

HOUSE No. 1252

The Commonwealth of Massachusetts.

HOUSE OF REPRESENTATIVES, March 25, 1925.

The committee on Bills in the Third Reading, to whom was referred the Bill relative to appeals in certain criminal cases (House, No. 1189), report recommending that the same be amended by the substitution of the accompanying bill.

For the committee,

THOMAS C. CROWTHER.

The Commonwealth of Massachusetts

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

An Act relative to Certain Appeals in Murder and Manslaughter Cases and to the Elimination of Delay therein.

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. Chapter two hundred and seventy-eight
2 of the General Laws is hereby amended by inserting
3 after section thirty-three the seven following new
4 sections: —

5 *Section 33A.* In any proceedings or trial upon an
6 indictment for murder or manslaughter, the evidence
7 shall be taken by an official stenographer or by a stenog-
8 rapher appointed by the court, and transcribed in such
9 number of copies as the court may direct. The evidence
10 transcribed shall be designated as the "Transcript of
11 the Evidence", shall be certified by the stenographer
12 and shall, with such corrections as are made therein by
13 direction of the court, be regarded as a true record of
14 the evidence. Alleged errors in the transcript of the
15 evidence must be seasonably called to the attention of
16 the court. Exceptions taken during the proceedings
17 and trial shall be numbered consecutively in the tran-
18 script of the evidence.

19 *Section 33B.* A defendant in a case of murder or
20 manslaughter aggrieved by an opinion, ruling, direction
21 or judgment of the superior court, rendered upon any
22 question of law arising out of such case or upon a mo-

23 tion for a new trial, but not upon a plea in abatement,
24 who desires to appeal therefrom and whose exceptions
25 thereto have been seasonably saved shall, within twenty
26 days after verdict, file a claim of appeal in writing with
27 the clerk, who shall forthwith notify the district attorney
28 of such claim.

29 *Section 33C.* Upon the filing of a claim of appeal,
30 one copy of the transcript of the evidence shall be
31 delivered to the clerk, who shall forthwith cause it to
32 be substantially bound into volumes of convenient size
33 and inscribed with the name of the court from which
34 the appeal is taken, the title and number of the case,
35 and the term "Transcript of the Evidence". The clerk
36 shall forthwith prepare a concise summary of the record,
37 which shall also include a copy of the indictment and
38 of such pleadings and motions as the district attorney
39 or defendant may designate. Written notice of the
40 completion of the summary shall be given by the clerk
41 to the defendant or his counsel of record and the fact
42 that such notice was given shall be certified upon the
43 record.

44 *Section 33D.* Within ten days after the notice pro-
45 vided for in the preceding section the defendant shall
46 file an assignment of errors. For cause shown, a justice
47 of the superior court may extend the time for filing such
48 assignment of errors; provided, that no assignment of
49 errors may be filed more than thirty days after such
50 notice except upon order of a justice of the supreme
51 judicial court. The specific grounds upon which any
52 claim of error is based shall be set forth in a concise
53 form. The mere statement that the evidence was inad-
54 missible or immaterial or irrelevant, without other
55 grounds, shall not be a sufficient assignment of error.
56 There shall be no statement of testimony in the assign-

57 ment of errors other than by reference to pages in the
58 transcript, except when it is essential to clarify the
59 point raised.

60 *Section 33E.* The clerk shall as speedily as possible
61 transmit the bound copy of the transcript of the evi-
62 dence, the summary of the record and the assignment
63 of errors, which together shall constitute the record on
64 appeal, to the supreme judicial court for the proper
65 county. The entry thereof shall not transfer the case
66 but only the questions to be determined. The supreme
67 judicial court shall consider all questions of law fairly
68 raised.

69 *Section 33F.* If the defendant neglects to file an
70 assignment of errors within the time specified in section
71 thirty-three-D, or to enter his appeal in the supreme
72 judicial court, or to take the necessary measures for the
73 hearing of the cause in the supreme judicial court, a
74 justice of said court may, upon the application of the
75 district attorney and after notice, order that the appeal
76 be dismissed and that the judgment appealed from be
77 affirmed, or may make such orders as may be necessary
78 to the furtherance of justice.

79 *Section 33G.* The supreme judicial court may make
80 rules and regulations governing exhibits and the number
81 of copies, form, printing, filing and disposition of all
82 documents relating to appeals under the six preceding
83 sections; provided, that the the transcript of the evi-
84 dence shall not be printed.

1 SECTION 2. Section thirty-one of said chapter two
2 hundred and seventy-eight is hereby amended by insert-
3 ing after the word "abatement", in the fourth and fifth
4 lines, the words: — ; provided, that exceptions alleged
5 in any proceedings or trial upon an indictment for

6 murder or manslaughter shall be governed by sections
7 thirty-three A to thirty-three G, inclusive, and no bill
8 of exceptions shall be entered or considered in the
9 supreme judicial court in any such proceedings or trial,
10 — so as to read as follows: — *Section 31.* Exceptions
11 may be alleged by a defendant in a criminal case who
12 is aggrieved by an opinion, ruling, direction or judgment
13 of the superior court rendered upon any question of law
14 arising at the trial of such case or upon a motion for a
15 new trial, but not upon a plea in abatement; provided,
16 that exceptions alleged in any proceedings or trial upon
17 an indictment for murder or manslaughter shall be
18 governed by sections thirty-three A to thirty-three G,
19 inclusive, and no bill of exceptions shall be entered or
20 considered in the supreme judicial court in any such
21 proceedings or trial. The exceptions shall be reduced to
22 writing and filed with the clerk and notice thereof given
23 to the commonwealth within three days after the ver-
24 dict or after the opinion, ruling, direction or judgment
25 excepted to is given, unless a further time, not exceeding
26 five days, except by consent of the district attorney, is
27 allowed by the court. The clerk, immediately upon the
28 filing of the exceptions, shall present them to the court,
29 and if, upon examination thereof by the presiding jus-
30 tice, they are found conformable to the truth, they shall
31 be allowed by him. In all cases, the district attorney
32 shall have an opportunity to be heard concerning the
33 allowance of such exceptions. The provisions of sec-
34 tions one hundred and fifteen to one hundred and seven-
35 teen, inclusive, of chapter two hundred and thirty-one,
36 so far as appropriate, shall apply to exceptions taken in
37 criminal cases.

1 SECTION 3. Section eleven of chapter two hundred
2 and fifty of the General Laws is hereby amended by

3 inserting after the word "crime" in the first line the
4 following: —, murder in the second degree or man-
5 slaughter, — so as to read as follows: — *Section 11.* A
6 writ of error upon a judgment for a capital crime, mur-
7 der in the second degree or manslaughter shall not issue,
8 unless allowed by a justice of the supreme judicial court
9 after notice to the attorney general or other attorney for
10 the commonwealth; but a writ of error upon a judgment
11 in any other criminal case shall issue as of course, but
12 it shall not stay or delay the execution of the judgment
13 or sentence, unless by an express order of a justice of
14 the supreme judicial court, who may make a further
15 order for the custody of the plaintiff in error or for
16 releasing him on bail.

1 SECTION 4. Section eleven of chapter two hundred
2 and twelve of the General Laws is hereby amended by
3 inserting after the word "exceptions" in the seventh
4 line the words: —, assignment of errors, — and by in-
5 serting after the word "decisions" in the thirteenth line
6 the words: —; provided, that in appeals under sections
7 thirty-three A to thirty-three G, inclusive, the number
8 of copies of the transcript of the evidence to be pre-
9 pared and the persons to whom any such copy shall be
10 transmitted shall be governed by the provisions of said
11 sections and the rules made thereunder, — so as to
12 read as follows: — *Section 11.* The clerk, at the ex-
13 pense of the appellant or excepting party, or, upon a
14 case reserved or reported at the expense of the plaintiff
15 or of the party at whose request it is reserved or re-
16 ported, or in a criminal case at the expense of the com-
17 monwealth, shall prepare and transmit to the supreme
18 judicial court for the proper county one copy of every or
19 paper on file in the case, except papers used in evidence

20 only, and of all papers made part of the case or referred
21 to in the bill of exceptions, assignment of errors or
22 report, or so much thereof as is necessary fully to pre-
23 sent the question of law, for the use of the chief justice,
24 and a like copy for the clerk of the supreme judicial
25 court, which shall be kept on file in said court; and
26 one copy of the bill of exceptions, report or papers upon
27 which the question of law arises on appeal for each
28 associate justice, for each party and for the reporter of
29 decisions; provided, that in appeals under sections
30 thirty-three A to thirty-three G, inclusive, the number
31 of copies of the transcript of the evidence to be pre-
32 pared and the persons to whom any such copy shall be
33 transmitted shall be governed by the provisions of said
34 sections and the rules made thereunder. Original papers
35 used in the trial, which are needed in the supreme
36 judicial court, shall be transmitted to its clerk to be
37 kept on file by him until the rescript in such action is
38 sent. The expense of such copies and transmission shall
39 be taxed in the bill of costs of the prevailing party, if
40 he has paid it.

1 SECTION 5. Section fifteen of chapter two hundred
2 and eleven of the General Laws is hereby amended by
3 striking out, in the first line, the words "Exceptions
4 alleged at the trial of a capital case" and inserting in
5 place thereof the following: — Appeals from opinions,
6 rulings, directions or judgments of the superior court in
7 cases of murder or manslaughter in any county and ex-
8 ceptions alleged in the trial of a capital case other than
9 murder in the first degree, — so as to read as follows:
10 — *Section 15.* Appeals from opinions, rulings, directions
11 or judgments of the superior court in cases of murder
12 manslaughter in any county and exceptions alleged in

13 the trial of a capital case other than murder in the first
14 degree in any county may be entered and determined
15 either at the law sitting of the supreme judicial court
16 held for the county in which they arise, or, upon the
17 order of the justice presiding at the trial, at the sitting
18 of the court for the commonwealth.

1 SECTION 6. The provisions of this act, except those
2 in section thirty-three G, shall take effect on September
3 first, nineteen hundred and twenty-five, but shall not
4 apply to indictments for murder or manslaughter re-
5 turned and filed in court before its effective date.