

for the error a verdict might or even probably would have been for the other party, yet it should stand in an appellate court, if there is evidence to support it. If it does not mean this, it advances little from where we now stand. It is, however, a miscarriage of justice, in one sense, to turn a finding from what it would have been but for error, whether there is support for the other event or not or even if the latter should happen to be the correct event.

Nevertheless the legislature has the right to say this much, because it is no more than saying to an appellant that he has had his day in court and it is a matter of grace to hear him further.

Instead of such a provision, I would say that the proposed bill should provide, that on an appeal the respondent's right to a jury trial on questions of fact should never be impaired without his consent, and, if error which militated against appellant's right to a fair jury trial is found in the record, the court should nevertheless not remand without respondent being first allowed to demand that the appellate court render the verdict it thinks the jury should have rendered.

To make a provision of this kind operative in every case, it should be made obligatory on appellant to furnish a record as complete as in the court below or the judgment should be affirmed, unless respondent stipulates that what is before the court is sufficient for a disposition of the case.

In addition to this, remands could be lessened by requiring appellate courts to disregard as prejudicial all merely technical error and all errors in procedure, which do not palpably interfere with the function of the jury in its consideration of facts. In other words, to the principle that there is presumption of prejudice from error, I would add that it extends only to that which could or might be an invasion of the province of the jury in its findings of fact. As to other error, every presumption should be the other way.

I can conceive that respondents in whose favour there was error below might sometimes prefer remands to having the appellate tribunal decide a cause, but if they do, at least, neither