of evidence, for the judge could guide the jury from the pitfalls of false conclusions; (3) It would allow judges to exercise more effective control over the trial; (4) It would simplify the task of instructing juries on the law, inasmuch as instructions touching on some aspect of the fact situation are highly difficult to frame; (5) "It would reduce the frequency of resort to that expensive remedy for bad verdicts—the New Trial."[35]

Hon. B. F. Bledsoe, in an address before the California Bar Association in 1924, made some very strong remarks on this subject.[36] Judge Bledsoe was at this time sitting in the Federal District Court, which permits the judge to comment on the facts. We quote:

"I really and genuinely believe that there is no one thing that would contribute more to a just determination of controversies that are presented to courts and juries than to put it within the power of a judge to comment on the facts, and to give the jury the benefit of his assistance, and help to enable them to avoid the pitfalls and the departures that juries are prone to take because either of ignorance on their part, or because they have been seduced by a specious argument because of their own inexperience, and sometimes because of their own inability, successfully, to dissect or to separate the evidence in such a way that justice may triumph. . . .

"I have never yet taken occasion, in my court, to say that I believe that the defendant is guilty or not guilty. I do not believe that is a function of the court. . . . But I do endeavor to take the opportunity to direct the minds of the jury to those things that will enable them to arrive at a conclusion which will probably be in consonance with the truth in the case."

Equally strong are the statements of Dean McMurray of the University of California, addressing the Bar Association in 1925.[37] He said:

"When the elective judge is forbidden, as he has been in California since the Constitution of 1850, from expressing his opinion as to the weight which should be given to testimony and from commenting on the

[35]Note also similar observations by J. H. Cartwright, one time Chief Justice of the Illinois Supreme Court, in his article, *"Present but Taking No Part,"* (1915) 10 Ill. Law Rev. 537.

[36]Calif. Bar Assn. Proc. of 1924, p. 224.

[37]Calif. Bar Assn. Proc. of 1925, p. 73.

evidence, when his functions are limited to ruling upon the admissibility of evidence and reading abstract statements of law to the jury—in short, when he is made an automaton, or at best the umpire in a game of skill—should it be matter for amazement that our court machinery does not operate with the utmost celerity and precision? The bar, perhaps, should bear some of the blame, the substantive law and the procedural law, too, should have a share of just criticism, but beyond and above the faults of the bar, beyond and above the defects of the substantive law, and the law of procedure, lies the essentially defective system of our judicial organization. . . ."

We feel that the Constitutional prohibition in this State against the judge commenting on the evidence hampers the efficiency of the jury system and has necessitated many reversals on appeal because the judge has, sometimes inadvertently and at other times in the best interests of justice, failed to keep inviolate this "exclusive province of the jury."

In *People* v. *Lang*[38] the Court in charging the jury said:

"The defendant in this case, of course, has a powerful motive to swear himself out of this charge."

And in *People* v. *Kindleberger*[39] the Court held that where a jury was unable to agree, the statement of the judge that "in view of the testimony in this case the Court is utterly at a loss to know why twelve honest men cannot agree," was reversible error. The abolition of this constitutional rule would work a different result in such cases as these without much consequent damage to the rights of the criminal defendant.

Many other types of error have occurred in instructions—through failure of a judge to state the law properly, or through the giving of misleading, confusing, and often unintelligible charges. A flagrant example will emphasize our point. It was the sole instruction given in a prosecution for robbery in *People* v. *Monahan.*[40] Freelon, Judge, gave the following charge:

"It will only be necessary for me, I think, to read you a definition or *two* from the Code, setting out what the offense here charged is. You may then apply the facts as you find them to the definitions of the Code. The defendant is charged with robbery. Robbery is the felonious taking of personal property. In this case it is charged that it was a five dollar piece, or four or five dollars, I think, and a purse. Robbery is the felonious taking of personal property from the possession of another, *or* from his person. You have heard the testimony on that point. Robbery is the

[38]104 Calif. 363, 37 Pac. 1031 (1894).
[39]100 Calif. 367, 34 Pac. 852 (1893).
[40]59 Calif. 389 (1881).

felonious taking of personal property from the possession of another, *or* from his person, or from his immediate presence, accomplished by means of force and fear. The fear necessary to constitute robbery may either be fear of an unlawful injury to the person or property of the person robbed, or to any relative of his, or members of his family; or the fear which constitutes robbery may be the fear of an immediate and unlawful injury to the person or property of anyone in the company of the person robbed. *That is inapplicable to the testimony in this case.* Robbery is the felonious taking of the personal property in the possession of another *and* from his person or immediate presence and against his will, accomplished by means of force and fear. I think that unless some other charge is asked, that that is all is necessary to give to the jury." (Italics ours.)

Such an instruction as the one above speaks for itself. Its correction lies simply in the appointment or election of more efficient judges.

Other errors resulted from misconduct on the part of jurors. These have greatly decreased with the apparent lack of liquor in the jury room. The provision for degrees in certain crimes often indirectly necessitated new trials through the failure of a jury to state the degree of the crime of which they had found the defendant guilty in their verdict, as required by Penal Code Section 1157.

Regarding erroneous instructions, in one case[41] the defendant was charged with perjury and the Court neglected to give the jury *any* instructions as to the false oath on which he was charged. Similarly in a murder case[42] the Court omitted from its charge the element of premeditation and deliberation necessary to first degree murder.

D. Miscellaneous Errors.

Under this, the last category, come many of the highly technical errors so well known to the criminal law. We mention a few of them.

Jurisdictional errors, such as the trial of a case in the wrong court or venue, are responsible for a number of reversals. Such errors, needless to say, are bound to occur when dealing with any kind of a system of different courts of original jurisdiction. Lack of proper care in selecting the proper county in which to bring a case is responsible for many of the mistrials. This occurs most often in prosecuting accessories and accomplices to certain offenses.

The other errors concern many subjects. In an early case it was held reversible error to bring in a prisoner shackled and chained for judgment.[43] In another case there was a reversal because two

[41] *People* v. *Barry*, 63 Calif. 62 (1883).
[42] *People* v. *Williams*, 73 Calif. 531, 15 Pac. 97 (1887).
[43] *People* v. *Harrington & Minor*, 42 Calif. 165 (1871).

justices of the peace were not present in the Court of Sessions when the case was heard.[44] It has been held reversible error to refuse the prisoner a continuance on the production of an affidavit that his attorney was sick.[45] A conviction of larceny was reversed where the defendant was out on bail and absconded. The Court found the judgment illegal inasmuch as the defendant must be present when the judgment is rendered.[46] Many errors occurred in improper commitments and arraignments.[47] In *People* v. *Dinsmore*[48] a witness for the prosecution became sick and the trial was postponed for 63 days. It was deemed reversible error for the judge to order the same jury to return after 63 days' absence.

In *People* v. *Tupper*[49] a conviction was reversed because the Judge absented himself from the courtroom during twenty minutes of the argument. The Supreme Court said that "there can be no Court without a judge."[50]

These are but a few of the scattered, unclassified errors committed. Remedies for some of these will be suggested under the next head and in the conclusion.

V. The Decline of Reversals

While a glance at Table II reveals a general decline in the percentage of reversals during the period from 1850 to 1926, and while there are doubtless numerous reasons to account for such declines, we will be able to discuss but a few of them. And it must be admitted that any reasons herein advanced are in a large measure speculative.

When one considers that so many things besides dry legal principles enter into the make-up of every judicial decision it is not hard to appreciate the problem. We refer to such vague elements as public opinion and the personnel of the appellate courts. These certainly play an important role in every decision. To illustrate this one needs but look at the cases involving criminal syndicalism. The act defining the crime of syndicalism was passed in 1919[51] when war feeling was still high. Ten cases of syndicalism were appealed in this year and not one resulted in a reversal. From 1920 to 1922, 18

[44] *People* v. *Ah Chung*, 5 Calif. 103 (1855).
[45] *People* v. *Logan*, 4 Calif. 188 (1854).
[46] *People* v. *Beauchamp*, 49 Calif. 41 (1874).
[47] *People* v. *Moody* et al., 69 Calif. 184, 10 Pac. 392 (1886).
[48] 102 Calif. 381, 36 Pac. 661 (1894).
[49] 122 Calif. 424, 68 Amer. St. Rep. 44 (1898).
[50] Accord: *People* v. *Blackman*, 127 Calif. 248, 59 Pac. 573 (1899).
[51] Deering, *"General Laws of California,"* Act 8428, p. 3497.

cases were appealed and but 3 were reversed. By 1922 the war craze had ceased, and, as a result (we think it is safe to say), of the 16 syndicalism cases appealed, 7 were reversed. Is not that an example of the influence of public opinion?

Unfortunately we cannot trace the influence of public opinion throughout the entire period. It is not that prominent. The case of criminal syndicalism is fortunately an outstanding example.

So it is also with the personnel of the appellate courts. It would be an almost hopeless task to trace the changes in personnel, and make an intimate character study of every man who ever sat on the Supreme Court or the District Courts of Appeal. We can therefore say, simply, that the personality of each Justice accounts in part for the particular disposal of each case. So let us now proceed to more concrete matters.

Tables I and II reveal a decline of 5 per cent in the reversals during the second decade (1860 to 1869). The decline is more than compensated by a rise of almost 7 per cent in the next decade. During this last decade, in 1872, California adopted the Codes. We believe that the increase in the percentage of reversals in this period—when reversals reached the highest percentage in the entire history of the Supreme Court—is due partly to the fact that the court was dealing with a new legal system. There is a tendency in such a situation to insist on conformance to the letter of the law.

But the Codes were not calculated to provide new and more numerous errors, and with time the courts and counsel became more familiar with them. We may say, without much hesitation, that it took at least the remainder of the decade 1870 to 1879 to familiarize the bench and bar with the signification of code law. For in the next decade the percentage of reversals dropped 14.1 points. Of course, many other elements entered into this large decline. A new constitution was adopted in 1879 to supplant the old constitution of 1849. The changes which it wrought were numerous and not all for the better. One change worthy of notice, however, was the change in the constituency of the Supreme Court; for by constitutional provision the old court of five justices was supplanted by a new one of seven justices. Not only that, but it changed the entire court system in California. In one sweeping statement, it was provided that "all courts now existing, save justice and police courts, are hereby abolished." It then proceeded to set up an entirely new and more comprehensive judicial system. This undoubtedly led to a more efficient disposition of cases on appeal.

So with the Codes and the Constitution of 1879 we have the outstanding legislative accomplishments of the California legislature in the 19th century, and these enactments must have borne direct relation to the decline of reversals in criminal cases.

The cases from 1900 to 1909 were not examined in detail. We note, however, that the percentage of reversals in this period was 14 points below that of the preceding ten years. This drop must remain unexplained, inasmuch as we cannot point to any outstanding reason which could account for such a decline, unless it be the establishment of the District Courts of Appeal in 1904.

In the last 16 years of this study we find 2,163 criminal appeals, or 48.7 per cent of all the appeals considered; and of this number only 330 cases, or 15.2 per cent, were reversed. The decline here is remarkable, and the principal reason for it, we think, lies in a simple section which was added to the Constitution in 1911. This was Section 4½ of Article VI, which provided as follows:

"No judgment shall be set aside, or new trial granted in any criminal case[52] 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 an opinion that the error complained of has resulted in a miscarriage of justice."

Prior to this enactment, the legislation on this subject appears to have been sufficient enough, but there was an apparent failure on the part of the courts to make use of it. For instance, the Penal Code alone contained three provisions. Section 1258 provides:

"After hearing the appeal, the court must give judgment without regard to technical errors or defects, or to exceptions, which do not affect the substantial rights of the parties."

Section 1404 of the Penal Code reads:

"Neither a departure from the form or mode prescribed by this Code in respect to any pleading or proceeding, nor any error or mistake therein, renders it invalid, unless it has actually prejudiced the defendant or tended to his prejudice, in respect to a substantial right."

And Section 960, already referred to, said:

"No indictment or information is insufficient, nor can the trial, judgment or other proceeding thereon be affected by reason of any defect or imperfection in matters of form which does not tend to the prejudice of a substantial right of the defendant upon its merits."

[52]By 1914 amendment the word "criminal" was omitted.

All these provisions were part of the Code as enacted in 1872, and all seemingly are directed toward avoiding reversals on purely technical grounds. Whether the appellate court failed to apply these sections, or whether it found itself at a loss to determine when the *substantial* rights of the defendant were infringed, nevertheless these various sections seemed to have little effect in reducing reversals. Glance, for example, at the words of Mr. Justice Temple in *People* v. *Marshall*,[53] a murder case

"The function of this Court on such an appeal is to determine whether a defendant has been tried as the law prescribed. If he has not, there is but one way to correct the error, and that is to grant a new trial. But a defendant would not be entitled to a new trial for any error which has not prejudiced his case. *But this court cannot say that a defendant has not been injured because, notwithstanding the error, he must have been convicted anyway.* (Italics ours.) We cannot look at evidence except for the purpose of considering questions of law which may be raised in regard to it . . . If a defendant has been wrongly deprived of evidence he has been injured . . . To give contradictory instructions must be to commit error."

An earlier case, *People* v. *Williams*[54] reveals the same sentiment:

"Courts have no power in criminal cases to affirm a judgment merely because the judges are persuaded that upon the merits of the case the judgment is right. *If any error intervenes in the proceeding, it is presumed to be injurious to the prisoner.*"

There was, therefore, this hesitancy on the part of the courts to find that an error, no matter how technical it seemed, was not prejudicial to the substantial rights of the accused. Here, then, was the reason for Article VI, Section 4½.[55]

The first case to construe this constitutional section was *People* v. *O'Bryan*.[56] Mr. Justice Sloss delivered the opinion of the court, in the course of which he said:

"The general purpose of the amendment is plain. Inasmuch as under the pre-existing provisions of the Constitution the jurisdiction of the Supreme Court and of the District Courts of Appeal was limited in criminal cases to questions of law alone, it was incumbent upon these courts to reverse any judgment of conviction based upon proceedings which were affected in any degree by substantial error of law. Where, however, the error complained of was trivial, or the record showed that no prejudice to

[53] 112 Calif. 422, 425, 44 Pac. 718 (1896).
[54] 18 Calif. 187 (1861).
[55] One of the results of this Constitutional section is that in almost every criminal appeal the appellant sets forth that evidence is not sufficient to sustain the verdict, in order to induce the appellate court to review the evidence.
[56] 165 Calif. 55, 130 Pac. 1042 (1913).

a substantial right could have resulted therefrom to the defendant, it has always, even before the amendment, been the practice to disregard the error. Pen. Code 1258. But where neither of these conditions existed, and the error was one which might or might not have turned the scale against the defendant, the limitation of the appellate jurisdiction to questions of law precluded the reviewing courts from weighing the evidence for the purpose of forming an opinion whether error had or had not in fact worked injury. Having no jurisdiction in matters of fact, the court in which the appeal was pending was bound to apply the doctrine that prejudice was presumed to follow from substantial error."

Justice Sloss is of the opinion that the object of the amendment was to further the ends of justice in preventing reversals in those cases, where if the Court could not weigh the evidence, a reversal would be inevitable. The amendment requires an appellate court to affirm a judgment if there has not been a "miscarriage of justice." The precise meaning of this term is somewhat general as well as dubious. Quoting again from the same opinion:[57]

"This much, however, we think may safely be said. Section 4½ of Article VI of our Constitution must be given at least the effect of abrogating the old rule that prejudice is presumed from any error of law . . . On the other hand we do not understand that the amendment in question was designed to repeal or abrogate the guarantees accorded persons accused of crime by other parts of the same Constitution or to overthrow all statutory rules of procedure and evidence in criminal cases . . . It is an essential part of justice that the questions of guilt or innocence shall be determined by an orderly legal procedure . . . But it does not follow that every invasion of even a constitutional right necessarily requires a reversal. The final test is the opinion of the Court on the result of the error."

Thus it would seem that the hesitancy expressed by Justice Temple in *People* v. *Marshall,*[58] is now uncalled for, and the old rule expressed in the opinion in *People* v. *Williams,*[59] is a dead letter. And if we should go through the various reversals we would predict that many, if not a majority, would in the face of this constitutional rule, have resulted rather in affirmances.

A very recent case, *People* v. *Mahach,*[60] emphasizes the tremendous effect of this enactment. The Court says:

[57]Loregan, J., concurred in the affirmance but not in the construction of sec. 4½ of Art. VI. He refrains from construing it, however, saying that its construction is not necessary to this appeal, inasmuch as the defendant waived the alleged error committed by making him testify against himself by later giving confirmatory evidence. Though Sloss' construction of Art. VI, sec. 4½, was deemed *obiter dicta* it is cited and followed in later cases.

[58]112 Calif. 422, 44 Pac. 718 (1896), above at note 53.

[59] 18 Calif. 187 (1861), above at note 54.

[60]60 Calif. App. 635, 224 Pac. 130, 137 (1924).

"It is now incumbent upon the complaining party to make an affirmative showing that prejudice followed from the error relied upon."

Quite a change from a court which said that "prejudice is presumed from an error of law!"

There has, however, been a feeling on the part of the Court that such legislation can be carried too far. This accounts for the decision in *People* v. *Salaz*,[61] decided in 1924. The Court reversed a conviction for manslaughter saying:

"And whenever we are unable to determine whether the defendant would have been convicted had erroneously admitted evidence been withheld from the jury's consideration, this section of the Constitution *cannot* be applied to uphold the judgment."

Such a limitation is not only reasonable, but necessary for the protection of the accused.

We would like to cite one case which does not involve a criminal matter, but which may lead to something which we urged when considering the jury. We refer to *Houghton* v. *Pickwick Stages*,[62] This case held that an instruction to the jury as to matters of fact, although in contravention to Article VI, Section 19 of the Constitution, did not result in a "miscarriage of justice" requiring a reversal under Section 4½ of Article VI. It is seriously to be doubted whether this case, decided in 1927, will be carried over to the criminal side.

Another 1927 case, *People* v. *Mayfield*,[63] shows the extent to which the Court is willing to carry Section 4½. Here the public defender appeared with the defendant at the trial and defendant did not disclaim his assistance and did not object to his examining the State's witnesses. It was held that a refusal to let the defendant himself examine certain witnesses on the ground that he had a lawyer, if error, was not a cause for reversal under Section 4½ of Article VI.

These few cases will suffice to show the meaning and scope of the 1911 amendment. Its effect seems obvious, even from the few cases here noted. There is no other outstanding change which has occurred in the past 16 years which can account for the great diminution in the percentage of reversals in criminal appeals. We think that due credit must be given to this piece of legislation. More and more criminal cases are being appealed, yet the number and percentage of reversals is constantly decreasing. Whereas, from 1910 to 1912

[61]66 Calif. App. 173, 225 Pac. 777, 781 (1924).

[62]54 Calif. App. Dec. 1345, 262 Pac. 770 (1928). See also an elaborate note in (1928) 16 Calif. Law Rev. 219-27, commenting on the effect of sec. 4½, Art. VI, in civil cases.

[63]53 Calif. App. Dec. 1293, 259 Pac. 75 (1927).

over 23 per cent of the appeals were reversed, the percentage was only 12 per cent from 1916 to 1918 and but 11 per cent from 1918 to 1920. It will be seen by Appendix B that there has been a slight increase in percentage of reversals for the years 1922-26. This will probably prove to be a temporary fluctuation. The percentage for the six years of the present decade is below that of the previous decade as shown by Table I.

VI. Conclusion

To summarize briefly, this study has emphasized the following points:

1. That while over 27 per cent of the 4,438 criminal appeals taken in the period 1850 to 1926 have been reversed, there has been a general downward trend in the percentage of reversals. From the high point in the decade 1860 to 1869 of 52.4 per cent reversals, the percentage has decreased rapidly, reaching its lowest in the last six years, from 1920 to 1926.

2. That from 1850 to 1900 over 83 per cent of all reversals were due to so-called "procedural errors." From this we can say that the difficulty lies not in the great body of substantive criminal law, but rather in the enforcement thereof, or the criminal procedure.

3. That the reasons for the above result are numerous, but certain reasons are outstanding. The various changes in the personnel of the appellate courts; the selection of better trained judges and the presence of more able counsel; the great increase in population which has stimulatd better educational facilities and the pressure of public criticism, all have contributed to this end. These are some of the more general reasons which may be assigned to this downward trend of reversals in criminal cases. Besides these are the various legislative enactments designed to improve the criminal procedure; the adoption of the Codes and of a new and more comprehensive State Constitution, which entailed the establishment of an entirely new system of Courts.

4. That the addition of Section 4½ of Article VI of the California Constitution in 1911 has done more than any other piece of legislation to reduce the number of reversals in criminal cases. While prior legislation, particularly in the Penal Code, had existed on the same subject, there was feeling of hesitancy on the part of the Courts to use this legislation to overturn the well-established principle that "prejudice must be presumed from error." It remained for the constitutional section to abrogate that rule.

5. That while many of the reasons for the reversing of cases have been obviated by this legislation, there is still a wide field for reform. The rules of evidence and the jury system have been the main sources of error in the trial of criminal cases. The present rules of evidence leave much to be asked for, but many of the objections thereto could be surmounted by calling the jury from the Courtroom during arguments on the evidence. The jury has assumed a role all too dominant in the trials of cases. The constitutional rule against the Court commenting on the evidence has served to put the Court in an inferior position, and placed the responsibilities of the disposition of a case in the hands of the inexperienced rather than the skilled. We have advocated the abolition of this constitutional rule to remedy this deplorable situation.

6. That while the whole system of criminal procedure may still be the subject of many and divers reforms, yet it has been vastly improved during its 78 years of existence. And there is reason to believe that the downward trend in reversals will continue, although perhaps it may not be so rapid as in the past.

APPENDIX "A"

TABLE OF CRIMES

Crime	*Cases Affirmed*	*Cases Reversed*	*Total Appeals*
Abduction[3]	11	2	13
Abortion[4]	5	2	7
Administering Poison to Kill[2]	1	2	3
Adultery[2]	4	5	9
Altering Brand[2]	4	1	5
Altering Public Record[4]	...	1	1
Arson	53	24	77
Assaults (various)	245	99	344
Attempted Abortion[2]	...	1	1
Attempted Arson[3]	1	1	2
Attempted Burglary[3]	4	1	5
Attempted Crime against Nature[5]	1	...	1
Attempted Extortion[3]	1	1	2
Attempted Incest[4]	1	...	1
Attempted Kidnapping[3]	1	...	1
Attempted Larceny[4]	5	...	5
Attempted Murder[4]	2	1	3
Attempted Rape	6	2	8
Attempted Robbery[3]	6	2	8
Attempt to Contract Incestuous Marriage[1]	...	1	1
Attempt to Suborn Perjury[3]	...	1	1
Auto Bus Act Violation[5]	3	1	4
Bigamy[3]	5	4	9
Breaking a Levee[3]	1	...	1

[1]This crime first appears in the decade 1860-1869.
[2]This crime first appears in the decade 1870-1879.
[3]This crime first appears in the decade 1880-1889.
[4]This crime first appears in the decade 1890-1899.
[5]This crime first appears in the period 1900-1926.

Crime	*Cases Affirmed*	*Cases Reversed*	*Total Appeals*
Bribery	21	8	29
Burglary	214	61	275
Burning Insured Property[4]	3	1	4
Compounding Felony[4]	...	1	1
Conspiracy[3]	9	6	15
Concealed Weapon[5]	3	8	11
Concealing Property[5]	1	...	1
Contempt[4]	1	...	1
Crime against Nature[3]	23	7	30
Corporate Securities Act[5]	4	4	8
Destroying Bridge[5]	1	...	1
Dueling[1]	4	1	5
Embezzlement[1]	96	47	143
Election Laws	5	9	14
Escape[4]	18	2	20
Explosives[4]	6	2	8
Extortion[3]	9	10	19
False Claim[3]	9	4	13
False Entry on Books[2]	4	1	5
False Impersonation[3]	1	1	2
False Imprisonment[3]	1	1	2
False Licenses[1]	...	1	1
False Pretenses[3]	92	31	123
False Statement[2]	...	1	1
Fictitious Check[4]	30	9	39
Fictitious Order[4]	...	1	1
Fish Law Violation[4]	6	1	7
Forgery	98	34	132
Gaming	11	12	23
House-Breaking[1]	3	5	8
Injuring Jail[3]	2	...	2
Illegal Practice of Medicine[4]	47	3	50
Illegal Sale, Treas. Warrants[2]	...	1	1
Incest[1]	12	3	15
Influencing Juror[5]	1	...	1
Juvenile Court Laws[5]	24	1	25
Kidnapping[2]	6	2	8
Larceny	313	144	457
Lewd Acts[5]	64	14	78
Libel[3]	12	6	18
Liquors and Drugs[4]	120	39	159
Malicious Mischief	2	...	2
Manslaughter	86	43	129
Mayhem[1]	4	5	9
Misconduct in Office[4]	2	1	3
Misdemeanor	17	6	23
Motor Vehicle Act Violation[5]	19	2	21
Murder	775	261	1,036
Nonsupport[5]	17	13	30
Nuisance[5]	2	...	2
Obstructing Highway[4]	...	1	1
Pandering[5]	12	3	15
Pimping[5]	12	1	13
Perjury	39	42	81
Possessing Counterfeit Coins[1]	1	1	2

[1]This crime first appears in the decade 1860-1869.
[2]This crime first appears in the decade 1870-1879.
[3]This crime first appears in the decade 1880-1889.
[4]This crime first appears in the decade 1890-1899.
[5]This crime first appears in the period 1900-1926.

Crime	*Cases Affirmed*	*Cases Reversed*	*Total Appeals*
Possessing Counterfeiting Instruments[1]	3	1	4
Procuring False Evidence[3]	...	1	1
Prostituting a Female[2]	10	8	18
Rape	184	57	241
Real Estate Act Violation[5]	1	...	1
Receiving Stolen Property[1]	16	9	25
Recovery of Statutory Penalty[2]	...	1	1
Refusal to Pay over Public Moneys[3]	...	2	2
Resisting an Officer[3]	...	3	3
Robbery	232	62	294
Seduction[4]	15	5	20
Selling Land Twice[1]	...	3	3
Sending False Telegram[3]	...	1	1
Subornation of Perjury[4]	1	1	2
Syndicalism[5]	36	10	46
Taking Advantage of Act Regarding Trespassing Cattle[2]	...	1	1
Throwing Vitriol[3]	4	...	4
Trainwrecking[3]	3	1	4
Uttering Forged Instrument[1]	1	1	2
Violation of Parole[5]	1	...	1
Violation of Revenue Acts	2	...	2
Violating the Sepulture[3]	...	1	1
No Crime Stated	83	43	126

NOTE: "Abduction" includes "abduction for purposes of prostitution." "Bribery" includes also "offer to bribe," "giving a bribe," "receiving a bribe." "Escape" includes "Assisting a prisoner to escape." "Juvenile Court Law Violations" includes "contributing to the delinquency of a minor." "Kidnapping" includes "child-stealing." "Liquors and drugs" includes violations of the Poison Act, the Wright Act, the Wyllie Law, and offenses resulting from the manufacture, sale and possession of liquor, narcotics and poisons. "Prostituting a female" includes "prostituting one's wife," "prostituting a married woman" and "enticing a female into a house of ill fame."

APPENDIX "B"

YEARLY DISPOSAL OF APPEALS

Year	*Affirmed*	*Reversed*	*Total Appeals*
1850-1	3	2	5
1852	1	2	3
1853	....	2	2
1854	5	4	9
1855	4	8	12
1856	12	9	21
1857	13	10	23
1858	16	15	31
1859	2	5	7
1860	14	17	31
1861	16	12	28
1862	7	8	15
1863	8	6	14
1864	8	8	16

[1]This crime first appears in the decade 1860-1869.
[2]This crime first appears in the decade 1870-1879.
[3]This crime first appears in the decade 1880-1889.
[4]This crime first appears in the decade 1890-1899.
[5]This crime first appears in the period 1900-1926.

Year	*Affirmed*	*Reversed*	*Total Appeals*
1865	16	8	24
1866	13	11	24
1867	16	13	29
1868	8	8	16
1869	9	5	14
1870	14	23	37
1871	6	10	16
1872	21	18	39
1873	21	17	38
1874	27	18	45
1875	13	10	23
1876	3	7	10
1877	....	11	11
1878	1	13	14
1879	18	10	28
1880	27	27	54
1881	30	35	65
1882	47	24	71
1883	17	17	34
1884	37	17	54
1885	30	17	47
1886	39	17	56
1887	31	13	44
1888	41	14	55
1889	23	19	42
1890	30	24	54
1891	29	18	47
1892	27	23	50
1893	36	26	62
1894	37	29	66
1895	42	24	66
1896	46	23	69
1897	55	20	75
1898	42	30	72
1899	45	30	75
1900-1902*	21	9	30
1902-1904	97	39	136
1904-1906	89	33	122
1906-1908	77	23	100
1908-1910	123	31	154
1910-1912	138	41	179
1912-1914	169	30	199
1914-1916	198	46	244
1916-1918	214	30	244
1918-1920	175	22	197
1920-1922	271	36	307
1922-1924	333	61	394
1924-1926	325	64	389
Totals	3,236	1,202	4,438

*From 1900 to 1926 the statistical data shown was obtained from the Tables of Criminal Appeals found in the Biennial Reports of the Attorney General for California. This data includes the appeals taken to the District Courts of Appeal, established in 1904.