DOCUMENTS

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THE LEGISLATURE,

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1834.

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FOURTEENTH LEGISLATURE.

NO. 24. **SENATE.**

To the President of the Senate.

On the day of the final adjournment of the last Legislature, I received for approval and signature a Bill entitled an Act in addition to an Act regulating Judicial process and proceedings, which Bill, not having been approved, I herewith return, with my objections, to the Senate, the House in which it originated, that the same may be reconsidered, pursuant to the provisions of the Constitution.

The part of the Bill to which I object, is the fifth section which is in these words, "*Be it further enacted,* That in actions to be hereafter commenced, no motion in arrest of judgment shall be sustained in the Supreme Judicial Court, or Court of Common Pleas."

That the objection to this section may be more fully understood, it may be necessary to state, that the motion in arrest of judgment is made after a verdict, for causes apparent upon the face of the record. It is most usually made on the ground that the case stated in the plaintiff's declaration, although admitted to be true, is not sufficient in point of law to found an action upon. The omission of immaterial forms, and technical precision, and of many incidental circumstances, without proof of which on the trial of the issue, the action could not have been sustained, will be aided after verdict. For, in the words of a high legal authority, "exceptions that are moved in arrest of judgment must be more material and glaring than such as will maintain a demurrer, and many inaccuracies and omissions, which would be fatal if early observed, are cured by a verdict, and not suffered in the last stage of a cause to unravel the whole proceedings. But if the thing omitted be essential to the action, as if the plaintiff does not merely state his title in a defective manner, but sets forth a title that is totally defective in itself" this defect will not be cured by the verdict, and the motion in arrest of judgment will be sustained. Thus by the law as it now is, and more especially since the liberal practice adopted in modern times by Courts of Justice, judgments will not be arrested for immaterial causes, or for matter which does not effect the substantial law and justice of the case.

At the trial of an action before the jury, one judge alone presides, and decides the questions of law as they arise;—on the motion in arrest of judgment, the facts, found by the verdict of the jury, are admitted; but the question whether the plaintiff is by law entitled to judgment admitting the facts to be as substantially alleged in his declaration, is submitted to the full Court, and thus opportunity is afforded for a thorough examination of the law applicable to the case, and for the deliberate consideration, which is necessary for a correct decision, and which could not be expected from the judge, presiding at the trial, during the investigation of facts, and the examination of witnesses before the jury. The effect, therefore, of the proposed change in the law will not be merely to prevent the course of justice being embarrassed by immaterial and frivolous objections, but will deprive the citizen of one of the means which the law now provides, to enable him to claim the opinion of the full Court on important legal questions, and thus to protect his rights, character and property from the consequences of hasty and illegal decisions.

It may have been supposed that this section of the act would have the effect to render the verdict of the jury final, and that delay and expense in the prosecution of actions would thereby be prevented. Such, however, it is apprehended, would not be the effect of the proposed law, but the reverse. For generally where a motion in arrest of judgment can

be sustained, a writ of Error may be successfully prosecuted. And a party aggrieved by an illegal judgment will be subjected to the additional expense and delay of a new writ, service, entry and other incidental charges, in order to obtain the relief which more for the interest of both parties would have been speedily afforded on a motion to arrest the judgment.

For these reasons I am constrained to believe that the fifth section of the Bill presented for my approval, if it should become a law, would have an effect contrary to that intended by the two branches of the Legislature which passed it, and instead of being conducive to the public good, would have a tendency to render the administration of the law less perfect and more uncertain than it is at preset, and increase the delay and expense unavoidaly incident to the prosecution of suits in Courts of Justice.

SAMUEL E. SMITH.

Augusta, January 1, 1834.

STATE OF MAINE.

IN THE YEAR OF OUR LORD, ONE THOUSAND EIGHT HUNDRED AND THIRTY THREE.

AN ACT in addition to an Act regulating Judicial process and proceedings.

SECT. 1. *Be it enacted by the Senate and House of Representatives in Legislature assembled,* That in all actions of trespass and of trespass on the case, to be hereafter commenced, the declaration shall be deemed equally good and valid, to all intents and purposes, whether the same shall be, in form, a declaration in trespass or on the case.

SECT. 2. *Be it further enacted,* That no costs shall be allowed to the Plaintiff in any action, to be hereafter commenced, before any Justice of the Peace, upon any judgment recovered before any Justice of the Peace in this State, on which judgment an execution might at the time of commencing such action, have

been taken out ; excepting the action on such judgment shall be a trustee action, and excepting all cases, in which the original judgment-debtor shall have removed from the County after such judgment shall have been recovered.

SECT. 3. *Be it further enacted,* That either party aggrieved by any opinion, direction, or judgment of the Court of Common Pleas, in a matter of law, in any action originally commenced before a Justice of the Peace and brought by appeal into said Court, may allege exceptions to the same, and the same proceedings shall be had, as are prescribed by law in actions originally commenced in said Court.

SECT. 4. *Be it further enacted,* That in all actions, where there are two or more defendants, the plaintiff or plaintiffs shall have a right to amend the writ, by striking out one or more of such defendants, on paying him or them their costs to that time. And such action shall be heard and tried, as if the same had been originally commenced against the remaining defendant or defendants.

SECT. 5. *Be it further enacted,* That in actions hereafter to be commenced, no motion

in arrest of judgment shall be sustained in the Supreme Judicial Court or Court of Common Pleas.

IN THE HOUSE OF REPRESENTATIVES, *March 2d*, 1833.

This Bill having had three several readings passed to be enacted.

NATHAN CLIFFORD, *Speaker*.

IN SENATE, *March* 2, 1833.

This Bill having had two several readings, passed to be enacted.

FRANCIS O. J. SMITH, *President*.

STATE OF MAINE.

In Senate, February 12, 1834.

Ordered, That three hundred copies of the foregoing Bill, with the Governor's objections to the same, be printed.

(Extract from the Journal.)

Attest, WILLIAM TRAFTON, *Secretary.*

I. BERRY & CO., PRINTERS TO THE STATE.