

HOUSE No. 1354

By Mr. Timothy J. Murphy of Boston, petition of Timothy J. Murphy for legislation to provide for an appellate division of the Superior Court. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT TO PROVIDE FOR AN APPELLATE DIVISION OF THE SUPERIOR COURT.

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

1 Chapter two hundred and thirty-one of the General
2 Laws is hereby amended by inserting after section
3 one hundred and twenty-one, as appearing in the
4 Tercentenary Edition, the following two new sec-
5 tions:—

6 *Section 121A.* There shall be an appellate division
7 of the superior court for the rehearing of matters of
8 law arising in actions at law therein, consisting of
9 three justices thereof, to be designated from time to
10 time by the chief justice thereof. Any party to a
11 cause brought in said court after October first, nine-
12 teen hundred and thirty-eight, may, as of right, have
13 the ruling reported for determination by the appel-
14 late division, when the cause is otherwise ripe for
15 judgment, or sooner by consent of the justice hearing

16 the same. The request for such a report shall be
17 filed with the clerk within days after the
18 verdict is rendered or notice of the finding or decision
19 is received, and, when the objection is to the admis-
20 sion or exclusion of evidence, the claim for a report
21 shall be made known at the time of the ruling. The
22 justice whose ruling is complained of shall not sit
23 upon the review thereof. If the appellate division
24 shall decide that there has been prejudicial error in
25 the ruling complained of, it may reverse, vacate or
26 modify the same or order a new trial in whole or part;
27 otherwise it shall dismiss the report, and may impose
28 double costs in the action if it finds the objection to
29 such ruling to be frivolous or intended for delay. If
30 the party claiming such report shall not duly prose-
31 cute the same, by preparing the necessary papers or
32 otherwise, the appellate division may order the cause
33 to proceed as though no such claim had been made,
34 and may in like manner impose costs. A single justice
35 may, after decision thereon, report for determination
36 by the appellate division any case in which there is
37 an agreed statement of facts or a finding of the facts
38 or any other case involving questions of law only.
39 If a single justice is of opinion that an interlocutory
40 finding or order made by him ought to be reviewed by
41 the appellate division before any further proceedings
42 in the trial court, he may report the case for that pur-
43 pose and stay all further proceedings except such as
44 are necessary to preserve the rights of the parties.
45 The court shall make rules regulating the procedure
46 and sittings of the appellate division, for the prepara-
47 tion and submission of reports and the allowance of
48 reports which a single justice shall disallow as not
49 conformable to the facts, or shall fail to allow by rea-

50 son of physical or mental disability, death or resigna-
51 tion, for the reporting of cases reserved for report
52 when a single justice shall fail to report the same by
53 reason of physical or mental disability, death or
54 resignation, and for the granting of new trials.

55 Sections ninety-six and one hundred and eleven to
56 one hundred and nineteen, inclusive, of this chapter
57 shall not apply to actions to which this section applies.

58 *Section 121B.* An appeal to the supreme judicial
59 court shall lie from the final decision of the appellate
60 division of the superior court only where there is a
61 divided opinion in the appellate division, where the ap-
62 pellate division certifies that one or more of the ques-
63 tions presented should be determined by the full
64 bench of the supreme judicial court, or where a single
65 justice of the supreme judicial court, on application
66 filed in said court for the county in which the action
67 is pending or for Suffolk county within days
68 after notice of the decision of the appellate division,
69 certifies that in his opinion such question of law should
70 be so determined. Claims of appeal shall be filed in
71 the office of the clerk of the superior court within
72 days after notice of the decision of the
73 appellate division. The appeal shall not remove the
74 cause, but only the question or questions to be deter-
75 mined. The completion of such appeal shall be in
76 accordance with section one hundred and thirty-five.
77 The expense of the preparation of the necessary
78 papers and copies of papers and their transmission,
79 and the entry fee in the supreme judicial court, shall
80 be taxed in the bill of costs of the prevailing party, if
81 he has paid it. Section twenty-five of chapter two
82 hundred and sixty-one shall apply to such appealed
83 cases. If the appellant fails duly to perfect the appeal

84 or to enter the same in the supreme judicial court,
85 the appellate division may upon application of an
86 adverse party, and after notice to all persons inter-
87 ested, order the appeal vacated and the decision
88 appealed from affirmed.