

MAINE STATE LEGISLATURE

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EIGHTY-THIRD LEGISLATURE

Senate Document

No. 74

S. P. 175

In Senate, Feb. 11, 1927.

Referred to Committee on Legal Affairs and 500 copies ordered printed. Sent down for concurrence.

ROYDEN V. BROWN, Secretary.

Presented by Senator Holmes of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND TWENTY-SEVEN

AN ACT to Establish Small Claims Procedure.

Be it enacted by the People of the State of Maine, as follows:

Section 1. The justices of the supreme judicial court,
2 or a majority of them, shall, within ninety days from the
3 date when this act shall take effect, make uniform rules
4 applicable to the municipal courts of the state, providing
5 for a simple, informal, and inexpensive procedure, herein-
6 after called the procedure, for the determination, accord-
7 ing to the rules of substantive law, of claims in the nature
8 of contract or tort, other than slander and libel, in which
9 the plaintiff does not claim as debt or damages more than
10 thirty-five dollars, and for a review of judgments upon such
11 claims when justice so requires. The procedure shall not

12 be exclusive, but shall be alternative to the formal pro-
13 cedure for causes begun by writ.

Sect. 2. The procedure shall include the beginning of
2 actions with an entry fee of one dollar, but without writ,
3 and without requirements, except by special order of court,
4 of other pleading than a statement to the judge, clerk or
5 assistant clerk of the municipal court, who shall reduce
6 the same to concise, written form in a docket kept for the
7 purpose. The procedure shall include notice by registered
8 mail with return receipt, instead of the mode of service
9 heretofore required, and shall include provisions for early
10 hearing. The procedure may include the modification of
11 any or all rules of pleading and practice, anything con-
12 tained in other statutes, acts, or rules of court notwith-
13 standing, and may include a stay of entry of judgment or
14 of the issue of execution. The rules for the procedure
15 may provide for the elimination of any or all fees and
16 costs, and that costs shall be in the discretion of the court.
17 In causes begun under the procedure, the court may on
18 application for cause shown issue writs of attachment of
19 property or person as in causes begun by writ.

Sect. 3. A plaintiff beginning a cause under the proced-
2 ure shall be deemed to have waived a trial by jury and any
3 right of appeal; but if said cause shall be removed to the
4 superior or supreme judicial court as hereinafter provided,
5 the plaintiff shall have the same right to claim a trial by
6 jury as if the cause had been begun in the superior or

7 supreme judicial court. No other party to a cause under
8 the procedure shall be entitled to an appeal. In lieu thereof
9 any such party may, prior to the day upon which he is
10 notified to appear, file in the municipal court where the
11 cause is pending a claim of trial by jury and his affidavit
12 that there are questions of fact in the cause requiring trial,
13 with specifications thereof, and that such trial is intended
14 in good faith, together with the sum of two dollars and
15 ten cents for copies of papers and entry fee for the same
16 in the superior or supreme judicial court, and thereupon
17 the judge or clerk shall forthwith transmit such original
18 papers or attested copies thereof, as the rules for the pro-
19 cedure may provide, and the superior court or, in those
20 counties where there is no superior court, the supreme
21 judicial court may try the cause as transmitted or may re-
22 quire pleadings as in a cause begun by writ.

Sect. 4. The municipal court may in its discretion trans-
2 fer a cause begun under the procedure to the regular civil
3 docket for formal hearing and determination as though it
4 had been begun by writ.

Sect. 5. In any cause begun by writ which might have
2 been begun under the procedure, the rules for the procedure
3 may provide, or the court may by special order direct that
4 the costs to be recovered by the plaintiff, if he prevails,
5 shall be eliminated in whole or in part.

Sect. 6. Upon application of a judgment creditor under
2 the procedure, the municipal court shall issue a notice to

3 the debtor to appear at a time and place named therein, to
4 show cause why an examination into his circumstances
5 should not be made and a decree entered that he pay such
6 judgment in full or by installments. Said notice may be
7 sent by registered mail with return receipt, or may be served
8 by delivering to the debtor, or by leaving at his last and
9 usual place of abode, a copy thereof, in the discretion of
10 the court, at least seven days before the return day.

Sect. 7. At the hearing, which may be held in the absence
2 of the debtor if proof of receipt of notice is made, the court
3 shall inquire as to his circumstances, income, and ability
4 to pay said judgment. If it finds that he is able to pay it
5 in full or by installments, it may, after allowing the debtor
6 a sufficient part of his income, which need not be stated, for
7 the support of himself and family, enter a decree fixing the
8 time, place, and amount of payments to be made by him
9 out of his income, to be applied first to the costs of the
10 proceeding and next to the reduction of said judgment.
11 If it finds that the debtor is unable to pay the judgment
12 in full or by installments, it shall enter the finding in the
13 record and dismiss the proceeding.

Sect. 8. If proceedings are dismissed under the preced-
2 ing section, no new application shall be entertained unless
3 the creditor, or a person in his behalf, files an affidavit
4 stating in substance the evidence relied on to show a charge
5 in the debtor's circumstances and the court finds that there
6 is occasion for a new inquiry.

Sect. 9. Decrees under this act may be enforced by proceedings for contempt as in a court of equity; but not more than fourteen days imprisonment shall be imposed for any one such contempt.

Sect. 10. If a creditor proceeds under this act, other processes to enforce the judgment upon which such proceedings are based shall be suspended, except as to attachments which may have been issued by order of the court as before provided, which may be preserved and enforced as now provided by law.

Sect. 11. The court may at any time, upon such notice as it may order to the parties in interest or their attorneys of record, revise, modify, or suspend a decree of payment made under the preceeding sections.

Sect. 12. The entry fee and fees of witnesses and officers shall be allowed as costs, unless the court shall otherwise order, but no other costs shall be allowed to either party.

STATEMENT OF FACTS

Small Claims Procedure has been established in the following states, and is said to be giving satisfaction.

California—Code Civil Procedure Pt. 2, Title 11, Ch. 12, secs. 927-927p.

Idaho—Laws 1923, chapter 177.

Kansas—Revised Statutes, 20-1301 to 20-1311.

Massachusetts—General Laws Ch. 218.

Nevada—Laws 1923, Ch. 149.

Oregon—Gen. Laws, secs. 948-33 to 948-48 and 953-1 to 953-14.

South Dakota—Laws 1921, Ch. 187.

For examples of Rules of Court governing procedure in Small Claims Courts, see Rules of the Boston Municipal Court and Rules of the District Courts of Massachusetts, which may be obtained from the State Library.