

C H A P.
XLII.

the judgment excepted to shall be reversed, the court of appeals shall direct their clerk to return the transcript of the record to the clerk of the general court, with a writ of *procedendo* to the judges of the general court, directing them to proceed in such action, and to a new trial thereof, in the same manner as if no trial had taken place, or any appeal had been prosecuted or writ of error brought; and the opinion of the court of appeals shall be conclusive in law as to the question by them decided; and the general court, on receiving such writ of *procedendo*, shall proceed in such action, and to a new trial thereof, in the same manner as if no trial had taken place, or any appeal had been prosecuted or writ of error brought, and shall direct such cause to be tried at the court to which the said writ of *procedendo* shall be returned, if the plaintiff or defendant shall give notice of trial at such court, above thirty days before the sitting thereof, to the adverse party or his attorney at law or in fact, and the trial can be had at such court with justice to the parties, and if not, such action may be continued in like manner as other actions, according to the discretion of the court; and the appellee on such reversal may be compelled to pay the costs in the court of appeals, by execution issued therefrom returnable thereto or to the general court, and all former and future costs, in the general court, of such action, shall abide the final event thereof; and if the appeal or error shall be made for several exceptions, the court of appeals shall give judgment on every exception.

In cases of appeal, general court may proceed to trial, &c

II. **And be it enacted,** That in all cases of appeals or writs of error, hereafter to be prosecuted or brought before the general court by the plaintiff upon a bill or bills of exception, where the judgment excepted to shall be reversed, that the general court may, in their discretion, retain such action, and proceed to the trial thereof, in the same manner as if originally and legally commenced in the general court, and may direct the trial thereof, if the same can be had with justice to the parties, at the court of reversal, or they may continue the same in like manner as other actions, or they may direct their clerk to return the transcript of the record to the clerk of the county court that gave the judgment, with a writ of *procedendo* to such county court, directing them to proceed in such action, and to a new trial thereof, in the same manner as if no trial had taken place, or any appeal had been prosecuted, or writ of error brought; and the opinion of the general court shall be conclusive in law as to the question by them decided; and such county court, on receiving such writ of *procedendo*, shall proceed in such action, to a new trial thereof, in the same manner as if no trial had taken place, or any appeal had been prosecuted, or writ of error brought, and shall direct such action to be tried at the court to which the said writ of *procedendo* shall be returned, if the plaintiff or defendant shall give notice of trial at such court, above thirty days before the sitting thereof, to the adverse party, or to his attorney at law or in fact, and the trial can be had at such court with justice to the parties, and if not, such action may be continued in like manner as other actions, according to the discretion of the court; and the appellee on such reversal may be compelled to pay the costs in the general court, by execution issued therefrom, returnable thereto or to the county court that gave the judgment; and all former and future costs, in the county court, of such action, shall abide the final event thereof; and if the appeal or error shall be made for several exceptions, the general court shall give judgment on every exception: Provided, that nothing herein contained shall prevent the party against whom judgment shall be rendered by the general court, on such appeal, from appealing, or prosecuting a writ of error, to the court of appeals, according to the law of the land.

Court of appeals may direct a new trial in certain cases, &c.

III. **And be it enacted,** That in all cases of appeals, or writs of error, hereafter to be prosecuted or brought before the court of appeals by the defendant upon a bill or bills of exceptions, where the judgment excepted to shall be reversed, and it shall clearly appear to the said court that justice and the merits of the case require that there should be a new trial of the cause, the said court shall direct their clerk to return a transcript of the record to the clerk of the general court, with a writ of *procedendo* to the judges of the general court, directing them to proceed in such action, and to a new trial thereof, in the same manner as if no trial had taken place, or any appeal had been prosecuted, or writ of error brought; and the