RULE 14. THIRD-PARTY PRACTICE

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defendant as a third-party plaintiff may cause to be served a summons, complaint, and notice regarding Electronic Service upon a person not a party to the action who is or may be liable to such third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. The person so served, hereinafter called the third-party defendant, shall make any defenses to the third-party plaintiff's claim as provided in Rule 12 and any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim within the subject-matter jurisdiction of the court against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim within the subject-matter jurisdiction of the court against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the plaintiff's failure to do so shall have the effect of the failure to state a claim in a pleading under Rule 13(a). The third-party defendant thereupon shall assert any defenses as provided in Rule 12 and any counterclaims and cross-claims as provided in Rule 13 and in the District Court may remove the action to the Superior Court as provided in Rule 76C. Any party may move for severance, separate trial, or dismissal of the third-party claim; the court may direct a final judgment upon either the original claim or the third-party claim above in accordance with the provisions of Rule 54(b). A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this rule would entitle a defendant to do so.

(c) Orders for Protection of Parties and Prevention of Delay. The court may make such orders as will prevent a party from being embarrassed or put to undue expense, or will prevent delay of the trial or other proceedings, by the assertion of a third-party claim, and may dismiss the third-party claim, order separate trials, or make other orders to prevent delay or prejudice. Unless otherwise specified in the order, a dismissal under this rule is without prejudice.

Advisory Note– July 2018

The amendment to Rule 14, together with amendments to Rules 3, 4, 5(b), 11, and 101 of the Maine Rules of Civil Procedure, is part of a package of related amendments to require parties to civil actions to serve pleadings and other papers electronically upon one another following service of the summons and complaint under Rule 4.

A more detailed description of Electronic Service and the procedures for complying with its requirements, as well as opt-out procedures, is stated in the Advisory Note to Rule 5.

Reporter's Notes
December 1, 1959

This rule is similar to Federal Rule 14. It represents a drastic departure from Maine practice. When a defendant believes that a third person, not a party to the action, is or may be liable to him for all or part of the plaintiff's claim, he may bring such third person into the case as a party by service upon him of a summons and complaint. Thus the entire controversy can be settled in a single proceeding. Under existing practice the defendant must submit to judgment in the original action before he can sue the third party. He may, however, by giving the third party notice and calling upon him to defend, make the judgment conclusive against the third party, whether he appears or not. *Davis v. Smith*, 79 Me. 351, 10 A. 55 (1887). Moreover, although not a party to the record, such third party has standing under R.S.1954, Chap. 123, Sec. 1(111) (repealed in 1959), to bring a petition for review. *Vermeule v. Brazer*, 128 Me. 437, 148 A. 566 (1930). Hence the proposed rule has a respectable origin in present Maine practice. Finally, under R.S.1954, Chap. 96, Sec. 93 [now 23 M.R.S.A. § 3701], there is a provision for third-party

procedure in an action against a town for a defect in a railroad crossing constituting part of a highway.

The use of this device is optional with the defendant, who may elect to wait and bring a separate action. It is also discretionary with the court whether to allow the impleader to proceed. Impleader cannot be used by a defendant who contends that it is the third party instead of the defendant who is liable to the plaintiff.

The rule is careful in the terminology used. The term "plaintiff" always refers to the original plaintiff in the action. The term "third-party plaintiff" always is used to designate the defendant in the original action who asserts the third-party claim against a third party, who is always referred to as the "third-party defendant." Careful reading of the rule should avoid any confusion.

In practice the third-party plaintiff should attach a copy of the original complaint as an exhibit to his third-party complaint served on the third party.

The departures from the federal rule are as follows: (1) the federal rule allows a third-party claim only upon motion of the defendant*; (2) the sentence in Rule 14(a) about severance, separate trial, or dismissal of the third-party claim is not in the federal rule;* (3) the federal rule does not contain the requirement that the failure of the plaintiff to assert a claim against the third-party defendant shall have the effect of failure to assert a counterclaim made compulsory by Rule 13(a); (4) there is nothing comparable to Rule 14(c) in the federal rule.

The first two of these departures are taken from an unadopted proposal of the federal Advisory Committee in 1955. The requirement of seeking leave of court to serve a third-party complaint accomplished little, for the court had to pass upon it before the third-party defendant had answered, and thus at a time when it was hard to appraise the complications of bringing in the third

* [Field, McKusick & Wroth commented: "F.R. 14(a) was amended, effective July 1, 1963, to require leave of court only if the impleader is filed more than 10 days after answer and to incorporate language substantially similar to the severance provision of the Maine rule." 1 Field, McKusick & Wroth, *Maine Civil Practice* at 287 (2d ed. 1970).

party. This does not remove the discretion of the court as to allowance of the impleader. That, discretion is to be exercised on motion after the third party has been brought into the case. The second departure from the federal rule emphasizes the existence of this discretion. It seems particularly desirable in Maine not to require a judicial ruling on the propriety of an impleader unless someone objects to it. Since there are, in many of the counties, protracted periods when no judge is readily available, it appears desirable to reduce so far as practicable the necessity of trips to court.

The third change from the federal rule has to do with compulsory counterclaims in third-party practice. A plaintiff may under the federal rule assert his own claim against the third-party defendant if he chooses, or he may await the outcome of the initial suit and then bring a new action against the third-party defendant. It seems an unfair burden upon the latter not to require the plaintiff to clean up in a single action the entire controversy arising out of a single transaction or occurrence.

The purpose of Rule 14(c) is to reemphasize that the court should exercise its discretion as to third-party claims with due regard for the protection of the parties and the prevention of delay. It is taken from a 1959 amendment to the Minnesota rules.