

MAINE STATE LEGISLATURE

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EIGHTY-FOURTH LEGISLATURE

House Document

No. 123

H. P. 412. House of Representatives, Jan. 31, 1929.

Referred to Committee on Judiciary and 500 copies ordered printed. Sent up for concurrence.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Williamson of Augusta.

STATE OF MAINE

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

AN ACT Relating to Declarations upon a Contract in Writing.

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

Chapter eighty-seven of the revised statutes is hereby
2 amended by striking out all of section thirty-eight thereof
3 and substituting therefor the following:

'In all actions at law on insurance policies a declaration
2 in indebitatus assumpsit on an account annexed, with an
3 allegation that the plaintiff has complied with all condi-
4 tions of the policy of insurance, mentioned in the account
5 annexed, shall be deemed sufficient. The account annexed
6 shall state the number of the policy and the amount claimed

7 as due, both as principal sum, and interest, if any. The
8 fact that the amount claimed in the account annexed varies,
9 from the amount found to be due the plaintiff shall not de-
10 feat the action unless there be a fraudulent claim of an ex-
11 cessive amount. No declaration in an action at law upon
12 any contract in writing shall be adjudged insufficient if it
13 sets forth in full the contract relied upon with an allega-
14 tion that the plaintiff has complied with all the terms and
15 conditions thereof and the further allegation of the specific
16 breach or breaches upon which the plaintiff relies, and the
17 damage suffered therefrom. If in any action upon any
18 written contract the defendant relies for his defense upon
19 the breach by the plaintiff of any condition of said contract
20 he shall set the same up by brief statement or special plea
21 at his election; and all conditions of said contract the breach
22 of which is known to the defendant and not so specially
23 pleaded shall be deemed to have been complied with by the
24 plaintiff. The plaintiff by counter brief statement or repli-
25 cation may set up any matter waiving or legally excusing
26 his non-compliance with conditions as alleged by the de-
27 fendant. Nothing herein shall be construed as changing
28 in any way the common law burden of proof as to such
29 matters as are so put in issue under the pleadings.'

STATEMENT OF FACTS

The purpose of this bill is to extend the effect of section 38 of chapter 87 of the revised statutes of 1916 which now relates solely to policies of insurance to contracts in writing of all sorts. There would seem to be no reason why declaring upon a policy of insurance should be simpler or easier than declaring upon any other written contract. The effect of this statute would be to do away with the old rule of pleading laid down in *Bean vs Ayers*, 67 Me. 482 which obliges the pleader to state the promises contained in the contract even when the contract itself is made a part of the declaration.