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Supplement to Memorandum No. 102(1960)

Subject: Establishment of Priorities for 1963 Legislative Program

The attached letter and a 1959 resolution of the Conference of State Bar Delegates may be of interest in connection with Memorandum No. 102(1960).

Respectfully submitted,

John H. DeMouilly
Executive Secretary

THE STATE BAR OF CALIFORNIA

601 McAllister Street
San Francisco 2

January 12, 1961

John H. DeMouilly, Esq.
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear Mr. DeMouilly:

We enclose for your information copy of a 1959 resolution of the Conference of State Bar Delegates (No. 63) with an attachment showing the amendments to text. This relates to the power of the trial court to grant a motion for new trial conditioned upon payment of a larger sum than that awarded by the jury - so called additur.

The Committee on Administration of Justice has taken no position but is retaining this matter on its agenda because of a study of the subject matter by your commission.

We will appreciate being advised of the status of the study. Also please note the State Bar's interest in the matter.

Incidentally there is a case going through the California Appellate Courts that seems to recognize the trial court's power to make a conditional order. However the action of the State Supreme Court had not been reached at our last examination.

Yours very truly,

S/ GARRETT H. ELMORE

Garrett H. Elmore
Secretary, Committee on
Administration of Justice

GHE:jhl
enc.

RESOLUTION PROPOSED BY THE ALAMEDA COUNTY BAR ASSOCIATION

RESOLVED that the Conference of State Bar Delegates recommends to the Board of Governors of the State Bar that the State Bar sponsor legislation to amend Section 657 and add a new Section 657A to the Code of Civil Procedure as follows:

1. §657. The verdict may be vacated and any other decision
2. may be modified or vacated, in whole or in part, and a
3. new or further trial granted on all or part of the
4. issues, on the application of the party aggrieved, for
5. any of the following causes, materially affecting the
6. substantial rights of such party:
7. 1.
8. 2.
9. 3.
10. 4.
11. 5. Excessive or insufficient damages, appearing to
12. have been given under the influence of passion, or
13. prejudice, compromise or error;
14. 6.
15. 7.
16.
- (Proposed new language underlined; language to be
deleted shown by strike-out; balance of section
remains unchanged.)
17. §657A. (New) If the judge shall grant a new trial
18. on either ground specified in 657(5), he may provide
19. that the grant will be nullified if
20. (a) Defendant accepts a specified increase of the
21. judgment, or
22. (b) Plaintiff accepts a specified decrease of the
judgment.

STATEMENT OF REASONS

Trial judges, from time to time, exercise the power of remittitur. This is done by the judge saying the judgment is too high, accept a reduction or I will grant a new trial.

This is correct and fair only if it cuts both ways. Often damages are too low as a result of passion, prejudice, compromise or error (either of law or mechanical).

This proposal will permit, not require, the trial judge to cut it both ways.

For a good discussion of the problem, and what other states are doing about it, see 6 U.C.L.A. Law Review 441.

The Conference amended the resolution by striking the words "compromise or error", proposed to be added in line 13 of C.C.P. 657 and re-inserted the word "or" on line 13. As so amended, C.C.P. 657 would read as follows:

1. §657. The verdict may be vacated and any other decision
2. may be modified or vacated, in whole or in part, and a
3. new or further trial granted on all or part of the
4. issues, on the application of the party aggrieved, for
5. any of the following causes, materially affecting the
6. substantial rights of such party:
7. 1.
8. 2.
9. 3.
10. 4.
11. 5. Excessive or insufficient damages, appearing to
12. have been given under the influence of passion or
13. prejudice;
14. 6.
15. 7.
16.

(Balance of section remains unchanged. Proposed new C.C.P. 657A was adopted as introduced.)

1959 Conf. Res. No. 63, as amended.