

yet the plaintiff is allowed to succeed in spite of the fact that the defendant had as many judges in his favour as the plaintiff had. If the case is appealable the burden of instituting the appeal is thrown upon the defendant, which again is an injustice to him inasmuch as the plaintiff, who had only three judges in his favour while the defendant had the same number, should be obliged to handle the labouring oar.

It is urged that if there are only four judges sitting on the appeal the court may be equally divided and the result will be that the decision of the trial judge will be affirmed. Just so, and that is exactly what ought to happen in such a case. The plaintiff who has failed to convince the trial judge should not succeed on his appeal unless he can convince the majority of an even numbered court that the decision of the trial judge was erroneous.

Now let us suppose it is the defendant who appeals to the court of five judges. The plaintiff has succeeded in the court below. The defendant in order to reverse his judgment must secure three of the judges of the appeal court. It is not claimed that there is any injustice here. Each party has convinced the same number of judges, and the defendant has rightly succeeded. The presence of the fifth judge has not resulted in any injustice. Suppose there are only four judges present. The defendant appeals. He must secure the judgment of three of the four, and that is just what ought to happen in order to his success. Two of the judges who have heard the case support the plaintiff's claim and three support the defendant, who is thus ultimately successful. Again it is urged that the court may be equally divided. If so the defendant will fail on his appeal, and so he should. Three of the judges who have heard the case have, under those conditions, supported the plaintiff's claim and only two have supported the defendant. It is right that the plaintiff should succeed and the defendant should lose.

The result is that in the case of a defendant appealing no injustice can be done by a quorum of five judges and that full justice can also be done by a court composed of the statutory quorum of four. But in the case of a plaintiff appealing the