

Chapter 4

DEFINING THE POWERS OF THE COURTS

As the highest appellate body in the state, the Supreme Court had the final say in disputes involving the jurisdictions of the various courts. A few of these disputes involved courts of equal jurisdiction, more involved conflicts between higher and lower courts, but the vast majority involved merely determining the powers of each type of court. If the Supreme Court was in the position of having to define and draw the limits of its own powers, it had to do the same for the other courts. In deciding these disputes, the Court *attempted* to establish a uniform pattern, with each court having well-defined powers within an equally definite area of jurisdiction.

THE SUPREME COURT

In dealing with the powers and jurisdiction of the various courts, the Supreme Court, above all, had to deal with its own position in the judicial system.

As originally passed, the Constitution placed a rigid limitation on the Supreme Court's appellate power in that the Court could not hear an appeal unless the amount in dispute exceeded \$200, or "when the legality of any tax, toll, or impost or municipal fine is in question, and in all criminal

cases amounting to a felony, or questions of law alone.”¹ The 1862 amendments made \$300 the minimum that could be in controversy, and added appellate jurisdiction in all cases in equity and cases involving the title or possession of real estate.² The dollar value needed for an appeal was rigidly adhered to and had been since the very first session of the Court in 1850.³ But the “amount in dispute” depended on which party sought to appeal. When the plaintiff appealed from a judgment for the defendant, the “amount claimed by the complaint . . . is to be considered in determining whether this Court has appellate jurisdiction or not.”⁴ In the 1850s the Court allowed costs awarded in the lower court to be considered,⁵ but reversed itself in 1858.⁶ Later, Chief Justice Stephen J. Field, who wrote the earlier opinion disallowing costs, succinctly noted, “Costs are merely incidental to the action. They constitute no part of the matter in dispute.”⁷ In *Meeker v. Harris*, decided at the October 1863 term, only the costs assessed by the lower court were appealed, and being over the constitutional amount, the Supreme Court held that it had jurisdiction because the costs had become the amount in controversy.⁸ Normally, interest awarded with a judgment was not considered part of the amount in dispute, but when a demand was scheduled to draw interest, the interest was to be considered part of the demand sued for.⁹

The Supreme Court followed the Legislature and Constitution closely on other points as well. Since the Legislature extended appellate jurisdiction to cases originating in district courts only,¹⁰ the Court refused to hear appeals from county courts.¹¹ “Its [Supreme Court] appellate jurisdiction extends only to those cases in which the legislature authorized it to

¹ Cal. Const. (1849), art. VI, § 4.

² Cal. Const. (1849), art. VI, § 4 (amended 1862).

³ *Luther v. Master and Owners of Ship Apollo* (1850), 1 Cal. 15.

⁴ *Gillespie v. Benson* (1861), 18 Cal. 411.

⁵ *Gordon v. Ross* (1852), 2 Cal. 157.

⁶ *Dunphey v. Guindon* (1858), 13 Cal. 28.

⁷ *Votan v. Reese* (1862), 20 Cal. 89.

⁸ *Meeker v. Harris* (1863), 23 Cal. 285.

⁹ *Matson v. Vaughn* (1863), 23 Cal. 61; *Skillman v. Lachman* (1863), 23 Cal. 198.

¹⁰ Cal. Stats. (1850), chap. 23, § 35.

¹¹ *Warner v. Hall* (1850), 1 Cal. 90.

entertain appeals. The legislature has conferred upon us no power to review judgments of the county court, on appeal, or in any other way.”¹²

Further, the Supreme Court would not hear an appeal to review the facts of a case, unless a new trial was asked for at the lower court, and there refused,¹³ as the statute so stated.¹⁴ Nor would the Court accept a case involving original jurisdiction, turning down a petition by the attorney general to hear a case in order to test the constitutionality of the foreign miners’ tax.¹⁵ Chief Justice Hastings, speaking for the Court, said that any miner who felt his rights violated could commence an action in the proper court, and the matter might eventually reach the Supreme Court on appeal.¹⁶

The Court was not always satisfied with the restrictions placed upon it. In one case the Court refused to hear an appeal from a court of sessions on a conviction of a misdemeanor, but added that the courts of sessions did not have the best legal talents on their benches, and it would be better if the more serious of the misdemeanors were to be tried at the district court level instead. Chief Justice Murray, speaking for all three justices, recommended this to the Legislature at the conclusion of his opinion.¹⁷

In one instance the Court itself found a way around the Constitution when it answered an objection to its appellate power in a divorce case by saying that the framers of the Constitution could never have meant to deny appellate powers over civil cases where the relief sought could not be weighed in dollars and cents.¹⁸

In some instances, the Court had more room in which to exercise its discretion. Thus, while the law stated that an appeal could only be taken from a “final judgment,”¹⁹ that term was open to varying interpretations. At its first term the Court said that the final judgment was the determination of the issue in which the rights of the litigants were absolutely fixed.²⁰ At

¹² *White v. Lighthall* (1850), 1 Cal. 348.

¹³ *Brown v. Graves* (1852), 2 Cal. 118.

¹⁴ Cal. Stats. (1851), chap. 5, § 347.

¹⁵ Cal. Stats. (1850), chap. 97.

¹⁶ *Attorney General, ex parte* (1850), 1 Cal. 85.

¹⁷ *People v. Applegate* (1855), 5 Cal. 295.

¹⁸ *Conant v. Conant* (1858), 10 Cal. 249.

¹⁹ Cal. Stats. (1851), chap. 5, § 336.

²⁰ *Loring v. Illsley*, 28.

the next term the Court broadened its definition so that the final judgment only determined a particular suit, and not necessarily the rights involved.²¹

In 1857 the Court was called upon to decide whether a reversal of a case on appeal was a bar to further proceedings. This point never having come up before, the Court had no precedent in the state, nor any law on the subject, so it applied a common law principle to the effect that after a reversal of an erroneous judgment, the parties in the inferior court had the same rights they originally had.²² As to the appellate power of the Supreme Court, the Court said that the Legislature could not impair the right of appeal, but could regulate the mode in which appeals were to be made.²³

The Supreme Court's jurisdiction in criminal appeals was limited to felonies. A felony was any offense "which is punishable with death, or by imprisonment in the State prison."²⁴ But certain offenses could be punished either as felonies or misdemeanors, and in such cases the punishment decided the grade of the offense,²⁵ but the prosecution had to be in the form of a felony.²⁶ The application of the last two cases may be seen in *People v. Apgar*, where the defendant was indicted and prosecuted for assault with a deadly weapon, a felony, but convicted of simple assault, a misdemeanor. The conviction for simple assault was an acquittal for all felonies involved, and since the judgment was for a misdemeanor, the Supreme Court lacked the jurisdiction to hear an appeal.²⁷

The 1862 amendments gave the Court appellate jurisdiction of cases in equity, and a suit to abate a nuisance was an example of such an equity case.²⁸ The appeal power over cases dealing with the title or possession of real estate was affirmed in *Doherty v. Thayer*,²⁹ and in the same October 1866 term the Court took appeal jurisdiction over a case involving a disputed election even though there was no specific constitutional authorization

²¹ *Belt v. Davis* (1850), 1 Cal. 134.

²² *Stearns v. Aguirre* (1857), 7 Cal. 443.

²³ *Haight v. Gay*, 8 Cal. 297.

²⁴ *People v. Cornell* (1860), 16 Cal. 188.

²⁵ *Ibid.*, 187.

²⁶ *People v. War* (1862), 20 Cal. 117.

²⁷ *People v. Apgar* (1868), 35 Cal. 389.

²⁸ *People v. Moore* (1866), 29 Cal. 427.

²⁹ *Doherty v. Thayer* (1866), 31 Cal. 140.

to do so.³⁰ In his opinion Chief Justice John Currey cited with approval the earlier opinion of Stephen J. Field in *Conant v. Conant*, noted above, regarding the intent of the framers of the Constitution. Currey noted the division of the state government into three departments, and the various courts of the judiciary, “among which the Supreme Court is of highest authority. To it, as the Court of dernier resort, it may fairly be presumed the people intended the citizen might go, in matters of gravest concern, for the enforcement of his rights or for the redress of wrongs sustained.”³¹

No right was of greater value to a citizen than that of voting:

Then to deny to him the right of appeal to the highest tribunal of the State in cases where he may have been deprived of a right which lies at the foundation of all others would . . . be depriving him of a privilege which it was designed to those who adopted the Constitution he should have and enjoy. To so interpret the provisions of the Constitution defining the jurisdiction of this Court as to close the door to his appeal would . . . be to refuse to appreciate the intention of the people who adopted the Constitution, . . . a charter of our liberties, and would . . . involve us in a contradiction of the manifest design of the Constitution as a whole; and further, we would thereby hold that in cases involving rights of the highest and most sacred importance the party concerned could be heard only in Courts of inferior grade, though reason and justice might demand that he should have a right of redress commensurate with the magnitude of the interest at stake.³²

In 1871 a majority of the Court, in a three-to-two decision, disapproved of *Knowles v. Yeates*, in part, by refusing to give the Court jurisdiction to hear the appeal of a case involving a street assessment because provisions of the statute in question said that the report of the county court was to be final and conclusive.³³ Justice Joseph B. Crockett said that when the Legislature made the county court’s report “final and conclusive,” it intended that there be no appeal.³⁴

³⁰ *Knowles v. Yeates* (1866), 31 Cal. 82.

³¹ *Knowles v. Yeates*, 88.

³² *Ibid.*

³³ Cal. Stats. (1869–70), chap. 36, § 5.

³⁴ *Appeal of S. O. Houghton* (1871), 42 Cal. 35.

The Constitution also empowered the Court to issue such writs as necessary to the exercise of its appellate powers.³⁵ The writs whose use caused the most controversy were those of mandamus and certiorari. The Court affirmed its right to use the writ of mandamus to review acts of subordinate bodies,³⁶ but refused to use the writ to order dismissal of a case in a district court when the action of the lower court's judge was judicial and discretionary.³⁷ As Justice Sanderson stated in *Lewis v. Barclay*, "Mandamus lies to compel an inferior tribunal to perform a duty enjoined by law, if it refused to do so; but if the duty is judicial, the writ cannot prescribe what the decision of the inferior tribunal shall be."³⁸

Like mandamus, the writ of certiorari was to be used when there was no other available appeal. The purpose of this writ was only to see if a lower judicial body had exceeded its jurisdiction. Justice Edward Norton stated: "This Court has only appellate jurisdiction, and is only authorized to issue the writ of certiorari in aid of such jurisdiction."³⁹ The Court would not issue the writ if the lower tribunal had not exceeded its jurisdiction, even if a matter of law were involved. "It is now too well settled to admit of argument that we cannot on certiorari review mere errors of law committed by an inferior Court."⁴⁰ The writ also included the right to review the acts of nonjudicial bodies, if such bodies acted judicially. In *Robinson v. Board of Supervisors of Sacramento*, the Court said that while the defendants did not constitute an ordinary judicial tribunal, they were invested by the Legislature with power to decide on the property or rights of the citizen. "In making their decision they act judicially, whatever may be their public character."⁴¹

With the three-man Court, as noted earlier, it was not uncommon for only two justices to hear a case and then fail to agree on a decision. This was possible with the five-man Court if there were a vacancy or if a justice were disqualified for any reason, such as illness of having been counsel

³⁵ Cal. Const. (1849), art. VI, § 4.

³⁶ *Tyler v. Houghton* (1864), 25 Cal. 26.

³⁷ *People v. Pratt* (1865), 28 Cal. 166.

³⁸ *Lewis v. Barclay* (1868), 35 Cal. 213.

³⁹ *Miliken v. Huber* (1862), 21 Cal. 169.

⁴⁰ *People v. Burney* (1866), 29 Cal. 460.

⁴¹ *Robinson v. Board of Supervisors of Sacramento* (1860), 16 Cal. 210.

for one of the parties at a different hearing of the same cause. In 1867 the Court said that in such an instance:

The rule seems to be that where the motion is such as to make an affirmative decision indispensable to the further progress of the action, the action must stop in case of an equal division; but where the motion is in arrest of the progress of the action, all equal division is equivalent to a denial of the motion.⁴²

In practical effect, the action of the tribunal from which the appeal was taken was allowed to stand.

Occasionally, the Court had to spell out the legal import of its decisions. In a case at the January 1864 term the Court commented that a dismissal of an appeal was a legal affirmance of the lower court's judgment.⁴³ On several occasions the Court had to point out that when it decided a case, the decision became the rule of that particular case, and no appeal could be taken again on the same merits. In referring to a previous decision it made in the same case, the Court said that the earlier decision "stands as the judgment of the highest Court of record of the State; and it is not in our power now to retry it on appeal, for . . . we have no appellate power over our own judgment."⁴⁴ This meant that a decision on points of law by the Supreme Court in the same case on a former appeal was conclusive,⁴⁵ and binding on the court below.⁴⁶ Again: "The legal propositions which arose and were decided on the former appeal, whether they were correctly decided or not, have become the law of the case. . . . There would be no end to the litigation, if the same questions in the case once decided by the appellate Court were open to examination on every succeeding appeal."⁴⁷

THE INFERIOR COURTS

The lower courts also had limited powers, and as with its own powers, the Supreme Court was called upon to examine the powers of these courts.

⁴² *Ayres v. Bensley* (1867), 32 Cal. 633.

⁴³ *Rowland v. Krayenhagen — Krayenhagen v. Rowland* (1864), 24 Cal. 52.

⁴⁴ *Davidson v. Dallas* (1860), 15 Cal. 75.

⁴⁵ *Soule v. Ritter* (1862), 20 Cal. 522.

⁴⁶ *Megerle v. Ashe* (1874), 47 Cal. 632.

⁴⁷ *Page v. Fowler* (1869), 37 Cal. 105.

The district courts had unlimited jurisdiction in all criminal cases not otherwise provided for and in all issues of fact in the probate courts, and had original jurisdiction, in both law and equity, in all civil cases where the amount in dispute exceeded \$200, exclusive of interest.⁴⁸ In addition to these powers, the district courts, along with the Supreme Court and county courts, could issue writs of certiorari to determine whether lower judicial bodies had exceeded their jurisdiction.⁴⁹ The amendments of 1862 extended the jurisdiction of the district courts to include all cases involving the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, and raised the limit on the amount in controversy to \$300 or more,⁵⁰ and the Legislature continued the use of the certiorari writ.⁵¹

The constitutional limitations on the powers of the district courts were similar to those of the Supreme Court, and as a consequence most cases heard by the high tribunal were from the district courts. In a suit to recover \$550, the Supreme Court affirmed the district court's power to try the case, and its own power to hear the appeal, by saying that it had jurisdiction over any case the district court could try.⁵² If a suit were brought for a sum below the constitutional amount the district court could transfer the case to the proper court, that of a justice of the peace.⁵³

One way around the monetary limit after the 1862 amendments was to bring suit in equity rather than in law. In *People v. Mier*, the Court, in discussing a suit to recover taxes, noted that a complaint asking for a money judgment was an action at law, but a complaint asking for a foreclosure was an action in equity and the district court would have jurisdiction regardless of the amount in controversy.⁵⁴ The same reasoning also held true for a suit to collect for a street assessment,⁵⁵ and even in a suit to collect for damage done to real property by sheep.⁵⁶ In the latter case the

⁴⁸ Cal. Const. (1849), art. VI, § 6.

⁴⁹ *Ibid.*, § 4; Cal. Stats. (1851), chap. 5, § 456.

⁵⁰ Cal. Const. (1849), art. VI, § 6 (amended 1862).

⁵¹ Cal. Stats. (1863), chap. 260, § 225.

⁵² *Solomon v. Reese* (1867), 34 Cal. 28.

⁵³ *Hopkins v. Cheeseman* (1865), 28 Cal. 180.

⁵⁴ *People v. Mier* (1864), 24 Cal. 61.

⁵⁵ *Mahlstadt v. Blanc* (1868), 34 Cal. 577.

⁵⁶ *Young v. Wright* (1877), 52 Cal. 407.

plaintiff, rather than suing the owner of the sheep for money, brought an action in rem, against the animals, which had the same effect as enforcing a lien since the property (animals) were to be sold in the same manner as a foreclosure on real property. Another method used to bring an action to the district court for trial even though less than \$300 was in controversy, was to put the title or possession of land in question. Prior to the amended Constitution this was simply a statutory method.⁵⁷ But whether before or after the amendments, if the title or possession of real property was an issuable fact upon which a plaintiff relied for a recovery, or a defendant for a defense, then the district court had jurisdiction regardless of the amount in controversy.⁵⁸

By use of the writ of certiorari, as mentioned earlier, a district court could review actions of an inferior tribunal, but only to the extent of determining whether that tribunal exceeded its jurisdiction. In *Will v. Sinkwitz*, the district court modified a judgment of the county court, changing an award from \$300 to \$299, so as to keep the amount within the lower court's limits. This was wrong; the district court should have merely set aside the judgment because it had no authority to modify or reduce it.⁵⁹ The power to review the jurisdiction of judicial tribunals included normally nonjudicial bodies performing judicial functions, such as boards of supervisors. A judicial function involved, for example, the proceedings necessary to authorize the establishment of a road.⁶⁰ The Supreme Court said that district courts could also issue writs of mandamus, although the amended Constitution did not specifically grant district courts the use of this writ. The Court said that they could use this writ before the amendments, and if it were intended that they should not continue to do so, language limiting the district courts should have been used.⁶¹

The Legislature was left to decide the jurisdiction of justices of the peace and the classes of cases appealable to the county courts.⁶² The 1862 amendment prescribed the areas of appeal, saying that the Legislature was

⁵⁷ Cal. Stats. (1851), chap. 1, § 23.

⁵⁸ *Holman v. Taylor* (1866), 31 Cal. 338.

⁵⁹ *Will v. Sinkwitz* (1870), 39 Cal. 570.

⁶⁰ *Keys v. Marin County* (1871), 42 Cal. 253.

⁶¹ *Perry v. Ames* (1864), 26 Cal. 372.

⁶² Cal. Const. (1849), art. VI, § 14.

to fix the powers of the justices, and that such powers could not impinge on those of the other courts.⁶³ In 1850 the Legislature limited the jurisdiction of justices of the peace to civil cases involving personal property with a maximum value of \$200.⁶⁴ After the 1862 amendments the monetary limit was raised to \$300 and the justices were given jurisdiction over certain misdemeanors.⁶⁵ The monetary limitation was strictly adhered to,⁶⁶ and when a penalty stipulated in the original contract raised the award past \$300, the justice of the peace court lost its jurisdiction even though the original amount in controversy was but \$125. The reasoning of the Supreme Court was that the stipulation raised the amount in controversy beyond the legal maximum for a justice's court.⁶⁷

The county courts were presided over by the county judge, who was also the probate judge. In addition to these duties he was to hold courts of sessions with two justices of the peace as associates, with such criminal jurisdiction as the Legislature allowed, and he was to "perform such other duties as shall be required by law."⁶⁸ The county courts themselves were given "such jurisdiction, in cases arising in Justice's Courts, and in special cases, as the Legislature may prescribe, but shall have no original civil jurisdiction, except in special cases."⁶⁹ The Legislature gave to the courts of sessions jurisdiction over all "cases of assault, assault and battery, breach of the peace, riot, affray, and petit larceny, and over all misdemeanors punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding three months, or both such fine and imprisonment."⁷⁰ The county court was given appellate jurisdiction over civil cases arising in justices' courts, and as already mentioned, those courts had a \$200, later \$300, limit on the amount involved in cases they could hear.

The 1862 amendments did not include the courts of sessions but otherwise increased the powers of the county judge, one of whom described his job thusly in 1866:

⁶³ Cal. Const. (1849), art. VI, § 9 (amended 1862).

⁶⁴ Cal. Stats. (1850), chap. 73, § 3.

⁶⁵ Cal. Stats. (1863), chap. 260, §§ 48, 51.

⁶⁶ *Cariaga v. Dryden* (1865), 29 Cal. 307.

⁶⁷ *Reed v. Bernal* (1871), 40 Cal. 628.

⁶⁸ Cal. Const. (1849), art. VI, § 8.

⁶⁹ *Ibid.*, § 9.

⁷⁰ Cal. Stats. (1850), chap. 86, § 5.

County judges have jurisdiction in cases of forcible entry and detainers, insolvency, actions to prevent or abate a nuisance[.] They have appellate jurisdiction in all cases coming before justice of the peace. They are Ex officio Judges of Probate, have power to issue writs of Habeas Corpus [and] Mandamus and can grant Naturalization papers. There is no appeal from the County Court in civil cases . . . Justices have jurisdiction to \$300. . . . Jurisdiction in criminal cases[.] all crimes short of murder and treason.⁷¹

In *People v. Moore*, the Supreme Court affirmed the constitutional mandate that gave the county courts jurisdiction in cases of nuisance,⁷² but such actions could also be brought in equity, which would give the district courts jurisdiction as well, and the Supreme Court said that there was no reason why both county and district courts could not have concurrent jurisdiction. Though the Constitution may have given original jurisdiction over a class of cases to one court, other courts were not necessarily deprived of concurrent jurisdiction unless the Constitution also expressly excluded these other courts.⁷³

The original jurisdiction of county courts in criminal matters was limited to cases in which an indictment had been found by a grand jury.⁷⁴ The same offenses, if there were no grand jury indictments, could be tried in a justice's court, providing another instance of concurrent jurisdiction.⁷⁵

The Constitution, in both its original and amended forms, gave the county courts original jurisdiction in all "special cases" prescribed by the Legislature. In 1860 the Supreme Court said that the use of the writ of mandamus could be included as a special case,⁷⁶ but in 1873 the Court reversed itself, holding, "The familiar definition of a special case is that it is a case unknown to the general framework of Courts of law or equity."⁷⁷ Mandamus was certainly known to the general framework, and the act of

⁷¹ Henry Eno, *Twenty Years on the Pacific Slope: Letters of Henry Eno* . . . edited by W. Turrentine Jackson. Yale Americana Series, no. 8 (New Haven: Yale University Press, 1965), 143–44.

⁷² *People v. Moore* (1866), 29 Cal. 427.

⁷³ *Courtwright v. B. R. & A. W. & M. Co.* (1866), 30 Cal. 573.

⁷⁴ *People v. Halloway* (1864), 26 Cal. 651.

⁷⁵ *Ex parte McCarthy* (1879), 53 Cal. 412.

⁷⁶ *Jacks v. Day* (1860), 15 Cal. 91.

⁷⁷ *People v. Kern County* (1873), 45 Cal. 679.

the Legislature attempting to give county courts the power to issue such writs was unconstitutional.⁷⁸ A mechanic's lien was unknown to the common law, though, and was an acceptable special case,⁷⁹ as was a proceeding dealing with conflicting claims to town lots,⁸⁰ or an action to contest an election.⁸¹

The appellate jurisdiction of the county courts was limited to appeals from justices' courts and any other inferior courts established by the Legislature, such as the San Francisco police judge's court.⁸² In civil cases appeals from a justice's court could only take place when the sum in controversy did not exceed \$200 before the 1862 changes or \$299 afterwards. This limitation was enforced here as with the other courts.⁸³ The appellate jurisdiction of the county courts in criminal matters was limited to misdemeanors, and the decision of the county court was final unless there was an excess of jurisdiction.⁸⁴

Until they were abolished by the 1862 amendments, the courts of sessions had wide-ranging criminal jurisdiction of all indictments for public offenses except arson, murder, and manslaughter. Although the jurisdiction of these courts seemed clear-cut, questions still arose, such as whether a death caused by dueling was murder, manslaughter, or a separate offense. The Supreme Court in *Terry v. Bartlett* said that the Legislature enacted special legislation dealing with dueling and removed the death caused by the duel from the category of a murder.⁸⁵ The "Terry" in the name of the case was David S. Terry, and the duel involved was his famous duel with David C. Broderick, resulting in the latter's death.⁸⁶

The first section of the article on the judiciary contained a provision that the Legislature could "establish such municipal and other inferior

⁷⁸ Cal. Code Civ. Proc. (1872), § 85, subdiv. 5.

⁷⁹ *McNeil v. Borland* (1863), 23 Cal. 144.

⁸⁰ *Ryan v. Tomlinson* (1866), 31 Cal. 11.

⁸¹ *Kirk v. Rhoads* (1873), 46 Cal. 398.

⁸² *People v. Maguire* (1864), 26 Cal. 635.

⁸³ *Bradley v. Kent* (1863), 22 Cal. 169.

⁸⁴ *People v. Johnson* (1866), 30 Cal. 98.

⁸⁵ *Terry v. Bartlett* (1860), 14 Cal. 651.

⁸⁶ A. Russell Buchanan, *David S. Terry of California; Dueling Judge* (San Marino: The Huntington Library, 1956), 83–112.

courts as may be deemed necessary.”⁸⁷ The Legislature took advantage of the provision on several occasions to create new courts, particularly for San Francisco, where, because it was both the most populous city and the financial center of the state, additional courts were needed to keep up with the cases to be heard. One of these courts, the San Francisco Superior Court, even had the same powers as a district court, except that its jurisdiction in cases dealing with property was limited to land in San Francisco.⁸⁸ In 1870 the Legislature established a municipal criminal court for San Francisco with the power to try felony cases, but without the right of appeal to the county courts.⁸⁹ The Supreme Court held this provision constitutional, saying there could be no appeals unless the Legislature also provided the mode and means for making the appeals.⁹⁰ The Legislature created a similar court in 1876, again without providing for appeals to the county courts.⁹¹ Without referring to its earlier decision, the Court said that the act creating the new court was unconstitutional and void because the Legislature did not provide the machinery for appeals.⁹²

COURTS AND JUDGES

Without necessarily mentioning a particular court by name, the Supreme Court made decisions that applied to several courts or the whole judicial system at once. One such instance was *Hahn v. Kelly*, in which a decision in one district court was attacked in the court of another district.⁹³ Justice Sanderson wrote that when a judgment of a court of general jurisdiction was introduced as evidence, it could only be attacked by the opposition on the ground that the court rendering that decision lacked jurisdiction. He said that

the presumptions of law are in favor of the jurisdiction and of the regularity of the proceedings of superior Courts, or Courts of general jurisdiction, . . . The rule itself is founded upon the idea that

⁸⁷ Cal. Const. (1849), art. VI, § 1.

⁸⁸ *Vassault v. Austin* (1869), 36 Cal. 691.

⁸⁹ Cal. Stats. (869–70), chap. 384.

⁹⁰ *People v. Nyland* (1871), 41 Cal. 129.

⁹¹ Cal. Stats. (1875–76), chap. 548.

⁹² *Ex parte Thistleton* (1877), 52 Cal. 220.

⁹³ *Hahn v. Kelly* (1868), 34 Cal. 391.

the peace and good order of society require that a matter once litigated and determined shall be regarded as determined for all time, or that rights of person and property, once determined ought not to be again put in jeopardy.⁹⁴

This presumption, being limited to superior courts, did not apply to inferior courts, which in California meant any court not a court of record.

Nevertheless, the Supreme Court refused to interpret the Constitution so as to limit a district judge solely to his own district since districts could be altered at will by the Legislature. Thus, the Court refused to reverse a murder conviction solely because the presiding judge was from a different district.⁹⁵ Further, a court could not interfere with the decrees and judgments of another court of concurrent jurisdiction.⁹⁶

Any court, whether of inferior or superior jurisdiction, could take judicial notice of readily known facts. In *People v. Potter*, Joel C. Potter was indicted for embezzling money from the city of San Jose.⁹⁷ The indictment stated that the money belonged to the city, whereas technically it belonged to the mayor and common council under the acts incorporating the city.⁹⁸ Justice Sanderson said that the misnaming was not important because the intention of the indictment was clear, and the acts incorporating the city were public acts that the courts were bound to notice judicially.

In discussing any judicial system constant reference is made to various courts, often without considering the judges who manned the courts, their duties, powers, and areas of direction. In 1858 the Legislature passed an act for the incorporation of water companies, and conferring authority upon county judges to hear and determine applications to appropriate land and water.⁹⁹ The Supreme Court admitted that such proceedings were “special cases” within the constitutional meaning of the term, and that while jurisdiction could be given to the county courts, the Legislature could not confer the jurisdiction on the county judge. The county judge was not the county court, and although the Legislature might authorize the judges of

⁹⁴ *Ibid.*, 409.

⁹⁵ *People v. McCauley* (1851), 1 Cal. 379.

⁹⁶ *Anthony v. Dunlap* (1857), 8 Cal. 26.

⁹⁷ *People v. Potter* (1868), 35 Cal. 110.

⁹⁸ Cal. Stats. (1859), chap. 117, § 16; Cal. Stats. (1863), chap. 69, § 15.

⁹⁹ Cal. Stats. (1858), chap. 262, § 2.

courts, at chambers, to perform certain duties in respect to a cause, yet some court had to have had jurisdiction.¹⁰⁰ But even with the court having jurisdiction, a judge could not settle the case in chambers.¹⁰¹

After rejecting part of the defendants' appeal in *Smith v. Billett*, the Supreme Court noted: "The other points involve only questions of discretion of the presiding Judge, in controlling and conducting the proceedings, which we never review, unless in extreme cases, where the power of the Court is grossly abused, to the oppression of the party."¹⁰²

One area in which a judge was allowed to use a great deal of discretion was in attempts to change the place of trial, or venue. The Supreme Court had early said that the granting of a change of venue was discretionary in the hands of the lower courts and would only be reversed in cases of gross abuse.¹⁰³ What would be considered gross abuse, though, was open to question. In one instance a defendant claimed that the presiding judge had been an active member of the San Francisco Vigilance Committee of 1856, and that group had at that time banished the defendant from the city. There was no abuse here because the facts as presented dealt with past events and were unconnected to the present charge.¹⁰⁴ In *McCauley v. Weller*, the Court said that any change of venue based on the disqualification of a judicial officer would have to be for a cause listed in the statute.¹⁰⁵ Chief Justice Terry noted that partisan feeling or an opinion on the justice or merits of a case would not be within the causes given in the statute; the judge has only to decide on the law, not the facts, and if his opinion as to the law was erroneous, it could be reversed upon appeal.¹⁰⁶

If a judge did allow the change of venue, the Supreme Court would not interfere. In *People v. Sexton*, the judge said he was not conscious of any bias, but he granted the change of venue, even though the plaintiff objected. "In making the order changing the venue, the Court acted judicially upon a matter within its cognizance."¹⁰⁷ But the plaintiff in civil suit

¹⁰⁰ *Spencer Creek Water Co. v. Vallejo* (1874), 48 Cal. 70.

¹⁰¹ *Brennan v. Gaston* (1861), 17 Cal. 374.

¹⁰² *Smith v. Billett* (1860), 15 Cal. 23.

¹⁰³ *Sloan v. Smith* (1853), 3 Cal. 410.

¹⁰⁴ *People v. Mahoney* (1860), 18 Cal. 180.

¹⁰⁵ Cal. Stats. (1853), chap. 180, § 87.

¹⁰⁶ *McCauley v. Weller* (1859), 12 Cal. 500.

¹⁰⁷ *People v. Sexton* (1864), 24 Cal. 78.

moved for a change of venue from San Joaquin to Stanislaus, because his witnesses and the property involved were in the latter county. The judge refused the change, but the Supreme Court, in reversing the lower court, said that if a defendant in a similar case asked for a change, it would be granted, and the plaintiff was entitled to the same consideration.¹⁰⁸

One area in which there could be no discretion was when the judge was closely related to one of the parties. In *De la Guerra v. Burton*, the plaintiff and the judge were first cousins, and the judge was thus incompetent to try the case.¹⁰⁹ Not only could a judge not try such a case, he could not even examine the pleadings.¹¹⁰ Punishment or contempt by a judge would not be upheld except under the circumstances and in the manner prescribed by law because such punishment was arbitrary.¹¹¹ Certain acts of judges were so irregular as to be reversed by the Supreme Court. These included the disbarment of an attorney for making a motion not supported by the facts of the case,¹¹² and ordering a woman not to remarry in her lifetime, when a divorce was granted.¹¹³

There is no pattern readily discernible in the cases enumerated in this chapter, but there is the picture of a young state attempting to regularize its judicial system along the lines of normally recognized legal procedure. Compounding the work of the Supreme Court was the problem of men, not always competent or lacking the same outlook in regard to the importance of uniform decisions in all the courts of the state, as the men on the supreme bench. Henry Eno, the county judge quoted earlier, also wrote, "I make it a rule to decide all cases according to my ideas of right and wrong and not according to the ideas of any of our Supreme Judges — for whom I dont [*sic*] have much respect."¹¹⁴ The Court faced the need to settle important questions in numerous instances, such as *Teschmacher v. Thompson*, where the Court had technical grounds for a reversal because the lower court did not define key terms for the jury.¹¹⁵ But, said Chief

¹⁰⁸ *Grewell v. Walden* (1863), 23 Cal. 165.

¹⁰⁹ *De la Guerra v. Burton* (1863), 23 Cal. 592.

¹¹⁰ *People v. de la Guerra* (1864), 24 Cal. 73.

¹¹¹ *Batchelder v. Moore* (1871), 42 Cal. 412.

¹¹² *Fletcher v. Daingerfield* (1862), 20 Cal. 427.

¹¹³ *Barber v. Barber* (1860), 16 Cal. 378.

¹¹⁴ Eno, *Twenty Years on the Pacific Slope*, 143–44.

¹¹⁵ *Teschmacher v. Thompson* (1861), 18 Cal. 11.

Justice Stephen J. Field, “We do not intend, however, to determine the appeal in this way. We prefer to place our decisions upon grounds which will finally dispose of the controversy between the present parties, and furnish a rule for the settlement of other controversies of a similar character.”¹¹⁶

Field’s desire to furnish a rule for the settlement of similar cases indicated that the justices themselves realized the importance of a consistent line of decisions as a stable element in a not always stable society.

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¹¹⁶ Ibid., 21–22.