

MAINE STATE LEGISLATURE

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N I N E T Y - S E C O N D L E G I S L A T U R E

Legislative Document

No. 92

H. P. 241

House of Representatives, January 24, 1945.

Referred to the Committee on Judiciary, sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Jacobs of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-FIVE

AN ACT Relating to Small Claims.

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

R. S., c. 96-A, additional. The revised statutes are hereby amended by adding thereto a new chapter to be numbered 96-A, to read as follows :

‘Chapter 96-A.

Small Claims.

Sec. 1. “Small claim” defined. A “small claim” is any right of action cognizable by a court of law not involving the title to real estate in which the debt or damage claimed 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 established shall not be exclusive but shall be alternative to the formal procedure for actions begun by writ of attachment.

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 it to be reduced to writ-

ing in concise, intelligible untechnical form in a docket kept for that purpose to be known as the small claims docket.

The plaintiff shall also state his own and the defendant's residence and mailing address which shall be noted on the docket. He shall at the same time pay an entry fee of \$1.75. He shall upon request be furnished with summonses for witnesses without charge.

Sec. 4. No attachment. No process of attachment or trustee process shall issue in causes governed by this chapter.

Sec. 5. Notice to the defendant. The magistrate shall thereupon fix the time and place for hearing which shall be within not less than 20 nor more than 30 days thereafter, shall give to the plaintiff a memorandum thereof and shall forthwith mail to the defendant at the address furnished by the plaintiff, by registered mail, return receipt requested, a notice signed by him and bearing the seal of the court, which after setting forth the name of the court shall read substantially as follows:

To _____ of _____ in the County
of _____ and State of Maine:

“(Name of plaintiff _____ of _____ in the
County of _____ and State of Maine) exhibits his claim
against you in this court for (in words) dollars and (in words) cents
(\$ _____) upon the following claim: (here insert the nature of the claim
as it appears on the docket; no list of items need be included).

“The court will give a hearing upon this claim at (here insert the loca-
tion of the court) at (here insert the hour) o'clock in the (here insert 'fore-
noon' or 'afternoon' as the case may be) on _____ day the _____
day
of _____ A. D. 19 _____.

“If you deny the claim in whole or in part you must not later than (here
insert the date, naming day of week and month which shall be not less
than seven nor more than nine days prior to the date set for hearing)
personally or by attorney file with the judge or recorder either orally or
in writing your full and specific defense to the claim and you must appear
at the hearing. Unless you do both, judgment may be entered against you
by default and your non-appearance at the hearing will be taken as an ad-
mission that you are able to pay the claim. If your defense is supported by
witnesses, account books, receipts or other documents you should produce
them at the hearing. Summonses for witnesses will be furnished without
charge on request.

“If you have any demand in the nature of set-off or counterclaim you
must not later than the day hereinbefore set for filing your defense per-

sonally or by attorney file with the judge or recorder a complete and intelligible statement thereof, accompanied by a fee of \$.75.

“If you admit the claim, but desire time to pay, you must, not later than the day set for filing your defense, personally or by attorney 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 therefor.

“Take notice 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.

“Any paper herein required to be filed may be sent by mail to (here insert proper mailing address of judge or recorder).

“If you wish your defense to be submitted to a jury you must not later than the day hereinbefore set for filing your defense file with the judge or recorder of this court your request therefor accompanied by a fee of \$.75 and your sworn affidavit that there are matters in dispute requiring a jury trial with specifications thereof and that the request is made in good faith. If such request is not made the judgment of this court will be final.”

All the requirements contained in the preceding notice shall be binding upon the defendant according to their tenor.

The magistrate 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 magistrate shall issue, at the expense of the plaintiff, such other or further notice as may seem proper, which notice may be served by an officer qualified to serve civil precepts.

He shall also enter upon the docket whatever may be filed by the defendant in the way of defense, set-off, counterclaim, request for time for making payment or request for trial by jury.

Sec. 6. If no answer, default; demurrer etc. prohibited. If no answer be filed in compliance with the notice provided for in the preceding section the defendant may be defaulted. Demurrers, dilatory pleas and answer of general denial are prohibited.

Sec. 7. Trial by jury and appeal waived unless claimed; procedure. A plaintiff filing a claim under the provisions of this chapter shall thereby be

deemed to have waived his right to trial by jury and any right of appeal; but if the cause shall be removed to the superior court he shall have all and the same rights as in cases commenced therein. The defendant shall not be entitled to an appeal; but in lieu thereof he may not later than the day fixed for filing his defense file with the judge or recorder his request for a trial by jury which shall be accompanied by a fee of \$.75 and his sworn affidavit that there are matters in dispute requiring such trial, with specifications thereof and that such request is made in good faith. Notice of such request shall be by the judge or recorder mailed forthwith to the plaintiff and upon his request therefor, if received within 7 days, the judge or recorder shall require the defendant to recognize as provided in section 6 of chapter 98. When the procedure for removal to the superior court shall have been complied with the recorder shall then forthwith transmit attested copies of all papers and docket entries relating to the case to the superior court in his county where trial may be had either upon the papers filed or upon such other and further pleadings as the court may order.

Sec. 8. Set-off or counterclaim to be answered. When set-off and counterclaim is interposed in defense, if the amount so claimed shall not exceed the jurisdiction of the court, the magistrate shall immediately notify the plaintiff thereof who shall either personally or by attorney at least 3 days prior to the date fixed for hearing file his answer thereto and upon hearing if the plaintiff shall have filed his answer thereto the court shall determine which party is justly indebted to the other, if either, and for what amount and shall enter judgment accordingly. If the plaintiff shall not have filed his answer the claim of the defendant shall be allowed unless the court for good cause shall otherwise order and judgment may be entered for either party as justice may require.

Sec. 9. Procedure on claim of set-off. When defense by way of set-off or counterclaim is interposed, if the amount claimed shall exceed the jurisdiction of the court the magistrate shall notify the plaintiff thereof and shall then forthwith transmit the cause to the superior court as provided in section 7 where trial may be had either upon the papers filed or upon such other and further pleadings as the court may order.

Sec. 10. Procedure if plaintiff does not appear. If the plaintiff does not appear at the time set for the hearing the court may dismiss the action for want of prosecution, or make such other disposition of the cause as may be proper.

Sec. 11. Amendments allowed; manner of hearing. The court may at any time allow amendment of any claim or answer. Hearings shall be con-

ducted by the judge unless the recorder is an attorney at law. 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, rules of practice and pleading notwithstanding.

Sec. 12. Consequence of absence from hearing. A party absenting himself from hearing without excuse shall be deemed thereby to have admitted his ability to pay the amount of any judgment which may be rendered against him.

Sec. 13. Costs. The actual sums paid into court by the prevailing party together with such sums as he may have paid for witness and officer's fees may be allowed him as costs. The court shall have power in its discretion either to award no costs or to award as costs a sum to be fixed by the court in addition to the costs as hereinbefore provided not to exceed \$10 against any party whether the prevailing party or not who shall be found by the court to have set up a frivolous, unfounded or vexatious claim or defense, or to have made an unfair, insufficient or misleading answer or otherwise to have sought to hamper the adverse party or to hinder the court in arriving at a speedy and just determination of the claim upon its merits.

Sec. 14. Judge to examine debtor. At the time of hearing the magistrate shall examine under oath a party against whom a judgment may be rendered, as to his estate and effects, their disposal and his ability to pay the judgment.

Sec. 15. Order of payment. Upon rendition of judgment against a party the court shall issue an order signed by the judge or recorder and bearing the seal of the court directing such party to pay its amount to the adverse party either on a day certain or in instalments as therein specified, which order shall be given in hand to the party to whom it is directed or mailed to him by registered mail, return receipt requested, at his address as shown on the docket, but such order shall not issue unless the magistrate shall find that the party is able to pay the judgment in full or by instalments, and if not so satisfied he shall enter his finding to that effect upon the docket and further proceedings thereon shall be stayed, but at any time after the expiration of 1 month the adverse party may file an application for an order of payment which shall be supported by his affidavit stating in substance the evidence relied upon to show a change in his opponent's circumstances and if the court shall find that there is occasion for a new inquiry he may cite the party to appear on a day certain to show cause why an order of payment should not then be made. The citation

may be served by registered mail, return receipt requested, at the expense of the applicant and if on appearance of the party so cited and hearing the court shall be satisfied of his ability to pay, the order hereinbefore provided for may issue. If the party so cited shall fail to appear and the court shall be satisfied that he had received the citation or that his failure to receive it has been occasioned by his own misconduct and evidence shall be submitted which shall appear to justify the same the order may issue notwithstanding.

Like proceedings may be had for the procurement of other and further orders of payment.

Sec. 16. No execution to issue action for contempt. No execution shall issue upon any judgment rendered under the provisions of this chapter, but for failure to comply with the terms of an order provided for in the preceding section, if satisfied that the party to whom it is directed has received it or that his failure to receive it has been occasioned by his own misconduct, upon motion of the party in whose favor the order is made the court may institute proceedings for contempt substantially as provided in section 35 of chapter 95. 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 the provisions of this chapter shall be punished by a fine of not more than \$20 or by imprisonment for not more than 30 days.

Sec. 17. 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 the provisions of this chapter for want of actual notice to a party, for error, or for any other cause that the court may deem sufficient, and may order a new hearing, upon such terms, costs and conditions as to the court shall seem just and proper.

Sec. 18. Disposition of fees. A strict account of all fees paid into court under the provisions of this chapter shall be kept and the sum of \$1 from each entry fee shall be placed in a fund to be known as the compensation fund, the accumulation of which shall be paid to the judge at quarterly intervals if the court have no recorder, otherwise to the judge and recorder in proportion to their respective salaries. All other such fees shall be placed in a separate account to be known as the postage account from which the expense of sending such notices as are required by this chapter shall be paid and whenever there shall have accumulated in this account

an amount in excess of \$10 that sum shall be paid to the town or county which maintains the court.

Sec. 19. Limitation of number of claims. No person shall be permitted to enter in any one court more than 5 small claims in any one week nor more than 20 small claims in any one month.

Sec. 20. Clerk may be substituted for recorder. Wherever the word "recorder" occurs in this chapter the word "clerk" may be substituted therefor in its application to courts having a clerk instead of a recorder.'