

RULE 2. ONE FORM OF ACTION

There shall be one form of action to be known as “civil action.”

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This rule is the same as Federal Rule 2. It abolishes the common law forms of action and effects a procedural merger of law and equity. The abolition of the forms of action has long since been achieved in all but a few states, and the merger of law and equity has similarly been a common reform. The right to a specific kind of legal or equitable relief upon proof of certain facts is not changed.

The enabling act specifically authorized the merger of law and equity so as to secure one form of action. The effecting of such merger was complicated by the fact that at law the jurisdiction of the Superior Court is exclusive of that of the Supreme Judicial Court, while in equity the jurisdiction of the two courts is concurrent. Plainly law and equity could not be merged so long as these differences in original jurisdiction existed. Accordingly R.S.1954, Chap. 106, Sec. 5, [now 4 M.R.S.A. § 105] and Chap. 107, Sec. 4, [now 14 M.R.S.A. § 6051] have been amended so as to give exclusive original jurisdiction to the Superior Court of all cases whether legal or equitable in their nature, except those brought by extraordinary writ. *See* R.S.1954, Chap. 107, Sec. 1 [now 14 M.R.S.A. § 5301]. It is provided, however, that a single justice of the Supreme Judicial Court shall have full jurisdiction and power to hear, with his consent, any case in the Superior Court where trial is without jury. Public Laws of 1959, c. 317, § 74 [now 4 M.R.S.A. § 105].

The practical effect is to continue the desirable existing practice of having single justices of the Supreme Judicial Court hear equity cases. The phrasing in terms of trial without jury instead of trial of equity cases is simply to preserve the principle of merging law and equity. There is no thought that justices of the Supreme Judicial Court will sit in ordinary jury-waived cases of a legal nature. The amended statute requires the consent of the Supreme Judicial Court justice to hear such a case; and it may be assumed that such consent will not be forthcoming unless the case is equitable in nature.

Statutes providing for actions at law or suits in equity or specifying a named common law form of action are to be treated as referring to the civil action prescribed by these rules. This is spelled out in Rule 81(a).