

HOUSE No. 1672

House No. 1608 as passed to be engrossed.

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Ten.

AN ACT

Relative to Procedure in the 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. Section two of chapter one hundred
2 and fifty-seven of the Revised Laws is hereby
3 amended by striking out the word " may ", in the
4 first line, and inserting in place thereof the word:
5 — shall, — by striking out the words " or more ",
6 in the first line, and by striking out all after the
7 word " court ", in the third line, and inserting in
8 place thereof the following:—The chief justice
9 shall from time to time make such assignments for
10 the attendance of a justice at the several times and
11 places appointed for holding the court as will be
12 most convenient and as will insure the prompt per-
13 formance of its duties, — so as to read as follows:

14 — *Section 2.* The court shall be held by one of
15 the justices, and when so held shall have and exer-
16 cise all the power and jurisdiction committed to
17 said court. The chief justice shall from time to
18 time make such assignments for the attendance of
19 a justice at the several times and places appointed
20 for holding the court as will be most convenient and
21 as will insure the prompt performance of its duties.

1 SECTION 2. Section nine of chapter one hundred
2 and fifty-eight of the Revised Laws is hereby
3 amended by inserting after the word “ them ”, in
4 the second line, the words:— except as otherwise
5 provided, — so as to read as follows:— *Section 9.*
6 The justices of said courts, respectively, or a ma-
7 jority of them, except as otherwise provided, shall,
8 from time to time, make such arrangements for the
9 attendance of a justice at the several times and
10 places appointed for holding the courts as will be
11 most convenient and as will insure the prompt per-
12 formance of their duties.

1 SECTION 3. Sections five and eight of chapter one
2 hundred and fifty-seven of the Revised Laws, and
3 section two of chapter two hundred and one of the
4 Revised Laws as amended by section two of chap-
5 ter three hundred and seventy of the acts of the
6 year nineteen hundred and five, and by chapter two
7 hundred and eighty-eight of the acts of the year
8 nineteen hundred and eight, and by chapter two
9 hundred and four of the acts of the year nineteen
10 hundred and nine, are hereby repealed.

1 SECTION 4. Section ninety-six of chapter one
2 hundred and seventy-three of the Revised Laws as

3 amended by chapter three hundred and forty-two
4 of the acts of the year nineteen hundred and six
5 is hereby further amended by striking out the
6 words “ except a judgment rendered by three jus-
7 tices under the provisions of section five of chapter
8 one hundred and fifty-seven ”, in the seventh, eighth
9 and ninth lines, — so as to read as follows:—*Sec-*
10 *tion 96.* A party who is aggrieved by a judgment
11 of the superior court upon a demurrer which
12 alleges that the facts stated in the pleadings de-
13 murred to do not in law support or answer the
14 action, if such pleadings are not amended, or a
15 party who is aggrieved by any other judgment
16 founded upon matter of law apparent on the
17 record in any proceeding, may appeal therefrom
18 to the supreme judicial court. An issue of law
19 joined in the superior court shall not be waived by
20 consent of parties after such appeal has been en-
21 tered in the supreme judicial court, but that court
22 may, for good cause, allow the parties to withdraw
23 or amend their pleadings, and, if they result in an
24 issue of fact, the case shall be remanded to the
25 superior court for trial but no execution shall issue
26 upon the judgment appealed from, unless the ap-
27 peal is waived, until the case shall have been so
28 remanded. An appeal from a judgment rendered
29 upon a demurrer or upon a case stated shall be
30 claimed within thirty days after the entry of such
31 judgment.

1 SECTION 5. Section one hundred and five of said
2 chapter one hundred and seventy-three is hereby
3 amended by striking out the words “ and a majority
4 of the justices of the superior court sitting for the

5 trial of a cause under the provisions of section five
6 of chapter one hundred and fifty-seven", in the
7 third, fourth and fifth lines, — so as to read as fol-
8 lows:— *Section 105.* A justice of the supreme judi-
9 cial court or of the superior court, after verdict,
10 or after a finding of the facts by the court, may re-
11 port the case for determination by the full court.
12 If the justice is of opinion that an interlocutory
13 finding or order made by him ought to be deter-
14 mined by the full court before any further proceed-
15 ings in the trial court, he may report the case for
16 that purpose and stay all further proceedings ex-
17 cept such as are necessary to preserve the rights of
18 the parties.

1 SECTION 6. This act shall take effect on the first
2 day of September in the year nineteen hundred and
3 ten.

HOUSE OF REPRESENTATIVES, May 9, 1910.

Passed to be engrossed.

Sent up for concurrence.

JAMES W. KIMBALL, *Clerk.*