

CHAPTER 632

NEW TRIALS, APPEALS, AND WRITS OF ERROR

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632.01 REMOVAL TO SUPREME COURT; APPEAL; WRIT OF ERROR. Criminal cases may be removed by the defendant to the supreme court, by appeal or writ of error, at any time within six months after judgment, or after the decision of a motion denying a new trial; but, if the order denying a new trial be affirmed upon hearing upon the merits, no appeal shall be allowed from the judgment.

[R. L. s. 5400] (10747)

632.02 TRIAL OR SUPREME COURT JUDGE MAY STAY PROCEEDINGS; NOTICE. When an appeal is taken, it shall not stay the execution of the judgment, unless an order to that effect shall be made by the trial judge or a judge of the supreme court. Notice of the appeal and the order staying proceedings, if any, shall be filed with the clerk of the court where the judgment is entered, and served on the attorney general.

[R. L. s. 5401] (10748)

632.03 WRIT OF ERROR; BY WHOM ALLOWED; WHEN A STAY. No writ of error upon a judgment for any capital offense shall issue unless allowed by one of the judges of the supreme court after notice to the attorney general. Writs of error upon judgment in all other criminal cases shall issue of course, but they shall not stay or delay the execution of the judgment or sentence, unless allowed by one of the judges of the supreme court, with an express order thereon for a stay of proceedings.

[R. L. s. 5402] (10749)

632.04 RETURN. Upon an appeal being perfected, or a writ of error filed with him, the clerk shall transmit to the supreme court a copy of the judgment roll, and of the bill of exceptions, if any.

[R. L. s. 5403] (10750)

632.05 BILL OF EXCEPTIONS. Any person who shall be convicted of a crime before the district court, being aggrieved by any opinion, direction, or judgment of such court in any matter of law, may allege exceptions thereto, which, being reduced to writing in a summary manner and presented to the court at any time before the end of the term, or within such time thereafter as the court shall designate, and being found conformable to the truth of the case, shall be allowed and signed by the judge, and may be used on a motion for a new trial, and, when judgment is rendered, shall be attached to, and become part of, the judgment roll.

[R. L. s. 5404] (10751)

632.06 PROCEEDINGS IN SUPREME COURT. No assignment of errors or joinder in error shall be necessary upon any writ of error issued or appeal taken in a criminal case, but on the return thereto the court shall proceed and render judgment upon the record before it. If the court affirms the judgment, it shall direct the sentence pronounced to be executed, and the same shall be executed accordingly. If it reverses such judgment, it shall either direct a new trial, or that the defendant be absolutely discharged, as the case may require.

[R. L. s. 5405] (10752)

632.07 ADMISSION TO BAIL OR APPEARANCE BEFORE SUPREME COURT. If upon appeal or writ of error the defendant shall be admitted to bail, he may recognize to the state in such sum as shall be ordered, with sufficient sureties, conditioned for his appearance before the supreme court, and the presentation and prosecution of the appeal or writ of error with effect, and in harmony with the rules of the court, to abide the judgment of the court thereon, and in the meantime to keep

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the peace and be of good behavior, and the trial judge, or a justice of the supreme court, on the allowance of a writ of error or after an appeal has been perfected, may in his discretion allow such recognizance in all cases where the death penalty does not apply.

[R. L. s. 5406; 1919 c. 95 s. 1] (10753)

632.08 DEFENDANT COMMITTED, WHEN; COPY OF RECORD FILED. If any person so appealing or taking a writ of error does not so recognize, he shall be committed to prison to await the decision of the supreme court; and in that case the clerk of the court in which the conviction was had shall file a certified copy of the record and proceedings in the case in the supreme court, which shall have cognizance thereof, and consider and decide the questions of law, and render judgment or make such order therein as law and justice shall require; and, if a new trial is ordered, the cause shall be remanded to the district court for such new trial.

[R. L. s. 5407] (10754)

632.09 DISMISSAL OF APPEAL; NOT TO PRECLUDE ANOTHER. If any of the provisions made requisite by law to the taking of an appeal or a writ of error shall not be complied with, the supreme court may dismiss the same, but no discontinuance or dismissal of an appeal or writ of error in the supreme court shall prevent a person from suing out another writ of error or taking another appeal in the same case within the time limited by law.

[R. L. s. 5408] (10755)

632.10 CERTIFYING PROCEEDINGS; STAY. If upon the trial of any person convicted in any district court, or if, upon any demurrer or special plea to an indictment, or upon any motion upon or relating thereto, any question of law shall arise which in the opinion of the judge is so important or doubtful as to require the decision of the supreme court, he shall, if the defendant shall request or consent thereto, report the case, so far as may be necessary to present the question of law arising therein, and certify the report to the supreme court, and thereupon all proceedings in the cause shall be stayed until the decision of the supreme court shall have been made. The county attorney shall, upon the certification of any such report, forthwith furnish a copy thereof to the attorney general at the expense of the county. Other criminal causes in such court involving or depending upon the same question may, if the defendants so request, or consent thereto, be stayed in like manner until the decision of the cause so certified.

[R. L. s. 5409] (10756)