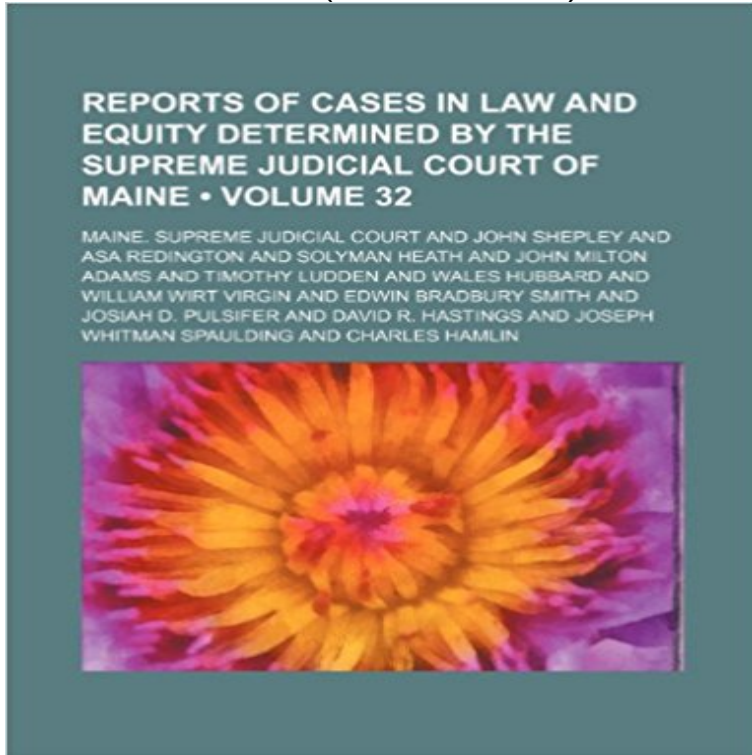


Reports of Cases in Law and Equity Determined by the Supreme Judicial Court of Maine (Volume 32)



This historic book may have numerous typos and missing text. Purchasers can download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1852 Excerpt: ... Hutchings r. Buck. not testimony, but affidavits merely. This is not according to the practice. We can therefore consider the motion merely in the light of a proposition to postpone the case, till the testimony can be had. But we have examined the affidavits. If put into deposition form, they would not constitute a sufficient ground for the ordering of a new trial. It is mostly cumulative. We do not say that a new trial cannot, in any case, be granted on the ground of evidence merely cumulative. The ground of the rule is that, as the matter was before the jury, and they had viewed the features of the case, it is to be presumed the evidence proposed to be added, on the very point before them, would not have altered their conclusions. It is, however, conceivable that evidence might be introduced, such as would lead the jury to a different result. But for that purpose the evidence must be very strong. Besides, unless the rule was quite stringent, there would be no end to litigation. But some of the affidavits state facts, not of the cumulative character. To them, another principle is deemed applicable, which is, that a case will not be opened to a new trial, unless the court should think it probable the new evidence would alter the verdict. Such is not our impression in this case. Motion for new trial overruled. Edward Hutchings verstit Buck. Edward Hutchings, Jr. versus Same. An agreement under seal to withdraw an action from the court, is not rescind able by one of the parties alone. Where, in pursuance of such an agreement, the entry of neither party, has been made on the docket, the suit is discontinued and the jurisdiction of the court over it is at an end. Though the same agreement also contains a

submission of the action, and the referee afterwards d...

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