

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

N I N E T Y - F I R S T L E G I S L A T U R E

Legislative Document

No. 314

H. P. 565

House of Representatives, February 4, 1943.

Referred to Committee on Legal Affairs. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Sleeper of Rockland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-THREE

**AN ACT to Provide for the Speedy and Inexpensive Adjudication of Small
Claims.**

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

Sec. 1. Small claim defined. A small claim is any right of action not involving the title to real estate in which the debt or damages does not exceed \$35.

Sec. 2. Procedure established; alternative to formal procedure. There is hereby established a speedy, informal and inexpensive procedure which a plaintiff may pursue in an action commenced in a municipal court for the determination according to the rules of substantive law of a small claim. The procedure herein provided shall not be exclusive but shall be alternative to the formal procedure for causes begun by writ.

Sec. 3. Entry of action. The plaintiff shall state the substance of his claim, either orally or in writing, to the judge or recorder of the municipal court having jurisdiction thereof who shall cause the claim to be reduced to writing in a docket kept for the purpose, in concise, untechnical form. The plaintiff shall also thus state to the judge or recorder the plaintiff's and defendant's place of residence, usual place of business and place of em-

ployment and the judge or recorder shall note the same in the docket. The plaintiff shall at the same time pay an entry fee of \$1.85.

Sec. 4. Notice to the defendant. The judge or recorder shall thereupon fix the time and the place for the hearing of said claim, give to the plaintiff a memorandum thereof and shall then mail to the defendant, at one or more of the addresses supplied by the plaintiff, as the judge or recorder may deem necessary or proper, by registered mail, return receipt requested, a notice signed by the judge and bearing the seal of the court, which, after setting forth the name of the court, shall read substantially as follows:

“To (here insert name of defendant).

“(Here insert name of plaintiff) asks judgment in this court against you for (here insert the amount claimed in dollars and cents) upon the following claim: (here insert the nature of the claim as it appears on the docket; but no list of items need be included).

“The court will give a hearing upon this claim at (here insert the location of the court) at (here insert the hour) o'clock in the (here insert 'forenoon' or 'afternoon' as the case may be) on (here insert the date).

“If you deny the claim, in whole or in part, you must not later than (here insert the 2nd day before the day set for hearing), personally or by authorized representative state to the judge or recorder, orally or in writing, your full and specific defense to said claim, and you must also appear at the hearing. Unless you do both, judgment may be entered against you by default. If your defense is supported by witnesses, account books, receipts or other documents, you should produce them at the hearing. The judge or recorder, if requested, will issue summonses for witnesses without fees.

“If you admit the claim, but desire time to pay, you must, not later than the day set for notice of defense, personally or by authorized representative state to the judge or recorder, orally or in writing, that you desire time to pay, and you must also appear at the hearing and show your reasons for desiring time to pay.

“Take notice also that if you are found indebted, upon hearing or default, the court may order payment at a time stated or by instalments and that failure to comply with such order may be treated as a contempt and subject you to punishment.”

The judge or recorder shall note in the docket the mailing date and address, the date of delivery shown by the return receipt and the name of the

addressee or agent signing the receipt. Notice shall be valid although refused by the defendant and therefore not delivered. If the notice is returned undelivered, without refusal by the defendant, or if in any way it appears that notice has not reached the defendant, the judge or recorder shall issue, at the expense of the plaintiff, such other or further notice as the court may order.

Sec. 5. Trial by jury and appeal waived unless claimed; procedure. A plaintiff beginning a cause under this act shall be deemed to have waived a trial by jury and any right of appeal; but if said cause shall be removed to the superior court as hereinafter provided, the plaintiff shall have the same right to trial by jury as if the cause had been begun in the superior court. No other party to a cause shall be entitled to an appeal. In lieu thereof any such party may, prior to the day upon which he is notified to appear, file with the judge or recorder of the municipal court where the cause is pending a claim of trial by jury and his affidavit that there are questions of fact in the cause requiring such trial, with specifications thereof, and that such trial is intended in good faith, together with the fees required for transfer to and entry in the superior court. Upon request of the plaintiff the defendant shall be made to recognize as provided in section 20 of chapter 97 of the revised statutes. When the procedure for removal to the superior court has been thus complied with, the judge or recorder shall forthwith transmit the original papers or attested copies thereof and the superior court may try the cause as transmitted or may require pleadings as in a cause begun by writ.

Sec. 6. Answer of defendant. A defendant, unless the court shall otherwise order, shall be defaulted unless he shall, personally or by attorney not later than the second day before the day set for hearing, state to the judge or recorder, orally or in writing, his defense to the claim. The judge or recorder shall enter the substance of the defense in the docket, and the docket entry shall be deemed the answer. The answer shall state fully and specifically, but in concise and untechnical form, what parts of the claim are contested, and the grounds of such contest. Demurrers, dilatory pleas, and the answer of general denial are prohibited.

Sec. 7. Counterclaim and set-off. The defendant within the time for answer may, in the manner provided by sections 3 and 4 hereof claim any set-off or counterclaim within the jurisdiction of the court in civil cases. Upon the making of such claim by the defendant, the judge or recorder shall give a notice to the plaintiff, at the expense of the defendant, similar to that provided by section 4 hereof and shall postpone the hearing of the

defendant's claim, and shall notify the parties accordingly. The defendant's claim shall be answered within the time and in the manner provided by section 6 hereof, and the penalties upon defendants provided by said section shall apply to plaintiffs in respect to claims by a defendant. If the defendant's claim in set-off or counterclaim shall exceed the sum of \$35 and in the opinion of the court there shall be due the defendant thereon an amount greater than \$35, the court shall enter decision against the plaintiff as in case of nonsuit, and for the defendant for his costs only, and shall not further adjudicate upon the claim of defendant, whose right to sue for the same shall remain in the same manner as before the commencement of the action.

Sec. 8. Plaintiff's appearance. If the plaintiff does not appear at the time set for hearing the court may dismiss the claim and action for want of prosecution, or enter a finding on the merits for the defendant, or make such other disposition as may be proper.

Sec. 9. Amendments; hearings. The court may at any time allow any claim or answer to be amended. Witnesses shall be sworn; but the court shall conduct the hearing in such order and form and with such methods of proof as it deems best suited to discover the facts and to determine the justice of the case, present rules of practice and pleading notwithstanding.

Sec. 10. Attachments. No process of mesne attachment shall issue under this procedure, except upon the order of the court. Such order shall state the amount of the attachment and the property or credits to be attached. The form of process shall be substantially the same as that required for supplementary process in ordinary civil actions.

Sec. 11. Costs. The actual cash disbursements of the prevailing party for entry fee, mailing fee, witness fees and officer's fees may be allowed as costs. No other costs shall be allowed either party, except by special order of the court. The court shall have power in its discretion to award no costs or to award costs, in a sum fixed by the court, not exceeding \$20 against any party, whether the prevailing party or not, who has set up a frivolous or vexatious claim or defense, or has made an unfair, insufficient or misleading answer, or has otherwise sought to hamper a party or the court in securing a speedy determination of the claim upon its merits; and to enter judgment and issue execution therefor, or set off such costs against damages or costs, as justice may require.

Sec. 12. Judgment; procedure subsequent thereto. Judgment shall be entered for the prevailing party and for his costs if the court so order.

Upon application of a judgment creditor under this procedure, the court shall issue a notice to the debtor to appear at a time and place named therein, to show cause why an examination into his circumstances should not be made and an order entered that he pay such judgment in full or by instalments. Such notice may be sent by registered mail, return receipt requested, or may be served in the same manner as other process in the discretion of the court. Such notice or service shall be given at least 7 days before the date set for hearing and shall be at the expense of the applicant.

Sec. 13. Authority of the court. At the hearing, which may be held in the absence of the defendant if proof of notice or service is made, the court shall inquire as to his circumstances, income and ability to pay such judgment. If it finds that he is able to pay it in full or by instalments, it may order that the judgment shall be paid to the prevailing party, or, if it so order, into court for the use of the prevailing party, at a certain date or by specified instalments, and may stay the issue of execution and other supplementary process during compliance with such order. Such stay shall at all times be subject to being modified or vacated. If it finds that the debtor is unable to pay the judgment in full or by instalments, it shall enter the finding in the record and dismiss the proceeding.

Sec. 14. Action for contempt. The order for payment, in the discretion of the court, may be vacated, modified or extended. So long as it is in force, failure to comply with its terms shall be subject to action for contempt substantially as provided in section 67 of chapter 91 of the revised statutes as amended on written request of the party in whose favor the order is made that the party subject to the order be cited therefor. The citation may be served by registered mail, return receipt requested, at the expense of the applicant. If the party after due notice, fails to appear, *capias* may issue, to be served at the expense of the applicant. Contempt of court under this act shall be punished by a fine of not more than \$20 or by imprisonment for not more than 14 days. A sentence for contempt shall not end the proceedings nor any order thereon, and future violations of the order upon which the sentence was founded, or any other order, may likewise be dealt with as for contempt.

Sec. 15. Limitation if proceedings dismissed. If proceedings are dismissed under section 13 hereof, no new application shall be entertained by the court unless the creditor or his authorized representative shall file an affidavit stating in substance the evidence relied upon to show a change in

the debtor's circumstances and the court finds there is occasion for a new inquiry.

Sec. 16. Court may vacate proceedings for cause shown. The court may at any time upon motion, and after such notice, by mail, or otherwise, as it may order, for cause shown, vacate any decision, order or judgment entered by it under this procedure for want of actual notice to a party, for error, or for any other cause that the court may deem sufficient, and may stay or vacate execution, and may order a new hearing, upon such terms, costs and conditions as such court shall deem just and proper.

Sec. 17. Limitation of number of claims. No person shall be permitted to enter in any one court more than 5 small claims in any 1 week nor more than 20 small claims in any 1 month.

Sec. 18. Disposition of entry fee. The postage for notice to the defendant, or plaintiff in case of set-off or counterclaim, shall be paid from the entry fee and the balance up to 85c shall be for the use of the town, city or county which maintains the court. The sum of 1 dollar from the entry fee shall be paid to the town, city or county treasurer, and shall be by him paid out as additional salary to the judge in a court having no recorder and, in courts having both a judge and recorder, it shall be divided by him in the same proportion that the present salary of the judge bears to the present salary of the recorder and, in that proportion, added to and paid out as additional salary to each.