RULE 42. CONSOLIDATION; SEPARATE TRIALS

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, in the same county or division or a different county or division, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial in the county or division where the action is pending, or a different county or division, of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

(c) Convenience and Justice. In making any order under this rule, the court shall give due regard to the convenience of parties and witnesses and the interests of justice.

Reporter's Notes
December 1, 1959

This rule is similar to Federal Rule 42, but slight changes have been made and subdivision (c) has been added.

Rule 42(a) is one of trial convenience. It complements the liberal provisions for joinder of claims and parties. Where joinder could have been had but was not, the court can order a consolidated hearing. It is to be noted that an order for consolidation may apply to separate issues and not necessarily to entire cases. For instance, several actions arising out of the same accident may be consolidated for trial on the issue of liability with reservation of separate trials on damages.

Rule 42(b) is similarly for trial convenience. The broad provisions for joinder of claims and parties, for counterclaims, cross-claims, and third-party claims may produce an unwieldy package for trial. A discretionary power to separate them is a practical necessity for efficient administration.

Under this provision the court has discretion to isolate a single issue which may be decisive of the case and try that issue separately. For example, where the affirmative defense of a release is pleaded, a court might try that issue first, since it

would save the time and expense of a trial if proved. More commonly, of course, the rule is applied in multiple claim situations.

The rule goes somewhat further than *Field v. Lang*, 89 Me. 454, 36 A. 984 (1897), which indicates a broad discretion in the presiding justice to order actions to be tried together, but suggests a distinction between a joint trial and a consolidation of the actions.

The rule includes an express provision that cases pending in different counties may be consolidated for trial in one county. R.S.1954, Chap. 113, Sec. 24 (amended in 1959) [14 M.R.S.A. § 508], now allows a change of venue for trial from one county to any other county, for good cause shown, but it does not appear commonly to have been utilized to provide a single trial of two or more actions brought in different counties on the same facts. It seems desirable that this be done and equally desirable that a separate trial of a claim or issue ordered under Rule 42(b) be held in a different county if more convenient.