RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining an action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. An amendment of a pleading relates back to the date of the original pleading when

(1) relation back is permitted by the law that provides the statute of limitations applicable to the action, or

(2) the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, or

(3) the amendment changes the party or the naming of the party against whom a claim is asserted if the condition of paragraph (2) of this subdivision is satisfied and, within the period provided by Rule 3 for service of the

summons and complaint, the party to be brought in by amendment (A) has received such notice of the institution of the action that the party will not be prejudiced in maintaining a defense on the merits, and (B) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

Advisory Committee's Notes
1993

Rule 15(c) is amended to adopt a 1991 amendment of Federal Rule 15(c) for the purpose of maintaining Maine's relation-back provisions in conformity with the federal rule. The reasons are those given in the federal Advisory Committee Note, which reads as follows:

The rule has been revised to prevent parties against whom claims are made from taking unjust advantage of otherwise inconsequential pleading errors to sustain a limitations defense.

Paragraph (c)(1). This provision is new. It is intended to make it clear that the rule does not apply to preclude any relation back that may be permitted under the applicable limitations law . . . . Whatever may be the controlling body of limitations law, if that law affords a more forgiving principle of relation back than the one provided in this rule, it should be available to save the claim . . . . If *Schiavone v. Fortune,* 106 S. Ct. 2379 (1986) implies the contrary, this paragraph is intended to make a material change in the rule.

Paragraph (c)(3). This paragraph has been revised to change the result in *Schiavone v. Fortune, supra*, with respect to the problem of a misnamed defendant. An intended defendant who is notified of an action within the period allowed by [M.R. Civ. P. 3] for service of a summons and complaint may not under the revised rule defeat the action on account of a defect in the pleading with respect to the

defendant's name, provided that the requirements of clauses (A) and (B) have been met. If the notice requirement is met within the [M.R. Civ. P. 3] period, a complaint may be amended at any time to correct a formal defect such as a misnomer or misidentification. On the basis of the text of the former rule, the Court reached a result in *Schiavone v. Fortune* that was inconsistent with the liberal pleading practices secured by Rule 8 . . . .

Explanation of Amendments
November 1, 1966

The amendment of Rule 15(c) was taken from a 1966 amendment to F.R. 15(c). It states the circumstances under which an amendment of a pleading bringing in a new party defendant "relates back" to the date of the original pleading so as to prevent the statute of limitations from barring the action. Such relation back can take place only if the new defendant has received such notice of the action that his defense on the merits will not be prejudiced and if he knew or should have known that he would have been sued originally but for a mistake concerning the identity of the proper party. In addition, the amendment must satisfy the usual condition of Rule 15(c) of "arising out of the conduct . . . set forth . . . in the original pleading." The federal rule was amended to cure injustice arising in actions against officers or agencies of the United States where the proper defendant was not named and the mistake was not discovered within the time for commencing a new action. It is apparent that the cases in Maine covered by the amendment will be rare indeed, and in some of them relation back might be allowed under the rule as originally framed. Nevertheless, the amendment seems soundly based and may prevent an occasional injustice.

The amendment to Rule 15(d) was taken from a 1963 amendment to F.R. 15(d). It resolves a conflict in the federal cases as to whether a complaint failing to state a claim on which relief can be granted can be made good by the assertion in a supplemental complaint of subsequently occurring events. Under the amendment the court has discretion to permit a supplemental complaint despite the fact that the original pleading is defective.

Reporter's Notes
December 1, 1959

This rule is the same as Federal Rule 15. It broadens somewhat the already liberal Maine practice with respect to amendments. A pleading may be amended once as a matter of course without leave of court before a responsive pleading is

filed, or, if no responsive pleading is permitted, within 20 days after it is served. This is comparable to the present Equity Rule 20, allowing amendments before issue as of course. There is no provision at law for amendment without leave of court, but Revised Rules of Court 3 allows amendments in matters of form, as of course, on motion. Revised Rules of Court 4 gives broad discretionary power to allow amendments of substance, on terms, but forbids a new count or amendment "unless it be consistent with the original declaration, and for the same cause of action."

The notion of consistency with the original declaration requires that the action be of like kind, subject to the same plea, and such as might have been originally joined with the other. *Anderson v. Wetter*, 103 Me. 257, 69 A. 105 (1907). With the abolition of the forms of action and common law pleading, and with the freedom of joinder of causes under these rules, this requirement becomes meaningless. The requirement of the present rule of court that the amendment be for the same cause of action is modified by Rule 15. The words "cause of action" are avoided in these rules, but the concept of "claim for relief" is broad enough to include the mass of operative facts upon which the plaintiff's grievance is based. The theory of recovery is not a part of the claim for relief and a shift of theory is permissible. The present Maine law is considerably narrower. For instance, Cornish, J., in *Anderson v. Wetter, supra*, poses the question of what is meant by the term "cause of action", and answers it by saying: "It does not refer to the facts and circumstances which may be introduced in evidence and because of whose occurrence the action has resulted." (103 Me. at 265, 69 A. at 108). This is contrary to the approach of these rules. This matter is chiefly significant when the amendment comes after the statute of limitations would bar a fresh action, which is discussed below under Rule 15(c).

Rule 15(b) allowing amendments to conform to the proof seems substantially declaratory of existing law. There are many cases, both in equity, *e. g., Maxim v. Thibault,* 124 Me. 201, 126 A. 869 (1924), and *Sawyer v. White,* 125 Me. 206, 132 A. 421 (1926) ; and at law, *e. g., Charles v. Harriman,* 121 Me. 484, 118 A. 417 (1922) ; *Clapp v. Cumberland Cy. Power & Light Co.,* 121 Me. 356, 117 A. 307 (1922); *Rowe v. Kerr*, 126 Me. 35, 135 A. 825 (1927); *Burner v. Jordan Family Laundry,* 122 Me. 47, 118 A. 722 (1922) ; and *Hoskins v. B. & A. Ry.*, 135 Me. 285, 195 A. 363 (1937), which allow amendments to conform to the proof where the issues have been fully tried. The provision for a continuance in the event that an amendment allowed at trial unfairly surprises an opponent also reflects present practice. *Charlesworth v. American Express Co.,*

117 Me. 219, 103 A. 358 (1918); *Fournier v. Great Atlantic & Pacific Tea Co.*, 128 Me. 393, 148 A. 147 (1929).

Rule 15(c), dealing with relation back of amendments, is important only when the statute of limitations would bar a new suit. Here an amendment which changes the "cause of action", as that term has been commonly construed, is allowed if the amended claim arises out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading. To illustrate, an amendment alleging violation of the Boiler Inspection Act has been allowed under Federal Rule 15(c) to relate back and thus defeat the bar of the statute of limitations where the original complaint was under the Federal Employers' Liability Act. *Tiller v. Atlantic Coast Line Ry.*, 323 U.S. 574, 65 S.Ct. 421 (1945). Similarly, an amendment has been permitted where the theory of recovery was changed from negligence in the use of a scaffold to negligence in its construction. *Blair v. Durham*, 134 F.2d 729 (6th Cir. 1943). Apparently the former would not be in accord with Maine law (*Cf. Frost v. Cone Taxi Co.*, 126 Me. 409, 139 A. 227 (1927)), and it is at least doubtful whether the latter would be (*Cf. Tolman v. Union Mut. Life Ins. Co.*, 124 Me. 42, 126 A.16 (1924)).

Rule 15(d), providing for supplemental pleadings setting forth events which have happened since the date of the original pleading somewhat broadens Maine law. Although the supplemental bill is familiar in Maine equity practice, it has not been permitted in order to maintain a cause of action that accrued after the original bill was filed, even though arising out of the same transaction. *Rose, Adm'x v. Osborne,* 136 Me. 393, 11 A.2d 345 (1940). The old plea puis darrein continuance at law has allowed the pleading of defensive matter arising after the commencement of the action, but this plea has operated as an abandonment of all former pleas. *Hilliker v. Simpson,* 92 Me. 590, 43 A. 495 (1899). Rule 15(d) is not thus restricted in its operation.

A warning is appropriate as to the effect upon an attachment of an amendment of the pleadings. If a new demand is introduced after an attachment under present Maine law, it will not be good against subsequent attaching creditors. *Fairbanks v. Stanley*, 18 Me. 296 (1841). But amendments merely in form will not dissolve an attachment so as to let in subsequently attaching creditors. *Marston v. F. C. Tibbetts Mercantile Co.,* 110 Me. 533, 87 A. 220 (1913). Under Rule 15(c), it is plain that an amendment will discharge an attachment insofar as it introduces a new cause of action in the sense of a claim arising from an altogether different transaction. An attachment will not, however, be dissolved by an amendment which can fairly be regarded as within the

contemplation of the parties under the original pleadings even though there is a change in the cause of action as that term has been construed in the Maine cases. *See Aronow v. Gold*, 274 Mass. 65, 174 N. E. 267 (1931) (bond to dissolve attachment not discharged by amendment from demand on written contract to quantum meruit for work and materials in rendering the identical service).