

# HOUSE . . . . No. 483

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Bill accompanying the petition of the Massachusetts Bar Association relative to the jurisdiction and procedure in civil actions in police, district and municipal courts. Joint Judiciary. January 10.

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## The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Seventeen.

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### AN ACT

Relative to the Jurisdiction and Procedure in Civil Actions  
in Police, District and Municipal Courts.

*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 1. The superior court shall have original  
2 and concurrent jurisdiction with police, district and mu-  
3 nicipal courts of all actions of contract, tort or replevin  
4 in which the debt or damages demanded or the value of  
5 the property alleged to be detained does not exceed one  
6 thousand dollars; also of petitions to enforce liens under  
7 the provisions of chapter one hundred and ninety-seven  
8 of the Revised Laws, if the amount of the claim does  
9 not exceed one thousand dollars; also of petitions brought  
10 under the provisions of sections twenty-three to thirty,  
11 both inclusive, of chapter one hundred and ninety-eight

12 of the Revised Laws, and petitions brought under the  
13 provisions of chapter two hundred and twenty-seven of  
14 the acts of the year nineteen hundred and nine. The pro-  
15 cess of a police, district or municipal court shall run  
16 throughout the commonwealth for service in any case  
17 within its jurisdiction.

1 SECTION 2. If after this act takes effect a party,  
2 elects to bring, in a police, district or municipal court,  
3 any action or other civil proceeding which he might have  
4 begun in the superior court, he shall be deemed to have  
5 waived a trial by jury and his right to appeal to the  
6 superior court, unless the said action or other civil pro-  
7 ceeding is removed to the superior court, as hereinafter  
8 provided, in which case the plaintiff shall have the same  
9 right to claim a trial by jury as if the action or civil  
10 proceeding had been originally brought in the superior  
11 court: *provided, however,* that if a declaration in set-off  
12 is filed in such action, the plaintiff may of right remove  
13 the cause and claim a jury trial, in the manner and upon  
14 the terms set out in section three of this act, within the  
15 time allowed him for filing an answer to such declaration  
16 in set-off.

1 SECTION 3. No other party to such action shall be  
2 entitled to an appeal. In lieu thereof, any such party  
3 may, within two days after the time allowed for entering  
4 his appearance, file in said court a claim of trial by jury,  
5 and an affidavit by his counsel of record, if any, and if  
6 none, the affidavit of such party, that in his opinion  
7 there is an issue of fact requiring trial in the cause, and  
8 that such trial is in good faith intended, together with  
9 the sum of three dollars for the entry of the cause in the  
10 superior court, and a bond in the penal sum of one hun-  
11 dred dollars with such surety or sureties as may be ap-

12 proved by the plaintiff, or the clerk or an assistant clerk  
13 of the court in which the action was brought, payable  
14 to the other party or parties to the cause, conditioned  
15 to satisfy any judgment for costs which may be entered  
16 against him in the superior court in said cause within  
17 thirty days after the entry thereof. The clerk shall  
18 forthwith transmit the papers and entry fee in the cause  
19 to the clerk of the superior court for the same county  
20 and the same shall proceed as though then originally  
21 entered there, but may be marked for trial upon the  
22 lists of causes advanced for speedy trial by jury.

1 SECTION 4. In any action brought by or against two  
2 or more persons in which separate judgments are au-  
3 thorized by sections two and three of chapter one hun-  
4 dred and seventy-three of the Revised Laws, the party  
5 seeking removal may specify in his claim of jury trial  
6 the parties as to whom such trial is claimed, in which  
7 case the cause shall be removed as to such parties only  
8 as are specified in such claim, and the court in which  
9 the action was brought shall retain jurisdiction as to the  
10 remainder. In such case the clerk shall transmit copies  
11 of the papers in the cause to the clerk of the superior  
12 court in lieu of the originals.

1 SECTION 5. Any party, in lieu of filing the bond  
2 above required, may deposit with the clerk the sum of  
3 one hundred dollars in cash. A certificate of such  
4 deposit shall be issued to the depositor by the clerk,  
5 and the deposit shall be transmitted by him, with the  
6 papers, to the clerk of the superior court, who shall  
7 receipt therefor and shall hold said deposit until the  
8 final disposition of the case, when he shall apply the same  
9 to the satisfaction of any costs awarded against the de-

10 positor, and pay the balance, if any, to the depositor or  
11 his legal representatives.

1 SECTION 6. No bond or deposit in lieu thereof shall be  
2 required of a county, city, town or other municipal  
3 corporation or by a party who has given bond according  
4 to law to dissolve an attachment; and the court may in  
5 any case, for cause shown, after notice to adverse parties,  
6 order that no bond be given. The court in which the  
7 action was brought may, upon cause shown and after  
8 notice to all adverse parties, permit such removal to the  
9 superior court, upon the terms above specified, at any  
10 time prior to final judgment.

1 SECTION 7. There shall be an appellate division of  
2 each police, district and municipal court for the rehearing  
3 of matters of law arising in civil causes therein. Any  
4 party to a cause brought after this act takes effect, who  
5 is aggrieved by any ruling on a matter of law by a  
6 single justice, may, as of right, have the ruling reported  
7 for determination by the appellate division when the  
8 cause is otherwise ripe for judgment, or sooner by con-  
9 sent of the justice hearing the same. The request for  
10 such a report shall be filed with the clerk within two  
11 days after notice of the ruling, and when the objection  
12 is to the admission or exclusion of evidence, the claim  
13 for a report shall also be made known at the time of the  
14 ruling. If the appellate division shall decide that there  
15 has been no prejudicial error in the ruling complained of,  
16 it shall dismiss the report, and may impose double costs  
17 in action if it finds the objection to such ruling to be  
18 frivolous or intended for delay. If the appellate division  
19 shall decide that there has been prejudicial error in the  
20 ruling complained of, it may reverse, vacate or modify

21 the same, order a new trial in whole or in part, and  
22 exercise any of the powers relating to civil actions tried  
23 without a jury given to the supreme judicial court by  
24 chapter seven hundred and sixteen of the acts of the year  
25 nineteen hundred and thirteen; and the provisions of  
26 said chapter shall apply to actions brought in any police,  
27 district or municipal court, so far as the same may be ap-  
28 plicable thereto. If the party claiming such report shall  
29 not duly prosecute the same, by preparing the necessary  
30 papers or otherwise, the appellate division may order  
31 the cause to proceed as though no such claim had been  
32 made, and may in like manner impose costs.

1 SECTION 8. Such appellate division in any court shall  
2 be holden by the justice of such court, and other justices  
3 of police, district and municipal courts, not exceeding  
4 three in number, assigned to the performance of such  
5 duty by the chief justice of the supreme judicial court,  
6 but no justice shall sit upon the review of his own rulings.  
7 Such assignment may be made for such period of time  
8 as such chief justice may deem advisable. Such chief  
9 justice shall assign justices of courts within the counties  
10 of Essex and Middlesex to act in the appellate divisions  
11 of courts within those counties, shall assign justices of  
12 courts within the counties of Suffolk, Norfolk, Plymouth,  
13 Bristol, Barnstable, Dukes and Nantucket to act in the  
14 appellate divisions of courts within those counties, and  
15 shall assign justices of courts within the counties of  
16 Worcester, Franklin, Hampshire, Hampden and Berk-  
17 shire to act in the appellate divisions of courts within  
18 those counties. Two justices shall constitute a quorum  
19 to decide all matters in an appellate division. Sittings  
20 of the appellate divisions of the several courts may be  
21 held at such times and places as the chief justice of the

22 supreme judicial court may direct. A justice, acting in  
23 the appellate division of a court other than the court of  
24 which he is justice, shall be allowed reasonable compensa-  
25 tion for his services and travelling expenses, to be  
26 awarded and paid by the county in which the court in  
27 which he so acts is located, in the same manner as if he  
28 had acted as an auditor appointed by the supreme  
29 judicial court.

1 SECTION 9. An appeal shall lie from the final decision  
2 of the appellate division to the supreme judicial court.  
3 Claim thereof shall be filed in the office of the clerk of  
4 the police, district or municipal court within five days  
5 after notice of the decision of the appellate division.  
6 The necessary papers shall, at the expense of the party  
7 appealing, unless the court shall order the expense to be  
8 borne by some other party, be prepared by the clerk,  
9 who may require the estimated expense thereof to be  
10 paid in advance. The appeal shall be transmitted to  
11 and entered in the docket of the supreme judicial court  
12 within ten days after notice to the appealing party that  
13 the papers are ready for transmission. The expense of  
14 such copies and transmission, and the entry fee in the  
15 supreme judicial court, shall be taxed in the bill of costs  
16 of the prevailing party, if he has paid it. The provisions  
17 of section twenty-six of chapter two hundred and three  
18 of the Revised Laws, as amended by chapter four hun-  
19 dred and thirteen of the acts of the year nineteen hun-  
20 dred and four shall apply to such appealed cases. If  
21 the appellant fails duly to perfect the appeal or to enter  
22 the same in the supreme judicial court, the appellate  
23 division may upon application of an adverse party, and  
24 after notice to all persons interested, order that the ap-  
25 peal be vacated and the decision appealed from affirmed.

1 SECTION 10. Section forty-five of chapter one hun-  
2 dred and sixty of the Revised Laws is hereby amended  
3 by inserting after the word "appearances", in the fifth  
4 line thereof, the words:— the presentation of questions  
5 which a justice may refuse or fail to report in whole or  
6 in part in such manner as fairly to present the same, —  
7 by inserting after the word "trials" in the fifth line, the  
8 words:— and the granting of new trials, — and by  
9 striking out the word "superior", in the eighth line  
10 thereof, and by inserting in the place thereof the words:  
11 — supreme judicial, — and by substituting for the word  
12 "a", in the ninth line thereof, the words:— the chief, —  
13 so as to read as follows:— *Section 45.* The justices, or a  
14 majority of them, of the several police, district and mu-  
15 nicipal courts except the municipal court of the city of  
16 Boston, shall from time to time make and promulgate  
17 uniform rules regulating the time for the entry of writs,  
18 processes and appearances, the presentation of questions  
19 which a justice may refuse or fail to report in whole or  
20 in part in such manner as fairly to present the same,  
21 the allowance of reports which a justice may disallow as  
22 not conformable to the facts or shall fail to allow by  
23 reason of physical or mental disability, death or resigna-  
24 tion, the filing of answers and for holding trials and the  
25 granting of new trials in civil actions, and the practice  
26 and manner of conducting business in cases which are not  
27 expressly provided for by law, and shall submit a copy  
28 thereof to the supreme court or the chief justice thereof,  
29 for approval, amendment or alteration.

1 SECTION 11. All acts and parts of acts inconsistent  
2 herewith are hereby repealed.

1 SECTION 12. Nothing in this act shall apply to the  
2 municipal court of the city of Boston or the justices  
3 thereof.

1 SECTION 13. This act shall take effect on the first  
2 day of September, in the year nineteen hundred and  
3 seventeen.