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PROCEDURAL REFORM IN THE FEDERAL COURTS.

For ten years the American Bar Association has been engaged in the work of procedural reform in the federal courts. A special committee on that subject was appointed in 1907, of which the author of this article has for years been chairman. President Taft has been one of our most effective supporters. In his annual message of December 7, 1909, he put our case with his usual clearness:

"In my judgment a change in judicial procedure, with a view to reducing its expense to private litigants in civil cases, and facilitating the dispatch of business and final decision, in both civil and criminal cases, constitutes the greatest need in our American institutions."

What has been accomplished?

1. A flagrant abuse in judicial procedure which was an innovation upon the common law was the unrestricted right to a writ of error in criminal cases. These writs were often sued out solely for delay. The punishment of notorious criminals was constantly being postponed in violation of every principle of justice. This was especially flagrant in the suing out of writs of error from the Supreme Court of the United States to review the decision of the highest courts of criminal jurisdiction in the different states. We recommend that no writ of error in criminal cases, returnable to the Supreme Court of the United States, should be allowed, unless a justice of that court shall certify

that there was probable cause to believe that the defendant was unjustly convicted.

By the Act approved March 10, 1908,[1] it was enacted,

"That from a final decision of a court of the United States, in a proceeding in *habeas corpus,* where the detention complained of is by virtue of process issued out of a state court, no appeal to the Supreme Court shall be allowed, unless the United States Court by which the final decision was rendered, or a justice of the Supreme Court, shall be of opinion that there exists probable cause for an appeal, in which event, on allowing the same, the said court or justice shall certify that there is probable cause for such allowance."

2. The Supreme Court of the United States, November 4, 1912, promulgated new rules of equity practice. These were adopted by the court after conference with committees of the bar appointed in different circuits, on one of which was S. S. Gregory, who was then president of the American Bar Association, and also with the committee of that association which had been appointed in 1907 to suggest remedies and propose laws to prevent delay and unnecessary cost in litigation. To frame them was a task of difficulty, and the bar and the public are under great obligation to the court for undertaking it. Many of the amendments proposed or discussed by that committee in its report of 1911, which it presented to the Supreme Court pursuant to the vote of the association, were adopted by the court.

The most important changes in these rules are as follows:

Rule 19. "The court, at every stage of the proceeding, must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

Rule 22. "If at any time it appear that a suit commenced in equity should have been brought as an action on the law side of the court, it shall be forthwith transferred to the law side and be there proceeded with, with only such alteration in the pleadings as shall be essential."

Rule 30. A counter-claim may be set up in the answer instead of by a cross-bill.

Rule 46. "In all trials in equity the testimony of witnesses shall be taken orally in open court, except as otherwise provided by statute or these rules."

Rule 48. Testimony of expert witnesses in patent or trade-

[1] 35 U. S. Stat. 40.

mark cases may be taken by affidavits subject to cross-examination afterwards.

Rule 57. Makes it very difficult to obtain an adjournment beyond the time fixed by the rules.

Rule 59. References to a master are exceptional "save in matters of account."

Rule 75. The record on appeal is required to state the testimony of witnesses in narrative form, "all parts not essential to the decision of the questions presented by the appeal being omitted," though the judge may direct that "any part of the testimony shall be reproduced in the exact words of the witness."

Rule 76. Requires the omission of the formal, and immaterial parts of all exhibits, documents, *etc.*, in the return.

Rule 81. Abrogates the previous requirement to follow the old English chancery practice.

Many other changes were made which have materially expedited the trial of equity cases and diminished their expense.

3. In natural sequence to these amended rules was the law and equity bill which was approved March 3, 1915 (38 U. S. Stat. 956). This amended the Judiciary Act of March 3, 1911, by adding three new sections, 274a, 274b and 274c. The first two provide:

"Sec. 274a. That in case any of said federal courts shall find that a suit at law should have been brought in equity or a suit in equity should have been brought at law, the court shall order any amendments to the pleadings which may be necessary to conform them to the proper practice. Any party to the suit shall have the right, at any stage of the cause, to amend his pleadings so as to obviate the objection that his suit was not brought on the right side of the court. The cause shall proceed and be determined upon such amended pleadings. All testimony taken before such amendment, if preserved, shall stand as testimony in the cause with like effect as if the pleadings had been originally in the amended form."

"Sec. 274b. That in all actions at law equitable defenses may be interposed by answer, plea or replication without the necessity of filing a bill on the equity side of the court. The defendant shall have the same rights in such case as if he had filed a bill embodying the defense or seeking the relief prayed for in such answer or plea. Equitable relief respecting the subject-matter of the suit may thus be obtained by answer or plea. In case affirmative relief is prayed in such answer or plea, the plaintiff shall file a replication. Review of the judgment or decree entered in such case shall be regulated by rule of court. Whether such review be sought by writ of error or by appeal the appellate court shall have full power to render such judgment upon the records as law and justice shall require."

This particular reform was very carefully considered by the Bar Association Committee. We had the benefit of the advice and co-operation of President Taft. Henry D. Clayton, who was for years chairman of the Judiciary Committee of the House of Representatives and is now Judge of the United States District Court for the Northern and Middle District of Alabama, was one of the most persistent advocates of this reform. The objection that had been frequently taken to it was that the Constitution of the United States recognized the distinction between law and equity and that Congress could not abolish it. Our reply was and is that the distinction is intrinsic and is not affected by the act. That it is remedial only and facilitates procedure so that the complainant may promptly obtain the remedy to which, either at law or in equity, he is entitled. We pointed out that in the federal courts the same judge has always had jurisdiction at law and in equity. The court is one, and the pleadings can and should be readily adapted to the facts.

One of the judges in the third circuit in *Waldo* v. *Wilson*,[2] has thought proper to give a limited construction to this act. The remark was only a dictum. The decision was rendered on other grounds. When the question is fairly presented, we are convinced that a liberal construction will be given to this remedial statute.

4. The same act[3] directs the amendment of pleadings either in the court of original jurisdiction or in the appellate court, where jurisdiction depends upon diverse citizenship and this fact is defectively alleged. Prior to the passage of this act the appellate court had felt itself obliged to reverse a judgment solely on the ground of defective allegation of citizenship.

5. Another reform of importance was accomplished by the passage of the bill, approved December 23, 1914,[4] which gives to the Supreme Court the power to review on *certiorari*, the decision of the highest court of a state, that a statute was repugnant to the Constitution, treaties or laws of the United States,

[2] 231 Fed. 654 (1916).
[3] Sec. 274c.
[4] 38 U. S. Stat. 790.

or in favor of the title or immunity claimed under the authority of the United States by the litigant in the state courts.

The framers of the Judiciary Act of 1790 were evidently of the opinion that the state courts would in all, except very clear cases, sustain the validity of state statutes and rights claimed under state laws. But the decision of the Court of Appeals of the State of New York, in *Ives* v. *South Buffalo R. Co.*,[5] reversing the Supreme Court of that state, and holding that the Workmen's Compensation Act of New York was in violation of the Constitution of the United States, left our constitutional law in a state of uncertainty which the United States Supreme Court, under the law as it then stood, was powerless to redress. For similar Workmen's Compensation Acts had been sustained in other states. It seems invidious to mention individuals. But justice requires the statement that these reforms had no more steadfast supporter than Senator Root of New York.

The limits of this article will not permit the consideration of all the other reforms advocated by the Bar Association, but not yet embodied in legislation. One, however, should be presented. It has for ten years been advocated by the association, it has passed the House of Representatives in substantially the same form in three successive Congresses (the last time June 16, 1916) but we have never been able to bring it to a vote in the Senate. This bill was drafted to correct the practice in many jurisdictions of disposing of appeals or writs of error both in civil and criminal cases upon technical grounds, and not to decide them upon the merits. The question is often solely: Has reversible error been committed in the court below? The rule should be: Was the judgment of the court below right, upon the merits, as the case appears upon the record? If not, what judgment ought to be rendered upon the merits? In other words, the Bar Association would restore the practice upon the hearing in all appellate courts which originally prevailed at common law, even on writs of error, which existed on appeals

[5] 201 N. Y. 271 (1911).

in the Roman civil law, and has been retained by courts of equity and admiralty. Unfortunately, in many states which have adopted code procedure the rules which prevailed in the Court of Chancery, relating to the hearing of appeals, have been abandoned. The practice which had grown up in courts of law of considering solely whether reversible error had been committed has been applied to appeals in equity cases. The original equity practice on this subject was far more conducive to the interest of justice.

The recommendation was in accord with the common law practice as it existed, for example, in the time of Lord Mansfield. This important fact is so often ignored or disputed that we support our statement by the following quotation from Stephen on Pleading:[6]

"It is, however, a principle necessary to be understood in order to have a right apprehension of the nature of writs of error, that judges are in contemplation of law bound, before in any case they give judgment, to examine the whole record, and then to judge either for the plaintiff or defendant, according to the legal right as it may on the whole appear."

This is a correct statement of the existing practice in admiralty and equity cases. The court takes up the record upon the merits and gives final judgment accordingly. It has the power to order a rehearing in case of necessity, but even then the evidence already taken stands as evidence in the cause.

On the other hand, in common law cases many courts do not feel warranted in giving a decision upon the merits, but affirm if they find no reversible error and reverse if they find reversible error. The courts have differed from time to time as to what constitutes reversible error, but the tendency has been to construe an adherence to strict legal rules as the right of each party, and to reverse if there has been any infraction of these rules. This makes the trial of a case a game, in which the man wins who plays it most skillfully, without regard to the merits of the controversy. The rule which prevails in equity and admiralty cases has given general satisfaction to

[6] P. 119.

the public and the bar. There can be no good reason why a court sitting in admiralty or equity should be bound to render judgment upon the merits, while in common-law cases it should be required to render judgment according to technical rules which do not affect the merits. If it be said that in common-law cases the decision of the jury should be final, we reply that the proposed amendment makes the first verdict final, unless the appellate court is convinced that upon the merits the judgment should have been the other way. This would establish the verdict as a finding upon the issues of fact in favor of the successful party, subject only to be set aside when it is clear to the appellate court that some substantial error has intervened which has caused a miscarriage of justice.

The facts thus being settled by the verdict, we would restore to the appellate court the power it had at common law to render final judgment upon the facts without the necessity of ordering a new trial. It was not part of the plan to leave the administration of the law by the appellate court to the discretion of the judges. But we would have them remember the common-law maxims: *"apices juris non sunt jura"; "summum jus summa injuria."* The decision should be according to the law of the land. But it should be no part of this law that every technical departure from a rule of practice or evidence should compel a new trial. The presumption should be that the departure worked no prejudice to the defeated party, upon the merits, and it should be for him to establish the contrary. In other words, no judgment should be reversed for error in admitting or excluding evidence, or for error in the charge unless the appellate court shall be of opinion that the verdict, if the error had not been committed, should have been the other way. For error in fact the remedy in cases tried by jury must be a new trial. But this error should never be presumed.

The rule thus recommended was that which originally prevailed in America. As early as 1828, in the case of *McLanahan* v. *Ins. Co.*,[7] Judge Story said:

[7] 1 Peters 170, 183.

"If, therefore, upon the whole case, justice has been done between the parties, and the verdict is substantially right, no new trial will be granted, although there may have been some mistakes committed at the trial."

It also was the English rule until 1835, when the case of *Crease* v. *Barrett*,[8] was decided by the English Exchequer Court. This held that a new trial should be awarded if the error found by the appellate court could possibly have affected the jury. Of Baron Parke, who was largely responsible for the adoption of this technical rule, Goldwin Smith said "that he cleverly reduced the law of England to an absurdity."

This rule was changed in England by a Rule of the Supreme Court (1883) after the Judicature Acts, yet——

"Until the passing of the Judicature Acts . . . if any bit of evidence not legally admissible, which might have affected the result, had gone to the jury, the party against whom it (the verdict) was given was entitled to a new trial."

Per Coleridge, C. J., in *Regina* v. *Gibson*.[9]

The burden of proof lay upon the appellee to show that the verdict could not possibly have been affected by the erroneous ruling. Similarly, the effect of the majority of decisions in this country is to cast the burden of proof upon the appellee. It was only natural that those courts which had taken up the "Exchequer Rule" should likewise adopt the Exchequer construction.

In a vigorous and illuminating address before the Minnesota Bar Association in 1906, Judge Amidon of the North Dakota District Court presented these comparative figures: "For the period 1890-1900, I find that of all of the causes that were brought under review or appeal in that country (England), new trials were granted in less than three and a half per cent."

In 1907 there were 197 reversals in the English Supreme Court of Judicature. In only nine of these were new trials ordered.

As Chief Justice Reading said in his address to the Bar Association in 1915:

[8] 1 C. M. & R. 919 (1835).
[9] (1887) Q. B. D. 537, 540.

"We now strive to get at the merits; to allow no technicalities to prevent the court from perceiving the true facts, and arrive at a just decision."

In America, during another period of time, from the first reports until the year 1887, the American Bar Association reported that forty-six per cent. of all the cases in the United States courts had been reversed, and sixty per cent. of these on alleged errors in procedural matters. Does this summary disposition of cases by the English Court of Appeals tend to weaken popular confidence in its ability to administer justice? Let Judge Amidon answer:

"During the last 75 years, nowhere in the British Empire has a man been snatched away from the custody of the law and sacrificed to mob violence. That is respect for law organized into human character."

And what of our own record? The facts in general are too well known to repeat, too shameful to enumerate. The connection between lynch law and a certain proneness in the courts to grant new trials may be discovered by a glance through the newspaper reports. We quote one:

The New York Times for July 16, 1903, contains an account of the lynching of a murderer who had been twice found guilty by a jury, and twice been granted a new trial. After the third conviction the multitude, not wishing to have a murderer loose, took the law into their own hands. He that runs may read what lesson these reports carry with them.

So far as procedure in appellate courts is concerned, the reform proposed is this: That in the consideration in an appellate court of a writ of error or appeal, judgment should be rendered upon the merits without permitting reversals for technical defects in the procedure below, and without presuming, as many courts now do, that if there has been a violation in some particular of some rule of law, that violation has been prejudicial to the result.

Perhaps no better argument can be stated for this proposition than a decision of the Court of Appeals of New York. It expresses the great embarrassment that lawyers feel in the trial

of important cases. In *Lewis* v. *The Long Island Railroad Company,*[10] Judge Martin, delivering the opinion of the court, says:

"After carefully and studiously examining the great number of perplexing and difficult questions determined during the heat and excitement of a sharp and protracted trial, we can but admire and commend the scrupulous and intelligent care and ability evinced by the trial judge, and the almost unerring correctness of his rulings. When the trial and the variety of the questions raised are considered, we are surprised, not that a single error was committed, but rather that there were not many more."

Yet the Court of Appeals felt obliged to reverse and order a new trial. In other words, the procedure was such that it is impossible, even with a judge of "almost unerring correctness," to get a verdict on the trial of an intricate cause that will stand the test of an appeal. It needs no argument to show that such procedure needs revision. It has been revised in New York. This state some fifteen years ago created a commission to inquire into the causes of the law's delay. Several judges of the Supreme Court of that state were examined before the commission. Presiding Justice Hirschberg said in the course of his examination:

"I have always thought it was a fatal feature of our judiciary system . . . the idea that if a man tries a suit and loses he can appeal on the assumption that that was wrong instead of appealing on the assumption that it was right."

Mr. Justice Scott agrees with this view:

"Judge Scott: You should change that rule of presumption. In the first place, I think the appellant should have cast upon him the burden of establishing that there had been error below, and also of showing that that error had been prejudicial. None of us is so wise that he can try a long case without committing some error."

In opposition to all the rules of technicality, which work such injustice and cause such delay, we urge that laid down by Chief Justice Marshall in *Church* v. *Hubbard,*[11]

"It is desirable to terminate every cause upon its real merits, if those merits are fairly before the court, and to put an end to litigation where it is in the power of the court to do so."

[10] 162 N. Y. 52, 67 (1900).
[11] 2 Cranch 165 (1804).

Under the existing rule the administration of justice by the federal courts has been neither speedy nor complete. In many instances, the parties are left where they began, with their differences undetermined. In the 164th volume of the United States Reports, for example, there may be found three cases whose history points the defect in procedure more clearly than argument. *Allen* v. *U. S.*, finally affirmed in 164 U. S. 492, was begun in 1893, was reversed in 150 U. S. 551, and was reversed again in 157 U. S. 675, before it was concluded in 1896. The case of *Starr* v. *U. S.* was reversed in 1894 (153 U. S. 614), and was reversed again in 164 U. S. 627. The case of *Brown* v. *U. S.* was reversed in 150 U. S. 93, reversed again in 159 U. S. 100, and for a third time in 164 U. S. 221. A notable instance of the delays under the present system is the Hillmon case.[12] Second judgment of reversal was twenty-three years after suit begun. This was an action brought by a widow to recover life insurance. Another instance is that of *Williams* v. *Delaware, Lackawanna and Western Railroad,* reported in 155 New York, 158, and in many other New York Reports. This case was tried seven times, and was in litigation twenty-two years. The plaintiff finally succeeded. But of necessity his victory was barren.

These cases represent in kind, if not in degree, what has occurred in the United States courts too many times during the last three-quarters of a century. This injustice the bill would remedy.

The Committee of the American Bar Association has been heard upon this bill before the Judiciary Committee of the United States Senate in four successive Congresses. It was twice reported favorably. In the last Congress it was amended to meet the views of some senators who thought that in its original form it created too strong a presumption in favor of the judgment appealed from. As thus amended it came up for consideration on the sixth day of February, 1917. One senator asked that it be laid aside. By "the courtesy of the Senate" the

[12] 145 U. S. 285 (1892).

request was granted. All our endeavors were exerted to bring it to a vote at a later period of the session, but in vain. This senator had been in the Senate nearly four years. He had received a copy of the brief in favor of the bill. His right to oppose it or to vote against it cannot be questioned. But what an abuse of courtesy to allow one such objection to defeat a bill that had been pending for eight years, had been discussed repeatedly in committee, and twice on the floor of the Senate. To continue to tolerate such an abuse is to establish, not merely minority, but autocratic government. When lawyers are blamed for the law's delay in the federal courts, we can justly reply that this is the fault, not of lawyers, nor of judges, but of the Senate.

It is very satisfactory, however, to conclude with the statement that the reform recommended has been adopted in the following twenty-six states and territory of the United States:

Alabama, Alaska, Arizona, California, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Texas, Wisconsin and Wyoming.[13]

Everett P. Wheeler.

New York.

[13] Abstract of statutes and decisions in various states and territories embodying proposed amendment to federal practice.

ALABAMA.

Alabama Bar Association Report for 1915, p. 145. Report of the Committee on Jurisprudence and Law Reform.

Rule 45 of the Supreme Court of Alabama provides that no judgment will be reversed or new trial granted in any civil or criminal case on the ground of giving or refusal of special charges unless, in the opinion of the court after an examination of the entire cause, it appears that the error has injuriously affected the substantial rights of the party.

ALASKA.

Alaska Territory Compiled Laws 1913:

Section 1052.—"No exception shall be regarded on a motion for a new trial or on an appeal, unless the exception be material and affect the substantial rights of the parties."

Error must affirmatively appear.

McMahon v. Duffee, 59 Pac. 184.

ARIZONA.

Revised Statutes of Arizona, Civil Code 1913. Tit. 6, Ch. IV, No. 423.

"The court shall in every stage of an action disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of such parties, and no judgment shall be reversed or affected by reason of such error or defect."

CALIFORNIA.

Their statute is to be found in the California Code of Civil Procedure (1915) No. 475:

"No judgment, decision or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction or defect was prejudicial, and also that by reason of such error, ruling, instruction or defect, the party complaining or appealing sustained substantial injury, and that a different result would have been probable if such error, ruling, instruction or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done, if error is shown."

See People v. Warner, 147 Cal. 553.

FLORIDA.

The Compiled Laws of the State of Florida, Ann. 1914 (Ch. 6223, May 26, 1911, No. 1), 1608d:

"No judgment shall be set aside or reversed or new trial granted by any court of the State of Florida in any cause, civil or criminal, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire case, it shall appear that the error complained of has resulted in a miscarriage of justice. This Act shall be liberally construed."

ILLINOIS.

Convert v. Bishop, etc., Co., 152 Ill. App. 516. At p. 521 the court said:

"Upon the whole case it by no means appears that substantial justice has not been done by the verdict and judgment. In such case this court will not reverse a judgment even if errors have been committed by the court below upon the trial in the admission or exclusion of evidence or in the giving or refusal of instructions."

INDIANA.

Burns's Annotated Indiana Statutes, 1914, Vol. I, Sec. 700:

"No judgment shall be stayed or reversed in whole or in part by the Supreme Court, for any defect in form, variance, or imperfection contained in the record, pleading, process, entries, returns or other proceedings therein, which by law might be amended in the court below, but such defects shall be deemed to be amended in the Supreme Court, nor shall any judgment be stayed or reversed, in whole or in part, where it shall appear to the court that the merits of the cause have been fairly tried and determined in the court below."

The burden is on the party claiming error to show injury.

Badger v. Merry, 139 Ind. 631, 636, 39 N. E. 309; 35 Ind. App. 167, 73 N. E. 1009.

IOWA.

Code of Iowa (Ann.) 1897. No. 3601.

"The court, in every stage of an action, must disregard any error or defect in the proceedings which does not affect the substantial rights of the adverse party; and no judgment shall be reversed or affected by reason of such error or defect."

Mosier v. Vincent, 34 Iowa 478. At p. 480 the court said:

"An appellant must show error to his prejudice before he can ask a reversal."

KANSAS.

General Statutes of Kansas (1909), p. 1345:

"The appellate court shall disregard all mere technical errors and irregularities which do not appear to have prejudicially affected the substantial rights of the party complaining, where it appears upon the whole record that substantial justice has been done by the judgment or order of the trial court."

KENTUCKY.

Kentucky Criminal Code 1877, No. 340, and amended by a statute of 1880:

"A judgment of conviction shall be reversed for any error of law to the defendant's prejudice appearing on the record, whenever upon the consideration of the whole case the court is satisfied that the substantial rights of the defendant have been prejudiced thereby."

To the same effect are sections 134, 338, 756, Ky. Rev. Code of Civil Procedure. The briefest of these is section 338:

"No exception shall be regarded unless the decision to which it relates be prejudicial to the substantial rights of the party excepting."

MICHIGAN.

Public Acts 1915. No. 314, Ch. L. No. 28:

"No judgment or verdict shall be set aside or reversed, or a new trial granted by any court in any civil case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice."

MINNESOTA.

Lewis v. St. Paul, &c., R. R., 20 Minn 261. At page 264 the court said:

"Even if it be admitted that some of the defendant's exceptions to testimony and instructions were well taken in point of law, this is a case in which we have no hesitation in disregarding such exceptions upon the ground that upon the uncontroverted facts of the case it is evident that a new trial would not change the result of the trial which has already taken place."

MISSOURI.

No. 1850 Revised Statutes (1909). Like the Arizona statute.

MONTANA.

Revised Codes of Montana (1907). Section 7118 Civil; Sec. 9415 Criminal:

"After hearing the appeal the court must give judgment without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties."

Section 7118: "The Supreme Court on such appeal shall consider such orders, rulings and proceedings, and shall reverse or affirm the cause on such appeal according to the substantial rights of the respective parties as shown upon the record."

NEBRASKA.

Nebraska Code, 1913, Sec. 7713:

"The court shall, in every stage of the action, disregard any errors or defect in the pleading or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect."

NEVADA.

Revised laws of Nevada (1912), 5066, Sec. 124; Civil Code. Like Arizona.

NEW HAMPSHIRE.

The same reform was effected by the Supreme Court.

NEW JERSEY.

New Jersey Practice Act (1912), Sec. 27, C. 231:

"No judgment shall be reversed, or new trial granted on the ground of misdirection, or the improper admission or exclusion of evidence, or for error as to matter of pleading or procedure, unless, after examination of the whole case, it shall appear that the error injuriously affected the substantial rights of a party."

NEW MEXICO.

New Mexico Statutes: Codification, 1915. Sec. 4167, sub. 101:

"The court shall, at every stage of the action, disregard any errors or defects in the pleadings or proceedings which shall not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such error or defect."

NEW YORK.

New York Code, Civil Procedure (1912), Sec. 1317:

"After hearing the appeal the court must give judgment without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties."

People v. Strollo, 191 N. Y. 42.
People v. Gilbert, 199 N. Y. 28.

OHIO.

Their statute is to be found in Laws of Ohio, 1911, p. 132.
It is the same as that recommended by the American Bar Association.

OKLAHOMA.

Revised Laws of Oklahoma (Ann. 1010), Sec. 6005:

"No judgment shall be set aside or new trial granted by any appellate court of this state in any case, civil or criminal, on the ground of misdirection of the judge or the wrongful admission or rejection of evidence, or as to error in any matter of pleading or procedure, unless in the opinion of the Court to which application is made, after an examination of the entire record, it appears that the error complained of has probably resulted in a miscarriage of justice, or constitutes a substantial violation of a constitutional or statutory right."

Byers v. Territory of Oklahoma, 103 Pac. 532 is excellent case.
Gorman v. Shelton, 43 Oklahoma, 139.
Producers Oil Co. v. Eaton, 44 Oklahoma, 55, 61:

"If in the amount of the verdict or elsewhere there was any evidence of the influence of this argument to the prejudice of the defendant, we should be disposed to reverse, etc.; but in view of all the facts in this case it does not appear that the error has probably resulted in a miscarriage of justice or constitutes a substantial violation of a constitutional or statutory right."

Error was in outrageous language of counsel to jury.

PENNSYLVANIA.

The subject is considered in Pennsylvania Bar Association Reports, 1915, p. 62:

"The act was introduced to the legislature, but its passage was opposed by the Law Association of Philadelphia, on the ground that it would not change the existing law of Pennsylvania."

25 Pa. 332 (1855) was cited, which held that the appellant must show both error and prejudice.
Affirmed in 188 Pa. 496, 503. 248 Pa. 598, 603.

TEXAS.

Revised Civil Statutes, 1911, Art, 1553:

"There shall be no reversal or dismissal for want of form, provided that the requirements of the law and the rules of court be sufficiently complied with in presenting the case to enable the court to determine the same upon its merits. In each case the Supreme Court shall affirm the judgment, reverse and render the judgment which the courts of civil appeals ought to have rendered, or reverse the judgment, and remand the case to the lower court, if it shall appear that the justice of the case demands another trial."

WISCONSIN.

Wisconsin Statutes (1911), Sec. 3072m:

"No judgment shall be reversed or set aside or new trial granted in any action or proceeding, civil or criminal, on the ground of misdirection of the judge or the wrongful admission of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an examination of the entire action or proceeding, it shall appear that the error complained of has affected the substantial rights of the party seeking to reverse or set aside the judgment or to secure a new trial."

Similar to C. 192, Laws 1909.

WYOMING.

Wyoming Compiled Statutes (1910) Annotated. Mullen:

Sec. 4599: "No exception shall be regarded unless it is material, and prejudicial to the substantial rights of the party excepting."