~~Bill No.~~

Introduced by Mr Hager

Proposed
Judicial System.

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Suggested Amendments
of the
Present ~~Constitution~~,
proposed to be incorporated in the
New Constitution
as a
Judicial System.

To the declaration of Rights.

Section One. The right of trial by jury shall be secured to all and remain inviolate; but hereafter the concurrence of only three-fourths of the jury shall be necessary to render a verdict. In criminal cases where the punishment may be death or imprisonment in the State Prison, the jury shall consist of sixteen persons; in all other actions either criminal or civil the jury shall consist of twelve persons; but by the agreement of the parties the jury in a Civil action may consist of eight persons,

or a trial by jury may be waived.

Section Two. No person shall be held to answer for a crime or any public offense punishable by death or imprisonment in the State Prison, (except in cases of impeachment or in cases arising in the Militia when in actual service, or in the land or naval forces in time of war, or which this State may keep with the consent of Congress in time of peace) unless on presentment or indictment ~~by~~ of a Grand Jury. In all other cases, offenses shall be prosecuted criminally by indictment, information or complaint, as concurrent remedies and in any trial in any Court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions. Hereafter a Grand Jury shall consist of nineteen men any ten (10) of whom concurring may find an indictment or true bill.

The Legislature by a two-thirds vote of all the members elected

~~[illegible]~~

To each house may abolish ~~the~~ or establish and restore the Grand Jury system in all or any County of the State.

Section Three. No person shall be compelled in any criminal case to be a witness against himself; but if he voluntarily becomes a witness he may be fully cross-examined; nor shall any person after being once acquitted by a jury be again ~~tried~~ for the same offense put in jeopardy of life or liberty, but if the jury fail to render a verdict or if judgment after verdict be arrested or reversed nothing herein contained shall prevent a new trial.

Section Four. No person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken or damaged for public use without just compensation. Such compensation shall be ascertained by a jury in such manner as may be ~~prescribed~~ prescribed by law; and until the

same shall be paid to the owner or into Court for the owner, the property shall not be disturbed or the proprietary rights of the owner therein divested. The fee of lands taken for rail-road tracks or canals, without the consent of the owner thereof, shall remain in such owner subject to the use for which it is taken.

Section Four. The provisions of this Constitution are mandatory and prohibitory unless by express words it is declared to be otherwise.

To The Judicial Department.

Section One. The Judicial power of this State, in matters of law and equity, shall be vested in a Supreme Court, in District Courts, in County Courts and in Justices of the Peace; and in such municipal courts of inferior criminal jurisdiction as the Legislature, with the concurrence of two thirds of all the members elected to each house, may establish in any incorporated City or town.

Section Two. The Supreme Court shall consist of eight Justices. The Justices of the Supreme Court shall be learned in the law and not less than thirty-five years of age. They must be citizens of the United States and of this State for five years next preceding their election or appointment.

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Section Three. The Supreme Court shall have a general superintending control over all inferior tribunals and shall have appellate jurisdiction as follows:

In all cases involving the construction of the Constitution of the United States or of this State:

In all cases where the validity of any statute or treaty of, or authority exercised under, the United States, is drawn in question; in all civil cases arising in the District Courts whereof such Courts have exclusive original jurisdiction:

In all cases of Probate in the County or Probate Courts;

And in all criminal cases amounting to felony on questions of law alone; and it shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto and such other writs as may be necessary to the complete exercise of its appellate jurisdiction

The Justices and each of them upon petition in behalf of any person held in actual custody may issue writs of habeas corpus to any part of the State and make such writs returnable before the Supreme Court or a justice thereof, or before any District Court or County Court or before any Judge of such Courts.

Section Four. The Justices of the Supreme Court, except as in this Constitution otherwise provided, shall be elected by the qualified electors of the State. Two every two years at each general election, and shall hold office for the term of eight years. But the Legislature may, in its discretion, provide separate tickets and ballot boxes for the election of justices of the Supreme Court at a general election, or may change the time of election of such justices, from a general to a special election to be held

every two years.

Section Five. The full terms of office of the Justices of the Supreme Court, and the unexpired terms of those elected to fill any vacancies, shall commence on the First Tuesday after the first Monday in January next ensuing their election.

Those appointed shall enter upon the discharge of their duties as soon as qualified.

Section Six. The Justices of the Supreme Court shall be so classified that only two of them shall go out of office every two years, and at the same time. If a vacancy occurs in the office of Justice of the Supreme Court it shall be filled by the Governor. The person so appointed shall only hold his office until the next election, appointed for the election of Justices of the

Supreme Court by the people, when the vacancy shall be filled by the election of a justice, who shall hold the office only for the unexpired term.

Section Seven. The State shall from time to time be divided by the Legislature into two Territorial districts, each district to be composed of entire contiguous counties. A Supreme Court, to consist of any four of the eight justices of the Supreme Court, shall be held in each Territorial District, and the concurrence of three justices shall be necessary to pronounce a judgment or render a decision.

Appeals to the Supreme Court from judgments entered of record in a County within a Territorial District shall be to the Supreme Court in the same district.

Section Eight. If in any case pending in the Supreme Court, in either district, the Justices be equally divided in opinion, or the Court overrules an authoritative decision previously made by any Supreme Court of this State, such case shall, with a statement of the reason therefor, be certified and transmitted to the Supreme Court in full bench, to consist of eight justices: All cases so certified and transmitted shall be heard in the Supreme Court in full bench, and only, unless the Court otherwise direct, upon written ~~agreements~~ arguments; and the concurrence of five justices shall be necessary to pronounce a judgment or render a decision therein. If five Justices fail to concur the judgment appealed from must be affirmed.

Section Nine. The Supreme Court in full bench, of eight justices, and the Supreme Court in the territorial districts, of four justices, shall be held at such times and places and appeals thereto respectively shall be taken, certified, transmitted, and the business of the Courts regulated as may be prescribed by law.

Section Ten. At any session of the Supreme Court the justice holding a commission, oldest in date, shall be Chief Justice and if there be more than one commission of the same date the Justices may select the Chief Justice.

Section Eleven. The State shall provide suitable Court rooms and accommodations for holding the sessions of the Supreme Court and for the Justices and officers.

Section Twelve. When any Justice of the Supreme Court, through interest or other disability, is disqualified from taking part in the hearing or decision of any case pending before the Supreme Court, in full bench the remaining justices may call to their assistance a disinterested District Judge who shall act, in such case, as a Justice of the Supreme Court. In like cases the Supreme Court in either territorial district may call to its assistance another Justice of the Supreme Court or a District Judge.

Section Thirteen. The present Justices of the Supreme Court shall remain in office (unless sooner succeeded by those elected under this Constitution) until the expiration of the terms of office respectively to which they were elected; but their terms of office

shall expire & the payment of further salaries or compensation cease, and they shall severally retire from office in the order of their Election (the justice of the shortest unexpired term first) at the commencement of the terms of office respectively of justices elected under this Constitution. To succeed the present justices of the Supreme Court two justices ~~of the Supreme Court~~ shall be elected at the Election in the year and in the year

Section Fourteen. All judicial decisions in this State shall be free for publication by any person; but the Supreme Court may designate what decisions & opinions delivered by that Court, or the Justices thereof, shall be printed at the expense of the State; and no payment shall be made by the State for the publication of any decisions or opinions ~~decisions decided by the Supreme~~

~~Court~~ not so designated.

All cases finally submitted to the Supreme Court ~~should~~ must be decided without unnecessary delay and within three months after such submission.

Section Fifteen. The State except as otherwise provided in this Constitution shall be divided into convenient judicial districts, of entire contiguous counties, in each of which one district Judge shall be elected, by the qualified electors of the district, at the general or special elections provided for the election of Justices of the Supreme Court. Such judicial districts may be changed, enlarged, diminished or abolished by the Legislature, by a two-thirds vote of all the members elected to each house, as public convenience may require; and whenever a judicial district shall be abolished the office of the Judge, & his salary & compensation shall cease.

The district Judges shall hold their offices for the term of eight years.

Section Sixteen. Any single county containing fifty thousand inhabitants may of itself constitute a judicial district.

In a judicial district composed of a single county the Legislature, by a two-thirds vote of all the members elected to each House, may from time to time, as the public convenience may require, provide for an additional district Judge for every additional fifty thousand inhabitants in such county; each of whom may separately hold District Courts, hear and try cases, perform all the duties imposed upon district judges and exercise the full jurisdiction of District Courts. In any judicial district where there may be more than one district Judge the several District Courts therein, for business purposes, shall be known and designated as the first, second &c. District Court of the Judicial District, in numerical order according to their respective numbers of judicial

Districts, as may be prescribed by law. The business practice and proceedings and the times and manner of holding such courts may be regulated by general and special laws applicable to such judicial districts.

Sec. 17. The District Courts shall have original jurisdiction in all cases in equity; in all cases involving the title to real property or mining claims; the construction of the revenue laws of this state; the legality of any tax, impost assessment toll or municipal fine forfeiture or penalty, or the title to any office under this State; and in all other cases in which the demand exclusive of interest or the value of personal property in controversy amounts to three hundred dollars; and also in all criminal cases not otherwise provided for, or which may be conferred by law. They shall also have such concurrent jurisdiction with, and such appellate jurisdiction from, inferior tribunals as may be conferred by law.

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18. No person shall be eligible to the Office of District Judge unless he be learned in the law and has attained the age of thirty-five years; and who has not, for five years next preceding his election, been a resident of the District and a Citizen of the United States and of this State.

19. The District Courts shall exercise a superintending control over County Courts, Probate Courts and other inferior courts in each County of their respective districts, and they and the judges thereof shall have power to issue orders and writs of mandamus, quo warranto, certiorari, prohibition, ne exeat, injunction, habeas corpus and all other orders and writs necessary and proper to the complete exercise of their jurisdiction and to hear and determine the same.

20. In each of the Counties of the State there shall be a County Court and, except as otherwise

provided in this Constitution for each a County Judge shall be elected by the qualified electors of the County. County Judges shall hold their offices for the term of four years.

21. In any county containing over fifty thousand inhabitants, the Legislature, by a two-thirds vote of all the members elected to each house, may from time to time, as the public convenience may require, provide for such county one additional County Judge for each additional fifty thousand inhabitants; each of whom shall separately hold county courts, hear and try cases, exercise the jurisdiction and perform all other duties imposed upon county courts and judges. The business practice and proceedings of, and the manner and times of holding such courts may be regulated by general and special laws applicable to such counties.

22. The County Courts shall have original jurisdiction of actions of forcible entry and detainer and to prevent or abate a nuisance; of proceedings in insolvency and of all such special cases and proceedings as are not otherwise provided for; they shall also have such criminal jurisdiction as the Legislature may prescribe, and shall have power to hear applications for, and to issue, naturalization papers. They shall also have appellate jurisdiction in all cases arising in Courts held by Justices of the Peace, and in such inferior municipal Courts as may be established under this constitution. County judges shall hold in their respective counties, Probate Courts; and in such Probate Courts, and as Probate judges, shall perform such duties as may be prescribed by law. In any county where there may be two or more county judges the Probate Court shall be held and the duties of Probate judge

performed, by one or more of such county judges, as the public convenience may require and as may be prescribed by law.

23. The County Courts in their respective counties shall exercise a superintending control over justices of the Peace and all municipal courts, and shall have authority to issue writs of habeas corpus, on petition by, or on behalf of, any person in actual custody, unless committed or imprisoned by the order or judgment of the Supreme Court or a justice thereof, or by a District Court or a Judge thereof.

24. No person shall be eligible to the office of County or Probate Judge unless he has attained the age of thirty years, and for five years next preceding his election or appointment has been a resident of the County, a citizen of the

United States and of this State.

25 District, County and Probate Judges shall be elected at the general or special elections and in the same manner prescribed for the election of Judicies of the Supreme Court, and shall enter upon the duties of their respective offices on the first Tuesday after the first Monday in January next after their election.

26 The election of all Justices and Judges of Courts of record shall be held and conducted as this constitution and laws in harmony therewith may provide; and in case of a tie or contested election between any candidates, the same shall be determined as prescribed by law.

27. District Judges may interchange with each other in holding district Courts and in the

performance of official duties in the several judicial Districts throughout the State; and if from any cause a County or Probate Judge be unable or disqualified from holding Court in any County such Court may be held by any other county or probate Judge.

28. The Supreme Court District Courts, County Courts and Probate Courts shall be Courts of Record.

29. The Legislature shall provide for the election in each County of as many Justices of the Peace as the public convenience may require, with such duties, powers, jurisdiction (inferior to the Courts of record) and terms of office as ~~prescribed~~ prescribed by law.

30. The Justices of the Supreme Court, District Judges, County and Probate Judges shall, at stated times during their continuance in office, receive for their services such compensation as is, or may be prescribed by law, which shall not be increased or diminished after their election, or during their terms of office. The compensation to County and Probate Judges shall be paid out of the County treasury of their respective counties. No Judicial Officer, except Justices of the Peace when authorized by law, shall receive to his own use any fees or perquisites of office.

31. The Justices of the Supreme Court, District Judges, County and Probate Judges, during the term for which they shall have been elected shall not be eligible to any other office, state or Federal, than a judicial office.

nor shall they hold any other office of profit, under this State or under the Government of the United States, or of any other State, or practice as an attorney or counsellor in any Court in this State.

32. In jury trials judges may state the testimony and declare the law; but shall not charge juries as to conclusions of fact.

33. The Legislature shall have no power to grant leave of absence to any judicial Officer; and if any such officer shall absent himself from the State, for more than thirty consecutive days, his office shall be forfeited and become vacant.

34. If a Justice or Judge of any Court of record willfully neglects, or violates his oath of office, or by reason of prolonged sickness, or physical or mental infirmity, becomes unable, to perform the duties of his office, with efficiency, the Legislature shall have power, by a two thirds vote of the members of each house concurring, and with the approval of the Governor to remove such Justice or Judge from office; but the cause of such removal shall be first stated on the journal of each house, and notice thereof given to such justice or judge, with such reasonable time to be heard in his defense as may be prescribed by law.

35. The style of all process shall be "The People of the State of California", and all prosecutions shall be conducted in their name and by their authority.

36. The salaries and compensation allowed to judicial officers must be fixed by law:
The yearly salary & compensation of Justices of the Supreme Court shall not exceed the sum of
— dollars: that of a District Judge shall not exceed the sum of
dollars; and that of a County Judge, or a judge of a Municipal Court, shall not exceed the sum of dollars.
Justices of the Peace shall receive such salary or fees as prescribed by law.

37. Judicial officers, before entering upon the duties of their respective offices, shall take & subscribe before a judge of a court of record the following oath or affirmation in writing:
"I do solemnly swear (or affirm as the case may be) that I will support the Constitution of the United States; that I will support and ~~faithfully~~ fully sustain observe & obey the constitution of the state of California in all its parts and provisions, and that I will faithfully discharge the duties of (here insert title of office) according to the best of my ability & understanding.

The oath or affirmation of a justice of the Supreme Court, or of a District Judge, must, before the issuance of his Commission, be filed & deposited in the office of the Secretary of State; that of a County Judge, the Judge of a Municipal Court and of a Justice of the Peace, must, in like manner, be filed & deposited in the office of the County Clerk of the County.

Amendment No 10

Relative to Judicial System

Oct 9 1878
Read & referred to
~~Com on~~
Appropriate Committee
Geo A Thornton
Asst Sec

Nov 13 1878
Reported back with
substitute Am No 503
Thornton
Asst Sec

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