

By Mr. Airola of Revere (by request), petition of James M. Hoy for legislation requiring trial by jury in certain probate matters. Legal Affairs. Jan. 20.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Twenty-Eight.

An Act requiring Jury Trial in Certain Probate Matters.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section sixteen of chapter two hundred and fif-
2 teen of the General Laws is hereby amended by in-
3 serting at the end of the first sentence the follow-
4 ing:—; provided, that in any case involving the
5 construction of a will issues of fact on any question
6 as to its execution or as to fraud or undue influence,
7 lack of testamentary capacity, or kinship, shall as of
8 right be tried by a jury in the superior court as
9 aforesaid,— so as to read as follows:—

10 *Section 16.* A probate court in any proceeding,
11 upon the application of a party and in accordance
12 with the practice established by the supreme
13 judicial court in like cases, may direct that any is-
14 sues of fact shall be tried by a jury in the superior
15 court for the same county, or, if there shall not be
16 any regular sitting for such trial within three
17 months after such order, or by consent of the

18 parties, in any other county; provided, that in any
19 case involving the construction of will issues of fact
20 on any question as to its execution or as to fraud
21 or undue influence, lack of testamentary capacity, or
22 kinship, shall as of right be tried by a jury in the
23 superior court as aforesaid. The form of such is-
24 sues shall be settled in the probate court, and certi-
25 fied copies of the issues and other material papers
26 in the case shall be entered by the applicant in the
27 superior court forthwith, or within such time as the
28 probate court may direct, but the same may be
29 entered by any other party; and, if the same shall
30 not so be entered, the probate court may discharge
31 the order for a trial. On motion of any party in the
32 superior court the issues shall be advanced for a
33 speedy trial. Questions of law arising upon the trial
34 of any such issues may be considered and deter-
35 mined by the supreme judicial court in the same
36 manner and with like effect as in actions at law
37 tried in the superior court.

