

MAINE STATE LEGISLATURE

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NEW DRAFT

E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 1041

S. P. 649

In Senate, March 28, 1933.

Tabled by Senator Holmes of Androscoggin pending acceptance of either report, March 29 assigned and 500 copies ordered printed.

ROYDEN V. BROWN, Secretary.

New Draft of S. P. 83, L. D. 99.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED THIRTY-THREE

AN ACT to Define and Limit the Jurisdiction of Courts Sitting in Equity, and for Other Purposes.

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

Sec. 1. No injunctions shall issue without hearing. No court nor any judge or judges thereof shall have jurisdiction to issue a temporary or permanent injunction in any case except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, provided, however, that if a complainant shall also allege that unless a temporary restraining order shall be issued before such hearing may be had, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be granted upon the expiration of such reasonable notice of application therefor as the court may direct by order to show cause, but in no case less than 48 hours.

Such order to show cause shall be served upon such party or parties as are sought to be restrained and as shall be specified in said order, and then

only upon testimony under oath, or in the discretion of the court upon affidavits, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing as herein provided for.

Such a temporary restraining order shall be effective for no longer than 5 days, and at the expiration of said 5 days shall become void and not subject to renewal or extension, provided however that if the hearing for a temporary injunction shall have been begun before the expiration of the said 5 days the restraining order may in the court's discretion be continued until a decision is reached upon the issuance of the temporary injunction. A temporary restraining order may be issued without notice on condition that complainant shall first file an undertaking with adequate security sufficient to recompense those enjoined for any loss, expense, or damage caused by the erroneous issuance of such order, including all reasonable costs and expense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

Sec. 2. Right of those judged in contempt. In all cases where a person shall be charged with contempt for violation of a restraining order or injunction issued by a court or judge or judges thereof, the accused shall enjoy,

(a) The rights as to admission to bail that are accorded to persons accused of crime;

(b) The right to be notified of the accusation and a reasonable time to make a defense, provided the alleged contempt is not committed in the immediate view or presence of the court;

(c) Upon demand, the right to a speedy and public trial by an impartial jury of the county wherein the contempt shall have been committed, provided that this requirement shall not be construed to apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writ, orders, or process of the court; and

(d) The right to file with the court a demand for the retirement of

the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred otherwise than in open court. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated by the chief justice of said court. The demand shall be filed prior to the hearing in the contempt proceeding.

Sec. 3. Repealing clause. All acts and parts of acts in conflict with the provisions of this act are hereby repealed.