

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

OF THE

SIXTY-SIXTH LEGISLATURE

OF THE

STATE OF MAINE.

1893.

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PUBLIC LAWS
OF THE
STATE OF MAINE.

1893.

Chapter 217.

An Act in relation to suits at law and in equity in the Supreme Judicial Court and Superior Courts.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

In actions at law, court may strike out pleadings at law, and require parties to plead in equity, when rights can be better determined.

SECT. 1. When, in an action at law in the supreme judicial court, it appears that the rights of the parties can be better determined and enforced by a judgment and decree in equity, the court may, upon reasonable terms, strike out the pleadings at law, and require the parties to plead in equity in the same cause and may hear and determine the cause in equity.

In equity proceedings, court may require parties to plead at law, when rights can be as fully determined and enforced.

SECT. 2. When in any equity proceeding in the supreme judicial court, it appears that the remedy at law is plain, adequate and complete and that the rights of the parties can be fully determined and enforced by a judgment and execution at law, the court may upon reasonable terms strike out the pleadings in equity, and require the parties to plead at law in the same cause and may hear and determine the cause at law.

In actions at law in superior courts, and pending in law court, pleadings may be changed, when rights can be better determined.

SECT. 3. When in an action at law commenced in either of the superior courts and pending in the supreme judicial court, sitting as a law court, it appears that the rights of the parties can be better determined and enforced by a judgment and decree in equity, the supreme judicial court may, upon reasonable terms, strike out the pleadings at law, and require the parties to plead in equity in the same cause; and thereupon the action shall be transferred to the docket of the supreme judicial court for the same county, and be heard and determined in equity in that court.

—action shall be transferred to supreme judicial court.

Defendant may plead in defense any matter which would be ground for relief in equity.

SECT. 4. Any defendant may plead in defense to any action at law in the supreme judicial court, any matter which would be ground for relief in equity, and shall receive such relief as he would be entitled to receive in equity, against the claims of the plaintiff; such matter of defense shall be pleaded in the form of a brief statement under the general issue. And, by counter brief statement, any plaintiff may plead any matter which would be ground for relief in equity against any defense set up by any defendant in an action at law in said court, and shall receive such relief as he would be entitled to receive in equity against such claim of the defendant.

—plaintiff may plead against defense.

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SECT. 5. In actions at law in the superior courts, equitable defenses and equitable replies to matters of defense, may be pleaded by filing a brief statement thereof supported by affidavit that the matters so pleaded are true in fact. Thereupon the action shall be transferred to the docket of the supreme judicial court for the same county, and be heard and determined in that court.

In actions at law, in superior courts, equitable defenses and replies may be pleaded, and actions transferred to supreme judicial court.

SECT. 6. Whenever in such action any matter which would be ground for relief in equity is so pleaded by any party, the supreme judicial court may make such decrees and restraining orders, as may be necessary to protect and preserve such equitable rights, and may issue injunctions, according to the usual practice of courts of equity.

Court may make necessary decrees to preserve equitable rights.

SECT. 7. No attachments shall be affected by proceedings under this act. Either party to a cause may, upon petition, obtain from the court an order for the attachment of property of a party to the suit to secure any judgment which may be obtained, to be made on such precept as the court may order and to be recorded as in case of other attachments.

No attachments shall be affected by proceedings.

—either party may obtain order for attachment of property.

SECT. 8. In all proceedings in the supreme judicial court, under the preceding sections, when there appears to be any conflict or variance between the principles of law and those of equity, as to the same subject matter, the rules and principles of equity shall prevail. At the hearing of all equity causes, oral testimony shall be received as in trials at common law.

Rules and principles of equity shall prevail in all proceedings.

SECT. 9. A party to any action in the supreme judicial court or superior courts, may file in the clerk's office of the court in the county where such action is pending, any document which he may deem material to the issue, and give to the adverse party notice of such filing and that he desires the execution of said document to be admitted. Unless the adverse party shall within seven days after such notice, unless the time is enlarged by the court or a justice thereof, file in said clerk's office, a denial of the genuineness of the execution of said document, he shall be held to have admitted the same.

Party to any action may file any document material to issue, and give notice to other party.

—unless denial is filed within given time, genuineness shall be held to have been admitted.

SECT. 10. Where books, papers, or written instruments material to the issue in any action at law pending in the supreme judicial court or in the superior courts, are in the possession of the opposite party, and access thereto refused,

Court may order production of books, papers or written instruments.

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the court upon motion, notice and hearing, may require their production for inspection.

No justice shall sit in law court, upon hearing of any cause tried before him.

SECT. 11. No justice of the supreme judicial court shall sit in the law court upon the hearing of any cause tried before him, or in which any of his rulings are the subject of review, nor take any part in the decision thereof.

Approved March 17, 1893.

Chapter 218.

An Act to amend Section thirteen of Chapter eighty-seven of the Revised Statutes, relating to actions by or against Executors and Administrators.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

Sec. 13, ch. 87,
R. S., amended.

Section thirteen of chapter eighty-seven of the revised statutes is amended by striking out the first sentence thereof which reads as follows: ‘A creditor who was absent from the state during said two years, and had no sufficient attorney in the state, may make presentment and demand of his claim, and after thirty days may commence his action, within six months from his return, or the appointment of such attorney.’ So that said section as amended, shall read as follows :

When action may be brought by creditor, when assets come into hands of executor after said two years.

‘SECT. 13. When assets come into the hands of an executor or administrator after said term of two years, presentment and demand may be made by a creditor, and after thirty days an action may be commenced, within two years from the receipt of such assets and within six months after the creditor has notice thereof. Judgment rendered in any action authorized by this section, shall not disturb payments made in good faith by the executor or administrator prior to presentment of the claim sued in such action.’

Approved March 17, 1893.