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2/15/67

Memorandum 67-17

Subject: Senate Bill No. 250 (Additur)

Attached as Exhibit I (gold) is a revised version of this bill which contains the amendments made by the Commission at the January meeting.

Exhibit II contains a draft of a report for the Senate Committee on Judiciary revising the comment to amended Code of Civil Procedure Section 657 to reflect the changes made by amendment.

The amended bill has the approval of the Judicial Council and the Board of Governors of the State Bar.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

SENATE BILL

No. 250

Introduced by Senator Bradley

February 6, 1967

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 657 of, and to add Section 662.5 to, the Code of Civil Procedure, relating to new trials.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 657 of the Code of Civil Procedure is
2 amended to read:
3 657. The verdict may be vacated and any other decision
4 may be modified or vacated, in whole or in part, and a new
5 or further trial granted on all or part of the issues, on the
6 application of the party aggrieved, for any of the following
7 causes, materially affecting the substantial rights of such
8 party:
9 1. Irregularity in the proceedings of the court, jury or
10 adverse party, or any order of the court or abuse of discre-
11 tion by which either party was prevented from having a fair
12 trial ;
13 2. Misconduct of the jury; and whenever any one or more
14 of the jurors have been induced to assent to any general or
15 special verdict, or to a finding on any question submitted to
16 them by the court, by a resort to the determination of chance,
17 such misconduct may be proved by the affidavit of any one
18 of the jurors ;
19 3. Accident or surprise, which ordinary prudence could not
20 have guarded against ;

LEGISLATIVE COUNSEL'S DIGEST

SB 250, as introduced, Bradley (Jud.). New trials.

Amends Sec. 657, adds Sec. 662.5, C.C.P.

Revises provisions relating to new trial on grounds of excessive damages, insufficiency of evidence, and evidence not justifying verdict or against law.

Authorizes granting of motion for new trial on ground of inadequate damages subject to denial if person against whom verdict is rendered consents to addition of such amount as court determines.

Vote—Majority; Appropriation—No; State Expense—No.

1 4. Newly discovered evidence, material for the party mak-
2 ing the application, which he could not, with reasonable dili-
3 gence, have discovered and produced at the trial ;

4 5. Excessive or inadequate damages ; appearing to have been
5 given under the influence of passion or prejudice ;

6 6. Insufficiency of ~~The evidence to does not~~ justify the ver-
7 dict or other decision, or ~~that if the verdict or other decision~~
8 is against law ;

9 7. Error in law, occurring at the trial and excepted to by
10 the party making the application.

11 When a new trial is granted, on all or part of the issues,
12 the court shall specify the ground or grounds upon which
13 it is granted and the court's reason or reasons for granting
14 the new trial upon each ground stated.

15 A new trial shall not be granted upon the ground of insuf-
16 ficiency of ~~that the evidence to does not~~ justify the verdict or
17 other decision, ~~nor upon the ground of excessive or inade-~~
18 ~~quate damages~~, unless after weighing the evidence the court
19 is convinced from the entire record, including reasonable in-
20 ferences therefrom, that the court or jury clearly should have
21 reached a ~~contrary~~ different verdict or decision.

22 The order passing upon and determining the motion must be
23 made and entered as provided in Section 660 and if the mo-
24 tion is granted must state the ground or grounds relied upon
25 by the court, and may contain the specification of reasons.
26 If an order granting such motion does not contain such speci-
27 fication of reasons, the court must, within 10 days after filing
28 such order, prepare, sign and file such specification of reasons
29 in writing with the clerk. The court shall not direct the attor-
30 ney for a party to prepare either or both said order and said
31 specification of reasons.

32 On appeal from an order granting a new trial the order
33 shall be affirmed if it should have been granted upon any
34 ground stated in the motion, whether or not specified in the
35 order or specification of reasons ; ~~provided, except that (a)~~
36 ~~the order shall not be affirmed upon the ground of the insuf-~~
37 ~~ficiency of that the evidence to does not~~ justify the verdict or
38 other decision, ~~or upon the ground of excessive or inadequate~~
39 ~~damages~~, unless such ground is stated in the order granting
40 the motion ; and ~~provided further that (b) on appeal from an~~
41 ~~order granting a new trial upon the ground of the insuffi-~~
42 ~~ciency of that the evidence to does not~~ justify the verdict or
43 other decision, or upon the ground of excessive or inadequate
44 damages appearing to have been given under the influence of
45 passion or prejudice, it shall be conclusively presumed that
46 said order as to such ground was made only for the reasons
47 specified in said order or said specification of reasons, and
48 such order shall be reversed as to such ground only if there
49 is no substantial basis in the record for any of such reasons.

50 Sec. 2. Section 662.5 is added to the Code of Civil Pro-
51 cedure, to read :

Insufficiency of the evidence to

of insufficiency of the
evidence to

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the evidence to

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the evidence to

1 662.5. (a) In any civil action where the verdict of the
2 jury on the issue of damages is supported by substantial evi-
3 dence but an order granting a new trial limited to the issue
4 of damages would nevertheless be proper, the trial court may
5 grant a motion for new trial on the ground of inadequate
6 damages and make its order subject to the condition that the
7 motion for a new trial is denied if the party against whom
8 the verdict has been rendered consents to an addition of so
9 much thereto as the court in its discretion determines.

10 (b) Nothing in this section precludes a court from making
11 an order of the kind described in subdivision (a) in any
12 other case where such an order is constitutionally permissible.

13 (c) Nothing in this section affects the authority of the
14 court to ~~order~~ ^{its} a new trial on the ground of excessive damages
15 and to make ~~such~~ order subject to the condition that the mo-
16 tion for a new trial on that ground is denied if the party
17 recovering the damages consents to a reduction of so much
18 therefrom as the court in its discretion determines.

grant a motion for

granting a new trial

Memorandum 67-17

EXHIBIT II

DRAFT OF REPORT FOR SENATE COMMITTEE ON JUDICIARY

REPORT OF SENATE COMMITTEE ON JUDICIARY ON SENATE BILL NO. 250

In order to indicate more fully its intent with respect to Senate Bill No. 250, the Senate Committee on Judiciary makes the following report.

Except for the revised comment set out below, the comments contained under the various sections of Senate Bill No. 250 as set out in the Recommendation of the California Law Revision Commission Relating to Additur (October 1966) reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Senate Bill No. 250.

The following revised comment to amended Section 657 of the Code of Civil Procedure also reflects the intent of the Senate Committee on Judiciary in approving Senate Bill No. 250.

Section 657

Comment. The amendments to Section 657 simply codify judicial decisions declaring its substantive effect:

First, the amended section explicitly recognizes that an inadequate award of damages is a ground for granting a new trial just as an excessive award of damages presently is recognized. The availability of this basis for granting a new trial, on the ground of "insufficiency of the evidence to justify the verdict," is well settled in California. *Harper v. Superior Air Parts, Inc.*, 124 Cal. App.2d 91, 268 P.2d 115 (1954); *Reilly v. McIntire*, 29 Cal. App.2d 559, 85 P.2d 169 (1938) (neither passion nor prejudice need be shown).

Second, the qualifying language in subdivision 5 and in the last paragraph that purports to limit the ground of excessive damages to an award influenced by "passion or prejudice" is eliminated as unnecessary. It is settled that the true basis for granting a new trial because of excessive damages is that the verdict is against the weight of the evidence, i.e., "the insufficiency of the evidence to justify the verdict or other decision"; neither passion nor prejudice need be shown. *Koye v. McComber*, 12 Cal.2d 175, 82 P.2d 941 (1938). See *Sims v. Owens*, 33 Cal.2d 749, 205 P.2d 3 (1949).

Third, subdivision 6 is revised to substitute "the evidence does not justify the verdict or other decision" for "insufficiency of the evidence to justify the verdict or other decision." This revision codifies the decisional law that a new trial may be granted not only where the court is convinced that the evidence is clearly insufficient (either nonexistent or lacking in probative force) to support the verdict but also where the evidence is such (both present and of such probative force) as to convince the court that a contrary verdict is clearly required by the evidence. *State v. Dunbridge*, 189 Cal. 166, 146 Pac. 427 (1916); *Sharp v. Hoffman*, 48 Cal. 401, 31 Pac. 846 (1890). Conforming changes are made in three other places in the section.

Third, ~~added~~ an explicit reference to "excessive or inadequate damages" is added to the second paragraph following subdivision 7, and the phrase "different verdict or decision" is substituted for "contrary verdict or decision" in the same paragraph to avoid any misunderstanding that might result from the addition of a reference to excessive or inadequate damages. The phrase "the evidence does not justify the verdict or other decision" has been substituted for "insufficiency of the evidence to justify the verdict or other decision." The reference to "excessive or inadequate damages" has been added in recognition of the fact that the true basis for granting a new trial on either of these grounds has been "the insufficiency of the evidence to justify the verdict or other decision." Conforming changes are also made in the last paragraph of the section.