NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

FIRST ANNOTATED REVISION

IN FIVE VOLUMES

VOLUME 2

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

Chapter 59.

Banks and Banking.

The Bank Commissioner. Deputy.

Sec. 1. Bank commissioner; appointment; salary; not to disclose information; fees.—A bank commissioner, as heretofore appointed, shall be appointed by the governor, with the advice and consent of the council, and shall hold his office for 4 years and until his successor is appointed and qualified, and may be removed from office by the governor and council for cause. He shall engage in no other business or profession and shall not during his continuance in office hold any office in any bank in the state, nor receive directly or indirectly any remuneration or fee of any kind from any bank, banking house, corporation, association or individual for examining any property or properties or securities. He shall receive an annual salary of $7,000 and his actual traveling expenses incurred in the performance of his duties.

No information derived by or communicated to the bank commissioner, deputy bank commissioner or any examiner or employee of the department in the course of official duty shall be disclosed except:

I. To United States government officials charged with the duty of supervising national banks;

II. To federal reserve officials;

III. To banking departments of other states;

IV. To the governor and treasurer of state;

V. To an advisory board, to be made up of mutual savings banks executive officials or trustees, or both, chosen by the savings banks association of Maine, so far as such information may relate to the conditions, policies and practices of mutual savings banks under his supervision and in such manner and to such extent as in the judgment of the commissioner will tend to assist him in the discharge of his obligations under the provisions of this chapter; any information so communicated to such advisory board shall be held by each member thereof in strict confidence.

Whoever violates the provisions of the preceding paragraph shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 6 months, or by both such fine and imprisonment.

The bank commissioner shall collect the legal and usual fees payable to him by virtue of his office, and account for and pay over the same to the treasurer of state forthwith for deposit in the general fund.

He shall receive in behalf of the state:

For a certificate of authorization of a loan and building association, $5.

For each license authorizing a foreign banking corporation to conduct its business in this state, and each renewal thereof, $20.

For receiving service of process against such corporation or against a foreign corporation acting as trustee of a mortgage given by a domestic corporation, $2, which shall be paid by the plaintiff at the time of such service, and shall be recovered by him as a part of his taxable costs, if he prevails in the suit.

For granting license to foreign corporations selling securities on the partial payment or installment plan, and for each renewal thereof, $20.

For registration or renewal of registration of dealers in securities, $50, which shall be returned if application is not granted.

For certified copies of dealer's certificate, 50c each.

For registration or renewal of registration of salesmen or agent of dealer in securities, $10 each. (R. S. c. 55, § 1. 1945, c. 103; c. 297, § 18; c. 365. 1951, c. 412, § 14.)

Cited in Opinion of the Justices, 72 Me. 542, 556.

Sec. 2. Deputy bank commissioner; examiners, etc.; expenses; bank's failure to pay its portion.—The bank commissioner may employ, subject to the provisions of the personnel law, a deputy bank commissioner and as many examiners, assistant examiners and clerks as the business of the office may require. The deputy bank commissioner shall perform the duties of the commissioner whenever the latter shall be absent from the state, or whenever he shall be directed by the commissioner, or whenever there shall be a vacancy in the office of commissioner. The deputy bank commissioner and all examiners and assistant examiners shall receive their actual expenses incurred in the performance of official duties.

The expenses of the banking department necessarily incurred in the examination of the institutions under its supervision shall be chargeable to such institutions. Every savings bank, institution for savings, trust company and loan and building association incorporated under the laws of this state shall be assessed for the actual expenses incurred by the department in connection with any bank examination, investigation or verification of depositors' books, whether regular or special, such assessments to include the proportionate part of the salaries of the examiners and assistant examiners while engaged at such institutions and the board, room and hotel expenses of such persons while away from home, but to exclude their traveling expenses. Such assessment shall be made by the bank commissioner within 30 days after the close of such examination, investigation or verification and notice thereof shall forthwith be sent to such institution. All assessments so made shall be paid to the treasurer of state by such institutions within 10 days following such notice.

To provide for the balance of the expense of the banking department, including overhead and general office and administrative expenses, the bank commissioner shall assess semiannually each savings bank, institution for savings and trust company incorporated under the laws of this state at the annual rate of 7c for each $1,000 of average deposits, excluding deposits of other banking and savings institutions, and shall assess semiannually each loan and building association at the annual rate of 7c for each $1,000 of average total resources. For the period ending the last day of June in each year the assessment shall be made on or before the 1st day of August next following, and for the period ending on the last day of December in each year the assessment shall be made on or before the 1st day of February next following. The bank commissioner shall forthwith notify said institutions of such assessments. The assessments so made shall be paid semiannually to the treasurer of state within 10 days next following the 1st days of August and February in each year. The aggregate of the payments provided for by this sec-

tion is appropriated for the use of the banking department. Any balance of said fund shall not lapse but shall be carried forward to be expended for the same purposes in the following fiscal years.

All institutions other than savings banks, institutions for savings, trust companies and loan and building associations whose affairs the bank commissioner is required by law to examine shall annually, on or before the 1st day of January, pay to the treasurer of state a sum equivalent to $2.50 for each $100,000 or major portion thereof of the resources, exclusive of trust assets, of such institution as shown by its books to have existed on the 1st day of December preceding. All payments hereunder shall be added to the aforesaid fund.

Any institution which shall fail to make such payments within the time specified shall be subject to a penalty of not less than $50 nor more than $200, which, together with the amount due under the foregoing provisions of this section, may be recovered in an action of debt in the name of the state. All institutions so delinquent on the 10th day of January of each year shall be reported to the attorney general for the purpose of such action. (R. S. c. 55, § 2. 1945, c. 293, § 10; c. 297, § 19; c. 378, § 53. 1949, c. 438, § 1. 1951, c. 406, § 1.)

Cross reference.—See § 241, re assistant commissioner, examiners, etc.

Tax cannot be recovered from bank whose charter has expired.—The tax upon savings banks provided by this section is a tax upon the franchise of the bank, and first becomes a subsisting debt against the bank when the return of the average deposits therein required should be made. Such tax cannot be recovered of a bank whose charter had previously expired by a decree of sequestration. Jones v. Winthrop Savings Bank, 66 Me. 242.

Applied in State v. Waterville Savings Bank, 68 Me. 515.

General Provisions.

Sec. 3. Deposits exempt from municipal taxation.—All interest-bearing deposits in saving banks, institutions for savings, trust companies and all capital dues of loan and building associations in the state are exempt from municipal taxation to said institutions and to the depositors of said institutions and to the shareholders of said loan and building associations. (1949, c. 438, § 2. 1951, c. 406, § 2.)

Cited in East Livermore v. Livermore Falls Trust & Banking Co., 103 Me. 418, 69 A. 306.

Sec. 4. Banking business authorized; banking defined. — No person, copartnership, association or corporation shall do a banking business unless duly authorized under the laws of this state or the United States, except as provided by section 5. The soliciting, receiving or accepting of money or its equivalent on deposit as a regular business by any person, copartnership, association or corporation, or a corporation intended to derive profit from the loan of money except as a reasonable incident to the transaction of other corporate business or when necessary to prevent corporate funds from being unproductive, shall be deemed to be doing a banking business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, a receipt or other writing; provided that nothing herein shall apply to or include money left with an agent, pending investment in real estate or securities for or on account of his principal.

Whoever violates any provision of this section, either individually or as an interested party in any copartnership, association or corporation, shall be punished by a fine of not less than $300 nor more than $1,000, or by imprisonment for not less than 60 days nor more than 11 months, or by both such fine and imprisonment. All fines collected under the provisions of this section shall be paid to the treasurer of state for deposit in the general fund. (R. S. c. 55, § 3. 1945, c. 297, § 20.)

Section not applicable to national banks.—This section was not intended to apply to banking corporations created by authority of congress, since such corporations

may be legally established in the state without the consent of the legislature. Stetson v. Bangor, 56 Me. 274.

Applied in State v. Pelletier, 118 Me. 257, 107 A. 828.

Quoted in part in Davis Investment Co. v. Cratty, 127 Me. 290, 143 A. 61; Opinion of the Justices, 146 Me. 316, 80 A. (2d) 866.

Sec. 5. Application by mercantile corporation to the bank commissioner; statement of financial condition; license and bond.—A corporation, desiring to encourage thrift among its employees by receiving deposits subject to interest at a specified rate, may apply to the bank commissioner for a license to receive such deposits and shall, at the same time, file with the said commissioner a complete statement of its financial condition. If satisfied that the applying corporation is solvent and reputable, the bank commissioner may, at his discretion, issue a license to such corporation, authorizing it to receive such deposits from its employees only, upon filing with the treasurer of state its bond, payable to him and his successors in office for the use of its depositors, and secured by a surety company authorized to do business in this state, in such amount as the bank commissioner may specify in such license, conditioned for the payment of all such deposits and interest thereon. All such bonds shall at the expiration of 5 years from the date thereof be deemed insufficient and shall be renewed by the giving of a new bond to be approved as above provided. The bank commissioner may order a new bond to be given at any time when he deems the existing obligation to be insufficient. (R. S. c. 55, § 4.)

Sec. 6. Use of words "bank," "savings," "trust" and kindred words; injunction.—No person or partnership and no association or corporation, unless duly authorized under the laws of this state or of the United States to conduct the business of a bank or trust company, shall use as a part of the name or title under which such business is conducted, or as designating such business, the word or words "bank," "banker," "trust," "trust company," "banking" or "trust and banking company," or the plural of any such word or words or any abbreviation thereof in or in connection with any other business than that of a bank or trust company duly authorized as aforesaid. Provided, however, that this restriction shall not apply to any such person, partnership, association or corporation conducting business under such name or style prior to the 23rd day of April, 1905. No person, partnership, association or corporation, bank or trust company, except a mutual savings bank organized under the laws of this state, shall use as a part of its name or title the word or words "saving," "savings" or "savings bank," except that loan and building associations legally organized under the laws of this state may use the name or style "savings and loan associations." Provided, however, that this restriction shall not apply to any business being conducted under such name or style prior to the 23rd day of April, 1905, nor to any bank or trust company using such word or words prior to the 1st day of January, 1929.

Any person, partnership, association or corporation violating any of the provisions of this section may be enjoined therefrom by any court having general equity jurisdiction on application of the bank commissioner or any person, corporation or association injured or affected by such use; and any such court may further enjoin any attempt on the part of any person, firm or corporation to mislead or give a false impression to the public that such person, firm or corporation is authorized under the laws of this state to conduct the business of a trust company. Any person or persons violating any of the provisions of this section, either individually, as members of any association or copartnership or as interested in any such corporation shall be punished by a fine of not more than $1,000, or by imprisonment for not less than 60 days nor more than 11 months, or by both such fine and imprisonment. (R. S. c. 55, § 5.)

See § 204, re use of word "bank" by industrial or Morris Plan banks.

Sec. 7. Banking emergency.—Whenever it shall appear to the governor that the welfare of the state or any section thereof, or the welfare and security of banking institutions under the supervision of the bank commissioner in sections 7 to 17, inclusive, referred to as banks, or their depositors, require, the governor may proclaim that a banking emergency exists, and that any bank or banks shall be subject to special regulation as hereinafter provided until the governor, by a like proclamation, declares the period of such emergency to have terminated. The governor may declare such banking holidays as in his judgment such emergency may require. (R. S. c. 55, § 6.)

Sec. 8. Banking business restricted.—During the period of any banking emergency declared as provided in the preceding section, the bank commissioner, in addition to all other powers conferred upon him by law, shall have authority to order any 1 or more banks or banking institutions as hereinafter defined to restrict all or any part of their business and to limit or postpone for any length of time the payment of any amount or proportion of the deposits in any of the departments thereof as he may deem necessary or expedient and may regulate further payments therefrom as to time and amount, as the interest of the public or of such bank or banks or the depositors thereof may require, and any order or orders made by him hereunder may be amended, changed, extended or revoked, in whole or in part, whenever in his judgment circumstances warrant or require. After the termination of any such banking emergency, any such order may be continued in effect as to any particular bank or banks as aforesaid if in the judgment of the commissioner circumstances warrant or require and the governor approves. (R. S. c. 55, § 7.)

Sec. 9. New deposits specially segregated. — The bank commissioner may by order authorize banking institutions thereafter to receive new deposits, and such new deposits shall be special deposits and designated as new deposits, shall be segregated from all other deposits, and may be invested only in assets approved by the commissioner as being sufficiently liquid to be available when needed to meet any demands on account of such new deposits, which assets shall not be merged with other assets but shall be held in trust for the security and payment of such new deposits, except that income from such assets may to the extent authorized by the commissioner be used by the bank for other proper purposes of the institution; and the withdrawal of such new deposits shall not be subject in any respect to restriction or limitation under the provisions of sections 7 to 17, inclusive. The provisions of this section shall not apply to loan and building associations. (R. S. c. 55, § 8.)

Sec. 10. Special rules and regulations. — Whenever the commissioner shall make any order under the provisions of sections 7 to 17, inclusive, he may adopt such rules and regulations as he may deem proper for the protection of any bank or banks subject thereto or the depositors thereof, and any person violating any provision of such a rule or regulation shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment. (R. S. c. 55, § 9.)

Sec. 11. Assets valued.—In determining action to be taken under the provisions of sections 7 to 17, inclusive, the bank commissioner may place such fair value on the assets of any bank as in his discretion seems proper under the conditions prevailing and circumstances relating thereto. (R. S. c. 55, § 10.)

Sec. 12. Cost and expense assessed banks.—Any costs and expenses incurred by the commissioner in the exercise of the powers given under the provisions of sections 7 to 17, inclusive, may be assessed by him against the banks concerned and, when so assessed, shall be paid by such banks. (R. S. c. 55, § 11.)

Sec. 13. Banks may become members of clearing house associations. —Notwithstanding any provisions of law now or hereafter enacted, any banking

institution may, subject to the approval of the commissioner, join any clearing house association or similar organization however formed, including such as issue clearing house certificates, scrip or other evidences of claims against assets of banking institutions, or other emergency currency, or substitute therefor, and any banking institution joining such association or organization may pledge any of its assets, whether segregated or not, except those segregated under the provisions of section 9, as security for the discharge of its obligations as a member of or to such association or organization, or to the holders of the instruments issued thereby. Such authority to join clearing house associations or similar organizations and pledge assets shall exist whether or not the other members of such association are banking institutions under the laws of this state or of other states, or national banking associations located in this state or in other states, or 1 or more of each of the above specified types of banking institutions. (R. S. c. 55, § 12.)

Sec. 14. Definitions.—The words "bank" and "banking institutions", as used in sections 7 to 17, inclusive, shall be held to include loan and building associations, Morris Plan banks, credit unions and all other financial institutions under the supervision of the bank commissioner, and the word "deposits", so far as applicable, shall be held to apply to the interests of shareholders in loan and building associations. (R. S. c. 55, § 13.)

Sec. 15. Commissioner's liability limited. — The bank commissioner shall be under no liability of any nature whatever for any act or failure to act under the provisions of sections 7 to 17, inclusive, provided only his action or failure to act be in good faith. (R. S. c. 55, § 14.)

Sec. 16. Transactions during banking holidays. — The provisions of section 194 of chapter 188 shall apply to all said banking holidays already or hereafter declared by the governor or by the President of the United States of America. (R. S. c. 55, § 15.)

Sec. 17. Provisions of §§ 7-17 enforceable in equity.—Upon application of the bank commissioner, any justice of the supreme judicial or superior courts shall have jurisdiction in equity to enforce by appropriate decrees the provisions of sections 7 to 17, inclusive, or any order, rule or regulation issued by the commissioner thereunder. (R. S. c. 55, § 16.)

Applied in Robinson v. Fidelity Trust Co., 140 Me. 302, 37 A. (2d) 273.

Sec. 18. Duties of banking institutions and loan and building associations regarding insurance upon mortgage property. — Each banking institution, including loan and building associations, conducting business within the state, shall at all times cause all real and personal property, whether owned by such institution or upon which it holds a mortgage and which may be subject to risk by fire, to be insured under the Maine Standard Fire Insurance Policy, in such an amount as the officers of any such banking institution may deem necessary to protect the ownership or interest of said institution therein, and any such banking institution may, at any time, demand and cause to be carried such other kind of insurance on any of its property, or upon any interest that it may have in the property of others, in such amount as said officers may deem necessary to protect the interest of said institution. Any charge for insurance not paid by the mortgagor, if paid by the mortgagee, shall become a part of the mortgage debt and shall bear interest at the same rate as the lowest rate of interest provided for in any of the notes secured by said mortgage on such real and personal property. (1945, c. 174, § 1; c. 378, § 54.)

Sec. 19. Inactive savings accounts in national banks; paid to state. —All moneys in savings accounts in national banks, to which no deposit has been

made and from which no part of the deposit or dividends has been withdrawn for a period of more than 22 years shall be deemed presumptively abandoned and shall be paid into the state treasury, and credited to the general fund for the use of the state. Thereafter no action at law or in equity shall be maintained in any court in this state by any depositor or his heirs, successors or assigns for any deposit so paid, against any bank making such payments; provided, however, that thereafter any lawful claimant may petition the governor and council for payment of such moneys to the claimant. In his petition the claimant shall state fully the facts showing the basis of his right, title and interest in such deposit. The governor and council, after a hearing, shall determine who are lawful claimants and shall authorize payment by the treasurer of state from the general fund to such claimants.

The provisions of this section shall not apply to the savings deposits of persons known to the cashiers of national banks to be living, or to a savings deposit the deposit book of which has during the 22-year period been brought into the bank to be compared or to have the dividends added. (1949, c. 44, § 1.)

Organization of Savings Banks.

Cross Reference.—See § 21, re definition of "savings bank."

Sec. 20. Powers of savings banks as corporations. — All savings banks, lawfully organized, are corporations possessed of the powers and functions of corporations generally, and as such have power:

I. To have perpetual succession, each by its corporate name.

II. To sue and be sued, complain and defend, in any court of law or equity.

III. To adopt and use a common seal.

IV. To make by-laws not inconsistent with the laws of the state or of the United States for the management of their property and the regulation of their affairs. The clerk shall file with the bank commissioner a copy of such by-laws and all amendments thereto.

V. To receive money on deposit, to invest the same, to own, maintain and let safe deposit boxes and vaults, and further to transact the business of a savings bank, as hereinafter provided. (R. S. c. 55, § 17.)

Bank may not be guarantor except in certain cases. — Except to protect an investment of its own, or as an incident to the transfer of commercial paper, or to effectuate a merger with another institution, a bank has no implied power to become a guarantor and any contract by which it seeks to do so is void. Gardiner Trust Co. v. Augusta Trust Co., 134 Me. 191, 182 A. 685.

Sec. 21. Definition.—Wherever the words "savings banks" or "savings bank" shall appear, they shall be held to mean also "institutions for savings" or "institution for savings." (R. S. c. 55, § 18. 1945, c. 293, § 11.)

Sec. 22. Organization.—Any number of persons, not less than 13, may associate themselves for the purpose of organizing a savings bank in accordance with the provisions of this chapter; ¾ of such number shall reside in the county where the proposed bank is to be located, and may fill vacancies and add to their number from time to time as they desire. All incorporators shall be residents of the state. (R. S. c. 55, § 19.)

Cross reference. — See c. 55, re credit unions.

Cited in Opinion of the Justices, 146 Me. 316, 80 A. (2d) 866.

Sec. 23. Certificates sent to the secretary of state and bank commissioner.—Persons associating themselves as provided for in the preceding section shall execute duplicate certificates, sworn to before a justice of the peace, 1 of which shall be deposited with the secretary of state for record and the other sent to the bank commissioner, in which shall be set forth: the name of the bank;

the names of all the corporators and the places where they reside; their business occupations; and the place where its business is to be transacted; together with the reasons why a bank is needed in such place. (R. S. c. 55, § 20.)

Sec. 24. Notice of intention to organize. — A notice of intention to organize a savings bank, signed by all the corporators, shall be published once a week for 3 weeks in some newspaper published in said county where said bank is to be located, if any, otherwise in some newpaper published in an adjoining county. (R. S. c. 55, § 21.)

Sec. 25. Duty of bank commissioner.—When the commissioner receives the certificate provided for in section 23, with the published order of notice, if he finds that the foregoing provisions have been complied with, he shall, from the best information at his command, ascertain whether public convenience and advantage will be promoted by the establishment of such savings bank. (R. S. c. 55, § 22.)

Sec. 26. Certificate of authorization to corporators; duplicate filed with secretary of state. — If the commissioner is satisfied that public convenience and advantage will be promoted, he shall, within 60 days after the certificate provided for in section 23 has been received by him for examination, issue under his hand a certificate of authorization to the persons named therein, or to a portion of them, together with such other persons as a majority of those named in such certificate of association, in writing, approve; also a duplicate to the secretary of state which certificate, so issued by him, shall authorize the persons named therein to open an office for the deposit of savings, as designated in the certificate of association, subject to the provisions of the 6 preceding sections. (R. S. c. 55, § 23.)

Sec. 27. Corporation, when authorized to transact business.—Upon the filing of the certificate provided for in section 23 with the secretary of state, the persons named therein and their successors are thereupon and thereby constituted a body corporate and politic, vested with all the powers conferred and charged with all the liabilities imposed by the provisions of the 7 preceding sections. (R. S. c. 55, § 24.)

Management of Savings Banks.

Sec. 28. Savings banks, their powers and liabilities.—Savings banks incorporated under the authority of the state may exercise the powers and shall be governed by the rules and be subject to the duties, liabilities and provisions in their charters, in the following sections and in the general laws relating to corporations, unless otherwise specially provided. (R. S. c. 55, § 25.)

Cross reference.—See § 21, re definition of "savings bank".

Quoted in Maine Unemployment Compensation Comm. v. Maine Savings Bank, 136 Me. 136, 3 A. (2d) 897.

Sec. 29. Membership. — Every corporation described in section 28 shall consist of not less than 30 members and may, at any legal meeting by a vote of at least 2/3 of those present, elect by ballot any citizen of the county wherein the corporation is located, or of an adjacent county, to be a member thereof. No person shall continue to be a member after removing from the state. Any member who fails to attend the annual meetings for 2 successive years ceases to be a member, unless reelected by a vote of the corporation. (R. S. c. 55, § 26.)

Sec. 30. Officers; trustees, number and restrictions.—The officers of every corporation described in section 28 shall consist of a president, treasurer, and, when in the opinion of the trustees necessary, a vice-president and an assistant treasurer, and not less than 5 trustees, not more than 2 of whom shall be

directors of any 1 national bank, trust company or other banking institution, who shall elect from their number or otherwise such other officers as they see fit. All officers shall be annually sworn to the faithful performance of their duties and shall hold their several offices until others are chosen and qualified in their stead. The trustees, in their discretion, may appoint an investment board to have charge of the loans and investments of the bank, but all doings of such board shall be reported to the trustees at their regular meetings. (R. S. c. 55, § 27.)

Officer has no power to act individually for institution.—A single trustee or director has no power to act for the institution that creates his office, except in conjunction with others. It is the board of directors only that can act. Fairfield Savings Bank v. Chase, 72 Me. 226.

Sec. 31. Officers not to act as agents for certain corporations; treasurers and trustees regulated.—No president, treasurer, clerk or employee of any savings bank shall act as agent or representative of any corporation engaged in the business of selling or negotiating any bonds, mortgages, notes or other choses in action, nor receive directly or indirectly any fee, commission, bonus or other compensation for the sale or transfer of any security. No cashier in a national bank or trust company shall be treasurer of any savings bank, the deposits of which exceed $150,000; and if the treasurer of a savings bank, having deposits not exceeding $150,000, is cashier in a national bank or trust company, the board of trustees of such savings bank shall not include more than 1 director nor more than 2 stockholders in the national bank or trust company so connected therewith. No treasurer or assistant treasurer shall, directly or indirectly, engage in any other business or occupation without the consent of the majority of the trustees evidenced by resolution duly recorded. (R. S. c. 55, § 28.)

Sec. 32. Trustees, their election and duties; office vacated.—The members of a savings bank corporation shall annually, at such times as may be provided in their by-laws, elect from their number not less than 5 trustees, who shall have the entire supervision and management of the affairs of the institution, except so far as may be otherwise provided by their by-laws. Any trustee who becomes a trustee or officer in any other savings bank thereby vacates his office as such trustee. Trustees shall hold regular meetings at least monthly and shall cause full and complete records of their proceedings to be kept. (R. S. c. 55, § 29.)

Quoted in part in Newport Savings Bank Case, 68 Me. 396.

Sec. 33. Officers, their election and term; treasurer, ex officio clerk; bonds of treasurer and assistant treasurer and their annual examination; compensation of officers fixed by trustees; compensation of trustees.—The trustees of savings banks, immediately after their election and qualification, shall elect 1 of their number president, who shall also be president of the corporation. They shall also elect a treasurer, and when deemed necessary, a vice president and an assistant treasurer, to hold their offices during the pleasure of the trustees. The treasurer, and in his absence the assistant treasure if there is one, shall be ex officio clerk of the corporation and of the trustees. The treasurer, assistant treasurer, trustees and all other officials and employees designated by said trustees or the bank commissioner as handling or having access to moneys or securities shall give bonds to the corporation for the faithful discharge of the duties of their office, in such sums as the trustees and bank commissioner decide to be necessary for the safety of the assets, and such bonds shall continue and be valid from year to year, so long as they act in such capacities, subject to renewal whenever ordered by the trustees or commissioner. Each treasurer shall be bonded for a sum not less than $15,000, each assistant treasurer or other official, trustee or employee handling or having access to moneys or

securities for not less than $5,000. All bonds shall be approved by the bank commissioner and copies furnished the banking department by the clerks of the several banks. Said bonds shall be recorded upon the books of the savings banks, and the commissioner shall annually examine the same and inquire into and certify to the sufficiency thereof, and when he deems any such bond insufficient, he shall order a new bond to be given within a time by him specified. All such bonds hereinafter given under the provisions of this section shall be executed by the principal and 1 or more surety companies authorized to transact business in this state, and bonds with personal sureties shall no longer be regarded as complying with the provisions hereof. The trustees may, in lieu of such bonds, insure at the expense of the bank with some surety company which shall be satisfactory to the bank commissioner for the faithful performance of the duties of such officials, trustees and employees as are required by this section to be bonded, in such sums as they shall decide to be necessary for the safety of the assets in the custody of the corporation, but in no event less than $25,000; subject, however, to the same right of the bank commissioner, as above provided, to require a new bond if at any time he shall deem the one provided by the corporation to be insufficient and unsatisfactory. The treasurer, assistant treasurer and clerks shall receive a compensation fixed by the trustees. The trustees may receive such compensation for their services in making examinations and returns required by their by-laws and the state laws, for making examinations of property, and for attendance at any regular or special meetings of the board of trustees or any committee thereof, as may be fixed by the corporation at any legal meeting thereof or as may be fixed by the board of trustees and approved by the bank commissioner in writing. (R. S. c. 55, § 30.)

Cross reference.—See § 107, re board of directors of trust companies.

Cited in Cumberland v. Pennell, 69 Me. 357.

Sec. 34. Clerks to publish list of officers and corporators; to return copy of list to bank commissioner.—Within 30 days after the annual election in the several savings banks, the clerks thereof shall cause to be published in some local newspaper, if any, otherwise in the nearest newspaper, a list of the officers and corporators thereof. They shall also return a copy of such list of officers and corporators to the bank commissioner within said 30 days, which shall be kept on file in his office for public inspection. Any clerk who neglects to give such notice or make such return shall be punished by a fine of $50. (R. S. c. 55, § 31.)

Cited in Richmond Bank v. Robinson, 42 Me. 589.

Sec. 35. Vacancies; meetings of the corporation.—If any office becomes vacant during the year, the trustees of savings banks may fill the same until it is filled at the next annual meeting, and vacancies occurring in the board of trustees shall be immediately filled whenever the number of trustees shall fall below the statutory minimum. Special meetings of the corporation may be held at any time by order of the trustees; the treasurer shall also call special meetings upon application in writing of 10 members of the corporation. Seven days' notice of all annual meetings shall be given by public advertisement in some newspaper of the county where the corporation is established, if any; otherwise, in the state paper. (R. S. c. 55, § 32.)

Sec. 36. Regulation of deposits and their amount; deposits in trust.—Any bank, savings bank or trust company may receive on deposit, for the use and benefit of depositors, all sums of money offered for that purpose. Whenever a deposit is made in trust the name and residence of the person for whom it is made, or the purpose for which the trust is created, shall be disclosed in writing to the bank, and the deposit shall be credited to the depositor as trustee for such

person or purpose; and if no other notice of the existence and terms of a trust has been given in writing to the corporation, the deposit with the interest thereon may, in the event of the death of the trustee, be paid to the person for whom such deposit was made, or to his legal representative or to some trustee appointed by the court for that purpose. The trustees or directors of the bank may refuse any deposit at their pleasure. (R. S. c. 55, § 33. 1947, c. 47.)

Evidence of the intention of the one making a deposit is admissible to show a trust or vary the effect of entries in the deposit book. Northrop v. Hale, 72 Me. 275.

Intent to make gift and delivery must be proved.—The right to a deposit alleged to have been made in trust depends upon proof of an intent to make an absolute gift of the money to the cestui que trust and of the delivery requisite to effectuate such intent. Fairfield Savings Bank v. Small, 90 Me. 546, 38 A. 551.

Where deposit is made in the name of another without his knowledge, the depositor retaining the pass book and control over the deposit for his own use, no trust is created in favor of that other person. Northrop v. Hale, 73 Me. 71.

Sec. 37. Authority to pay any order notwithstanding death of drawer.—Any bank, savings bank or trust company may pay any order drawn by any person who has funds on deposit to meet the same, notwithstanding the death of the drawer in the interval of time between signing such order and its presentation for payment, when said presentation is made within 30 days after the date of such order; and at any subsequent period, provided the corporation has not received actual notice of the death of the drawer. (R. S. c. 55, § 34. 1945, c. 378, § 77.)

Sec. 38. Deposits of married women or minors are property of depositors.—Money deposited in a bank, savings bank or trust company by a married woman is her property and she may maintain an action in her own name to recover it. Money deposited in the name of a minor is his or her property and the corporation may, in the discretion of the officer making the payment, pay the same to such minor or upon his or her order or to his or her guardian, and such payment shall be valid. The foregoing provisions as to ownership do not apply to money belonging to a third person and fraudulently deposited by or in the name of a married woman or minor, but payment to such married woman or minor by said bank, savings bank or trust company, without notice of such fraud, shall be valid. The receipt of such married woman or minor for such deposits and interest, or any part thereof, is a valid release and shall discharge the corporation. (R. S. c. 55, § 35. 1945, c. 378, § 78.)

Sec. 39. Bonds in name of minors.—United States bonds or certificates registered in the name of a minor are his or her property, and any bank, institution for savings or trust company, doing business within the state, may pay the redemption value of any of such bonds or certificates to a minor or to his or her guardian, and such payment shall be valid. The execution of the request for payment is a valid release and shall discharge the institution so paying. (1945, c. 177.)

Sec. 40. Deposits or loan and building shares in the names of 2 or more persons.—

I. When a deposit has been made or shall hereafter be made in any bank, savings bank or trust company, or shares have been already issued or shall be hereafter issued in any loan and building association transacting business in this state, in the names of 2 or more persons, payable to either or payable to either or the survivor, such deposit, or any part thereof, or the interest or dividends thereon may be paid to any or either of said persons, whether the other or others be living or not, or to the legal representative of the survivor of said persons, and the receipt or acquittance of the persons to whom said

payment is so made shall be a valid and sufficient release and discharge to such bank, savings bank, trust company or loan and building association for any payment so made. (1945, c. 378, § 79)

Purpose of subsection.—This particular subsection was enacted for the benefit of the savings institutions. The legislature did not intend to enact a law that, as between the depositors themselves, should in and of itself determine their ownership in an account. Rose v. Osborne, 133 Me. 497, 180 A. 315.

Applied in Portland Nat. Bank v. Brooks, 126 Me. 251, 137 A. 641.

II. All such accounts opened or such shares in loan and building associations issued on or after the 1st day of August, 1929, payable to either of 2 or more or the survivor, up to, but not exceeding an aggregate value of $3,000, exclusive of interest and dividends, in the name of the same persons in all banks, savings banks, loan and building associations or trust companies within this state, together with the additions thereto and increment thereof, including interest and dividends, shall, in the absence of fraud or undue influence, upon the death of any of such persons, become the sole and absolute property of the survivor or survivors, even though the intention of all or any 1 of the parties be in whole, or in part, testamentary and though a technical joint tenancy be not in law or fact created. (1947, c. 48)

When account is deemed to have been opened.—For purposes of this subsection, an account originally opened in an individual's name but later made payable to that individual or another is deemed to have been opened as of the date it was made so payable. Bosworth, Appellant, 145 Me. 92, 72 A. (2d) 451.

III. Accounts so opened and shares so issued prior to August 1st, 1929 may be brought within the provisions of this section by written declaration in form to be prescribed by the bank commissioner, executed by all such depositors or share owners, and delivered to any such bank, savings bank, trust company or loan and building association, which declaration shall bind each and every signer thereof, his heirs, executors, administrators and assigns. In case such declaration be signed by 1 or more, but not all of the depositors named in such account or share owners, such declaration shall be effective as against the person or persons signing the same, his and their heirs, executors, administrators and assigns; but shall not be effective as against those not so signing. (1945, c. 378, § 79)

Cited in Bosworth, Appellant, 145 Me. 92, 72 A. (2d) 451.

IV. All such accounts opened or such shares in loan and building associations issued on or after the 1st day of September, 1949, payable to either of 2 or more or the survivor, up to, but not exceeding an aggregate value of $5,000, including interest and dividends, in the name of the same persons in all banks, savings banks, loan and building associations or trust companies within this state shall, in the absence of fraud or undue influence, upon the death of any of such persons, become the sole and absolute property of the survivor or survivors, even though the intention of all or any 1 of the parties be in whole, or in part, testamentary and though a technical joint tenancy be not in law or fact created. The said amount which so becomes the sole and absolute property of the survivor or survivors pursuant to provisions of this subsection shall be exclusive of, and in addition to, any amounts to which such survivor or survivors are entitled under common law as contributors to such account or accounts, share or shares. (1945, c. 378, § 79. 1949, c. 24)

V. Accounts so opened and shares so issued prior to September 1, 1949 may be brought within the provisions of subsection IV by written declaration in form to be prescribed by the bank commissioner, executed by all such depositors or share owners, and delivered to any such bank, savings bank, trust company or loan and building association, which declaration shall bind each and

every signer thereof, his heirs, executors, administrators and assigns. In case such declaration be signed by 1 or more, but not all of the depositors named in such account or share owners, such declaration shall be effective as against the person or persons signing the same, his and their heirs, executors, administrators and assigns; but shall not be effective as against those not so signing. (1949, c. 24)

VI. The provisions of subsections II, III, IV and V apply only to accounts opened in banks, savings banks or trust companies, or shares in loan and building associations, made payable to persons or to either or the survivor who are husband and wife, parent and child. [1949, c. 24]. (R. S. c. 55, § 36. 1945, c. 378, § 79. 1947, c. 48. 1949, c. 24.)

Cross reference. — See c. 55, § 10, re credit unions.

Right to survivorship depends on proof of joint tenancy.—This section does not abrogate the common-law rules concerning creation of joint tenancies. The right to survivorship in a bank account depends upon the proof of the four unities of time, title, interest and possession to create a joint tenancy therein. A joint tenancy will not be implied from the entries on the bank records alone. Garland, Appellant, 126 Me. 84, 136 A. 459; Portland Nat. Bank v. Brooks, 126 Me. 251, 137 A. 641.

Where the parties were neither husband and wife nor parent and child as required by subsection IV, a declaration filed with the bank is insufficient to create a survivorship under this section. Hand v. Nickerson, 148 Me. 465, 95 A. (2d) 813.

Quoted in part in Strout v. Burgess, 144 Me. 263, 68 A. (2d) 241.

Cited in Hallett v. Bailey, 143 Me. 1, 54 A. (2d) 533.

Sec. 41. Duplicate book of deposit, in case of loss of original.—If a savings bank or trust company receives a notice in writing that a book of deposit in its savings department is lost, together with a request that a duplicate book of deposit be issued, such notice and request signed by the appropriate person or persons as hereinafter provided, said bank or trust company at the expiration of a period of 10 days from the receipt of such notice, if the missing book is not sooner presented, may issue a duplicate book of deposit to the person signing said notice and request, and the delivery of such duplicate book relieves said savings bank or trust company from all liability on account of the missing original book of deposit. Such notice and request shall be signed:

I. If the book was issued to a single depositor, then by him or by his guardian, conservator, executor or administrator;

II. If the book was issued to 2 or more depositors, then by all such depositors then surviving, or by the last survivor or the executor or administrator of the last survivor of such depositors; provided, however, that a guardian or conservator shall sign for any of the foregoing persons respecting whom he has been appointed. (R. S. c. 55, § 37. 1953, c. 251.)

Sec. 42. Investment of deposits.—Savings banks may hereafter invest their funds as follows, and not otherwise:

I. Government obligations.

A. In the bonds and other interest-bearing obligations of the United States; and in the interest-bearing obligations of any debtor or promisor for the payment of the principal and interest of which the faith and credit of the United States government are pledged.

B. In bonds constituting a direct and primary obligation of the Dominion of Canada and in the interest-bearing obligations of any body politic or corporation in Canada, the principal and interest of which are unconditionally guaranteed by the Dominion of Canada; provided that the principal and interest of all the obligations of Canadian origin that may be bought under the authority of this section are payable in the United States at not less than their face value in United States funds.

II. Obligations of states and provinces of Canada. In the bonds or other interest-bearing obligations of any state in the United States, and in the bonds constituting a direct and primary obligation of any province of the Dominion of Canada, the principal and interest of which are payable in United States funds, provided the above-mentioned bonds or interest-bearing obligations of any state and bonds of any province have not, for a period of more than 90 days, defaulted in the payment of the principal or interest of any obligation within a period of 10 years immediately preceding the investment.

III. Obligations of counties.

A. In the bonds or other interest-bearing obligations of any county in this state.

B. In the bonds or other interest-bearing obligations of any county in any other state in the United States which at the date of the investment has more than 50,000 inhabitants and whose net debt does not exceed 3% of the last preceding valuation of the taxable property therein; provided, however, that neither such county nor the state in which it is situated shall have defaulted for more than 90 days in payment of principal or interest of any obligation within a period of 10 years immediately preceding the investment, that all issues for highway purposes shall be payable serially to mature in not more than 20 years, and that the principal and interest are payable from a direct tax to be levied on all the taxable property within such county; provided, however, that only such portion of such highway issue shall be legal as will be due and payable in not less than 15 years from date of issue.

C. The term "net debt" shall be construed to include all bonds which are a direct obligation of the county, less the amount of any sinking fund available in the reduction of such debt.

IV. Municipal obligations.

A. In the bonds or other interest-bearing obligations of any municipal or quasi-municipal corporation of this state, provided such securities are a direct obligation on all the taxable property thereof.

B. In the bonds or other interest-bearing obligations of any city or town in any other state in the United States, incorporated at least 25 years prior to the date of investment, and having according to each of the last 2 censuses of the federal government, a population of not less than 10,000; provided that neither such municipality nor the state in which it is situated shall, for more than 90 days, have defaulted in the payment of principal or interest of any obligation within a period of 10 years immediately preceding the investment, that the net debt of any such municipality whose population is less than 500,000 shall not exceed 5% of the assessed valuation of the taxable property therein, and that the net debt of any such municipality whose population is in excess of 500,000 shall not exceed 8% of the assessed valuation of the taxable property therein. The obligations of any municipality which comply with the provisions of this section except for the fact that such municipality has been incorporated within 25 years of the date of the investment shall be held to be legal for the purposes of this section if the territory comprising such municipality shall for more than 20 years have had a population of not less than 10,000, and have been during said time a part of 1 or more towns or cities having a population of not less than 10,000, or have contained within its limits a municipality having a population of not less than 10,000.

C. In the bonds or other interest-bearing obligations of any quasi-municipal corporation, other than an irrigation or drainage district, within the territorial limits of any city or town whose obligations are eligible under the

provisions of paragraph B, or comprising within its limits 1 or more such municipalities; provided, however, that the population and valuation of any such quasi-municipal corporation incorporated within a single city or town shall be at least 75% of the population and valuation of the city or town in which it is located; and provided further, that such obligations shall be enforceable by a direct tax levied on all the taxable property within such corporation.

D. The term "net debt" as applied to a municipality shall be construed to include not only all bonds which are a direct obligation of the municipality, but also all bonds of quasi-municipal corporations within the same, exclusive of any such debt created for a water supply and of the amount of any sinking fund available in reduction of such debt. The securities of any municipality or quasi-municipal corporation shall not be held to be a direct obligation on all the taxable property thereof within the meaning of the foregoing provisions in any state which by statute or constitutional provision prevents the levying of sufficient taxes to meet such obligations.

Subsection cited in Greaves v. Houlton Water Co., 140 Me. 158, 34 A. (2d) 693.

V. Federal land banks. In the bonds or other interest-bearing obligations of any federal land bank or joint stock land bank organized under any act of congress enacted prior to the 4th day of April, 1923.

VI. Obligations of steam railroads.

A. In the bonds, notes or other interest-bearing obligations of any Maine corporation owning and operating a steam railroad located principally within this state, having a mileage of not less than 500 miles of road, exclusive of sidings, including all obligations assumed or guaranteed by such corporation and issued by any lessor, subsidiary or affiliated corporation, provided that the assumption or guaranty thereof shall have been authorized and approved in the manner and to the extent required by state or federal law at the time of such assumption or guaranty.

B. In the bonds or notes issued or assumed by any steam railroad corporation organized under the laws of any other state in the United States; provided:

1. Such corporation shall own in fee not less than 500 miles of standard gauge railroad, exclusive of sidings, within the United States, or shall own not less than 100 miles and have received each year for a period of 5 successive years next preceding the investment a gross operating income of not less than $10,000,000.

2. Such obligations shall be secured:

a. by a first mortgage or a mortgage or trust indenture which is in effect a first mortgage, on at least 75% of all the mileage of such corporation owned in fee, or

b. by a refunding mortgage providing for the retirement of all prior lien bonds outstanding at the date of issue and covering at least 75% of the mileage owned in fee by said corporation; provided, however, that all bonds secured by said refunding mortgage shall mature at a later date than any bond which it is given to refund, or if any such bonds are to mature at an earlier date the mortgage must provide that such bonds shall be retired by a like amount reissued under said mortgage, or

c. by a mortgage prior to a refunding mortgage above described covering some part of the railroad property included in such refunding mortgage, if the bonds secured by such prior mortgage are to be refunded by said refunding mortgage and the property covered by

such prior mortgage is operated by the corporation issuing the refunding mortgage, or

d. by a first mortgage on the property of a leased road forming a substantial portion of the system of the operating company.

3. Such corporation shall have earned and received an average net income for a period of 3 successive calendar or fiscal years next preceding the investment of not less than 1½ times its average fixed charges during that period, and also shall have earned and received for a period of 12 consecutive months within the 15 months next preceding the investment a net income of not less than 1½ times its fixed charges during such period. The term "net income" as used herein shall be construed as the equivalent of "income available for fixed charges" under the regulations of the interstate commerce commission. It shall be determined for the purposes of this subparagraph after deducting all operating expenses, taxes, maintenance and depreciation charges. Rentals accruing for leased roads shall be treated as fixed charges.

4. The total funded indebtedness of said corporation shall not exceed 3 times its outstanding capital stock at the date of investment.

C.

1. In equipment obligations issued under the Philadelphia plan, so called, and secured by standard equipment leased to any steam railroad corporation in the United States; provided, however, that the amount of such securities outstanding shall at no time exceed 80% of the cost of the equipment by which they are secured. (1951, c. 97)

2. In such other obligations issued or assumed by any steam railroad corporation organized under the laws of any state in the United States, secured by first mortgage or trust indenture which is in effect a first mortgage, on standard gauge railroad operated by such corporation or a lessee corporation as the bank commissioner, upon the written recommendation of a special committee of the savings banks association of Maine appointed or elected for such purpose, may deem suitable for savings bank investment, having regard primarily to the strategic importance of such mileage or its density or revenue producing characteristics per dollar of debt secured thereby. (1951, c. 97)

D. In the first mortgage bonds of any terminal or bridge company guaranteed as to principal and interest by any railroad corporation, any of whose mortgage obligations are eligible under the provisions of paragraphs A and B.

E. Not more than 30% of the deposits of any 1 bank shall be invested in steam railroad obligations and not more than 2% of such deposits in the obligations of any single railroad corporation whose mileage is located principally outside this state.

F. In the bonds or notes, issued or assumed by any steam railroad corporation organized under the laws of the Dominion of Canada, the principal and interest of which are payable in United States funds without exchange, and the principal and interest of which are guaranteed directly or indirectly by the Dominion of Canada.

Not more than 5% of the deposits of any 1 bank shall be invested in these obligations issued and guaranteed by the Dominion of Canada, and not more than 1% of such deposits in the obligations of any single railroad corporation above described.

VII. Public utility obligations.

A. In the bonds or notes issued or assumed by any Maine corporation subject to the jurisdiction of the Maine public utilities commission and carry-

ing on in this state the business for which it was organized; provided, however, that such securities shall first have been duly authorized by said commission under the laws of this state, if at the time of their issue such authorization was required by law.

B. In the mortgage bonds or other interest-bearing obligations secured by mortgage issued or assumed by any corporation, at least 75% of whose gross income is derived from the operation of an electric light and power business, artificial or natural gas business or a combination thereof, or from furnishing municipal and domestic users with a water supply; provided:

1. Such corporation shall be subject to the jurisdiction of a public utilities commission, public service commission or some other tribunal exercising supervisory functions ordinarily incident to such commission, and the issuance of the securities in question shall have been duly authorized by such commission, if at the time of their issue such authorization was required by law.

2. At least 51% of the corporation's property shall be located in and 51% of its business transacted within the United States.

3. Such corporation shall own in fee not less than 51% of the property used by it in the carrying on of its business.

4. Any such corporation, whose sole business is furnishing municipal, industrial and domestic users with a water supply and whose entire public service income is derived solely therefrom, shall have received average gross earnings of at least $250,000 per year in each of its 3 fiscal years or 3 nearer periods of 1 year next preceding investment, and any other such corporation shall have received average gross earnings of at least $500,000 per year in each of its 3 fiscal years or 3 nearer periods of 1 year next preceding investment.

5. Such corporation, except corporations whose sole business is furnishing municipal, industrial and domestic users with a water supply and whose entire public service income is derived solely therefrom, shall have earned and received an average net income, including income from investments, for a period of 3 fiscal years or a nearer period of 3 years next preceding such investment, of not less than twice the annual interest on its debt outstanding during that period and secured by the mortgage under which the bonds in question are issued and all prior liens, and also shall have earned and received for a period of 12 consecutive months within the 15 months next preceding investment a net income of not less than 1½ times the annual interest on its debt outstanding at the time of investment, secured as aforesaid, and shall not have defaulted on any of its obligations during the same period, and any such corporation whose sole business is furnishing municipal, industrial and domestic users with a water supply and whose entire public service income is derived solely therefrom, shall have earned and received an average net income, including income from investments, for said periods of not less than 1½ times the annual interest on such debts, and also shall have earned and received for a period of 12 consecutive months within the 15 months next preceding investment a net income of not less than 1¼ times the annual interest on its debt outstanding at the time of investment, secured as aforesaid, and shall not have defaulted on any of its obligations during the same period. The net income of any corporation as described in this paragraph shall be determined after deducting all operating expenses, maintenance charges, depreciation, rentals, taxes and guaranteed interest and dividends paid by or due from it.

6. Such obligations shall mature at least 3 years before the expiration

of the principal franchise or franchises under which such corporation is operating, or there shall exist some statute or definite agreement or contract with the grantors whereby such franchise or franchises may be renewed or extended from time to time throughout and beyond the life of the bonds in question, under which statute, agreement or contract the security of such obligation is adequately protected, except where such company is operating under an indeterminate franchise granted by a public utilities commission or public service commission.

7. Such obligations shall be secured:

a. by a first mortgage or a mortgage or trust indenture which is in effect a first mortgage, on at least 75% of all the property of such corporation owned in fee, or

b. by a refunding mortgage providing for the retirement of all prior lien bonds outstanding at the date of investment and covering at least 75% of the property owned in fee by said corporation; provided, however, that all bonds secured by said refunding mortgage shall mature at a later date than any bond which it is given to refund, or if any such bonds are to mature at an earlier date the mortgage must provide that such bonds shall be retired by a like amount reissued under said mortgage, or

c. by a mortgage prior to a refunding mortgage above described covering some part of the public utility property included in such refunding mortgage, if the bonds secured by such prior mortgage are to be refunded by said refunding mortgage and the property covered by such prior mortgage is operated by the corporation issuing the refunding mortgage, or

d. by a first mortgage on the property of a lessor public utility forming a substantial portion of the system of the operating company.

8. The total of the bonds and notes issued under the mortgage securing the bonds in question and all prior liens, exclusive of those authorized for refunding or otherwise retiring prior lien obligations, shall not exceed 3 times the outstanding capital stock of such corporation at the date of investment. (1953, c. 77)

C. Not more than 10% of the deposits of any 1 bank shall be invested in the obligations of such of the above specified corporations as are engaged solely in the business of furnishing municipal, industrial and domestic users with a water supply and whose public service income is derived solely therefrom; and not more than 35% of the deposits of any 1 bank in the obligations of all others of the above specified public utility corporations. Not more than 2% of such deposits shall be invested in the obligations of any 1 of such corporations, the business of which is transacted principally outside this state.

VIII. Obligations of telephone companies.

A. In the bonds and other interest-bearing obligations issued, guaranteed as to principal and interest, or assumed by any telephone company incorporated under the laws of any state of the United States or of Canada whose property is located chiefly in the United States or Canada; provided:

1. The corporation shall have received gross revenues of at least $5,000,000 per year in each of its 5 fiscal years, or 5 nearer periods of 1 year, next preceding the investment.

2. The corporation shall have earned and received a net income, including income from investments, in each of its 5 fiscal years, or 5 nearer periods of 1 year, next preceding the investment, of not less than

twice the annual interest on its bonds and other interest-bearing obligations including the interest-bearing obligations in question and all obligations assumed, guaranteed or constituting a lien on the property, and shall not have defaulted on any of its obligations during the same period. The net income of the corporation for the purpose of this subparagraph shall be determined after deducting all operating expenses, including maintenance and depreciation charges, rentals, taxes and guaranteed interest and dividends paid by or due from it.

B. Not more than 10% of the deposits of any 1 bank shall be invested in obligations of telephone companies and not more than 2% in the obligations of any single telephone company.

IX. Industrial bonds. In bonds or notes of industrial corporations whose property is located principally within the United States and issued or assumed by companies of which the net income in each year of the 5 years next preceding such investment shall have been either:

A. Not less than $10,000,000 and not less than twice the annual interest on the entire funded debt, or

B. Not less than $2,000,000 and not less than 4 times such interest.

Not more than 10% of the deposits of any 1 bank shall be invested in the bonds or notes authorized by this subsection, and said bonds or notes legalized hereunder are subject to the provisions relating to certificate of legality as set forth in subsection X.

X. Department certificates of legality. The bank commissioner shall ascertain what bonds and other interest-bearing obligations are legal investments under the provisions of subsections I to IX, inclusive, and within the first 10 days of May and November of each year shall send to each savings bank a certificate stating, over his signature, that upon investigation he finds the obligations specified in said certificate are legal investments under the provisions of this section. Such findings may be based upon information derived from any source which, in the judgment of the bank commissioner, is reliable, and need not include information furnished directly by the officers of the company issuing or assuming the obligations. Said certificate shall be prima facie evidence of the correctness of the findings of said commissioner and shall so continue until the issuance of the next certificate of said commissioner or of an intermediate certificate correcting and changing the list of legal investments in the certificate last issued. Nothing herein contained shall be construed to require any action by the bank commissioner as a condition precedent to the right of any savings bank to purchase any security conforming to the requirements of the provisions of this section at the time of investment.

Any person or corporation financially interested in any such finding of the bank commissioner may take an appeal therefrom to any justice of the superior court who, after such notice and hearing as he deems proper, may inquire into and render a judgment whether such obligation is a legal investment for savings banks under the provisions of this section.

The proper and necessary expenditures incurred by the bank commissioner in carrying out the provisions of this subsection, including the compensation of any person or persons specially employed for that purpose, shall be paid out of such amounts as the legislature may appropriate. (1945, c. 297, § 21)

XI. Bonds of Maine corporations. In the bonds or other interest-bearing obligations of any Maine corporation, other than those hereinbefore specifically mentioned, actually conducting in this state the business for which such corporation was created, which for a period of 3 successive fiscal years or 3 nearer periods of 1 year next preceding the investment, has earned and received an average net income of not less than twice the interest on the obligations in

question and all prior liens. Not more than 25% of the deposits of any 1 bank shall be invested in the obligations of such corporations and not more than 2% of such deposits in the obligations of any single corporation.

XII. Stocks of Maine corporations.

A. In the stock of any Maine corporation other than a banking corporation actually conducting in this state the business for which such corporation was created, provided such corporation has for a period of 3 years next preceding the investment earned and received an average net income equivalent to at least 6% upon the entire outstanding issue of the stock in question.

B. The aggregate of all investments made by any bank in stock shall at no time exceed 5% of its deposits and not more than 1% of the deposits of such bank shall be invested in the stock of any single corporation. No such bank shall hold by way of investment or as security for loans, or both, more than 1/5 of the capital stock of any corporation; but this limitation shall not apply to assets acquired in good faith upon judgments for debts or in settlements to secure debts, nor to any of such capital stock acquired subsequent to the making of the original loan in good faith for the sole purpose of improving the security for such loan.

XIII. Mortgage loans. In notes or bonds secured by first mortgages of real estate in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and Vermont to an amount not exceeding 60% of the market value of such real estate, or in notes or bonds secured by first mortgages which the federal housing administrator has insured or has made a commitment to insure, or to an amount not exceeding 70% of the market value of such real estate; provided, however, that such first mortgage loans in excess of 60% of said market value shall be amortized monthly at a rate sufficient to repay the entire loan in not over 20 years with interest payments to be paid in monthly installments. No bank shall have more than 60% of its deposits invested in such mortgages; except that a savings bank may invest not exceeding 75% of its deposits in first real estate mortgages, providing that not less than 25% of said deposits are invested in real estate mortgages that are insured by the federal housing administration.

In notes or bonds secured by mortgages issued under sections 500 to 505, inclusive, of Title III of the Servicemen's Readjustment Act of 1944 as amended, more familiarly known as "The G. I. Bill of Rights," and as such act may be interpreted and operated under rules to be promulgated. (1945, c. 72, § 1. 1951, c. 157, § 4)

Quoted in part in Maine Unemployment Compensation Comm. v. Maine Savings Bank, 136 Me. 136, 3 A. (2d) 897.

XIV. Collateral loans.

A. In notes with a pledge as collateral of any securities which the institution itself may lawfully purchase under the provisions of this section, provided the market value of such collateral is at least 10% in excess of the amount of the loan.

B. In notes with a pledge as collateral of any savings deposit book issued by any savings bank, trust company or national bank in this state or in any of the other New England states or the state of New York, or of a passbook or share certificate issued by any loan and building association in this state.

C. In notes with a pledge as collateral of such funds, bonds, notes or stocks as, in the judgment of the trustees, it is safe and for the interests of the

bank to accept, to an amount not exceeding 80% of the market value of such funds, bonds, notes or stocks.

D. In war veterans' compensation certificates issued in accordance with the provisions of the world war adjusted compensation act of the United States as amended, to an amount not in excess of the value of said certificates at the time of the loan, according to the United States table of values as stated in said certificates.

E. The aggregate of all collateral loans made by any bank, other than those secured by obligations of the United States government, shall at no time exceed 10% of its deposits and not more than 1% of its deposits shall be loaned on the obligations and stock of any single corporation.

F. In notes with a pledge as collateral of insurance policies on the life of the borrower, issued by any life insurance company licensed to do business in the state, having a present cash or loan value in excess of the amount of the loan. (1953, c. 95)

XV. Loans to municipal corporations. In loans to any municipal or quasi-municipal corporation in this state when duly authorized by such municipality or corporation.

XVI. Loans to Maine corporations. In loans to any religious, charitable, educational or fraternal corporation organized under the laws of this state, or to the trustees of any unincorporated religious, charitable, educational or fraternal association in this state, or to any log-driving company incorporated under the laws of this state, and in loans to any corporation whose stock may be purchased under the provisions of subsection XII; provided, however, that the total amount of loans to any corporation and of the par value of its stock owned by the bank shall at no time exceed 2% of the deposits of said bank.

XVII. Acceptances.

A. In bankers' acceptances and bills of exchange of the kind and maturities made eligible by law for rediscount with federal reserve banks, provided the same are accepted by a trust company incorporated under the laws of this state, or a member of the federal reserve system located in any of the New England states or the state of New York.

B. In bills of exchange drawn by the seller on the purchaser of goods sold and accepted by such purchaser of the kind and maturities made eligible by law for rediscount with federal reserve banks, provided the same are indorsed by a trust company incorporated under the laws of this state, or a member of the federal reserve system located in any of the New England states or the state of New York.

C. Not more than 10% of the assets of any savings bank shall be invested in such acceptances. The aggregate amount of the liability of any trust company or of any national bank to any savings bank, whether as principal or indorser, for acceptances held by such savings bank, shall not exceed 20% of the paid-up capital and surplus of such trust company or national bank, and not more than 5% of the assets of any savings bank shall be invested in the acceptances of a trust company or of a national bank of which a trustee of such savings bank is a director.

XVIII. Personal loans. In a note or notes of a responsible individual borrower with 2 substantial sureties or indorsers, approved by the board of trustees, in an amount not exceeding $1,000 directly or indirectly for any 1 individual, or in a note or notes of such borrower with 1 substantial surety or indorser, or to husband and wife as co-makers, in sums not to exceed $300 for any 1 individual as maker or co-maker and amortized for full payment

for a term not to exceed 12 months from date of such note. Provided, however, that the aggregate of loans under this subsection to any 1 individual as maker or co-maker or indorser shall not exceed $1,000, or in a note or notes of such borrower that are eligible for insurance under the National Housing Act and on which seasonable application for insurance is made under the provisions of Title I of the National Housing Act. The aggregate of such loans shall not exceed 5% of its deposits. (1945, c. 95)

Banks may enforce payment of loan not made in accordance with this subsection.—This subsection is designed for the protection of the depositors, and will not prevent a bank from enforcing payment of a loan whether the loan was or was not made in accordance with this subsection. Farmington Savings Bank v. Fall, 71 Me. 49.

XIX. Bank stocks. In the capital stock of any bank in this state incorporated under the laws of this state or the United States; and in the capital stock of any bank in any of the other states of New England or in the state of New York incorporated under the laws of any of those states or the United States and located in a city having a population of not less than 250,000; provided that any such bank located outside of this state shall be a member of the federal reserve bank system and shall have a capital and undivided profits of not less than $10,000,000.

A savings bank shall not acquire bank stock, both by way of investment and as security for loans, which, together with its present holdings, shall be in excess of 7½% of its deposits; nor acquire stock in any 1 bank which, together with its present holdings, shall have a book value of more than 1% of its deposits; nor acquire bank stock which, together with its present holdings, shall exceed 10% of the capital of any 1 bank.

XX. Stock, bonds or debentures. In the stock, bonds or debentures issued by the federal home loan bank system.

XXI. Home Owners' Loan Corporation bonds. In the bonds or other interest-bearing obligations of the home owners' loan corporation organized under an act of congress entitled "Home Owners' Loan Act of 1933".

XXII. National mortgage associations. In the bonds or other interest-bearing obligations of national mortgage associations.

XXIII. Obligations of international bank for reconstruction and development. In obligations issued, assumed or guaranteed by international bank for reconstruction and development. (1949, c. 55)

XXIV. Mortgages under Bankhead-Jones Farm Tenant Act. In obligations secured by mortgages insured, or with respect to which commitments to insure have been made, under Title I of the Bankhead-Jones Farm Tenant Act. (1949, c. 299)

XXV. Obligations of Development Credit Corporation of Maine. In notes or other interest-bearing obligations issued by Development Credit Corporation of Maine in accordance with and by virtue of the charter and by-laws of said corporation up to, but in no case exceeding, 2½% of the reserve funds of any such bank. (1949, c. 299)

XXVI. Insurance company stocks.

A. In the capital stock of any insurance company authorized to conduct business in this state provided:

1. In the period consisting of the 5 fiscal years immediately preceding the date of investment not less than 50% of the net premiums written by the company and its subsidiaries shall have been in respect to risks involving loss of or damage to property belonging to or in the custody of the insured, which risks are hereinafter referred to as fire and allied risks. Not over 1/3 of the net premiums written in the same period

shall have been in respect to liability of owners or operators of motor vehicles for personal injuries or property damage. For the purpose of this subsection, a fire insurance company subsidiary shall be construed to mean any insurance company 50% or more of the capital stock of which is owned by said fire insurance company or by any other subsidiary thereof;

2. At the end of the fiscal year immediately preceding the date of investment, the combined total of capital stock and surplus of the company plus the voluntary reserves, as the latter term is hereinafter defined, of the company and its insurance subsidiaries shall be at least 80% of the sum of all of the unearned premiums in respect to all fire and allied risks plus ½ of the unearned premiums in respect to accident and sickness policies and policies covering liability of the insured for injury or damage to the person or property of others. As used herein, the term voluntary reserves shall be construed to mean all sums allocated to reserve accounts other than unearned premium and loss reserves required by the existing laws and regulations relating to insurance companies doing business in this state.

B. Not more than 5% of the deposits of a mutual savings bank may be invested in stocks of fire insurance companies and not over 5% of the deposits of a mutual savings bank may be invested in the stock of any 1 insurance company or subsidiary thereof. (1951, c. 101)

XXVII. Preferred stock. In the preferred stocks of any corporation doing business anywhere in the United States, at least 75% of whose income is derived from the operation of an electric light and power business, artificial or natural gas business, or a combination thereof; or from furnishing municipal users with a water supply; provided that the aggregate or funded debt and outstanding preferred stock of the company shall not exceed 66 2/3% of its capitalization and that for a period of 3 successive calendar or fiscal years next preceding the investment, the corporation shall have received an average net income at least 2½ times the total of its fixed charges and preferred dividends. Provided further, that no stock of any such corporation shall be eligible for purchase under the provisions of this subsection unless at least 1 issue of mortgage bonds of the same corporation has qualified for purchase by Maine savings banks under the provisions of subsection VII.

Not more than 5% of the deposits of any 1 bank shall be invested in the preferred stocks of the above specified corporations and not more than 1% of such deposits shall be invested in the obligations of any preferred stock of any 1 of such corporations. [1953, c. 147]. (R. S. c. 55, § 38. 1943, c. 360. 1945, c. 72, § 1; c. 95; c. 297, § 21. 1949, cc. 55, 299. 1951, cc. 97, 101; c. 157, § 4. 1953, cc. 77, 95, 147.)

Cross reference. — See c. 22, § 81, re financial responsibility law.

Cited in Newport Savings Bank Case, 68 Me. 396.

Sec. 43. Guaranteed loans for veterans; minors.—Without regard to any other provision of law, savings banks of this state are authorized to make or buy and sell any loan secured or unsecured which is insured or guaranteed in any manner in part or in full by the United States or any instrumentality thereof, or by this state or any instrumentality thereof, or for which there is a commitment to so insure or guarantee or for which a conditional guarantee has been issued. The disability of minority of any person otherwise eligible for a loan, or guaranty or insurance of a loan, pursuant to the act of the congress of the United States entitled the Servicemen's Readjustment Act of 1944, (58 Stat. 284) as heretofore or hereafter amended (38 U. S. C. 693 et seq.), and of the minor spouse of any eligible veteran, in connection with any transaction entered into pursuant to said act of the congress of the United States, as heretofore or hereafter amended, shall

not affect the binding effect of any obligation incurred by such eligible person or spouse as an incident to any such transaction, including incurring of indebtedness and acquiring, encumbering, selling, releasing or conveying property, or any interest therein, if all or part of any such obligation be guaranteed or insured by the government or the administrator of veterans' affairs pursuant to said act and amendments thereto; or if the administrator be the creditor, by reason of a loan or a sale pursuant to said act and amendments. The provisions of this section shall not create or render enforceable any other or greater rights or liabilities than would exist if neither such person nor such spouse were a minor. (1945, c. 207, § 1. 1951, c. 157, § 5. 1953, c. 43, § 1.)

Sec. 44. Stock in federal reserve banks. — Any savings bank which hereafter may become a member of the federal reserve bank within the federal reserve district where such bank is situated under the United States "Federal Reserve Act", or any acts in amendment thereof, may purchase shares of stock of said federal reserve bank. Any savings bank may also purchase shares of stock of the Federal Deposit Insurance Corporation under the United States "Banking Act of 1933", and is authorized to exercise such power and do any and all things necessary to avail itself of the benefits of said "Banking Act of 1933" and any acts in amendment thereof, and any other acts of congress granting powers to or conferring benefits on such member bank now or hereafter passed, without otherwise limiting or impairing in any way the authority conferred upon the bank commissioner under the laws of this state. (R. S. c. 55, § 39.)

Sec. 45. May acquire and hold stocks, bonds and other securities not authorized by law, to avoid loss.—Savings banks, loan and building associations and trust companies, organized under provisions of this chapter, may acquire and hold stocks, bonds and other securities not authorized by law, hereafter acquired in settlements and reorganizations and accepted to reduce or avoid loss on defaulted loans and investments held by said banks, associations and trust companies, and may continue to hold such stocks, bonds and other securities heretofore so acquired and all other investments lawfully acquired, and shall not be obliged to sell or dispose of the same except at such times and in such manner as will prevent unnecessary loss or embarrassment to the business of the bank, association or trust company. (R. S. c. 55, § 40.)

Sec. 46. Investments, value as carried on books; authority of commissioner; financial reports; false reports.—All investments having a fixed maturity shall be charged and entered on the books of the bank at their cost to the bank. The bank commissioner may require any investment charged down to such sum as in his judgment represents its fair value. He may at any time call for a report of the financial condition of any corporation offering or likely to offer its bonds, stocks or notes to any savings bank in the state, or whose notes are held by any such savings bank, as much in detail as he may require, verified by the oath of such officers of said corporation as he may specify. He may communicate any such report, or an abstract thereof, to the officers of any of said savings banks. If such report is not furnished the bank commissioner within the time specified in his call therefor, or within such extension of time as he may grant, the bonds, stocks and notes of such corporation shall thereupon cease to be a legal investment for savings banks and shall not again become a legal investment until a report in all respects satisfactory to the bank commissioner is furnished. Any officer of a corporation who willfully makes a false report hereunder, and any officer, trustee, director, clerk or employee of a savings bank, trust company or loan and building association who willfully and knowingly undertakes in any manner to deceive or mislead the bank commissioner or any officer or representative of the state banking department, as to the true condition or value of any of the investments of such savings bank, trust company or loan and building association, or willfully conceals any material fact connected therewith, shall be

punished by a fine of not more than $500 or by imprisonment for not more than 2 years, or by both such fine and imprisonment. (R. S. c. 55, § 41.)

Sec. 47. Real estate holding.—A savings bank may hold real estate in the cities or towns in which such bank or any branches thereof are located, to a total amount not exceeding 5% of its deposits or to an amount not exceeding its reserve fund; but these limitations shall not apply to real estate acquired by the foreclosure of mortgages thereon, or upon judgments for debts or in settlements to secure debts. (R. S. c. 55, § 42.)

Purpose of section.—The legislature intended to prohibit the holding by a savings bank of real estate beyond what should be sufficient for banking rooms as that term is understood by bankers; except that, within limits, real estate acquired by the foreclosure of mortages thereon, or upon judgments to secure debts are authorized holdings. Maine Unemployment Compensation Comm. v. Maine Savings Bank, 136 Me. 136, 3 A. (2d) 897.

Bank may not hold additional real estate indefinitely.—There is no authority in this chapter for a savings bank to hold real estate, other than its banking rooms, indefinitely. Maine Unemployment Compensation Comm. v. Maine Savings Bank, 136 Me. 136, 3 A. (2d) 897.

Sec. 48. May deposit on call in banks and may deposit collateral for loans made without the state.—Savings banks may deposit on call in banks or banking associations incorporated under the authority of this state, or the laws of the United States, or in any member bank of the federal reserve system located in any of the New England states or the state of New York and receive interest for the same; and may deposit, subject to the approval of the bank commissioner, with such banks or banking associations any securities received as collateral for loans made to any person or corporation without the state. (R. S. c. 55, § 43.)

Sec. 49. Authority to issue capital notes and debentures.—Any savings bank may, from time to time, issue capital notes or debentures upon such terms and conditions as its trustees may upon a majority vote prescribe, and sell the same to any officer, board, commission, corporation or body created by the federal government, or pledge any such capital notes or debentures as security for any loan or loans of money from any such officer, board, commission, corporation or body, and may, from time to time, extend, refund or renew any such capital notes or debentures; provided that such capital notes or debentures may, in whole or in part or to any degree, be subordinated to claims of the depositors or other creditors of any such savings bank, or be made prior to the claims or interests of depositors in and to the surplus of any such savings bank; provided further, that no such capital notes or debentures shall be so issued, sold or pledged without the approval of the bank commissioner; and provided further, that nothing in this section contained shall be deemed or construed to require the approval by the bank commissioner of the acceptance by any such savings bank of such loans, secured or unsecured, from any such officer, board, commission, corporation or body, or other source, as it may from time to time require in the transaction of its business in the usual course. (R. S. c. 55, § 44.)

Sec. 50. Authority to borrow money and pledge securities.—Savings banks may, by vote of the trustees of such corporation, when in the judgment of said trustees such action is necessary to pay depositors and to prevent loss by sales of assets, borrow money within or without the state and may pledge bonds, notes or other securities as collateral therefor. The trustees of such corporation shall cause a copy of said vote to be sent forthwith to the bank commissioner and shall also notify him of any action taken thereunder. (R. S. c. 55, § 45.)

Sec. 51. Savings banks may conduct branch offices.—A savings bank may open and conduct branches in the city or town where its main business is located and in other cities or towns in the county of its location or the adjoining

counties; provided that before opening a branch in any other city or town, it shall have received a warrant to do so from the bank commissioner, who shall issue such warrant only when satisfied that public convenience and advantage will be promoted by the establishment of such a branch. He may require such notice on an application for a branch as he deems proper. If granted, the commissioner shall issue his warrant in duplicate, 1 copy to be delivered to the bank and the other to the secretary of state for record. Within 10 days after opening a branch, the bank shall file with the commissioner a certificate thereof signed by its president and treasurer. The rights to open a branch shall lapse at the end of 1 year from the date of filing the commissioner's warrant with the secretary of state, unless it shall have been opened and business actually begun in good faith. An application for permission to open a branch shall not be acted upon until the petitioning bank shall have paid to the treasurer of state the sum of $50 for the benefit of the state, to be credited and used as provided in section 102. Any such branch may be closed or discontinued with the consent of the commissioner, after such notice and hearing, if any, as in his judgment the public interest may require. (R. S. c. 55, § 46.)

Sec. 52. Retiring allowances or life insurance for officers and employees of savings banks.—

I. A savings bank, by vote of its trustees, may retire any officer or employee who shall have given his whole time to the service of the bank and shall have been continuously in receipt of a regular salary from the bank for 20 or more years and shall have arrived at the age of 65 years or has been continuously in the employ of the bank for not less than 15 years and has become incapacitated for any cause for further service in his office or position; or at any time, if he shall become so incapacitated by reason of injuries suffered by him in the discharge of his duties to the bank. The trustees may pay to him during the remainder of his life, in equal monthly installments, a yearly allowance of such amount as shall be deemed reasonable, based on the character and length of service rendered and other relevant circumstances. If the trustees decide to pay such allowances entirely from the bank's funds, they shall immediately set aside from the reserve fund or other surplus earnings, a special fund sufficient in amount, according to actuarial standards, to meet the cost thereof for any member or members of the bank's staff whose time for retirement has arrived or is near; and yearly, or oftener thereafter, shall appropriate from the current earnings and credit to such special fund amounts sufficient to create, as soon as may be, and maintain, for the payment of the allowances to the other members of the bank's staff, a fund sufficient therefor according to said standards; or, if the trustees prefer, they may enter into an agreement with an insurance company for the setting up of such reserves and the payment of the pensions or may carry out the foregoing provisions by means of an agreement with a trustee which may permit combination with funds similarly held for other banking and trust institutions all as approved by the bank commissioner. The trustees may also, subject to the approval of the bank commissioner, set up a retirement plan, by means of an agreement with a trustee which may permit combination with funds similarly held for other banking and trust institutions, for the payment of retirement benefits to employees, irrespective of the period of service of such employees, which plan may also permit the employee to elect to receive an optional form of annuity which provides for actuarially reduced monthly payments commencing at retirement date of the employee and continuing during the employee's lifetime, and for the continuance of such payments, or a specified percentage thereof, to a provisional payee, if living, after the employee's death. (1945, c. 102, § 1. 1949, c. 109, § 1. 1953, c. 143)

II. The trustees may also insure the lives of those officers and employees who

give their whole time to the service of the bank. Such insurance shall be placed with a life insurance company and shall be for such an amount for each beneficiary thereof as the trustees may decide. (1945, c. 102, § 1)

III. The cost of such allowances or insurance may be paid wholly by the bank; or the trustees may adopt a plan which will provide that some part thereof shall be contributed by the beneficiaries.

IV. The plan adopted by the trustees and the insurance company selected to cooperate in its administration shall be subject to the approval of the bank commissioner.

V. The benefits conferred upon any recipient of such allowances or upon the beneficiary of such insurance shall not be subject to trustee process, or brought into suit by his creditors or otherwise; nor may he assign or alienate them. (1945, c. 102, § 1)

VI. If, in the case of a sale of the assets of the bank, or of its merger with another bank, or if its standing and condition shall induce or oblige the commissioner or the trustees to have recourse to any of the proceedings provided by section 69 and sections 71 to 76, inclusive, any rights to accrued or future retirement allowances vested in any officer or employee under action taken by the trustees of any savings bank under the provisions of subsection I, or under any agreement with an insurance company then in force, shall be a preferred claim upon the assets of the bank unless such special fund is in the hands of a trustee for the benefit of such officer or employee. (1945, c. 102, § 1. 1949, c. 109, § 2)

VII. Provided, however, that where an insurance or pension plan is underwritten by 1 or more life insurance companies, as authorized by this section, by a contract for the purpose made either with an individual bank or with an association duly empowered so to act for and on behalf of the individual banks in the association, the rights of such bank or association and of any individual member or beneficiary of such plan as against the insurance company or companies and the obligations of such insurance company or companies shall, in the situations enumerated in subsection VI, be determined by and limited to the rights and obligations of the respective parties as set forth in the insurance or pension contract by which the plan was underwritten. [1945, c. 102, § 2; c. 378, § 55]. (R. S. c. 55, § 47. 1945, c. 102, §§ 1, 2; c. 378, § 55. 1949, c. 109, §§ 1, 2. 1953, c. 143.)

Sec. 53. Trustees to invest; no loan made to any officer.—The trustees shall see to the proper investment of deposits and funds of the corporation, in the manner hereinbefore prescribed. No loans shall be made directly or indirectly to any officer of the corporation or to any firm of which such officer is a member. (R. S. c. 55, § 48.)

Nonconformance by officers does not constitute a defense against action by the bank.—The legislature never intended that nonconformance by the bank officials with the provisions of this chapter, although mandatory, enacted solely for the proper government of the bank, should enure to the benefit of and constitute a defense for a borrower of the bank's money. York County Savings Bank v. Wentworth, 136 Me. 330, 9 A. (2d) 265.

This section is directory to the trustees and designed for protection of the depositors, and will not prevent a bank from enforcing payment of a loan whether the loan was or was not made in accordance with preceding sections. Farmington Savings Bank v. Fall, 71 Me. 49.

Quoted in Newport Savings Bank Case, 68 Me. 396.

Sec. 54. Dividends from earnings; maintenance of reserve fund; dividends, declared only by vote of trustees; not to exceed earnings of bank.—Every savings bank shall establish a reserve fund by setting aside from its net income, and before the declaration of each dividend, an amount which,

together with other amounts so set aside for this purpose during the year, shall be equal to ½ of 1%, at least, of its deposits; and such reservations shall be continued until the fund shall be equal to 5%, at least, of its deposits. The fund shall be kept constantly on hand as a security against losses and contingencies, and all losses shall be charged to it. If, and whenever, the fund shall become impaired below 5% of the deposits, it shall be restored in the manner provided for its accumulation.

After passing to the reserve fund that part of the income required to be set aside by the provisions of the previous paragraph, the trustees may declare such dividends as are permitted or required by their by-laws; provided that the rate of the dividends shall not be more than 5% per year; and provided also that the trustees are forbidden to declare any dividend of a rate per cent that will make its aggregate amount greater than the income actually collected in the period covered by it, except that for the purpose of maintaining the rate of the dividend, the trustees may deduct from the earnings and carry as a special fund such sums as they may deem wise.

The dividend or interest shall be declared and credited and paid to depositors, only as authorized by a vote of the board of trustees, entered upon their records, whereon shall be recorded the yeas and nays upon such vote. (R. S. c. 55, § 49.)

Sec. 55. Dividends credited within 60 days.—The treasurer of every savings bank shall, within 60 days after a dividend is declared, credit the same to the deposit account. Any treasurer neglecting or refusing to do so shall be punished by a fine of not less than $100 nor more than $200. (R. S. c. 55, § 50.)

Sec. 56. Interest on deposits. — Trust companies and savings banks organized under the laws of this state and national banks shall, in computing dividends on savings deposits, figure interest on the balance that has remained on deposit for the full dividend period, with additions for all deposits, less the withdrawals, remaining in the bank from their respective monthly dates to the dividend date. Withdrawals shall be deducted from the last deposit made in each case. Deposits made on other than the 1st day of each month may draw interest from the first or last day of the month or from date of deposit, as the bank shall determine. Savings banks may contract, on terms to be agreed upon, for the deposit at intervals within a period of 12 months of sums of money and for the payment of interest on the same at a rate not more than the rate of their last regular dividend on savings deposits. (R. S. c. 55, § 51.)

Sec. 57. Notice of withdrawal of deposits.—No savings bank shall be required to pay any depositor more than $50 at any 1 time or in any 1 month until after 90 days' notice. (R. S. c. 55, § 52.)

Sec. 58. Treasurer may assign, discharge and foreclose mortgages. —The treasurer, assistant treasurer or any other officer delegated by the trustees of a savings bank may, under the direction of the trustees, assign, discharge and foreclose mortgages and convey real estate held as security for loans, or the title of which accrued from foreclosure of mortgages or judgments of courts. (R. S. c. 55, § 53.)

Quoted in part in York County Savings Bank v. Wentworth, 136 Me. 330, 9 A. (2d) 265.

Sec. 59. Assets of bank, connected with other bank, kept separate. —All coins, bills, notes, bonds, securities and evidences of debt, comprising the assets of any savings bank connected with a national or stock bank, shall be kept separate and apart from the assets or property of such national or stock bank, and also separate and apart from the assets or property of any other bank, banker, corporation, partnership, individual or firm. (R. S. c. 55, § 55.)

Sec. 60. Securities kept within the state. — All securities owned or held by savings banks shall be kept within the state except as provided in sections 48 and 50, and except that for greater security and for the purpose of facilitating the sale or exchange of securities, they may be deposited without the state; and the place of their deposit shall be selected with reference to securing their safekeeping. Provided, however, that the approval of the bank commissioner before such deposit for safekeeping is made shall be obtained; and provided further, that said depository shall maintain adequate insurance against loss. (R. S. c. 55, § 56.)

Sec. 61. Treasurer to make trial balance weekly; twice yearly, at least, shall record net sum of each deposit.—The treasurer of every savings bank shall, on the last business day of every week, make and declare a trial balance, which shall be recorded in a suitable form of record kept for that purpose; and shall also, at least twice in each year, cause to be entered on a suitable form of record the net sum of each individual deposit at a fixed date, and ascertain the aggregate of all such deposits and whether it agrees with the other books of the bank; and said records shall be open at all times for the inspection of the trustees and the bank commissioner. (R. S. c. 55, § 57.)

Sec. 62. Treasurer to make annual return to the bank commissioner. — The treasurer of every savings bank shall annually, and as much oftener as the bank commissioner may require, make return of the condition and standing thereof at such time as the bank commissioner designates, which return shall be made to said commissioner within 15 days after the day designated in the blank form of such return furnished to every such bank by the said commissioner. (R. S. c. 55, § 58.)

Sec. 63. Treasurer to annually publish statement of inactive accounts; payment to state.—The treasurer of every savings bank shall on or before the 1st day of November cause to be published in a newspaper in the place where the bank is located, if any, otherwise in a newspaper published in the nearest place thereto, a statement containing the name, the amount standing to his credit, the last known place of residence or post-office address and the fact of death, if known, of every depositor in said bank who shall not have made a deposit therein or withdrawn therefrom any part of his deposit, or any part of the dividends thereon, for a period of more than 20 years next preceding; provided, however, that this section shall not apply to the deposits of persons known to the treasurer to be living, to a deposit the deposit book of which has during such period been brought into the bank to be verified or to have the dividends added or to a deposit which, with the accumulations thereon, shall be less than $10. Such publication, in addition to the above-required information, shall state that 2 years after the date of publication all moneys in such inactive accounts shall be paid into the state treasury. Said treasurer shall also transmit a copy of such statement to the bank commissioner, to be placed on file in his office for public inspection. Any treasurer neglecting to comply with the provisions of this or the preceding section shall be punished by a fine of $50. Two years after the date of such publication, all moneys in such inactive accounts shall be deemed presumptively abandoned and shall be paid into the state treasury and credited to the general fund for the use of the state, and there shall also be paid into the state treasury, and so credited at the end of 20 years after the last deposit, all deposits, inactive as aforesaid, which with accumulations thereon shall be less than $10. After payment into the state treasury of such deposits, no action at law or in equity shall be maintained in any court in this state by any depositor or his heirs, successors or assigns against any bank making such payments; provided, however, that thereafter any lawful claimants may petition the governor and council for payment of such moneys to the claimants. In his petition the claimant shall state fully the facts showing the basis of his right, title and interest

in such deposit. The governor and council, after a hearing, shall determine who are lawful claimants and shall authorize payment by the treasurer of state from the general fund to such claimants. (R. S. c. 55, § 59. 1949, c. 44, § 2.)

See § 120, re publication of inactive accounts in trust companies.

Sec. 64. Annual examinations by trustees. — Two of the trustees, at least, of a savings bank shall once in each year thoroughly examine the affairs of the corporation and report under oath to the bank commissioner and to the board of trustees the standing of the corporation, the situation of its funds and all other matters which the said commissioner requires, in the manner and according to the form that he prescribes. The said commissioner shall seasonably give notice of the time and furnish blanks for said examination and return. (R. S. c. 55, § 60.)

Sec. 65. No officer to receive gift, fee or commission; borrower to pay expenses.—No gift, fee, commission or brokerage shall be received by any officer of a savings bank on account of any transaction to which the bank is a party, under a penalty for each offense of $100, to be recovered in an action of debt in the name and to the use of the state, provided that nothing herein contained applies to any expenses of examining titles and making conveyances upon loans made by savings banks. (R. S. c. 55, § 61.)

Sec. 66. Officer not to use funds.—No officer of a savings bank shall use or appropriate any of its funds for his own private purposes, under the penalties for embezzlement. (R. S. c. 55, § 62.)

See c. 132, §§ 1-10, re larceny, embezzlement, etc.

Sec. 67. Verification of depositors' books; examiner to have full access to institutions under examination; imparting information obtained by audit or verification.—The bank commissioner, at least once in every 3 years, shall cause the books of the savings depositors in savings banks and in every trust company to be verified by such methods and under such rules as he may prescribe.

All necessary expenses for the purpose of such verification, publication or printing of the results of such verification, as may be necessary for the purpose of this section, shall be paid out of such sums as may be appropriated by the legislature.

The bank commissioner, deputy bank commissioner and all examiners and employees of the department acting under the foregoing provisions shall have full access to every part of the savings bank or trust company under examination, and to all books, papers, vouchers, resources and all other records and property belonging to said savings bank or trust company, whether in its immediate possession or otherwise, for the purpose of facilitating such verification.

If any representative of the banking department designated to make such audit or verification as herein specified shall communicate or impart to any person or persons, except to said bank commissioner or as witness in court, any information obtained by said audit or verification, he shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 55, § 63. 1949, c. 349, § 89.)

See § 2, re tax on savings banks and trust companies.

Sec. 68. Annual examinations by bank commissioner; proceedings and statement of condition published; joint examinations. — Savings banks are under the charge of the bank commissioner for the purposes of examination. He shall visit every savings bank, incorporated by authority of the state, once in every year and as much oftener as he deems expedient. At such visits

he shall have free access to the vaults, books and papers, and thoroughly inspect and examine all the affairs of each of said corporations, and make such inquiries as are necessary to ascertain its condition and ability to fulfill all its engagements, and whether it has complied with the law, and its officers shall, whenever required to do so by the bank commissioner, furnish him with statements and full information relating to the condition and standing of their institution, and of all matters pertaining to its business affairs and management. He may prescribe the manner and form of keeping the books and accounts of said corporations which, however, need not be uniform. He shall preserve, in a permanent form, a full record of his proceedings, including a statement of the condition of each of said corporations, a copy of which statement shall be published by such corporation immediately after the examination of the same in a newspaper in the place where it is established, if any, otherwise in a newspaper published in the nearest place thereto. Joint examinations of state and national banking institutions occupying the same rooms shall be made at least once in each year at such times and under such conditions as the 2 departments may, from time to time, agree upon. (R. S. c. 55, § 64.)

Cross reference.—See § 121, re applicability of § 68 to trust companies.

Stated in Craughwell v. Mousam River Trust Co., 113 Me. 531, 95 A. 221.

Sec. 69. Voluntary liquidation; jurisdiction of court; proceedings. — Whenever, in the opinion of the bank commissioner and a majority of the trustees of any savings bank, it is inexpedient for any reason for said bank to continue the further prosecution of its business, said trustees may join with the bank commissioner in an application to any justice of the supreme judicial court or of the superior court for the liquidation of the affairs of such corporation. Upon presentation of such application, such justice may issue an injunction wholly or partially restraining further payment of deposits until further order of court. If, after notice and hearing on such application, such justice is of the opinion that it is inexpedient for said bank to continue the further prosecution of its business, he may make such orders and decrees in the premises as seem proper for liquidating the affairs of said bank, the distribution of its assets and the protection of its depositors. Further proceedings on such application may be in the manner provided for the liquidation of an insolvent savings bank; or such justice may authorize the president and trustees of such bank then in office to liquidate its affairs under the direction of the court. The provisions of section 77 are made applicable to such applications. (R. S. c. 55, § 65.)

Cited in Smith v. Bath Loan & Building Ass'n, 126 Me. 59, 136 A. 284.

Sec. 70. Commissioner may summon officers and witnesses; refusal to testify.—The bank commissioner may summon all trustees, officers or agents of any savings bank, and such other witnesses as he thinks proper, in relation to the affairs, transactions and condition thereof, and for that purpose may administer oaths; and whoever, without justifiable cause, refuses to appear and testify when thereto required, or obstructs said commissioner in the discharge of his duty, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 2 years. (R. S. c. 55, § 66.)

See § 121, re applicability of § 70, to trust companies.

Sec. 71. Injunction to restrain insolvent corporation; receivers appointed.—If, upon examination of any savings bank, the bank commissioner is of the opinion that it is insolvent or that its condition is such as to render its further proceedings hazardous to the public or to those having funds in its custody, he shall apply, or if, upon such examination, he is of the opinion that it has exceeded its powers or failed to comply with any of the rules, restrictions or conditions provided by law, he may apply to one of the justices of the supreme ju-

dicial court or of the superior court to issue an injunction to restrain such corporation in whole or in part from proceeding further with its business until a hearing can be had. Such justice may forthwith issue process for such purpose and, after a full hearing of the corporation, may dissolve or modify the injunction or make the same perpetual, and make such orders and decrees to suspend, restrain or prohibit the further prosecution of its business as may be needful in the premises, according to the course of proceedings in equity; and he may appoint one or more receivers or trustees to take possession of its property and effects, subject to such rules and orders as are from time to time prescribed by the supreme judicial court or the superior court or by any justice thereof in vacation. (R. S. c. 55, § 67.)

Cross reference.—See § 121, re applicability to trust companies.

Purpose of section.—The purpose of this section is to protect the public and particularly those who may be depositors or intend to become depositors in the bank. It was the intention of the legislature to put compulsion on the bank commissioner to take action if the continued operation of a bank would be hazardous to the public or to depositors. There is no such qualification in the provision referring to insolvency, because it would seem to be clear that continued operation of an insolvent bank perforce would be hazardous to the public or depositors. Beck v. Corrinna Trust Co., 139 Me. 350, 31 A. (2d) 165.

This section does not require the court to appoint a receiver. The court may exercise its discretion. Beck v. Corrinna Trust Co., 139 Me. 350, 31 A. (2d) 165.

Number of receivers appointed left to discretion of court.—Under this section, the number of receivers to be appointed in such case is left to the discretion of the court or of the justice by whom the appointment is made. Wiswell v. Starr, 50 Me. 381.

And court's power continues through all stages.—If any emergency should require it, the number of receivers may be increased or diminished. One may be removed and a substitute appointed, as may be deemed expedient. The power of the court over this subject matter is not exhausted by the first appointment. The discretionary powers of the court continue through all the stages of the procedure. Wiswell v. Starr, 50 Me. 381.

Power of invoking court interference vested in bank examiner.—The power of invoking the interference of the court in cases of savings banks and loan and building associations was intended by the legislature to be vested in the bank alone. Craughwell v. Mousam River Trust Co., 113 Me. 531, 95 A. 221; Ulmer v. Falmouth Loan & Building Ass'n, 93 Me. 302, 45 A. 32.

Applied in Glidden v. Rines, 124 Me. 286, 128 A. 4; Lawrence v. Lincoln County Trust Co., 125 Me. 150, 131 A. 863; Cooper v. Fidelity Trust Co., 132 Me. 260, 170 A. 726.

Quoted in part in Newport Savings Bank Case, 68 Me. 396.

Cited in Robinson v. Fidelity Trust Co., 140 Me. 302, 37 A. (2d) 273.

Sec. 72. Receivers; duties and powers; reports; duties of bank commissioner and attorney general.—Upon taking possession of the property and business of a savings bank, the receiver may collect moneys due to the corporation and do all acts necessary to conserve its assets and business and shall proceed to liquidate its affairs as hereinafter provided. He shall collect all debts due and claims belonging to it, and upon the order or decree of the supreme judicial or of the superior court, or any justice thereof in term time or vacation, may sell or compound all bad or doubtful debts, and on like order or decree may sell for cash or other consideration or as provided by law all or any part of the real and personal property of the corporation on such terms as the court shall direct; and, in the name of such corporation, may take a mortgage on such real property from a bona fide purchaser to secure the whole or part of the purchase price, upon such terms and for such periods as the court shall direct; and on like order or decree he may borrow money and issue evidence of indebtedness therefor, and to secure the repayment of the same may mortgage, pledge, transfer in trust or hypothecate any or all of the property of such institution, whether real, personal or mixed, superior to any charge thereon for expenses of liquidation. Such receivers shall have all the rights and powers given to conservators

by the provisions of sections 130 to 143, inclusive. Such receivers or trustees shall annually, in May, and at such other times as the bank commissioner requires, make a report to him of the progress made in the settlement of the affairs of said corporation; and the commissioner shall seasonably give notice of the time and furnish blanks for the report. The court in its discretion may appoint the bank commissioner or deputy bank commissioner receiver for such purpose, in which case no commission, fee or other perquisite shall be allowed such official for his services in said capacity, but his expenses incurred in the performance of his duty as said receiver shall be chargeable against the assets of the institution and allowed in his account as receiver. The attorney general shall render such legal services in connection with such receivership as the commissioner or deputy bank commissioner may require, without additional compensation. (R. S. c. 55, § 68.)

Cross reference.—See § 121, re applicability to trust companies.

Receiver is ministerial officer of court.—A receiver is a person, indifferent between the parties to a cause, appointed by the court to receive and preserve property or funds, and is a ministerial officer of the court or, as he is sometimes called, the hand or arm of the court. He represents the court, acts under its direction, and his possession of the property or funds in litigation is the possession of the court. His authority is derived solely from the act of the court appointing him and he is subject to its order only. Glidden v. Rines, 124 Me. 286, 128 A. 4. See note to § 133, re conservator as ministerial officer of court.

And takes no title to assets of company.—As this section has been construed, such a receiver is an officer of the court, subject to its rules and orders and even his possession is the possession by the court. He takes no title to the property or assets of the trust company and receives his authority to act solely from the court. Cooper v. Fidelity Trust Co., 132 Me. 260, 170 A. 726.

A receiver of a corporation holds the property coming into his hands by the same right and title as the corporation, and is subject to all equities, including the right of set-off, which existed at the time of his appointment and could have been successfully invoked against the corporation. Cooper v. Fidelity Trust Co., 132 Me. 260, 170 A. 726.

Applied in Newport Savings Bank Case 68 Me. 396; Nutter v. Saco Savings Bank, 109 Me. 124, 82 A. 1012.

Cited in Wiswell v. Starr, 50 Me. 381; American Bank v. Wall, 56 Me. 167; Jones v. Winthrop Savings Bank, 66 Me. 242.

Sec. 73. After decree of sequestration, commissioners appointed; duties and powers; payment of claims.—After a decree of sequestration is passed as provided in section 71, the court or any justice thereof in vacation shall appoint commissioners who shall give such notice of the times and places of their sessions as the court or such justice orders; receive and decide upon all claims against the institution, and make report to the court at such time as the court orders of the claims allowed and disallowed and of the amount due each depositor, which shall be subject to exception and amendment as reports of masters in chancery. On application of any person interested, the court may extend the time for hearing claims by the commissioners as justice may require. When the amount due each person is established, the court shall cause others than depositors to be paid in full, and after deducting expenses the balance to be ratably distributed among depositors. When it appears upon the settlement of the account of the receiver of such an institution that there is remaining in his hands funds due depositors who cannot be found and whose heirs or legal representatives are unknown, the court may order such unclaimed funds to be paid into the state treasury, together with a statement giving the names of such depositors and the amount due each, the same to be held in trust for 20 years thereafter to be paid to the person or persons having established a lawful right thereto when made to appear upon proper proceedings instituted in the court ordering such disposition of such unclaimed funds; provided, however, that whenever any such unclaimed fund is in an amount less than $200, the claimant thereto may make application to any justice of the supreme judicial court or of the superior court who may, after identification to him satisfactory, issue an order under the seal

of the supreme judicial court or of the superior court directing the treasurer of state to pay said fund to the claimant therein named; and said fund shall be paid as directed. (R. S. c. 55, § 69.)

Cross reference.—See § 121, re applicability to trust companies.

No debt can accrue against the bank after the decree of sequestration. This is the end of its existence. No debts can be paid except such as the commissioners allow; and they can allow none except such as are outstanding at the date of the decree. Jones v. Winthrop Savings Bank, 66 Me. 242.

Time for presentation of claims may be extended and commissioners reappointed. —During the receivership of a trust company the time fixed for the presentation of claims against the company may be extended by the court, and commissioners may be reappointed to whom all claims in the first instance should be presented. Lawrence v. Lincoln County Trust Co., 125 Me. 150, 131 A. 863.

Report of commissioner not set aside unless clearly erroneous.—The report of commissioner to receive claims in a proceeding under this section, to wind up a savings bank, like the report of a master in chancery or a verdict, should not be set aside, unless clearly erroneous. Nutter v. Saco Savings Bank, 109 Me. 124, 82 A. 1012.

Sec. 74. Attachments dissolved and suits discontinued; judgment recovered, added to claims.—All attachments of the property of the savings bank shall be dissolved by the decree of sequestration, and all pending suits discontinued and the claim in suit presented to the commissioners, unless the court or some justice thereof in vacation, on application of the plaintiff within 3 months from said decree, passes an order allowing the receiver to be made a party to the suit and that the same may be prosecuted to final judgment. After a decree of sequestration, no action at law shall be maintained on any claim against the bank unless the court or a justice thereof in vacation, on application therefor within the time above named, authorizes it, and in such case the receiver shall be made a party; any judgment recovered as herein provided shall be added to the claims against the bank. (R. S. c. 55, § 70.)

Cross reference.—See § 121, re applicability to trust companies.

Cited in American Bank v. Wall, 56 Me. 167.

Sec. 75. Claims, when barred.—All claims not presented to the commissioners within the time fixed by the court or litigated as aforesaid are forever barred. (R. S. c. 55, § 71.)

Cross reference.—See § 121, re applicability to trust companies.

This section does not prevent the allowance of a claim presented within an extension of time for presenting claims. Nutter v. Saco Savings Bank, 109 Me. 124, 82 A. 1012.

Sec. 76. Court may reduce deposit accounts. — Whenever a savings bank is insolvent by reason of loss on or depreciation in the value of any of its assets without the fault of its trustees, the supreme judicial court or the superior court in term time or any justice thereof in vacation shall, on petition in writing of a majority of the trustees and the bank commissioner setting forth the facts, appoint a time for the examination of the affairs of such corporation, and cause notice thereof to be given to all parties interested, in such manner as may be prescribed; and, if upon examination of its assets and liabilities and from other evidence, he is satisfied of the facts set forth in said petition and that the corporation has not exceeded its powers nor failed to comply with any of the rules, restrictions and conditions provided by law, he may, if he deems it for the interest of the depositors and the public, by proper decree reduce the deposit account of each depositor so as to divide such loss pro rata among the depositors, thereby rendering the corporation solvent so that its further proceedings will not be hazardous to the public or those having or placing funds in its custody. The depositors shall not draw from such corporation a larger sum than is thus fixed by the court, except as hereinafter authorized; provided, however, that its treasurer shall keep

an accurate account of all sums received for such assets of the corporation held by it at the time of filing such petition; and if a larger sum is realized therefrom than the value estimated as aforesaid by the court, he shall, at such times as the court prescribes, render to the court a true account thereof, and thereupon the court, after due notice to all parties interested, shall declare a pro rata dividend of such excess among the depositors at the time of filing the petition. Such dividend may be declared by the court, whenever the court deems it for the interest of the depositors and the public, whether all or only a portion of such assets has been reduced to money; and any such dividend may at any time, in the discretion of the court, be declared to be a final one. No deposit shall be paid or received by such corporation after the filing of the petition until the decree of the court, reducing the deposits as herein provided. If the petition is denied, the bank commissioner shall proceed to wind up the affairs of the corporation as provided in section 72. (R. S. c. 55, § 72.)

Cross reference.—See § 121, re applicability to trust companies.

Purpose of section. — The legislature, acting upon the fact of the large depreciation in the value of some classes of property in which savings banks had properly invested, anticipated that they might become insolvent, without the fault of the trustees, and without any violation of law in the management of their affairs, and still be entitled to the confidence of the public; and to meet such cases enacted this section. Newport Savings Bank Case, 68 Me. 396.

Section strictly construed. — This section, being in derogation of the common-law right of the depositor, under the contract of the deposit, to draw out the full amount of his deposit, and, if refused by the bank after due notice, to maintain an action against it therefor, is not to be extended by construction beyond its clear and obvious meaning. Newport Savings Bank Case, 68 Me. 396.

Proof of all requirements of section condition precedent to exercise of power by court. — By the provisions of this section the court has power to grant the privilege herein contained, if it is satisfied from an examination of the assets and liabilities of the bank, and from other evidence, that it is insolvent, by reason of loss on, or depreciation in the value of, any of its assets without the fault of its trustees, and that it has not exceeded its powers, nor failed to comply with any of the rules, restrictions and conditions provided by law, for its government in the management of its affairs. Proof of these facts is a condition precedent to the exercise by the court of the power to reduce the deposits. Newport Savings Bank Case, 68 Me. 396.

Sec. 77. Court may restrain payment to preserve assets or to protect depositors; order revoked or modified.—Whenever it may become necessary to preserve the assets or protect depositors in a savings bank, the supreme judicial court or the superior court in equity, on application of the bank commissioner or trustees of such bank may, after due notice, make an order restraining the bank from paying out its funds or any portion thereof or from declaring or paying any dividends or deposits for such time as the court shall deem advisable. The court may at any time revoke or modify the original order and authorize the bank to pay dividends upon its deposits, or pay any portion of its deposits to such as may desire to withdraw the same or make any other or further order that may be necessary to protect the depositors in such institution. Nothing in this section shall be construed to take away the rights of the parties in interest to proceed under the provisions of sections 71, 72 and 76. (R. S. c. 55, § 73.)

See § 69, re applications for voluntary liquidation.

Sec. 78. Commissioner to make annual report; distribution.—The bank commissioner shall, annually, make a report to the governor and council of the general conduct and condition of each of the banks visited by him, making such suggestions as he deems expedient. Such report shall be printed and laid before the legislature at its next session and 1 copy sent to each savings bank in the state. (R. S. c. 55, § 74.)

Sec. 79. Commissioner to report violations of law; penalty for vi-

olations not otherwise prescribed; application.—If, in the opinion of the bank commissioner, any savings bank or its officers or trustees have persistently violated any provision of this chapter, he shall forthwith report the same with such remarks as he deems expedient to the attorney general, who shall forthwith institute a prosecution therefor in behalf of the state. The penalty for such violation, unless otherwise prescribed, is not less than $100 nor more than $500. The provisions of this section shall apply to sections 81 to 89, inclusive. (R. S. c. 55, §§ 75, 82.)

Sec. 80. Powers, privileges, duties and restrictions conferred by charters; application.—The powers, privileges, duties and restrictions conferred and imposed upon any savings corporation, by whatever name known, in its charter or act of incorporation are so far abridged, enlarged or modified that every such charter or act shall conform to the provisions of this chapter; and every such corporation possesses the powers, rights and privileges and is subject to the duties, restrictions and liabilities herein conferred and imposed, anything in their respective charters or acts of incorporation to the contrary notwithstanding. The provisions of this section shall apply to sections 81 to 89, inclusive. (R. S. c. 55, §§ 76, 82.)

Sec. 81. Segregation of certain assets.—Whenever in the judgment of the bank commissioner it shall be necessary in order to conserve the assets of any savings bank not deemed by him to be in condition to require action under section 71 or section 76 for the benefit of the depositors and other creditors, he may, with the consent of the trustees of such corporation, and when the depositors representing at least a majority in amount of the total deposits subscribed thereto, order that there be segregated and set aside investments which in his judgment are of slow or doubtful value or which on account of unusual conditions cannot be converted into cash at their full fair value; and that, simultaneously with the delivery of said order to the treasurer or other executive officer of such corporation, each and every deposit then standing therein be reduced so as to divide pro rata among the depositors the aggregate book value of all of the investments so segregated. After such order has been delivered, no depositor shall demand or receive on account of such deposit more than the amount remaining to the credit thereof after said reduction shall have been made, and dividends shall thereafter be computed only on the amounts so remaining, except as hereinafter provided. (R. S. c. 55, § 77.)

See §§ 79 and 80, re application to § 81.

Sec. 82. Treasurer to set up new accounts.—The treasurer of a savings bank shall withdraw all investments segregated as provided for in section 81 and the then book value thereof from his list of investments and his book values of assets as shown on the books of the corporation, and the sum of said reductions of deposits from his statements of amounts due depositors, and thereafter enter said reductions on individual passbooks as they are presented, and the investments and amounts due depositors then remaining with changes thereafter made in the usual course of business shall be deemed to be the investments held by and the deposits standing in said corporation for purposes of taxation and all other purposes except as elsewhere in sections 81 to 89, inclusive, provided. (R. S. c. 55, § 78.)

See §§ 79 and 80, re application to § 82.

Sec. 83. Treasurer to make list of segregated assets.—The treasurer of a savings bank shall make and keep a complete and accurate list of the investments segregated as provided for in section 81 at said book values and such other records in respect thereof as the bank commissioner may from time to time prescribe. (R. S. c. 55, § 79.)

See §§ 79 and 80, re application to § 83.

Sec. 84. Sale of segregated investments.—Investments segregated as provided for in section 81 may be sold or exchanged for other securities in reorganizations, by vote of the trustees, and shall be sold when so ordered by the bank commissioner. All moneys received from such sales or as income from such securities shall be entered in a special account, shall be deemed to be held by the corporation for the benefit of the depositors whose deposits were so reduced and shall be disposed of as provided in sections 85 to 89, inclusive. (R. S. c. 55, § 80.)

See §§ 79 and 80, re application to § 84.

Sec. 85. Payment of dividends from avails of such investments.—The trustees of a savings bank may from time to time, and when so directed by the bank commissioner shall, declare pro rata dividends of moneys received as provided in section 84 among the depositors whose deposits were reduced, payable to those who would then have been entitled to receive the sums so deducted if they had continued to be included in the deposits so reduced, and payable as other dividends are paid. (R. S. c. 55, § 81.)

See §§ 79 and 80, re application to § 85.

Sec. 86. Regulations.—The bank commissioner may make regulations for the carrying out of the provisions of sections 81 to 89, inclusive, not inconsistent therewith. The provisions thereof shall be deemed to be additional to other powers invested by law in the bank commissioner and savings banks, and shall not be deemed to repeal, alter or amend any existing statute relating to savings banks unless inconsistent therewith. (R. S. c. 55, § 82.)

See §§ 79 and 80 re application to § 86.

Sec. 87. "Investments" defined. — The word "investments" as used in sections 81 to 89, inclusive, shall be deemed to include all assets of the corporation whether real or personal. (R. S. c. 55, § 83.)

See §§ 79 and 80 re application to § 87.

Sec. 88. Commissioner's liability limited. — The bank commissioner shall be under no liability of any nature whatever for anything done or omitted to be done under the provisions of sections 81 to 89, inclusive, provided only his action or omission to act be in good faith. (R. S. c. 55, § 84.)

See §§ 79 and 80 re application to § 88.

Sec. 89. Appeal.—Any person aggrieved by anything done or omitted to be done under the provisions of sections 81 to 89, inclusive, may petition any justice of the superior or supreme judicial court sitting in equity for an order annulling, altering or amending such act, or enjoining the performance thereof, or requiring action to be taken under any provision of said sections, within 10 days after he shall have had notice of such act or failure to act, in person or by publication of a certificate thereof signed by the bank commissioner or by the president or treasurer of the corporation in 1 issue of a newspaper of general circulation printed and published in the city or town in which the corporation is located, if any, otherwise in the same county. Such petitions shall be prosecuted according to the usual practice in equity proceedings. (R. S. c. 55, § 85.)

See §§ 79 and 80 re application to § 89.

Trust Companies.

Sec. 90. Organization of trust companies; powers.—Five or more persons, a majority of whom shall be residents of the state, who associate themselves by an agreement in writing for the purpose of forming a trust company may, upon compliance with the provisions of this section and sections 96 to 104, inclusive, become a corporation subject to all the duties, restrictions and liabilities set forth in all general laws now or hereafter in force relating to such corporations, with power:

I. To receive on deposit, money, coin, bank notes, evidences of debt, accounts of individuals, companies, corporations, municipalities and states, allowing interest thereon, if agreed, or as the by-laws of said corporation may provide;

II. To borrow money, to loan money on credits or real estate or personal security and to negotiate loans and sales for others;

III. To invest their funds in notes or bonds secured by mortgages issued under sections 500 to 505, inclusive, of Title III of the Servicemen's Readjustment Act of 1944, as amended, more familiarly known as "The G. I. Bill of Rights," and as such act may be interpreted and operated under rules to be promulgated. (1945, c. 72, § 2. 1951, c. 157, § 6)

IV. To own and maintain safe deposit vaults, with boxes, safes and other facilities therein, to be rented to other parties for the safekeeping of moneys, securities, stocks, jewelry, plate, valuable papers and documents and other property susceptible of being deposited therein, and may receive on deposit for safekeeping property of any kind entrusted to it for that purpose;

V. To hold and enjoy all such estate, real, personal and mixed, as may be obtained by the investment of its capital stock or any other moneys and funds that may come into its possession in the course of its business and dealings, and the same sell, grant and dispose of;

VI. To act as agent for issuing, registering and countersigning certificates, bonds, stocks and all other evidences of debt or ownership in property;

VII. To hold by grant, assignment, transfer, devise or bequest, any real or personal property or trusts duly created, and to execute trusts of every description;

VIII. To act as assignee, receiver, executor, administrator, conservator or guardian; provided, however, that any such appointment as guardian shall apply to the estate of the ward only and not to the person;

IX. Subject to such restrictions as may be imposed by the bank commissioner, to accept for payment at a future date drafts and bills of exchange drawn upon it, and to issue letters of credit authorizing holders thereof to draw drafts upon it or its correspondents, at sight or on time; provided that such acceptances or drafts be based upon actual values, but no trust company shall accept such bills or drafts to an aggregate amount exceeding at any 1 time ½ of its paid-up capital and surplus, except with the approval of the bank commissioner, and in no case to an aggregate amount in excess of its capital and surplus;

X. To do in general all the business that may lawfully be done by trust companies. No surety shall be necessary upon the bond of the corporation in its capacity as trustee, executor, administrator, conservator, guardian, assignee or receiver, or in any other capacity, unless the court or officer approving such bond shall require it. (R. S. c. 55, § 86. 1943, c. 360. 1945, c. 72, § 2. 1951, c. 157, § 6.)

Cross references.—See c. 53, § 105, re appointment of receivers on dissolution of corporations; c. 55, re credit unions; c. 154, § 12, re bond of executors.

Trust companies may issue certificate of deposit. — There are no constitutional or statutory restrictions in this state upon the power of trust companies to issue certificates of deposit for either savings or commercial deposits. Cooper v. Fidelity Trust Co., 134 Me. 40, 180 A. 794.

Cited in Opinion of the Justices, 146 Me. 316, 80 A. (2d) 866.

Sec. 91. Guaranteed loans for veterans; minors.—Without regard to any other provision of law, any bank or trust company of this state or any insurance company authorized to do business in this state is authorized to make or buy and sell any loan secured or unsecured which is insured or guaranteed in any manner in part or in full by the United States or any instrumentality thereof, or by

this state or instrumentality thereof, or for which there is a commitment to so insure or guarantee or for which a conditional guarantee has been issued. The disability of minority of any person otherwise eligible for a loan, or guaranty or insurance of a loan, pursuant to the act of the congress of the United States entitled the Servicemen's Readjustment Act of 1944, (58 Stat. 284) as heretofore or hereafter amended (38 U. S. C. 693 et seq.), and of the minor spouse of any eligible veteran, in connection with any transaction entered into pursuant to said act of the congress of the United States, as heretofore or hereafter amended, shall not affect the binding effect of any obligation incurred by such eligible person or spouse as an incident to any such transaction, including incurring of indebtedness and acquiring, encumbering, selling, releasing or conveying property, or any interest therein, if all or part of any such obligation be guaranteed or insured by the government or the administrator of veterans' affairs pursuant to said act and amendments thereto; or if the administrator be the creditor, by reason of a loan or a sale pursuant to said act and amendments. The provisions of this section shall not create or render enforceable any other or greater rights or liabilities than would exist if neither such person nor such spouse were a minor. (1945, c. 207, § 2. 1947, c. 76. 1951, c. 157, § 7. 1953, c. 43, § 2.)

Sec. 92. Application of laws affecting trust companies. — All laws affecting trust companies shall apply to corporations organized and doing business as trust and banking companies. (R. S. c. 55, § 87.)

Sec. 93. Trust companies may acquire and hold stock in federal reserve banks, etc.—Any trust company which is or hereafter may become a member in the federal reserve bank within the federal reserve district where such trust company is situated under the United States "Federal Reserve Act" or any acts in amendment thereof may acquire and hold shares of stock of said federal reserve bank. Such trust company may also acquire and hold shares of stock of the "Federal Deposit Insurance Corporation" under the United States "Banking Act of 1933" and while such trust company continues as a member bank is authorized to exercise such power and do any and all things necessary to avail itself of the benefits of said "Banking Act of 1933" and any acts in amendment thereof, and any other acts of congress granting powers to or conferring benefits on such member bank now or hereafter passed, without otherwise limiting or impairing in any way the authority conferred upon the bank commissioner under the laws of this state. (R. S. c. 55, § 88.)

Sec. 94. Pledge of assets for deposits. — A trust company shall not have the power to pledge or hypothecate any of its assets as security for deposits made with it, except for the following:

I. Federal, state, county, municipal, United States postmaster funds, postal savings funds or other public funds.

II. Funds deposited by the bank commissioner as receiver of an institution of which he has, pursuant to the provisions of law, taken possession.

III. Funds deposited by a trust company in its own bank, which funds are being held by such trust company in a fiduciary capacity. (R. S. c. 55, § 89.)

Sec. 95. Federal housing mortgages and debentures as collateral. —Wherever collateral must or may be furnished by any depository in this state as security for the deposit of any funds whatsoever, or wherever collateral must or may be deposited with any official of this state pursuant to any statute of this state, mortgages insured and debentures issued by the federal housing administrator shall be considered eligible collateral for such purposes. (R. S. c. 55, § 90.)

Sec. 96. Engaging in business of issuing surety bonds. — No trust

company shall engage in the business of acting as surety on official bonds or bonds for the performance of other obligations or guaranteeing the fidelity of persons in positions of trust, private or public, and at the same time engage in the business of receiving on deposit money, coin, bank notes, evidences of debt, accounts of individuals, companies, corporations, municipalities or states subject to check or payable on demand, other than deposits for the payment of bonds and interest thereon and for sinking funds; but nothing in this section shall be construed as enlarging any of the corporate powers of any trust company. No trust company organized under the laws of this state shall be authorized to guarantee the fidelity of persons in positions of trust, private or public, and to act as surety on official bonds and for the performance of other obligations, unless it shall have a capital stock, fully paid in, of not less than $250,000. (R. S. c. 55, § 91.)

Sec. 97. Agreement of association.—The agreement of association of a trust company shall set forth that the subscribers thereto associate themselves with the intention of forming a corporation and shall specifically state:

I. The name by which the corporation shall be known.

II. The purpose for which it is formed.

III. The city or town, which shall be within this state, where its business is to be transacted.

IV. The amount of its capital stock and the number of shares into which the same is to be divided.

Each associate shall subscribe to the articles his name, residence, post-office address and the number of shares of stock which he agrees to take. (R. S. c. 55, § 92.)

Sec. 98. Notice of intention to organize.—A notice of the intention of the subscribers to form a trust company shall be given to the bank commissioner. A notice in such form as said commissioner shall approve shall be published at least once a week, for 3 successive weeks, in 1 or more newspapers designated by said commissioner and published in the county in which it is proposed to establish the company. Such notice shall specify the names of the proposed incorporators, the name of the corporation and the location of the same, as set forth in the agreement of association. Within 30 days after the 1st publication of said notice, the subscribers to said agreement shall apply to said commissioner for a certificate that public convenience and advantage will be promoted by the establishment of such trust company. If the commissioner refuses to issue such certificate, no further proceedings shall be had, but the application may be renewed after 1 year from the date of such refusal without further notice or publication unless the commissioner shall order the same. (R. S. c. 55, § 93.)

Sec. 99. First meeting of subscribers; notice; election of officers and adoption of by-laws.—The 1st meeting of the subscribers to the agreement of association of a trust company shall be called by a notice signed either by that subscriber to the agreement who is designated therein for the purpose, or by a majority of the subscribers; and such notice shall state the time, place and purposes of the meeting. A copy of the notice shall, 7 days at least before the day appointed for the meeting, be given to each subscriber or left at his residence or usual place of business or deposited in the post office, postage prepaid and addressed to him at his residence or usual place of business, and another copy thereof and an affidavit of 1 of the signers that the notice has been duly served shall be recorded with the records of the corporation. If all the incorporators shall, in writing indorsed upon the agreement of association, waive such notice and fix the time and place of the meeting, no notice shall be required. The subscribers to the agreement of association shall hold the franchise until the organization has been completed. At such 1st meeting or at any adjournment

thereof, the incorporators shall organize by the choice by ballot of a temporary clerk, by the adoption of by-laws and by the election in such manner as the by-laws may determine of directors, a president, a clerk and such other officers as the by-laws may prescribe. All the officers so elected shall be sworn to the faithful performance of their duties. The temporary clerk shall make and attest a record of the proceedings until the clerk has been chosen and sworn, including a record of such choice and qualification. (R. S. c. 55, § 94.)

Sec. 100. Articles of agreement; submitted to bank commissioner and attorney general and filed in office of secretary of state; certificate; has force and effect of special charter; evidence of existence of corporation.—The president, and a majority of the directors who are elected at such 1st meeting provided for in section 99, shall make, sign and make oath to, in duplicate, articles setting forth:

I. A true copy of the agreement of association, the names of the subscribers thereto and the name, residence and post-office address of each of the officers of the company;

II. The date of the 1st meeting and the successive adjournments thereof, if any.

One of such certificates shall be submitted to the bank commissioner and the other, together with the records of the proposed corporation, to the attorney general, who shall examine the same and who may require such amendment thereof or such additional information as he may consider necessary. If he finds that the articles conform to the provisions of the preceding sections relative to the organization of the corporation and that the provisions of section 98 have been complied with, he shall so certify and indorse his approval thereon. Thereupon the articles shall be filed in the office of the secretary of state, who shall cause the same, with the indorsement thereon, to be recorded, and shall thereupon issue a certificate of incorporation in the following form:

"STATE OF MAINE

Be it known that whereas" (the names of the subscribers to the agreement or association) "have associated themselves with the intention of forming a corporation under the name of" (the name of the corporation) ", for the purpose" (the purpose declared in the agreement of association) ", with a capital stock of" (the amount fixed in the agreement of association) ", and have complied with the provisions of the statutes of this state in such case made and provided, as appears from the articles of organization of said corporation, duly approved by the attorney general, and recorded in this office; now, therefore, I" (the name of the secretary) ", secretary of the State of Maine, do hereby certify that said" (the names of the subscribers to the agreement of association) ", their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of" (name of corporation) ", with the powers, rights and privileges, and subject to the limitations, duties and restrictions, which by law appertain thereto.

Witness my official signature hereunto subscribed, and the great seal of the State of Maine hereunto affixed, this day of in the year ." (the date of the filing of the articles of organization).

The secretary shall sign the certificate of incorporation and cause the great seal of the state to be thereto affixed, and such certificate shall have the force and effect of a special charter. The existence of every corporation which is not created by special law shall begin upon the filing of the articles of organization in the office of the secretary of state. The secretary of state shall also cause a record of the certificate of incorporation to be made and such certificate or such record, or a certified copy thereof, shall be conclusive evidence of the existence of such corporation. (R. S. c. 55, § 95.)

Sec. 101. Issue of shares; list of stockholders; examinations by bank commissioner.—A trust company shall not issue any shares of stock until the par value of such shares and 50% additional as a surplus shall have been actually paid in in cash or an equivalent as determined by the bank commissioner. When the whole capital stock has been issued, a complete list of the stockholders, with the name, residence and post-office address of each and the number of shares held by each, shall be filed with the bank commissioner, which list shall be verified by the president and the treasurer of the corporation. Upon receipt of such statement said commissioner shall cause an examination to be made, and if, after such examination, it appears that the whole capital stock and surplus has been paid in in cash or an equivalent as determined by the bank commissioner and that all requirements of law have been complied with, said commissioner shall issue a certificate authorizing such corporation to begin the transaction of business. Such certificate shall be conclusive as to the facts stated therein. It shall be unlawful for any such corporation to begin the transaction of business until such a certificate has been granted. (R. S. c. 55, § 96.)

Sec. 102. One-third of proposed capital stock subscribed for.—The written articles of association mentioned in section 90 shall not be regarded as sufficient unless they show that at least 1/3 of the proposed amount of capital stock has been subscribed for, and when filed with the bank commissioner, they shall be accompanied by satisfactory evidence that the sum of $50 has been paid to the treasurer of state. Such fees shall become general revenue of the state. (R. S. c. 55, § 97.)

Sec. 103. Minimum amount of capital stock authorized to begin business; par value of shares.—The minimum amount of paid-in capital stock on which a trust company may be authorized to begin business shall be $50,000 for a town or city of not more than 5,000 inhabitants, $75,000 for a town or city having from 5,000 to 10,000 inhabitants, $100,000 for a town or city having from 10,000 to 20,000 inhabitants, $150,000 for a town or city having from 20,000 to 30,000 inhabitants and $200,000 for a town or city of more than 30,000 inhabitants. The bank commissioner, in ascertaining the number of inhabitants of such town or city for the purpose of determining the sufficiency of the capital stock, may require such proof in addition to the last preceding United States census as he may deem necessary; but no charter once granted shall ever be deemed void for any error in computing the population. The par value of the shares of stock shall be not less than $25 each and not more than $100 each and may be changed at any time by vote of the stockholders with the approval of the bank commissioner. (R. S. c. 55, § 98.)

Sec. 104. Forfeiture of charter.—Every trust company shall forfeit its charter unless it shall actually commence to do business as a trust company within 1 year from the date of the issuance of its charter. (R. S. c. 55, § 99.)

Sec. 105. Capital stock increased.—Any company organized under the provisions of section 90 and sections 96 to 104, inclusive, or any company organized under special act of the legislature may increase its capital stock from time to time at any stockholders' meeting at which a majority of shares issued and outstanding is represented, notice of the intention to do so having been given in the call therefor. Provided, however, that before actually issuing such capital stock, a certified copy of the vote authorizing the same shall be filed with the bank commissioner within 10 days after its passage, and thereupon he shall issue his approval or disapproval of the action so taken and if approved shall issue a certificate allowing such increase, a copy of which shall be filed in the office of the secretary of state. (R. S. c. 55, § 100.)

Sec. 106. Authority to issue preferred stock. — Notwithstanding any

other provision of law, any company organized under the provisions of section 90 and sections 96 to 104, inclusive, or any company organized under special act of the legislature may, with the approval of the bank commissioner, by vote of stockholders owning a majority of the stock of such company, at a meeting duly called and held for that purpose or by the agreement of association signed by, or vote of, its incorporators in case of a newly organized trust company which has not yet issued common stock, issue preferred stock of 1 or more classes in such amount and with such par value as shall be approved by the bank commissioner, and make such amendments to its agreement of association, articles of organization, articles of association, charter or by-laws as may be necessary for this purpose.

No shares of such preferred stock shall be issued until the par value of such shares shall have been actually paid in in cash or its equivalent as determined by the bank commissioner whose certificate shall be conclusive as to the facts stated therein.

Notwithstanding any other provision of law, whether relating to restriction upon the payment of dividends upon capital stock or otherwise, the holders of such preferred stock shall be entitled to receive such cumulative dividends at a rate not exceeding 6% per year of the purchase price received by the company for said stock and in the event of the retirement of such stock to receive such retirement price not in excess of such purchase price plus all accumulated dividends as may be provided in the agreement of association, articles of organization, articles of association, charter or by-laws, with the approval of the bank commissioner, and shall have such voting rights, including that of cumulative voting, which may be granted also to the holders of common stock, and conversion rights and such control of management; and such stock shall be subject to retirement in such manner and under such conditions as may be provided in the agreement of association, articles of organization, articles of association, charter, or by-laws, with the approval of the commissioner.

Prior to or simultaneously with the retirement of such preferred stock, the company, without further action on the part of the holders of stock of any class or on the part of the bank commissioner, if its articles of organization, as amended, so provide, may, and to the extent necessary to maintain the capital of the company at the minimum required by law, shall declare on the common stock, out of surplus or net profits of the company, a dividend in an amount equal to the par value of the preferred stock so to be retired, payable at the time of or in connection with such retirement in common stock of the company, pro rata to the holders of common stock.

The designations, preferences, powers, restrictions, qualifications, terms and provisions affecting shares or classes of stock issued by any company which shall create 2 or more kinds or classes of stock, as set forth in its articles of organization or in any amendment thereof, shall control in all cases where any vote, consent of stockholders or other action is now or hereafter required or authorized by statute, unless such statute shall provide expressly to the contrary, and the provision of any statute requiring a specific vote of all, a majority or a fractional part of the stock issued or of the stock outstanding or any similar provision shall be construed as limited by any such restrictions, qualifications and other provisions set forth in said articles.

The holders of such preferred stock shall not be held individually responsible as such holders for any debts, contracts or engagements of such company, and shall not be liable for assessments to restore impairments in the capital of such company and such preferred stock shall not be subject to assessment, as now provided by law with reference to common stock and the holders thereof.

No dividends shall be declared on common stock of such company until cumulative dividends on the preferred stock shall have been paid in full; and, if the company is placed in voluntary liquidation or a conservator or receiver is ap-

pointed therefor, no payments shall be made to the holders of the common stock until the holders of the preferred stock shall have been paid in full such amount as may be provided in the agreement of association, articles of organization, articles of association, charter or by-laws, with the approval of the bank commissioner, not in excess of such purchase price of such preferred stock plus all accumulated dividends.

If any trust company is in need of funds for capital purposes either in connection with the organization or reorganization of such association or trust company or otherwise, it may request the Reconstruction Finance Corporation to subscribe for preferred stock in such association or trust company, or to make loans secured by such stock as collateral under such terms, conditions, restrictions and privileges as shall be approved by the bank commissioner. (R. S. c. 55, § 101.)

Sec. 107. Board of directors; executive committees; vacancies among directors; election of president, clerk and treasurer; false return; bonds of officials.—All the corporate powers of any trust company shall be exercised by a board of not less than 5 directors, 2/3 of whom shall be residents of this state, whose number and term of office shall be determined and who shall be elected by a vote of the stockholders at the 1st meeting held by the incorporators and at each annual meeting thereafter. Directors shall hold a regular meeting at least once each month. The stockholders at any annual meeting may elect from the full board of directors an executive committee of not less than 5 members, 2/3 of whom shall be residents of this state, and delegate to such committee the powers of the directors in regard to the ordinary operations of the business of the company; such powers to be exercised by such committee at all times when said board of directors is not in session; subject always, however, to any specific vote of said board of directors. All such committees shall keep full minutes of all business transacted by them and shall make such reports of their transactions at each monthly meeting of the board as said board or the bank commissioner may require. The directors shall be annually sworn to the proper discharge of their duties, and they shall hold office until others are elected and qualified in their stead. If any vacancy occurs in the board of directors or executive committee through death, resignation or otherwise, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation. The oath of office of any director shall be taken within 30 days of his election or his office shall become vacant. The clerk of such company shall, within 10 days, notify such directors of their election and within 30 days shall publish the list of all persons who have taken the oath of office as directors. The removal of any director from this state shall immediately vacate his office if such removal leaves less than 2/3 of the membership resident in the state. The board of directors shall elect a president from its number, a clerk who shall be sworn to the faithful performance of his duties, a treasurer and such other officers as they may deem necessary. Any officer or employee of any trust company who shall willfully or knowingly make a false return to the bank commissioner in response to any call for information issued by said commissioner or by the deputy bank commissioner, or upon making or filing of any regular or special report, shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. The president, treasurer, assistant treasurer and all other officials and employees having access to moneys or securities shall be bonded as in the case of similar officials in savings banks, and the provisions of section 33, so far as applicable, shall apply to the bonds of trust company officials and employees. (R. S. c. 55, § 102.)

Sec. 108. Duties of board of directors and executive committee; record of loans; lists of demand obligations.—The directors or executive committee shall keep or cause to be kept in a book or books appropriate therefor,

a record of all loans and investments of every description made by a trust company, substantially in the order of time when such loans or investments are made. Such record shall show that such loans or investments have been made with the approval of the directors or executive committee of said company and shall indicate such particulars respecting such loans and investments as the bank commissioner shall direct. Whenever requested, such record shall be submitted to the bank commissioner or to any meeting of the directors or stockholders. Such loans and investments shall be classified in said book or books of record as the bank commissioner shall direct. The treasurer or other officer having charge of such loans shall submit to the directors or executive committee at intervals of not more than 6 months a full and complete list of all outstanding demand obligations owed to the company. (R. S. c. 55, § 103.)

Sec. 109. Qualification of director.—No person shall be eligible to the position of a director of any trust company who is not the actual owner of stock amounting to $1,000 par value, free from encumbrance. (R. S. c. 55, § 104.)

Sec. 110. Trust assets.—Except as to common trust funds established under the provisions of section 243, all securities, money and property received by any trust company to be held in trust shall be kept separate and apart from the other assets of the company in a trust department to be established and maintained by such company; the assets belonging to each trust, except those held in such common trust funds, being listed and kept separate from those belonging to any other trust. A proper record of all matters relating to each such trust shall be separately kept in said trust department and shall indicate such particulars respecting each such trust as the bank commissioner shall direct. Provided, however, that nothing herein contained shall be construed to prohibit any such company from depositing, subject to proper rates of interest, in its commercial or savings department, in an account specifically stating the trust to which the same belongs, any cash income or cash principal received and held by it pending distribution or permanent investment in accordance with the terms of the trust under which the same is held; or such cash balances may be included in an aggregate deposit including like balances for other trusts, the books of the trust department showing the specific interest of each trust in such general deposit. The trust assets held by any such company shall not be subject to any other liabilities of said company. (R. S. c. 55, § 105. 1951, c. 358, § 2.)

Sec. 111. Administrators, etc., may deposit.—An administrator, executor, assignee, guardian, conservator, receiver or trustee, any court of law or equity, including courts of probate and insolvency, officers and treasurers of towns, cities, counties and savings banks of the state may deposit any moneys, bonds, stocks, evidences of debt or of ownership in property or any personal property with said corporation, and any of said courts may direct any person deriving authority therefrom to so deposit the same. (R. S. c. 55, § 106.)

Sec. 112. Regulation of loans.—No trust company shall loan to any person, firm, business syndicate or corporation, an amount or amounts, at any time outstanding in excess of 10% of its total capital, unimpaired surplus and net undivided profits, except on the approval of a majority of its entire board of directors or executive committee, unless secured by collateral which shall be of value equal to the excess of said loans above said 10%, and the total amount of loans to any person, firm, business syndicate or corporation shall at no time exceed 20% of said total capital, unimpaired surplus and net undivided profits; provided that in determining said amount, every person, firm, syndicate or corporation appearing on any loan as indorser, guarantor or surety shall be regarded as an original promisor; but the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same, and the renewal or

renewals in whole or in part of such commercial or business paper so discounted for periods not exceeding in all 3 years for any such paper, shall not be considered as money borrowed. Loans to municipal corporations located within the state upon their bonds or notes shall not be affected by the provisions hereof; nor shall the limitations and restrictions of this section apply to any loan or loans to the extent that they are secured or covered by guaranties or by commitments or agreements to take over to purchase the same, made by any federal reserve bank or by the United States or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States. In all cases where loans in excess of said 10% are granted, without collateral, the records of the company shall show who voted in favor thereof, and said records and those required by section 113 shall constitute prima facie evidence of the truth of all facts stated therein in prosecutions and suits to enforce the several provisions and penalties enumerated in section 114. (R. S. c. 55, § 107. 1945, c. 82.)

Sec. 113. Loans to officers; approval of loan recorded; records to show vote of directors; credit expires in 6 months.—No trust company shall make any loan to any of its directors, officers, agents or to any other person in its employ, or on which any such director, officer, agent or employee is an indorser, guarantor or surety, or to any firm or business syndicate of which such director, officer, agent or employee is a member, or to any person or on the indorsement or guaranty of any person who is a partner of, or member of a business syndicate with such director, officer, agent or employee, or to any corporation of which any such director, officer, agent or employee is a director, officer, superintendent or manager, until the proposition to make such loan shall have been submitted by the person desiring the same to the board of directors of such company, or to the executive committee thereof, if any, and accepted and approved by a majority of the entire membership of such board or committee; provided, however, that no director of such company who is interested in said loan in any of the above capacities or who is connected or associated with the borrower in any of the above ways shall be regarded as voting in the affirmative on such loan. For the purposes of this section each renewal shall be considered as an original loan. Such approval, if the loan is made, shall be spread upon the records of the company; and this record shall, in every instance, give the names of the directors authorizing the loan. Nothing in this section or section 112 shall make it unlawful for a trust company to give any person, firm, syndicate or corporation a line of credit to an amount not exceeding 20% of its total capital, unimpaired surplus and net undivided profits, subject to the several restrictions as to percentage of entire board and right of interested persons to vote on same contained in said sections. The records of the company shall show how every director voted on the same, and when such line of credit is given, the treasurer or other authorized officer may pay out loans in accordance therewith without further approval. A line of credit so given shall expire in 6 months unless renewed in the same manner in which it is originally given. No loan shall hereafter be made to the treasurer, assistant treasurer or any employee of the company upon the security of corporation stocks as collateral; provided, however, that this provision shall not apply to the renewal of existing loans. (R. S. c. 55, § 108.)

Sec. 114. Directors and officers personally responsible and guilty of misdemeanor for violation of §§ 112, 113. — Every director, officer, agent and employee of a trust company, who authorizes or assists in procuring, granting or causing the granting of a loan in violation of the provisions of section 112, or pays or willfully permits the payment of any funds of the company on such loan, and every director of a company who votes on a loan in violation of any of the provisions of section 113, and every director, officer, agent or em-

ployee who willfully and knowingly permits or causes the same to be done shall be personally responsible for the payment thereof and shall be guilty of a misdemeanor. All loans granted in violation of either of said sections shall be due and payable immediately and without demand, whether they appear on their face to be time loans or otherwise. When the bank commissioner shall find any loans outstanding in violation of either of said sections, he shall notify the president or treasurer of the company to cause the same to be paid forthwith. If they are not paid within 30 days or such further time as said bank commissioner shall determine, he shall report the facts to the attorney general, who shall commence suit in the name and for the benefit of such company for the collection of the same. The attorney general may employ special counsel to prosecute said suit, and said company shall pay all expenses thereof, to be recovered in an action of debt in the name of the state. (R. S. c. 55, § 109.)

Sec. 115. Cash reserve.—Every trust company having authority to receive money on deposit shall at all times have on hand in the lawful money or national bank notes of the United States, as a cash reserve, an amount equal to at least 15% of the aggregate amount of its deposits which are subject to withdrawal upon demand or within 10 days; and said reserve may consist of balances payable on demand due from any trust company created under the laws of this state, or from any trust company located in any of the other New England states or in the state of New York, or from any trust company located in any of the states of the United States which is a member of the federal reserve system or from any national bank, and approved by the bank commissioner in writing. Provided that no banking organization not a member of the federal reserve system should be required to maintain reserves against war loan deposits, that is, deposits payable to the United States arising solely as a result of subscriptions made by or through banking organizations for United States government securities, which are not required by federal reserve member banks. Whenever said reserve shall be below said percentage of such deposits, such corporation shall not further diminish the amount of its legal reserve by making any new loans until the required proportion between the aggregate amount of such deposits and its cash reserve shall be restored. The bank commissioner is authorized and empowered to raise or lower said cash reserve requirements on demand deposits and to establish reserves which shall be maintained on time deposits as in his judgment banking conditions may justify, provided such power to raise and establish reserves shall be limited to a percentage of such deposits not in excess of reserve requirements which may be from time to time established by the federal reserve board. Provided further, that any trust company may become a stockholder in a federal reserve bank within the federal reserve district where said trust company is situated, and while such trust company continues as a member bank under the provisions of the United States "Federal Reserve Act," approved December 23, 1913, or any acts in amendment thereof, shall be subject to the provisions of said "Federal Reserve Act" and any amendments thereof relative to bank reserves in substitution for the requirements of this section. Every such trust company may have and exercise any and all of the corporate powers and privileges which may be exercised by member banks under provisions of the "Federal Reserve Act" or any acts in amendment thereof or in addition thereto. All provisions of charters in conflict with this section are void. (R. S. c. 55, § 110. 1945, c. 81. 1953, c. 94.)

Sec. 116. Surplus to secure against loss.—Every trust company shall set apart as a surplus not less than 10% of its net earnings in each and every year until such surplus, together with any unimpaired surplus paid in, shall amount to ½ of the capital stock of the company. The said surplus shall be kept to secure against losses and contingencies and whenever the same becomes impaired, it shall be reimbursed in the manner provided for its accumulation. (R. S. c. 55, § 111.)

Sec. 117. No loans on shares of its capital stock.—Trust companies shall not make loans or discounts on the security of the shares of their own capital stock nor be the purchasers or holders of any such shares unless necessary to prevent loss upon a debt previously contracted in good faith, and all stock so acquired shall, within 1 year after its acquisition, be disposed of at public or private sale; provided, however, that the time for such disposition may be extended by the bank commissioner for good cause shown upon application to him in writing. (R. S. c. 55, § 112.)

Sec. 118. Borrowing capacity.—No trust company, not a member of the federal reserve system, shall be at any time indebted for borrowed money to an amount in excess of its capital, surplus and net undivided profits, except that by vote of a majority of its entire board of directors or executive committee, setting forth the reasons therefor, it may borrow to meet withdrawals of depositors or to prevent loss by sales of assets. Copies of all votes authorizing such excess borrowings shall be promptly forwarded by the clerk to the bank commissioner. Rediscounts, other than those of drafts or bills of exchange secured by bills of lading of agricultural products and payable at sight or upon arrival, shall be considered as borrowed money for the purpose of this section. (R. S. c. 55, § 113.)

Sec. 119. Report to bank commissioner.—Every trust company shall make such report of its condition from time to time as the bank commissioner shall require, and shall cause the same to be published as he may direct. Each return shall be rendered within 15 days after the day designated in the blank form furnished for the purpose. Any treasurer who shall willfully or negligently fail to comply with the provisions hereof shall be punished by a fine of not more than $50. (R. S. c. 55, § 114.)

Sec. 120. Treasurer to annually publish statement of inactive accounts; payment to state.—The treasurer of every trust company shall on or before the 1st day of November cause to be published in a newspaper in the place where the bank is located, if any, otherwise in a newspaper published in the nearest place thereto, a statement containing the name, the amount standing to his credit, the last known place of residence or post-office address and the fact of death, if known, of every savings depositor in said bank who shall not have made a deposit therein or withdrawn therefrom any part of his deposit, or any part of the dividends thereon, for a period of more than 20 years next preceding; provided, however, that this section shall not apply to the savings deposits of persons known to the treasurer to be living, to a savings deposit the deposit book of which has during such period been brought into the bank to be verified or to have the dividends added or to a savings deposit which, with the accumulations thereon, shall be less than $10. Such publication, in addition to the above-required information, shall state that 2 years after the date of publication all moneys in such inactive accounts shall be paid into the state treasury. Said treasurer shall also transmit a copy of such statement to the bank commissioner, to be placed on file in his office for public inspection. Any treasurer neglecting to comply with the provisions of this or the preceding section shall be punished by a fine of $50. Two years after the date of such publication, all moneys in such inactive accounts shall be deemed presumptively abandoned and shall be paid into the state treasury and credited to the general fund for the use of the state, and there shall also be paid into the state treasury, and so credited at the end of 20 years after the last deposit, all savings deposits, inactive as aforesaid, which with accumulations thereon shall be less than $10. After payment into the state treasury of such deposits, no action at law or in equity shall be maintained in any court in this state by any depositor or his heirs, successors or assigns against any bank making such payments; provided, however, that thereafter any lawful claimants may petition the governor and council for payment of such moneys to

the claimants. In his petition the claimant shall state fully the facts showing the basis of his right, title and interest in such deposit. The governor and council, after a hearing, shall determine who are lawful claimants and shall authorize payment by the treasurer of state from the general fund to such claimants. (R. S. c. 55, § 115. 1949, c. 44, § 3.)

See § 63, re publication of inactive accounts in savings banks.

Sec. 121. Authority of bank commissioner over trust companies; annual report.—The bank commissioner shall at all times have the same authority over all trust companies incorporated under the laws of this state that he now has over savings banks, and shall perform, in reference to such companies, the same duties as are required of him in reference to savings banks. He shall, annually, make a report to the governor and council of the general conduct and condition of each of said companies, making such suggestions as he deems expedient or the public interest requires. Such report shall be printed and laid before the legislature at its next session and 1 copy sent to each trust company in the state. The provisions of section 68 and sections 70 to 76, inclusive, shall apply to trust companies, excepting so much as relates to the distribution of assets after a decree of sequestration, as provided in section 73. Such distribution of assets of trust companies shall be made under order of the court. (R. S. c. 55, § 116.)

Applied in Lawrence v. Lincoln County Trust Co., 125 Me. 150, 131 A. 863.

Cited in Glidden v. Rines, 124 Me. 286, 128 A. 4.

Sec. 122. Affairs of the company examined annually.—Two of the directors, at least, of a trust company shall once in each year thoroughly examine the affairs of the company, settle the treasurer's account and report under oath to the bank commissioner the standing of the company, the situation of its funds and all other matters which the said commissioner requires, in the manner and according to the form that he prescribes, and publish an abstract thereof, if required. The said commissioner shall seasonably give notice of the time and furnish blanks for said examination and report. (R. S. c. 55, § 117.)

Sec. 123. By-laws adopted.—Any trust company organized under the provisions of this chapter may adopt all necessary by-laws, not inconsistent with the general laws of the state, for the management of its affairs. The clerk shall file with the bank commissioner a copy of such by-laws and all amendments thereto. All by-laws and amendments shall be submitted to the bank commissioner for his approval as to their legality, and shall not take effect until such approval is given. In case the bank commissioner shall refuse or unreasonably delay to give such approval, the directors of the company may submit such by-laws or amendments to a justice of the superior court for his approval and, if he shall approve them as legal, they shall thereupon take effect. (R. S. c. 55, § 118.)

The supreme judicial court cannot direct a bank to take action not in accord with a specific by-law even where that by-law is invalid. Searles v. Bar Harbor Banking & Trust Co., 128 Me. 34, 145 A. 391.

By-law placing restrictions on alienability of stock is invalid.—A by-law providing that stock issued, if it came into the hands of any person by will or descent or by conveyance taking effect after death, should be first offered for sale to such party as the directors of the company might designate, at a value to be fixed by appraisers, the option to continue for thirty days, is invalid. Searles v. Bar Harbor Banking & Trust Co., 128 Me. 34, 145 A 391.

Sec. 124. Establishment and closing of branches.—No trust company, now or hereafter organized, shall establish a branch or agency until it shall have received a warrant to do so from the bank commissioner, who shall issue such warrant only when satisfied that public convenience and advantage will be promoted by the establishment of such branch or agency, and that the unimpaired capital stock of the parent institution is sufficient to comply with the conditions

of section 103, reckoning the aggregate population of its home city or town and of all cities and towns in which it is authorized by its charter to establish branches or agencies, including the one under consideration. The commissioner may require such notice on an application for a branch or agency as he deems proper. No trust company shall be permitted to establish a branch or agency except in its own or an adjoining county; provided, however, that this limitation shall not prevent a trust company having a paid-in and unimpaired capital stock of not less than $500,000 from establishing a branch or agency in any city, town or village where there is no state bank regularly transacting customary banking business or where a unit bank or branch of another bank is taken over. If granted, the bank commissioner shall issue his warrant in duplicate, 1 copy to be delivered to the trust company and the other to the secretary of state for record. The company shall within 10 days after opening said branch or agency file a certificate thereof, signed by its president and treasurer, with the bank commissioner. The right to open a branch or agency shall lapse in 1 year from the date of filing the commissioner's warrant with the secretary of state, unless the same shall have been opened and business actually begun in good faith. No application for permission to open such branch or agency shall be acted upon until the petitioning company shall have paid to the treasurer of state the sum of $50 for the benefit of the state, to be credited and used as provided in section 102.

Any such branch or agency may be closed or discontinued by vote of the stockholders of the company with consent of the bank commissioner, after such notice and hearing, if any, as in his judgment the public interest may require. (R. S. c. 55, § 119.)

Sec. 125. Notice of withdrawal of deposits.—A trust company may at any time require its savings depositors to give a notice not exceeeding 90 days of their intention to withdraw more than $50 at any 1 time or in any 1 month. (R. S. c. 55, § 120.)

See § 37, re payment of order after death of drawer.

Sec. 126. Liability of stockholders.—As to deposits in and claims outstanding against trust companies on July 24, 1937, the liability of stockholders shall be as heretofore provided by law until terminated in accordance with the provisions of this section. Such liability shall cease on November 1, 1937 with respect to all shares of stock issued by any trust company which shall be transacting the business of banking on November 1, 1937, provided that not less than 3 months prior to such date such trust company shall have caused notice of such prospective termination of liability to be published in a daily newspaper if any, otherwise in a weekly newspaper published in the city, town or county in which the principal office of such trust company is located. If the trust company fails to give such notice as and when above provided, a termination of such liability may thereafter be accomplished as of the date 3 months subsequent to publication in the manner above provided. No such notice shall be required as to shares of common stock in any trust company issued after December 16, 1933, which shall not in any event be subject to any liability to the depositors or any other creditor thereof. (R. S. c. 55, § 121.)

For holdings under former law making stockholders individually liable for all corporation "contracts, debts and engagements, to a sum equal to the amount of the par value of the shares owned in addition to the amount invested in said shares," see Wheeler v. Frontier Bank, 23 Me. 308; Wiswell v. Starr, 50 Me. 381; Hewett v. Adams, 54 Me. 206; Bank of Mutual Redemption v. Hill, 56 Me. 385; Pulsifer v. Greene, 96 Me. 438, 52 A. 921; Johnson v. Libby, 111 Me. 204, 88 A. 647; Cooper v. Fidelity Trust Co., 132 Me. 260, 170 A. 726.

Cited in Gorham v. Chadwick, 135 Me. 479, 200 A. 500.

Sec. 127. Proceedings when capital stock impaired.—When the capi-

tal stock of a trust company shall become impaired by losses or otherwise, the bank commissioner may ascertain and determine the facts and give notice in writing to such company to make good the deficiency so appearing, within such time as he may order. The directors of such trust company, unless they shall by proper vote otherwise determine, shall forthwith levy an assesment upon the stock thereof sufficient to make good such deficiency and shall forthwith notify each stockholder of such requisition by giving him in hand or mailing to him at his last known address, postage prepaid, a written or printed notice which shall state the amount of assessment to be paid by him and the time within which it shall be paid, which time shall not be less than 60 days from the date of such notice. Such assessment shall be due and payable by each stockholder within the time specified in said notice and if any stockholder shall fail to pay the assessment specified in said notice within the time fixed therein as aforesaid, the directors of said trust company shall have the right to sell at public auction to the highest bidder the stock of each delinquent stockholder, after giving previous notice of such sale by publication thereof at least once a week for 3 successive weeks in some newspaper of general circulation in the county where the principal place of business of said trust company is located. A copy of such notice of sale shall also be given in hand to such delinquent stockholder or mailed to him at his last known address, postage prepaid, at least 10 days before the date fixed for said sale; or such stock may be sold at private sale and without such notice; provided, however, that before making such private sale thereof, an offer in writing to purchase said stock shall first be obtained and a copy thereof served upon the owner of record of the stock sought to be sold, either personally by giving him in hand a copy of such offer or mailing the same to him at his last known address, postage prepaid, and if after service of such offer, such owner shall still refuse or neglect to pay such assessment within 2 weeks from the time of the service of such offer, the said directors may accept such offer and sell such stock to the person making such offer or to any other person or persons making a larger offer than the amount named in the offer submitted to the stockholder; but such stock shall in no event be sold for a smaller sum than the valuation put on it by the bank commissioner in his determination and requisition as to said assessment, nor for less than the amount of said assessment so called for and the expense of the sale. Out of the avails of the stock so sold, the directors shall pay the amount of assessment levied thereon, and the necessary costs of sale; and the balance, if any, shall be paid to the person or persons whose stock has been thus sold. A sale of stock as herein provided shall effect an absolute cancellation of the outstanding certificate or certificates evidencing the stock so sold and shall make the same null and void and a new certificate shall be issued by the company to the purchaser thereof. Any stockholder aggrieved by any action of the bank commissioner or the directors of such company under the foregoing provisions may, within 10 days after receiving notice thereof, apply by bill in equity or other appropriate proceedings to a justice of the supreme judicial court or of the superior court whose decision, after due hearing, shall be final in the matters complained of. In the event that the directors of any trust company upon notification by the bank commissioner as hereinafter provided shall not vote within 10 days after receipt of said notification to make an assessment upon the stock under the foregoing provisions, the bank commissioner or the directors of such company may file a complaint in the supreme judicial court or the superior court in equity, setting forth the fact that such capital stock is impaired and asking said court to order an assessment upon the capital stock aforesaid sufficient to meet the impairment and make the corporation solvent. After giving due notice and hearing to all parties interested, the court shall, if it finds the capital stock to be impaired as aforesaid, order an assessment to be made upon such stock. Such assessment, when made, shall be due and payable by each stockholder to the treasurer of said company on order of said court within 60 days from the time such order is made. If any stockholder or stockholders of said company shall neglect

or refuse, after due notice, to pay the assessment ordered as aforesaid within the time specified, a sufficient amount of the capital stock of such stockholder or stockholders may, after due notice given, be sold under the direction of the court to pay such assessment and the costs of sale. After paying the assessment and costs aforesaid from the proceeds of such sale, the balance, if any, shall be returned to the delinquent stockholder or stockholders. If no bidder can be found who will pay for such stock the amount of the assessment due thereon and the costs of the advertisement and sale, the amount previously paid by such stockholder or stockholders and said stock shall be forfeited to the company; and shall be sold by said company as the directors shall order, within 6 months from the time of said forfeiture. (R. S. c. 55, § 122.)

Cited in Gorham v. Chadwick, 135 Me. 479, 200 A. 500.

Sec. 128. General rights of creditors not impaired.—Nothing in the 2 preceding sections shall be construed to take away the general rights of creditors to enforce the liability of stockholders in such corporation in any manner provided by statute, or the right to proceed against the corporation under the provisions of section 121. (R. S. c. 55, § 123.)

Cited in Bank of Mutual Redemption v. Hill, 56 Me. 385.

Sec. 129. Governmental units may participate in banking reorganization.—The treasurer of state, by written direction of the governor and council and with the approval of a justice of the supreme judicial court; the treasurer of any county, by written direction of the county commissioners of such county and with the approval of a justice of the supreme judicial court; the treasurer of any city, town or village corporation or other municipal corporation, including any district organized by law for any public purpose, by written direction, in case of cities of the city government thereof, in case of towns of the selectmen thereof, in case of village corporations of the assessors, overseers or other similar governing board thereof, in case of other municipal corporations and districts of their respective trustees, commissioners, directors or other similar governing board, and in each case with the approval of a justice of the supreme judicial court, may for and in behalf and in the name of his respective governmental unit participate in any plan of reorganization, management or continuation of any trust company organized under the laws of this state or of the United States in which his governmental unit has moneys on deposit including trust funds, sinking funds and all other forms of deposit, or may enter into any agreement concerning such deposits for the public benefit and for the benefit of the trust company and its depositors. (R. S. c. 55, § 124.)

Sec. 130. Examination and revaluation.—Whenever, in the opinion of a majority of the directors or the executive committee of any trust company organized under the laws of the state and the bank commissioner, it will be for the benefit of the depositors and the public for the assets of the trust company to be revalued, the bank reorganized and put in sound condition, any justice of the supreme judicial court shall, on petition in equity by the bank commissioner setting forth the facts, appoint a time for the examination of the affairs of such trust company and cause notice thereof to be given to all parties interested in such manner as may be prescribed and, upon examination of its assets and liabilities he may, if he deems it for the benefit of the public and the depositors, issue decrees necessary to carry out the provisions of sections 130 to 143, inclusive. In such examination of assets there shall be included the liability of stockholders to assessment. (R. S. c. 55, § 125.)

Applied in Robinson v. Fidelity Trust Co., 140 Me. 302, 37 A. (2d) 273.

Quoted in part in Cooper v. Casco Mercantile Trust Co., 134 Me. 372, 186 A. 885.

Sec. 131. Allocation of assets.—If the liabilities of the trust company described in section 130, not including the outstanding capital stock, exceed its assets, including the amount realized from an assessment of stockholders' liability, the deficit, after making due allowance for priorities, shall be divided pro rata among the depositors and each account shall be charged with its proportionate share thereof. The depositor will be entitled to draw the amount of his account as thus fixed and determined in such amounts and at such times as the court directs. (R. S. c. 55, § 126.)

Applied in Robinson v. Fidelity Trust Co., 140 Me. 302, 37 A. (2d) 273.

Sec. 132. Negotiable certificates.—The trust company described in section 130 shall issue to each depositor a certificate showing the amount of the deficit charged to his account, which said certificate shall be negotiable and shall bear no interest. No dividend or profit shall thereafter be made in liquidation of common stock until said certificate shall have been paid in full with interest compounded at the rate of 3% per year; otherwise, said certificate shall not be deemed to be a liability of the corporation; provided that the holder of said certificate, the commissioner or the corporation shall be entitled to petition the court, after 1 year from the date thereof, for an order of distribution whenever the condition of the corporation, taking into account the rights of creditors and preferred stockholders, warrants such payment. (R. S. c. 55, § 127.)

Sec. 133. Conservators; appointment; powers. — The court may on petition by the bank commissioner appoint 1 or more conservators for such trust company described in section 130 and require such bond as the court deems proper. Such conservator shall have all the rights, powers and privileges now possessed by or hereafter given receivers of banks and trust companies in this state including the right and power to enforce stockholders' liability and is specifically authorized to borrow money and pledge assets when so ordered by the court. Such conservatorships may be terminated at any time by order of the court. While such trust company is in the hands of the conservator, he may set aside and make available for withdrawal by depositors and payments to other creditors on a ratable basis such amounts as in the opinion of the court may safely be used for this purpose; and he may be permitted to receive deposits, but deposits so received shall not be subject to any limitation as to payment or withdrawal and shall be segregated and shall not be used to liquidate any indebtedness of such trust company existing at the time that a conservator was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of such bank existing at the time the conservator was appointed. Such deposits, received while the bank is in the hands of the conservator, shall be kept on hand in cash or invested in the direct obligations of the United States or deposited with a federal reserve bank or member of the federal reserve system. (R. S. c. 55, § 128.)

Conservator is ministerial officer of court.—In exercising the "rights, powers and privileges of receivers of banks and trust companies," the conservator is subject to and must abide by the rules expressed in § 72. He is a ministerial officer of the supreme judicial court which, contrary to the general statute, is given exclusive jurisdiction over conservators of trust companies, and he is subject at all times and in all matters to the direction and control of the court, which is the source of his authority and to which he is bound to render strict obedience. Cooper v. Fidelity Trust Co., 132 Me. 260, 170 A. 726. See note to § 72.

It is clear that the appointment of a conservator under this section is not equivalent to an order of dissolution. Cooper v. Casco Mercantile Trust Co., 134 Me. 372, 186 A. 885.

But it suspends the functions and business of the trust company. — While the appointment of the conservator does not work a dissolution of the trust company, it suspends its functions and authority over its property and effects. It deprives the bank of its right and power to exer-

cise the privilege of doing business under its franchise as completely as if injunction had issued or the bank been placed in dissolution. Robinson v. Fidelity Trust Co., 149 Me. 302, 37 A. (2d) 273.

Only bank commissioner may bring receivership proceedings.—There can be no question that the bank commissioner, and he alone, is authorized to bring receivership proceedings against a trust company. Craughwell v. Mousam River Trust Co., 113 Me. 531, 95 A. 221.

Sec. 134. Merger or consolidation.—The court may order the merger or consolidation of said trust company described in section 130 with any other banking institution, state or federal, with the consent of said latter banking institution, and prescribe the mode of procedure for said merger or consolidation and the terms and conditions thereof. (R. S. c. 55, § 129.)

Quoted in part in Cooper v. Casco Mercantile Trust Co., 134 Me. 372, 186 A. 885.

Sec. 135. Injunctions restraining procedure against trust companies.—Whenever proceedings are instituted under any provisions of sections 130 to 143, inclusive, injunctions may be issued restraining all persons from proceeding against said trust company described in section 130 until final decree, including trustee processes. (R. S. c. 55, § 130.)

Applied in Robinson v. Fidelity Trust Co., 140 Me. 302, 37 A. (2d) 273.

Sec. 136. Dissolution of attachments. — The court may dissolve all attachments on the property of the trust company made within 4 months before the filing of the petition; cancel leases, contracts and all other claims as in receivership proceedings, discontinue all suits pending against said trust company and fix the rights of said claimants, and adjudicate and fix the time and mode of payment of all claims, accounts and deposits having priority. (R. S. c. 55, § 131.)

Sec. 137. Authority of court in safeguarding rights of depositors.—The petition described in section 130 filed by the bank commissioner addressed to any justice of the supreme judicial court shall not be granted without hearing. It shall not be granted if objected to in writing by the time and demand depositors of said trust company who are credited with the majority in amount of the trust and demand deposits. The justice shall appoint immediately upon the filing of said petition a conservator with authority to act pending hearing. Any depositor may be permitted to intervene as party plaintiff in any bill in equity filed hereunder and may be heard thereon. Any depositor or party in interest may present in writing a plan of reorganization. The bank commissioner may file his plan of reorganization. The depositors, who are credited with the majority in amount of the trust and demand deposits, may present in writing to said justice a plan of reorganization and if said plan is the most feasible, it shall be adopted. Final decree of reorganization shall be made by said justice after submission of plans and hearing thereon. The right of appeal is granted. (R. S. c. 55, § 132.)

Applied in Robinson v. Fidelity Trust Co., 140 Me. 302, 37 A. (2d) 273.

Sec. 138. Further authority of court.—The court may do all other and further things necessary to carry out the terms and provisions of sections 130 to 143, inclusive. (R. S. c. 55, § 133.)

Sec. 139. Appointment of receivers or trustees.—The court may appoint 1 or more receivers or trustees to liquidate the affairs of said trust company described in section 130 in accordance with the provisions of this chapter. (R. S. c. 55, § 134.)

Cross reference.—See § 71, et seq. and notes thereto, re liquidation of savings banks.

Only bank commissioner may bring receivership proceedings.—There can be no question that the bank commissioner, and

he alone, is authorized to bring receivership proceedings against a trust company. Craughwell v. Mousam River Trust Co., 113 Me. 531, 95 A. 221.

Applied in Robinson v. Fidelity Trust Co., 140 Me. 302, 37 A. (2d) 273.

Cited in Cooper v. Fidelity Trust Co., 132 Me. 260, 170 A. 726.

Sec. 140. Receivers of trust companies; certain duties and powers. —Upon taking possession of the property and business of a trust company, the receiver may collect moneys due to the corporation, and do all acts necessary to conserve its assets and business and shall proceed to liquidate its affairs as hereinafter provided. He shall collect all debts due and claims belonging to it, and upon the order or decree of the supreme judicial or of the superior court, or any justice thereof in term time or vacation, may sell or compound all bad or doubtful debts, and on like order or decree may sell for cash or other consideration or as provided by law all or any part of the real and personal property of the corporation on such terms as the court shall direct; and, in the name of such corporation, may take a mortgage on such real property from a bona fide purchaser to secure the whole or part of the purchase price, upon such terms and for such periods as the court shall direct; and on like order or decree he may borrow money and issue evidence of indebtedness therefor and to secure the repayment of the same may mortgage, pledge, transfer in trust or hypothecate any or all of the property of such institution, whether real, personal or mixed, superior to any charge thereon for expenses of liquidation. Such receivers shall have all the rights and powers given to conservators by the provisions of sections 130 to 143, inclusive. (R. S. c. 55, § 135.)

Cross reference.—See notes to §§ 71 and 72, re liquidation of savings banks.

Receivers have right of possession only. —A decree of sequestration confers upon the receivers the power or right of possession and nothing more. They take no title to the property or assets of the trust company, and, as to any act, they receive their authority so to do solely from the court. Glidden v. Rines, 124 Me. 286, 128 A. 4.

Applied in Robinson v. Fidelity Trust Co., 140 Me. 302, 37 A. (2d) 273.

Sec. 141. Powers of bank commissioner additional. — All powers conferred under the provisions of sections 130 to 143, inclusive, on the bank commissioner are in addition to the powers conferred upon him by law. (R. S. c. 55, § 136.)

Sec. 142. Preferred stock.—Any trust company described in section 130 may be authorized to issue preferred stock as provided in section 106 on a petition filed for that purpose only. (R. S. c. 55, § 137.)

Sec. 143. Expenses.—All expenses of the commissioner or his assistants incurred in carrying out the provisions of sections 130 to 143, inclusive, shall be paid out of the assets of the trust company in connection with which such expenses were incurred. (R. S. c. 55, § 138.)

Sec. 144. Rights and powers under general law possessed by companies chartered by special act; certain rights and powers possessed by charter not revoked.—Any trust company chartered by special act of the legislature shall have all the rights and powers and shall be subject to all the provisions, regulations and restrictions from time to time conferred upon trust companies or established with reference thereto by general law; except, however, that neither the enumeration of powers in section 90, nor the provisions governing the number and election of directors or members of the executive committee in section 107, nor the requirements as to eligibility of directors in section 109, shall be construed as revoking any rights or powers possessed by such trust company by virtue of the express provisions of its charter. (R. S. c. 55, § 139.)

Private corporation may be created by special act under certain circumstances.— It is competent for the legislature to create by special act of the legislature a private corporation whose principal object shall be to engage in business intended to derive

profit out of the loan of money, subject to such limitations relative to the amount of individual loans, or otherwise, as the legislature may prescribe, if the objects of the corporation cannot be attained under any existing general laws. Opinion of the Justices, 146 Me. 316, 319, 80 A. (2d) 866.

Applied in Searles v. Bar Harbor Banking & Trust Co., 128 Me. 34, 145 A. 391.

Mergers.

Sec. 145. Resulting national bank. — Nothing in the law of this state shall restrict the right of a trust company to merge with or convert into a resulting national bank. The action to be taken by such merging or converting bank and its rights and liabilities and those of its shareholders shall be the same as those prescribed for national banks at the time of the action by the law of the United States and not by the law of this state, except that a vote of the holders of 2/3 of each class of voting stock of a trust company shall be required for the merger or conversion, and that on conversion into a national bank the rights of dissenting stockholders shall be those specified hereafter.

Upon the completion of the merger or conversion, the franchise of any merging or converting trust company shall automatically terminate. (1951, c. 242.)

Sec. 146. Resulting trust company.—Upon approval by the bank commissioner, banks may be merged to result in a trust company or a national bank may convert into a trust company as hereafter prescribed, except that the action by a national bank shall be taken in the manner prescribed by and shall be subject to limitations and requirements imposed by the law of the United States which shall also govern the rights of its dissenting shareholders. (1951, c. 242.)

Sec. 147. Merger procedure; resulting trust company.—The board of directors of each merging trust company shall, by a majority of the entire board, approve a merger agreement which shall contain:

I. The name of each merging bank and location of each office;

II. With respect to the resulting trust company: the name and location of the principal and the other offices; the name and residence of each director to serve until the next annual meeting of the stockholders; the name and residence of each officer; the amount of capital, the number of shares and the par value of each share; whether preferred stock is to be issued and the amount, terms and preferences; the amendments to its charter and by-laws;

III. Provisions governing the manner of converting the shares of the merging banks into shares of the resulting trust company;

IV. A statement that the agreement is subject to approval by the bank commissioner and by the stockholders of each merging bank;

V. Provisions governing the manner of disposing of the shares of the resulting trust company not taken by dissenting shareholders of merging banks;

VI. Such other provisions as the bank commissioner requires to enable it to discharge its duties with respect to the merger.

After approval by the board of directors of each merging trust company, the merger agreement shall be submitted to the bank commissioner for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board and evidence of proper action by the board of directors of any merging national bank.

Within 30 days after receipt by the bank commissioner of such papers, the bank commissioner shall approve or disapprove the merger agreement, and if no action is taken, the agreement shall be deemed approved. The bank commissioner shall approve the agreement if it appears that the resulting trust company meets the requirements of state law as to the formation of a new trust company, provides an adequate capital structure including surplus in relation to the deposit liabilities

of the resulting trust company and its other activities which are to continue or are to be undertaken, is fair, and the merger is not contrary to the public interest.

If the bank commissioner disapproves an agreement, he shall state his objections and give an opportunity to the merging banks to amend the merger agreement to obviate such objections. (1951, c. 242.)

Sec. 148. Merger; approval by stockholders of trust companies. — To be effective, a merger which is to result in a trust company must be approved by the stockholders of each merging trust company by a vote of 2/3 of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and by-laws of the resulting trust company, including the amendments in the merger agreement.

Unless waived in writing, notice of the meeting of stockholders shall be given by publication in a newspaper of general circulation in the place where the principal office of each merging bank is located, at least once a week for 4 successive weeks, and by mail, at least 15 days before the date of the meeting, to each stockholder of record of each merging bank at his address on the books of his bank; no notice by publication need be given if written waivers are received from the holders of 2/3 of the outstanding shares of each class of stock. The notice shall state that dissenting stockholders will be entitled to payment of the value of only those shares which are voted against approval of the plan. (1951, c. 242.)

Sec. 149. Effective date of merger; filing of approved agreement; certificate of merger as evidence.—A merger which is to result in a trust company shall, unless a later date is specified in the agreement, become effective upon the filing with the bank commissioner of the executed agreement together with copies of the resolutions of the stockholders of each merging bank approving it, certified by the bank's president or a vice-president and a secretary. The charters of the merging banks, other than the resulting bank, shall thereupon automatically terminate.

The bank commissioner shall thereupon issue to the resulting bank a certificate of merger specifying the name of each merging bank and the name of the resulting trust company. Such certificate shall be conclusive evidence of the merger and of the correctness of all proceedings therefor in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging banks is held. (1951, c. 242.)

Sec. 150. Conversion of national bank into trust company.—A national bank located in this state which follows the procedure prescribed by the laws of the United States to convert into a state bank shall be granted a state charter by the bank commissioner if he finds that the bank meets the standards as to location of offices, capital structure and business experience and character of officers and directors for the incorporation of a trust company.

The national bank may apply for such charter by filing with the bank commissioner a certificate signed by its president and cashier and by a majority of the entire board of directors, setting forth the corporate action taken in compliance with the provisions of the laws of the United States governing the conversion of the national to a state bank, and the articles of incorporation, approved by the stockholders, for the government of the bank as a trust company. (1951, c. 242.)

Sec. 151. Continuation of corporate entity; use of old name.—A resulting trust company or national bank shall be the same business and corporate entity as each merging bank or as the converting bank with all the property, rights, powers and duties of each merging bank or the converting bank, except as affected by the state law in the case of a resulting trust company or the federal law in the case of a resulting national bank, and by the charter and by-laws of the resulting bank.

A resulting bank shall have the right to use the name of any merging bank or

of the converting bank whenever it can do any act under such name more conveniently.

Any reference to a merging or converting bank in any writing, whether executed or taking effect before or after the merger or conversion, shall be deemed a reference to the resulting bank if not inconsistent with the other provisions of such writing. (1951, c. 242.)

Sec. 152. Dissenting stockholders.—The owner of shares of a trust company which were voted against a merger to result in a trust company, or against the conversion of a trust company into a national bank, shall be entitled to receive their value in cash, if and when the merger or conversion becomes effective, upon written demand, made to the resulting trust company or national bank at any time within 30 days after the effective date of the merger or conversion accompanied by the surrender of the stock certificates. The value of such shares shall be determined, as of the date of the shareholders' meeting approving the merger or conversion, by 3 appraisers, 1 to be selected by the owners of 2/3 of the shares involved, 1 by the board of directors of the resulting trust company or national bank, and the third by the 2 so chosen. The valuation agreed upon by any 2 appraisers shall govern. If the appraisal is not completed within 90 days after the merger or conversion becomes effective the bank commissioner shall cause an appraisal to be made.

The expenses of appraisal shall be paid by the resulting trust company.

The resulting trust company or national bank may fix an amount which it considers to be not more than the fair market value of the shares of a merging or the converting bank at the time of the stockholders' meeting approving the merger or conversion, which it will pay dissenting shareholders of that bank entitled to payment in cash. The amount due under such accepted offer or under the appraisal shall constitute a debt of the resulting trust company or national bank. (1951, c. 242.)

Sec. 153. Nonconforming assets or business.—If a merging or converting bank has assets which do not conform to the requirements of state law for the resulting trust company or carries on business activities which are not permitted for the resulting trust company, the bank commissioner may permit a reasonable time to conform with state law. (1951, c. 242.)

Sec. 154. Book value of assets.—Without approval by the bank commissioner, no asset shall be carried on the books of the resulting bank at a valuation higher than that on the books of the merging or converting bank at the time of its last examination by a state or national bank examiner before the effective date of the merger or conversion. (1951, c. 242.)

Bank Holidays. Saturday Closing.

Sec. 155. Bank holidays.—Any day of public thanksgiving, appointed by the governor and council or by the president of the United States, the 1st day of January, the 22nd day of February, the 19th day of April, the 30th day of May, the 4th day of July, the 1st Monday of September, Armistice Day, November 11th, and the 25th day of December are declared to be bank holidays. If a bank holiday falls on Sunday, the following Monday shall be deemed a bank holiday for the purposes of this chapter. (R. S. c. 55, § 140.)

Cited in Pickard v. Valentine, 13 Me. 412; McDonald v. Smith, 14 Me. 99; Buck v. Appleton, 14 Me. 284; Bartlett v. Leathers, 84 Me. 241, 24 A. 842.

Sec. 156. Banking acts performed after 12 o'clock noon on Saturdays.—Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument, or any other transaction by a bank in this state, because done or performed on any Saturday between 12 o'clock

noon and midnight, provided such payment, certification, acceptance or other transaction would be valid if done or performed before 12 o'clock noon on such Saturday; provided further, that nothing herein shall be construed to compel any bank or trust company doing business in this state, which by law or custom is entitled to close at 12 o'clock noon on any Saturday, to keep open for the transaction of business or to perform any of the acts or transactions aforesaid on any Saturday after such hour, except at its own option. (R. S. c. 55, § 141.)

See c. 41, § 154, re school holidays; c. 107, § 55, re court holidays; c. 112, § 87, re days on which arrests in civil actions may not be made.

Sec. 157. Saturday closing.—Any savings bank, trust company, industrial bank, loan and building association, savings and loan association or credit union organized under the laws of the state, also any national banking association, federal savings and loan association, federal credit union or licensed small loan agency doing business in the state, may remain closed on any Saturdays as it may determine from time to time; and any Saturday on which such institution remains closed shall be, with respect to such institution, a holiday and not a business day.

Any act authorized, required or permitted to be performed at or by, or with respect to, any such institution on a Saturday on which the institution is closed may be so performed on the next succeeding business day and no liability or loss of rights of any kind shall result from such delay. (1947, c. 345. 1951, c. 215.)

Loan and Building Associations.

Sec. 158. Organization; powers. — Loan and building associations may be organized in the manner provided herein for the organization of savings banks; and upon the filing of any certificate of authorization of a loan and building association with the secretary of state, as so provided, the persons therein named, their associates, successors and assigns shall, thereupon and thereby, be constituted a body corporate and politic, and such body may adopt and use a common seal, hold, manage and convey real and personal property, sue and be sued, prosecute and defend suits in law or in equity, have perpetual succession each by its corporate name and make and ordain by-laws for its government, not repugnant to the constitution and laws. The secretary shall file with the bank commissioner a copy of such by-laws and all amendments thereto. All by-laws and amendments adopted shall be submitted to the bank commissioner for his approval and shall not take effect until such approval is given. In case of refusal to give such approval, the directors of the association may appeal to a justice of the superior court, whose decision shall be final. (R. S. c. 55, § 142.)

Cross references.—See § 20, et seq., re organization of savings banks; § 40, re shares in names of 2 or more persons.

Loan and building associations are creatures of statute, and it follows that the statutes which give them being must be followed so far as provisions for their existence, powers, rights and liabilities, as well as the rights and liabilities of their members, are concerned. In respect to those matters where no such provisions are made, the general principles of law and equity will prevail. Smith v. Bath Loan & Building Ass'n, 126 Me. 59, 136 A. 284.

Cited in Tibbetts v. Deering Loan & Building Ass'n, 104 Me. 404, 72 A. 162; Opinion of the Justices, 146 Me. 316, 80 A. (2d) 866.

Sec. 159. First meeting.—The certificate of authorization issued by the bank commissioner for loan and building associations shall provide the method of calling the 1st meeting of the association. (R. S. c. 55, § 143.)

Sec. 160. Capital stock; shares may be issued in series; share savings accounts.—Loan and building associations may issue shares upon either the serial or permanent plan, or both. Shares issued upon the permanent plan may be taken out at any time and shall have no maturity. Shares issued upon the serial plan shall be of the ultimate value of $200 each and shall be issued in

quarterly, half yearly or yearly series, but no shares of a prior series shall be issued after the opening of a new series. Shares may also be issued upon the payment of such an amount as will mature them by the addition of dividends accredited thereon at the same percentage of profits apportioned to installment shares. Full-paid income shares may also be issued to shareholders whose shares shall have reached maturity value. The owners of such full-paid income shares shall remain shareholders and not creditors. Prepaid shares may be issued in units of $200 or multiples thereof upon payment by the subscriber of a lump sum. Owners of such prepaid shares shall be shareholders and not creditors of the association. In order to enable prospective purchasers of prepaid shares to accumulate savings with which to purchase such shares, associations may accept payments, subject to withdrawals from time to time, to be held in share savings accounts to which there shall be credited, at every regular distribution period, such interest or dividends as the directors may determine. The holders of such share savings accounts shall be considered as shareholders of the association. (R. S. c. 55, § 144. 1947, c. 116.)

The principal object of a loan and building association is to produce a loan fund for the benefit of its borrowing members, hence it is not a "savings bank or other institution for saving." Smith v. Bath Loan & Building Ass'n, 126 Me. 59, 136 A. 284.

Sec. 161. Minors may hold shares.—Minors may hold shares in loan and building associations by trustees or guardians, and the shares of each shareholder, not exceeding 2, shall be exempt from attachment and execution. Shares may also be issued in the name of any minor and be held for the exclusive right and benefit of such minor, free from the control or lien of any other persons, and the value of these shares shall be paid to the person in whose name the shares have been issued, if such person be over the age of 15 years, and if not to his or her parent or guardian, and the receipt or acquittance of such minor over 15 years of age or of the parent or guardian of such minor less than 15 years of age shall be a valid and sufficient release and discharge to such association. (R. S. c. 55, § 145.)

Sec. 162. Officers, elections and meetings determined by by-laws; tenure; secretary and treasurer may be same person. — The number, title, duties and compensation of the officers of a loan and building association, their terms of office, the time of their election, as well as the qualifications of electors, and time of each periodical meeting of the officers and members shall be determined by the by-laws, but no member shall be entitled to more than 1 vote. All officers shall continue in office until their successors are duly elected, and no association shall expire from neglect on its part to elect officers at the time prescribed by the by-laws. The office of secretary and treasurer may be held by one and the same person, if any association so provides by its by-laws. All officers shall be annually sworn to the faithful performance of their duties. (R. S. c. 55, § 146.)

Sec. 163. Secretary and treasurer to give bonds; bond examined annually.—The secretary, treasurer and other persons holding positions of trust in loan and building associations shall give bonds to the corporation for the faithful discharge of the duties of their offices in such sums as the directors decide to be necessary for the safety of the funds, and such bonds shall continue to be valid from year to year so long as they are elected and hold said offices, subject to renewal whenever ordered by the bank commissioner or directors. The directors may, in lieu of said bond, insure at the expense of the association with some fidelity or guaranty company which shall be satisfactory to the commissioner for the faithful discharge of the duties of the secretary and treasurer and such other clerks as may be employed, in such sums as they may decide to be necessary for the safety of the funds in the custody of the corporation. The commissioner shall annually examine the bonds given, as aforesaid, and inquire into and certify

to the sufficiency thereof, and when he deems any such bond insufficient, he shall order a new bond to be given within a time by him specified. (R. S. c. 55, § 147.)

Sec. 164. Meetings held monthly; payments on shares.—The officers of loan and building associations shall hold stated monthly meetings. At or before each of these meetings, every member shall pay to the association, as a contribution to its capital, $1 as dues upon each serial or permanent share held by him. Payments on shares issued on the serial plan shall cease when each share shall have reached the ultimate value of $200 and the payment of dues on each series shall commence from its issue. (R. S. c. 55, § 148. 1953, c. 177, § 1.)

A borrowing member of a loan and building association has assumed more obligations to the association than those of a mere borrower to a lender of money. He is bound to make such payments of dues, interest and fines as are imposed by the statutes and by-laws and his contract made in pursuance thereof. Tibbetts v. Deering Loan & Building Ass'n, 104 Me. 404, 72 A. 162.

Cited in Palmer v. Mutual Construction Co., 121 Me. 188, 116 A. 220.

Sec. 165. Shares withdrawn; shareholders' accounts; unpledged shares of any series retired.—Shares of loan and building associations may be withdrawn after 1 month's notice of such intention, written in a book held and provided by the association for the purpose, or in such other manner as the by-laws of the association may provide. Upon such withdrawal, the shareholders' account shall be settled as follows: from the amount then standing to the credit of the shares to be withdrawn, there shall be deducted all fines, a proportionate part of any unadjusted loss, together with such proportion of the profits previously credited to the shares as the by-laws may provide, and such shareholder shall be paid the balance; provided that at no time shall more than ½ of the funds in the treasury be applicable to the demands of withdrawing members, without the consent of the directors. The directors may, under rules made by them, retire any unpledged shares at any time after 4 years from the date of their issue, by enforcing the withdrawal of the same; provided that the shareholders whose shares are to be retired shall be determined by lot, and that they shall be paid the full value of their shares less all fines and a proportionate part of any unadjusted loss. (R. S. c. 55, § 149.)

Sec. 166. When shares reach maturity, holders paid value; shares subject to lien for unpaid dues.—When each unpledged share of a loan and building association of a given series reaches the value of $200, all payment of dues thereon shall cease, and the holder thereof shall be paid out of the funds of the association $200 therefor, with interest at a rate to be determined by the board of directors from the time of such maturity to the time of payment, or the shareholder may at his option continue the same under the permanent plan; provided that at no time shall more than ½ of the funds in the treasury be applicable to the payment of such matured shares, without the consent of the directors, and that before paying matured shares, all arrears and fines shall be deducted. Every share shall be subject to a lien for the payment of any unpaid dues, fines, interest, premiums and other charges received thereon, which may be enforced in the manner hereinafter provided. Any association may permit the holders of matured shares issued on the serial plan to allow the same to remain after maturity, giving proper certificates therefor, but the amount due on matured shares so permitted to remain may not be demanded except upon 1 month's notice of such intention, if required by the association. (R. S. c. 55, § 150.)

Sec. 167. Board of directors to invest funds and fix rates of interest; members may make loans; rate of interest; investment of balance.—The board of directors of a loan and building association shall see to the proper investment of the funds of the association, as provided in this section. After due allowance for all necessary and proper expenses and for the withdrawal of shares, the moneys of the association shall be loaned to the members at a rate of monthly premium to be fixed by the directors, which shall in no case exceed

40c a share. Any member may, upon giving security satisfactory to the directors, receive a loan of $200 or $300 for each share held by him, or such fractional part of $200 or $300 as the by-laws may allow. Any association may provide in its by-laws that instead of interest and premium, a stated rate of annual interest determined by the directors may be charged upon the sum desired, payable in monthly installments. Such rates shall include the whole interest and premium to be paid upon the loan. Loans on real estate may also be made to members repayable in monthly installments sufficient to amortize the same, paying off interest and principal in not more than 20 years. The mortgage and mortgage note shall require a monthly payment sufficient to amortize the debt in said periods and such payments shall be applied first to the interest on the unpaid balance of the debt, and the remainder to the unpaid principal of the debt, until the same is paid in full. Any balance remaining unloaned to members may be invested in such securities as are legal for the investment of deposits in savings banks or, with the approval of the bank commissioner, may be loaned in whole or in part to other loan and building associations in this state. No loan shall be made on the gross premium plan.

Funds may be invested in notes or bonds secured by mortgages issued under sections 500 to 505, inclusive, of Title III of the Servicemen's Readjustment Act of 1944, as amended, more familiarly known as "The G. I. Bill of Rights," and as such act may be interpreted and operated under rules to be promulgated. (R. S. c. 55, § 151. 1943, c. 160. 1945, c. 72, § 3. 1951, c. 109, § 1; c. 157, § 8.)

Cross reference. — See § 42, re investment of deposits of savings banks.

Borrowing member is both debtor and shareholder of corporation.—A borrowing member of a building and loan association occupies a dual relation to the association. In his capacity as borrower he is a debtor. In his capacity as shareholder, he is a member of the corporation. What he pays as interest is paid in his character as debtor on his loan. What he pays as stock dues is paid in his character as stockholder. The two are separate and distinct and must be so dealt with. Smith v. Bath Loan & Building Ass'n, 126 Me. 59, 136 A. 284.

Sec. 168. Guaranteed loans for veterans; minors.—Without regard to any other provision of law, loan and building associations of this state are authorized to make or buy and sell any loan secured or unsecured which is insured or guaranteed in any manner in part or in full by the United States or any instrumentality thereof, or by this state or instrumentality thereof, or for which there is a commitment to so insure or guarantee or for which a conditional guarantee has been issued. The disability of minority of any person otherwise eligible for a loan, or guaranty or insurance of a loan, pursuant to the act of the congress of the United States entitled the Servicemen's Readjustment Act of 1944, (58 Stat. 284) as heretofore or hereafter amended (38 U. S. C. 693 et seq.), and of the minor spouse of any eligible veteran, in connection with any transaction entered into pursuant to said act of the congress of the United States, as heretofore or hereafter amended, shall not affect the binding effect of any obligation incurred by such eligible person or spouse as an incident to any such transaction, including incurring of indebtedness and acquiring, encumbering, selling, releasing or conveying property, or any interest therein, if all or part of any such obligation be guaranteed or insured by the government or the administrator of veterans' affairs pursuant to said act and amendments thereto; or if the administrator be the creditor, by reason of a loan or a sale pursuant to said act and amendments. The provisions of this section shall not create or render enforceable any other or greater rights or liabilities than would exist if neither such person nor such spouse were a minor. (1945, c. 207, § 3. 1951, c. 157, § 9. 1953, c. 43, § 3.)

Sec. 169. Loan and building associations' powers to borrow.—Any loan and building association incorporated under the laws of this state shall have the right to become a member of, or stockholder in, the Federal Home Loan Bank system, and to that end to purchase stock in, or securities of, or deposit money with said Home Loan Bank system, and to comply with any other conditions of

membership or credit; or borrow money from said bank and pledge as security therefor in an amount within the limits of the said act, but subject to the limitations hereinafter provided, and in all things be bound by, and to function under, the terms of an act of congress entitled "Federal Home Loan Bank Act" and the rules and regulations promulgated thereunder in so far as said act, rules and regulations apply to loan and building associations or such other financial institutions named in said act.

Any loan and building association, by vote of its board of directors, may borrow money within or without the state, and may pledge as security therefor real estate mortgages, notes and other securities owned and held by it, provided, however, that no association shall without written consent of the bank commissioner borrow any sum or sums the aggregate of which would exceed the amount of its guaranty fund, plus 5% of its total assets, and in any event not exceeding 25% of its total assets. (R. S. c. 55, § 152.)

Sec. 170. National Housing Act applicable. — Loan and building associations may make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the federal housing administrator; may make such loans secured by mortgages on real estate as are eligible for insurance by the federal housing administrator; and they are also authorized to secure insurance from the Federal Savings and Loan Insurance Corporation. (R. S. c. 55, § 153.)

Sec. 171. Premiums received as profits and distributed to shareholders. — Premiums for loans made by a loan and building association shall consist of a percentage charged on the amount lent in addition to interest, and shall be deemed to be a consideration paid by the borrower for the present use and possession of the future or ultimate value of his shares, and shall, together with interest and fines, be received by the association as a profit on the capital invested in the loan and shall be distributed to the various shares and series of said capital as hereinafter provided. (R. S. c. 55, § 154.)

Words, "loan" and "lent" refer to whole sum contracted for. — The words "loan" and "lent" in this section and § 172 do not mean the sum or sums of money actually drawn out, but mean the whole sum contracted for. Tibbetts v. Deering Loan & Building Ass'n, 104 Me. 404, 72 A. 162.

Sec. 172. Rate of interest charged.—A borrowing member of a loan and building association, for each share borrowed upon, shall, in addition to his dues and monthly premium if such monthly premium be charged, pay monthly interest on his loan, except as otherwise provided in the by-laws of such association under the provisions of section 167, at such rate of interest as the directors may determine until the loan has been repaid. When shares of a borrowing member, with dividends credited thereon, shall have reached the value of ¼ of the amount borrowed, the association, upon request of the borrowing member, may at its option reduce thereafter by ¼ the amount of said borrowing member's original monthly dues' payment, and when said shares of a borrowing member shall have reached the value of ½ the original amount borrowed, the association may thereafter reduce by ½ the original amount of the borrowing member's original dues' payment and when said shares shall have reached the value of 3/4 of the original amount borrowed, the association may thereafter reduce by 3/4 the borrowing member's original monthly dues' payment. (R. S. c. 55, § 155.)

Interest and premiums must be paid on whole loan.—The fact that the association does not advance to the borrowing member the whole amount of the agreed loan at the time of making the contract therefor, but only advances it in installments from time to time as the security justifies in the opinion of the directors, does not excuse the borrowing member from paying interest and premiums on the whole loan according to the terms of the contract; nor does the further fact that the association did not set apart as a special fund the amount of the loan. Tibbetts v. Deering Loan & Building Ass'n, 104 Me. 404, 72 A. 162.

Sec. 173. Security for loans; condition of note and mortgage; shares alone pledged as security; if borrower fails to offer security, loan forfeited; notes and mortgages assigned in exchange for Home Owners' Loan Corporation bonds.—For every loan made by a loan and building association, a note secured by first mortgage of real estate shall be given, accompanied by a transfer and pledge of the shares of the borrower. Additional loans upon the same real estate or a portion thereof may, however, be made provided any mortgage securing such loan shall contain a provision to the effect that the premises described are subject to such prior mortgage or mortgages to the mortgagee and provided further that there shall be no intervening mortgage or encumbrance other than those held by the association concerned. The shares so pledged shall be held by the association as collateral security for the performance of the conditions of the note and mortgage. Said note and mortgage shall recite the number of shares pledged and the amount of money advanced thereon, and shall be conditioned for the payment, at the stated meetings of the corporation, of the monthly dues on said shares, and the interest and premiums upon the loan, together with all fines on payments in arrears, until said loan has been repaid; provided that the shares, without other security, may, in the discretion of the directors, be pledged as security for loans to an amount not exceeding their value as adjusted in the last adjustment and valuation of shares before the time of the loan. If the borrower neglects to offer security satisfactory to the directors within the time prescribed by the by-laws, his right to the loan shall be forfeited, and he shall be charged with 1 month's interest and 1 month's premium at the rate bid by him together with all expenses, if any, incurred, and the money appropriated for such loan may be reloaned at the next or any subsequent meeting. Any such note and mortgage taken by any loan and building association may, in the discretion of the directors thereof, be assigned to the Home Owners' Loan Corporation as created by an act of congress known as the Home Owners' Loan Act of 1933, in exchange for bonds issued or to be issued by said Home Owners' Loan Corporation or said note and mortgage so taken by any loan and building association may, in the discretion of its directors, be exchanged for said bonds so issued or to be issued by the Home Owners' Loan Corporation under the provisions of said act of congress known as Home Owners' Loan Act of 1933. (R. S. c. 55, § 156. 1953, c. 177, § 2.)

If a borrowing member increases his loan, giving therefor a second mortgage, such mortgage is security for the entire loan and all previous overdue installments of dues, interest and premiums. Tibbetts v. Deering Loan & Building Ass'n, 104 Me. 404, 72 A. 162.

Sec. 174. Borrower may repay loan at any time; settlement of accounts.—A borrower from a loan and building association may repay a loan at any time upon application to the association, whereupon, on settlement of his account, he shall be charged with the full amount of the original loan, together with all monthly installments of interest, premium and fines in arrears, and shall be given credit for the withdrawing value of his shares pledged and transferred as security, and the balance shall be received by the association in full satisfaction and discharge of said loan; provided that all settlements made at periods intervening between stated meetings of the directors shall be made as of the date of the stated meeting next succeeding such settlement; and provided that a borrower desiring to retain his shares and membership may, at his option, repay his loan without claiming credit for his shares, whereupon said shares shall be transferred to him and shall be free from any claim by reason of said canceled loan. (R. S. c. 55, § 157.)

This section is applicable only when the association is a going, solvent concern, for it is thoroughly settled by the authorities that when insolvency ensues the contract between the borrower and the association is abrogated. Smith v. Bath Loan & Building Ass'n, 126 Me. 59, 136 A. 284.

Sec. 175. Members failing to pay dues, etc., fined; shares in arrears more than 6 months forfeited.—Members of loan and building associations who make default in the payment of their monthly dues, interest and premiums may be charged a fine not exceeding 2% a month on each dollar in arrears. No fines shall be charged after the expiration of 6 months from the 1st lapse in any such payment, nor upon a fine in arrears. The shares of a member who continues in arrears more than 6 months shall, at the option of the directors, if the member fails to pay the arrears within 30 days after notice, be declared forfeited, and the withdrawing value of the shares at the time of the 1st default shall be ascertained, and after deducting all fines and other legal charges, the balance remaining shall be transferred to an account to be designated the forfeited share account, to the credit of the defaulting member. Said member, if not a borrower, shall be entitled, upon 30 days' notice, to receive the balance so transferred, without interest from the time of the transfer, in the order of his turn, out of the funds appropriated to the payment of withdrawals. All shares so forfeited or transferred shall cease to participate in any profits of the association accruing after the last adjustment and valuation of shares before said default. (R. S. c. 55, § 158. 1951, c. 109, § 2.)

In the case of an increase of the loan and the giving of a new note and mortgage to secure such increased loan, the 6 months' period commences to run from the first lapse under the new obligation. Tibbetts v. Deering Loan & Building Ass'n, 104 Me. 404, 72 A. 162.

Sec. 176. Forfeiture of shares of borrowing members; balance of account enforced against security.—If a borrowing member of a loan and building association is in arrears for dues, interest, premiums or fines for more than 3 months, the directors may declare the shares forfeited after 1 month's notice, if the arrears continue unpaid. The account of such borrowing member shall then be debited, with the arrears of interest, premiums and fines to date of forfeiture, and the shares shall be credited upon the loan at their withdrawing value. The balance of the account may, and after 6 months shall, be enforced against the security by any legal method, or by proceedings in equity, for sale and foreclosure, jurisdiction therefor being specially given to the supreme judicial court and to the superior court, to be exercised upon bill or petition in a summary manner. The shares, the value whereof has been so applied in payment, shall revert to the corporation and be held by it free from all interest, claim or demand on the part of the borrower or any person claiming from or under him. (R. S. c. 55, § 159.)

By the forfeiture of his shares one ceases to be a member of the association and becomes simply its mortgage debtor for the balance found due at the date for the forfeiture upon the account stated according to this section. The various items on either side of the account are merged in that balance and he becomes indebted for the whole balance and should pay interest on the whole from the date of forfeiture. Tibbetts v. Deering Loan & Building Ass'n, 104 Me. 404, 72 A. 162.

Sec. 177. Unpledged shares of deceased shareholders; distribution.—Upon the death of a shareholder of a loan and building association, his legal representatives shall be entitled to receive the amount of his unpledged shares, to be ascertained as provided in section 165 for withdrawal of shares. No fines shall be charged or profits credited to a deceased member's account from and after his decease, unless his legal representatives assume the future payments on such shares, which they may assume under the same rights and liabilities as those of the deceased. Moneys received for the shares of a deceased shareholder or the shares themselves, as the case may be, shall descend to the same persons and be distributed in the same manner as money received from a policy of life insurance on the life of a deceased person; provided, however, that said moneys shall be subject to inheritance and estate taxes. (R. S. c. 55, § 160.)

See c. 155, re inheritance taxes, etc.; c. 170, § 21, re descent of life insurance.

Sec. 178. Accounts; business.—The general accounts of every loan and building association shall be kept by double entry. The secretary shall at least once each month make and declare a trial balance, which shall be recorded in a book provided for that purpose, and it shall at all times be open to the inspection of the directors and shareholders of the association. All moneys received from the members shall be receipted for by persons designated by the directors in a passbook provided by the association for the use of and to be held by the member, and said passbook shall be plainly marked with the name and residence of the holder thereof, the number of shares held by him and the number or designation of the series or issue to which said shares respectively belong and the date of the issue of such series, if issued upon the serial plan. All moneys so received shall be originally entered by the proper officer in a book to be called the cashbook, and the entries therein shall be so made as to show the name of the payer, the number of the shares, the number or designation of the series or issues of the particular share or shares so entered, together with the amount of dues, interest, premiums and fines paid thereon, as the case may be. Each payment shall be classified and entered in a column devoted to its kind. Said cashbook shall be closed on the last day of the month in which each stated meeting is held, and shall be an exhibit of the receipt of all moneys paid by shareholders during said month. All payments made by the association for any purpose whatsoever shall be by orders, checks or drafts to be signed by such officer or officers as the board of directors of each association may designate, and indorsed by the persons in whose favor the same are drawn. The name of the payee, the amount paid and the purpose, object or thing for which the payment is made, together with its date, shall be entered on the margin of said order, check or draft. The treasurer shall dispose of and secure the safekeeping of all moneys, securities and property of the corporation in the manner designated by its by-laws. (R. S. c. 55, § 161.)

Sec. 179. Profits and losses; guaranty fund.—The profits and losses of a loan and building association may be distributed annually, semiannually or quarterly to the shares then existing, but shall be distributed at least once in each year. Profits and losses shall be distributed to the various serial and permanent plan shares existing at the time of such distribution, in proportion to their value at that time, and shall be computed upon the basis of a single share, fully paid to the date of distribution, or on the value at the time of distribution of each individual share exclusive of payments in advance. Such interest or dividends may be paid on other shares or types of investments, as the board of directors may determine. No dividend shall be paid at a rate per cent which will make the aggregate amount of said dividend greater than the actual earnings of the association, actually collected; provided, however, that a temporary deficiency in actual collections may be supplemented by taking from the guaranty fund, with the written consent of the bank commissioner, an amount sufficient to maintain the customary dividend rate. At each periodical distribution of profits, before declaring dividends, the directors shall reserve as a guaranty fund a sum not less than 3%, nor more than 10% of the net income accruing since the last adjustment, until such fund amounts to 5% of the capital dues including advance payments, and all other classes of shares issued by such association, which fund shall thereafter be maintained and held, and said fund shall be at all times available to meet losses in the business of the association from depreciation in its securities or otherwise. After such fund has reached said amount of 5%, additional amounts may be added from time to time to said fund by appropriate resolution or vote of the board of directors of the association. (R. S. c. 55, § 162. 1947, c. 111. 1953, c. 177, §§ 2-A, 3.)

Sec. 180. Association may purchase real estate upon which it has a lien; sale within 5 years.—Any loan and building association may purchase at any sale, public or private, any real estate upon which it may have a mortgage, judgment, lien or other encumbrance, or in which it may have an interest, and

may sell, convey, lease or mortgage at pleasure, the real estate so purchased, to any person or persons whatsoever. Any real estate however acquired by any such association may be sold, and such association in the discretion of its board of directors may accept the note or notes of the purchasers thereof in whole or part payment therefor, maturing within 3 years from the date thereof, and upon such other terms and conditions as said directors may determine. Said note or notes may be secured by a first mortgage in common form of the conveyed premises. All real estate in whatever manner acquired shall be sold within 5 years from the acquisition of title thereto, unless, with the written consent of the bank commissioner, used in whole or in part for the purposes of providing quarters and facilities for conducting the business of the association; but the bank commissioner, upon application of any association, may extend said time in which said real estate may be sold. (R. S. c. 55, § 163. 1953, c. 177, § 4.)

Sec. 181. Affairs of association examined annually.—Two of the directors, at least, of a loan and building association shall once in each year thoroughly examine the affairs of the association and report under oath to the bank commissioner the standing of the association, the situation of its funds and all other matters which the said commissioner requires, and in the manner and according to the form that he prescribes. The said commissioner shall seasonably give notice of the time and furnish blanks for said examination and report. (R. S. c. 55, § 165.)

Sec. 182. Examinations by bank commissioner.—The bank commissioner shall perform, in reference to all loan and building associations, the same duties and shall have the same powers as are required of him or given to him in reference to savings banks; and shall annually make a report to the governor and council of the general conduct and condition of each of the associations visited by him, making such suggestions as he deems expedient or the public interest requires. The officers of such associations shall answer truly all inquiries made and shall make all returns required by the bank commissioner. The bank commissioner, at least once in every 3 years, shall cause the passbooks of shareholders in loan and building associations to be verified by such methods and under such rules as he may prescribe. (R. S. c. 55, § 166.)

Cross reference.—See notes to §§ 71 and 72, re liquidation of savings banks.

Stated in Ulmer v. Falmouth Loan & Building Ass'n, 93 Me. 302, 45 A. 32; Craughwell v. Mousam River Trust Co., 113 Me. 531, 95 A. 221.

Sec. 183. May consolidate or transfer assets; requirements.—Any 2 or more loan and building associations organized under the laws of this state may consolidate into 1 association, or any loan and building association may transfer its engagements, funds and property to any other such association, under such terms as shall be mutually agreed upon by the directors of such associations when approved by 2/3 of all the shareholders of each association, after notice of such intention shall have been sent by mail to each shareholder of the associations involved at his, her or its last known address, as shown on the books of each association, and after such notice shall have been published once a week for 3 successive weeks in 1 of the newspapers published in the county where each association has its principal place of business, the last notice published and the notices by mail to be sent at least 14 days prior to the date of the meeting named in the call. Any shareholder not present at the meeting in person shall be regarded as having voted for the transfer or consolidation and shall be counted as being among the required 2/3 affirmative vote, provided notice of this fact shall be contained in the notices so mailed and in the publication so published; but such transfer or consolidation shall not prejudice the right of any creditor of any association to have payment of his debt out of the assets thereof, nor shall any creditor be thereby deprived of, or prejudiced in any right of action then existing

against the officers or directors of said association for any neglect or misconduct; providing that the reorganized association shall be liable for all obligations of the association existing prior to such consolidation, and providing further, that no consolidation or transfer as provided herein shall take effect until the terms and conditions have been approved by the bank commissioner, and until a copy of the resolution, certified by a majority of the board of directors of each association, shall be filed with said bank commissioner. (R. S. c. 55, § 167.)

Sec. 184. Business of loan and building associations restricted. — Except as hereinafter provided, no person, association or corporation shall carry on the business of accumulating and loaning or investing the savings of its members or of other persons in the manner of loan and building associations, or carry on any business similar thereto within this state, unless incorporated under the laws thereof for such purpose. (R. S. c. 55, § 168.)

Cross reference.—See § 186, re penalty.

Applied in Palmer v. Mutual Construction Co., 121 Me. 188, 116 A. 220.

Cited in State v. Pelletier, 118 Me. 257, 107 A. 828.

Sec. 185. Foreign associations authorized to do business in this state; deposit of securities in trust for benefit of creditors; duty of bank commissioner to make examinations.—The bank commissioner may authorize any association or corporation as described in section 184, duly established under the laws of another state, to carry on such business in this state, but said association or corporation shall not transact such business in this state unless it shall first deposit with the treasurer of state the sum of $25,000, and thereafter a sum equal to 15% of the deposits made in such association or corporation by citizens of the state, the amount of percentage of deposits so required to be determined from time to time by the bank commissioner; or in lieu thereof the whole or any part of said sum may consist of any of the securities in which savings banks may invest, as regulated in section 42, at their par value, and the said deposit shall be held in trust by said treasurer for the protection and indemnity of the residents of the state with whom such associations or corporations respectively have done or may transact business. Said moneys or property shall be paid out or disposed of only on the order of some court of competent jurisdiction, made on due notice to the attorney general of the state, and upon such notice to the creditors and shareholders of such association or corporation as the court shall prescribe. For the purpose of ascertaining the business and financial condition of any such association or corporation doing or desiring to do such business, the bank commissioner may make examinations of such associations or corporations, at such times and at such places as he may desire, the expense of such examinations being paid by the association or corporation examined, and may also require returns to be made in such form and at such times as he may elect. Whenever, upon examination or otherwise, it is the opinion of the bank commissioner that any such association or corporation is transacting business in such manner as to be hazardous to the public, or its condition is such as to render further proceedings by it hazardous to the public, said bank commissioner shall revoke or suspend the authority given to said association or corporation; but this section shall not prevent such association, corporation or institution incorporated under the laws of another state from loaning money upon mortgages of real estate located within the state. (R. S. c. 55, § 169.)

Cross reference.—See § 186, re penalty.

Cited in Palmer v. Mutual Construction Co., 121 Me. 188, 116 A. 220.

Sec. 186. Violation of §§ 184, 185. — Whoever violates any provision of the 2 preceding sections shall be punished by a fine of not more than $1,000; and any provision thereof may on petition be enforced by injunction issued by a

justice of the supreme judicial court or of the superior court. (R. S. c. 55, § 170.)

Applied in Palmer v. Mutual Construction Co., 121 Me. 188, 116 A. 220.

Sec. 187. Duplicate passbook of loan and building associations may be issued upon proof of loss of original.—When the owner of shares in any loan and building association evidenced by both passbook and certificate or either of them, or the executor, administrator or guardian of said owner, in writing, notifies the secretary of said loan and building association issuing the same that such passbook or certificate of shares is lost and that he desires to have a duplicate passbook or certificate of shares issued to him, said secretary shall give public notice of such application by publishing at the expense of such applicant an advertisement once a week for 3 weeks successively in some newspaper published in the town in which said loan and building association is located, if any, otherwise in one published in the county, if any, if not, then in the state newspaper. If such missing passbook or certificate of shares is not presented to said secretary within 30 days after the first advertisement, then he shall issue a duplicate passbook or certificate of shares to the person thus requesting the same, and such delivery of the duplicate relieves said association from all liability on account of the original passbook or certificates of shares so advertised. (R. S. c. 55, § 171.)

Sec. 188. Pensions and retirements.—Any loan and building association, by vote of its board of directors and with the approval of the bank commissioner, may adopt and maintain a system of pensions and retirements for the benefit of its officers and employees. (1947, c. 117.)

Protection of Banks in Particular Transactions.

Sec. 189. Liability of banks for forged or raised checks.—No bank shall be liable to a depositor for the payment by it of a forged or raised check unless within 1 year after the return to the depositor of the voucher of such payment, such depositor shall notify the bank that the check so paid is forged or raised. (R. S. c. 55, § 172.)

See c. 133, § 14, re penalty for fraudulent issue of check without funds to pay it.

Sec. 190. Limitation of actions to recover money paid on forged signatures.—No action at law or in equity to recover money by any depositor shall be maintained against any bank, savings bank or trust company, if the depositor denies the signature on any order drawn on any savings bank, or savings deposit or certificates of deposit in any bank or trust company, or on any receipt for payment by such bank, savings bank or trust company, unless such action is begun and service made thereon within 3 years from the date of such payment. (R. S. c. 55, § 173. 1947, c. 11.)

Sec. 191. Time limit on stop payment of checks, etc.—No revocation, countermand or stop payment order relating to the payment of any check, draft or order against an account of a depositor in any bank or trust company doing business in this state shall remain in effect for more than 90 days after the service thereof on the bank or trust company, unless the same be renewed, which renewals shall be in writing and which renewals shall be in effect for not more than 90 days from the date of service thereof on the bank or trust company, but such renewals may be made from time to time. (R. S. c. 55, § 174.)

Sec. 192. Checks presented more than 1 year after date may be refused payment.—Where a check or other instrument payable on demand at any bank or trust company doing business in this state is presented for payment more than 1 year from its date, such bank or trust company may, unless expressly

instructed by the drawer or maker to pay the same, refuse payment thereof and no liability shall thereby be incurred to the drawer or maker for dishonoring the instrument by nonpayment. (R. S. c. 55, § 175.)

Sec. 193. Banks not liable for nonpayment of checks, etc., through mistake or error, unless actual damage shown.—No bank or trust company doing business in this state shall be liable to a depositor because of the nonpayment through mistake or error and without malice of a check, draft or order which should have been paid, unless the depositor shall allege and prove actual damage by reason of such nonpayment, and in such event the liability shall not exceed the amount of damage so proved. (R. S. c. 55, § 176.)

Sec. 194. Forwarding checks direct.—Any banker, bank or trust company organized under the laws of or doing business in this state, receiving for collection or deposit any check, note or other negotiable instrument drawn upon or payable at any other bank located in another city or town, whether within or without this state, may forward such instrument for collection directly to the bank on which it is drawn or at which it is made payable, and such method of forwarding direct to the payor shall be deemed due diligence, and the failure of such payor bank, because of its insolvency or other default, to account for the proceeds thereof shall not render the forwarding bank liable therefor; provided, however, such forwarding bank shall have used due diligence in other respects in connection with the collection of such instrument. (R. S. c. 55, § 177.)

Sec. 195. Adverse claim to bank deposit.—Notice to any bank or trust company doing business in this state of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank to recognize said adverse claimant, unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said bank from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons, or shall execute to said bank, in form and with sureties acceptable to it, a bond indemnifying said bank from any and all liability, loss, damage, costs and expenses for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank; provided that this law shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, as also the facts showing reasonable cause of belief on the part of said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant. (R. S. c. 55, § 178.)

Section does not supersede interpleader.—This section was intended to supplement, not to supersede, interpleader. It may be applied where interpleader will not lie. It is not unlikely that it might be properly invoked in certain cases in which interpleader would be an appropriate remedy. It is permissive. It provides one means by which the title to a bank deposit may be, under some circumstances, litigated. First Nat. Bank of Portland v. Reynolds, 127 Me. 340, 143 A. 266.

Sec. 196. Unlawful copying of bank records. — Any officer or employee of any savings bank, trust company, loan company or loan and building association, copying any of the books, papers, records or documents belonging to or in the custody of any of the before-named institutions, either for his own use or for the use of any other person other than in the ordinary and regular course of his duties as such officer or employee, shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 55, § 179.)

Sec. 197. Destruction of old bank records.—When a statement of account has been rendered by a bank to a depositor accompanied by vouchers, if

any, which are the basis for debit entries in such account, or the depositor's passbook has been written up by the bank showing the condition of the depositor's account and delivered to such depositor with like accompaniment of vouchers, if any, such account shall, after the period of 6 years from the date of its rendition, in the event no objection thereto has been theretofore made by the depositor, be deemed finally adjusted and settled and its correctness conclusively presumed and such depositor shall thereafter be barred from questioning the correctness of such account for any cause. Nothing herein shall be construed to relieve the depositor from the duty now imposed by law of exercising due diligence in the examination of such account and vouchers, if any, when rendered by the bank and of immediate notification to the bank upon discovery of any error therein, nor from the legal consequences of neglect of such duty; nor to prevent the application of section 189 to cases governed thereby. Banks shall accordingly not be required to preserve or keep their records or files relating thereto for a longer period than 6 years. (1949, c. 57.)

Sec. 198. Deferred posting by banks.—In any case in which a bank receives, other than for immediate payment over the counter, a demand item payable by, at or through such bank and gives credit therefor before midnight of the day of receipt, the bank may have until midnight of its next business day after receipt within which to dishonor or refuse payment of such item. Any credit so given, together with all related entries on the books of the receiving bank, may be revoked by returning the item, or if the item is held for protest or at the time is lost or is not in the possession of the bank, by giving written notice of dishonor, nonpayment or revocation; provided that such item or notice is dispatched in the mails or by other expeditious means not later than midnight of the bank's next business day after the item was received. For the purpose of determining when notice of dishonor must be given or protest made under the law relative to negotiable instruments, an item duly presented, credit for which is revoked as authorized by this section, shall be deemed dishonored on the day the item or notice is dispatched. A bank, revoking credit pursuant to the authority of this section, is entitled to refund of or credit for the amount of the item.

The effect of this section may be varied by agreement between a bank and any depositor.

For the purposes of this section:

I. An item received by a bank on a day other than its business day, or received on a business day after its regular business hours or during afternoon or evening periods when it has reopened or remained open for limited functions, shall be deemed to have been received at the opening of its next business day;

II. The term "credit" includes payment, remittance, advice of credit or authorization to charge and, in cases where the item is received for deposit as well as for payment, also includes the making of appropriate entries to the receiving bank's general ledger without regard to whether the item is posted to individual customers' ledgers; and

III. Each branch or office of a bank shall be deemed a separate bank. (1949, c. 61.)

Sec. 199. Deposits in a fiduciary's personal account.—If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account against which he is empowered to sign as a fiduciary, or of checks drawn by him upon an account in the name of his principal if he is empowered to draw checks thereon, the bank receiving such deposit may assume, if acting in good faith and without actual knowledge to the contrary, that the funds so deposited by the fiduciary are funds to which the fiduciary is personally entitled. Nothing contained in this section shall be deemed to modify or otherwise affect

any provision of section 56 of chapter 188, nor to relieve such bank from any liability imposed upon it by law to the extent of any payment or amount which such bank may receive for its benefit from any withdrawal or application of such funds so deposited.

I. "Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer or any other person acting in a fiduciary capacity for any person, trust or estate.

II. "Person" includes a corporation, partnership or other association, or 2 or more persons having a joint or common interest.

III. "Principal" includes any person to whom a fiduciary as such owes an obligation. (1949, c. 277.)

Industrial or Morris Plan Banks.

Sec. 200. "Industrial banks," defined. — The term "industrial bank" means any corporation organized under and subject to the provisions of sections 200 to 208, inclusive. (R. S. c. 55, § 180.)

Sec. 201. Organization.—Industrial banks may be organized in the same manner as is provided for the organization of trust companies, so far as applicable and not inconsistent with the provisions of sections 200 to 208, inclusive. (R. S. c. 55, § 181.)

Cross reference.—See 90, et seq., re organization of trust companies.

Cited in Opinion of the Justices, 146 Me. 316, 80 A. (2d) 866.

Sec. 202. Government.—Except as herein otherwise provided, such corporations shall be governed and conducted in the manner provided by law for corporations generally in so far as not inconsistent with the provisions of sections 200 to 208, inclusive. (R. S. c. 55, § 182.)

Sec. 203. Capital stock and shares.—The capital stock of an industrial bank shall not be less than $25,000 in any town or city having a population of less than 50,000 inhabitants, and shall not be less than $50,000 in any town or city having 50,000 or more inhabitants and less than 150,000 inhabitants, and shall not be less than $100,000 in any town or city having 150,000 inhabitants or more, according to the last official census. The capital stock of every such corporation shall be divided into shares of the par value of $100 each, at least 25% of which shall be paid into the treasury of the corporation in cash before such corporation shall be authorized to transact any business other than such as relates to its formation and organization, and such payment shall be certified to the bank commissioner under oath by the president and manager of said corporation. The balance of the capital stock shall be paid to the corporation in cash at the rate of not less than 10% per month following the initial payment. No corporation organized under the provisions of sections 200 to 208, inclusive, shall create more than 1 class of stock. (R. S. c. 55, § 183.)

Sec. 204. May use word "bank" as part of corporate title.—Every corporation incorporated under the provisions of sections 200 to 208, inclusive, shall be known as an industrial bank and may use the word "bank" as a part of its corporate title. (R. S. c. 55, § 184.)

Sec. 205. Powers.—In addition to the powers conferred upon corporations by the general corporation law, every industrial bank shall have the following powers:

I. To borrow money, to lend money and discount notes and bills of exchange,

including trade acceptances, and to deduct interest thereon in advance at a rate no greater than 12% annually; and in addition to receive uniform weekly, semimonthly or monthly installments on its certificates of indebtedness or deposit purchased by the borrower simultaneously with a loan transaction, or otherwise, and pledged with the corporation as security for the said loan, with or without an allowance of interest on such installments. (1949, c. 133)

II. To sell or negotiate bonds, notes, certificates of investment and choses in action for the payment of money at any time, either fixed or uncertain, and to receive payments in installments or otherwise, with or without an allowance of interest upon such installments.

III. To charge for a loan made pursuant to this section $1 for each $50 or fraction thereof loaned, for expenses, including any examination or investigation of the character and circumstances of the borrower, co-maker or surety, and the drawing and taking acknowledgment of necessary papers, or other expenses incurred in making the loan. No charge shall be collected unless a loan shall have been made as a result of such examination or investigation and no such charge shall exceed $5.

IV. To establish branch offices or agencies in the manner and subject to the conditions prescribed for the establishment of branches or agencies in the case of trust companies.

V. To purchase, invest in, hold and sell such notes, bonds and securities as are legal for investments of deposits in savings banks.

VI. To make such loans as are eligible for insurance pursuant to Title I of the National Housing Act, and to apply for and obtain insurance on said loans pursuant to the provisions of said act. (R. S. c. 55, § 185. 1949, c. 133.)

See § 42, re investment of deposits of savings banks; § 124, re trust company branches or agencies.

Sec. 206. Prohibitions.—No industrial bank shall:

I. Hold at any 1 time the direct obligation or obligations of any 1 person, firm or corporation for more than 4% of the amount of capital and surplus of such industrial bank or the indirect obligation or obligations of any 1 person, firm or corporation for more than 15% of the amount of capital and surplus of such industrial bank; provided, however, that nothing in this subsection shall be construed to limit the holdings of an industrial bank in the obligations of the United States or the state of Maine, and in amounts authorized by a vote of a majority of the directors or the executive committee. For the purpose of this subsection bills of exchange, including trade acceptances, shall be deemed to be the direct obligations of the acceptors thereof, and the indirect obligations of the drawers thereof.

II. Make any loan for a longer period than 2 years from the date thereof, except in the case of loans that are eligible for insurance under the National Housing Act and for the insurance of which under that act, seasonable application is made pursuant to the provisions of Title I of the National Housing Act.

III. Deposit any of its funds with any other moneyed corporation unless such corporation has been designated as such depository by a vote of a majority of the directors or of the executive committee, exclusive of any director who is an officer, director or trustee of the depository so designated.

IV. Be at any time indebted for borrowed money to an amount in excess of its capital, surplus and undivided profits, except that by vote of a majority of its entire board of directors or executive committee setting forth the reasons

therefor, and upon receiving the written consent of the bank commissioner thereto, it may borrow money to redeem its certificates of investment or prevent loss by sale of assets, and may rediscount notes, or pledge bonds, notes or other securities as collateral therefor. Copies of all votes authorizing such excess borrowing shall be promptly forwarded by the secretary to the bank commissioner. Rediscount shall be considered as borrowed money for the purpose of this subsection. (R. S. c. 55, § 186.)

Sec. 207. Bank commissioner to make examination and issue certificate. — Upon receipt by the bank commissioner of the certificate showing that 25% of the capital stock has been paid into the treasury of an industrial bank in cash as herein provided, said commissioner shall cause an examination to be made, and if after such examination it appears that the required amount of capital stock has been paid in in cash, and that all requirements of law have been complied with, said commissioner shall issue a certificate authorizing such corporation to begin the transaction of business. It shall be unlawful for any such corporation to begin the transaction of business until such a certificate has been granted. (R. S. c. 55, § 187.)

Sec. 208. Under supervision and control of bank commissioner.— Every corporation organized under the provisions of section 201 shall be subject to the examination, supervision and control of the bank commissioner and shall report to him in the manner provided for savings banks, and the provisions of sections 64 to 75, inclusive, shall apply to industrial banks. (R. S. c. 55, § 188.)

Interest.

Sec. 209. Legal rate of interest.—In the absence of an agreement in writing, the legal rate of interest is 6% a year. (R. S. c. 55, § 189.)

Purpose of section.—The object of this section is apparent. It was to give unrestricted liberty of contracting as to the rate of interest. No limitations whatever are imposed. The power of the parties is absolute over the subject matter, provided their agreement is reduced to writing. Capen v. Crowell, 66 Me. 282; Turner v. Williams, 73 Me. 466.

Rate of interest is a matter of contract. —The rate of interest on a contract to pay money, other than loans secured by personal property, is a matter of contract in this state. Maybury v. Spinney-Maybury Co., 122 Me. 422, 120 A. 611.

And not limited by this section.—While this section fixes the legal rate of interest at six per cent. per annum, it does not in terms nor by necessary implication prohibit the taking of a greater sum, nor declare contracts for a greater rate illegal or void. Lindsey v. Hill, 66 Me. 212.

History of section.—See Lindsey v. Hill, 66 Me. 212; Holmes v. French, 68 Me. 525; Cate v. Merrill, 109 Me. 424, 84 A. 897.

Cited in Carr v. Judkins, 102 Me. 506, 67 A. 569.

Licensed Small Loan Agencies.

Sec. 210. Loans; persons, etc., charging more than 12% annually, must procure license; license fee; bond. — No person, copartnership or corporation shall engage in the business of making any loan of money, credit, goods or choses in action in the amount or to the value of $2,500 or less, whether secured or unsecured, and charge, contract for or receive a greater rate of interest than 12% per year therefor, without first obtaining a license from the bank commissioner. Application for such license shall be in writing and shall contain the full name and address, both of the residence and place of business, of the applicant, and if the applicant is a copartnership, of every member thereof, or if a corporation, of every officer thereof; also the county and municipality, with street and number, if any, where the business is to be conducted. Every such applicant, at the time of making such application, shall pay to the bank commissioner an annual license fee as follows: if no loans have been made or if the

average amount of the loans outstanding during the preceding year ending November 30 has not exceeded $20,000, a fee of $50, and for every additional $50,000 or fraction thereof, an additional fee of $50. The applicant shall also, at the same time, file with the bank commissioner a bond in which the applicant shall be the obligor, in the sum of $1,000 with 1 or more sureties to be approved by said bank commissioner; which bond shall run to the bank commissioner for the use of the state and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of sections 210 to 227, inclusive, and shall be conditioned that said obligor will conform to and abide by each and every provision of said sections, and will pay to the state and to any such person or persons, any and all moneys that may become due or owing to the state and to such person or persons from said obligor, under and by virtue of the provisions of sections 210 to 227, inclusive. If in the opinion of the bank commissioner the bond shall at any time appear to be insecure or exhausted, or otherwise doubtful, an additional bond in the sum of not more than $1,000 satisfactory to the bank commissioner shall be filed, and upon failure of the obligor to file such additional bond, the license shall be revoked by the bank commissioner. (R. S. c. 55, § 190. 1953, c. 215, § 1.)

Sec. 211. License issued by bank commissioner; expirations; rebate if for less than 6 months.—Upon the filing of the application provided for in section 210 and the approval of the required bond and the payment of the required fee, the bank commissioner may issue a license to the applicant to make loans in accordance with the provisions of sections 210 to 227, inclusive, for a period which shall expire the 1st day of January next following the date of its issuance; provided that if the license is issued for a period of less than 6 months, the license fee shall be $25. Such license shall not be assignable and shall be kept conspicuously posted in the place of business of the licensee. (R. S. c. 55, § 191.)

Sec. 212. Revocation of license.—The bank commissioner may, in his discretion, upon notice to the licensee and opportunity to be heard, revoke the license provided for in section 211 if satisfied that the licensee has violated any provision of law. The issuance of another license after a revocation shall be at the discretion of the bank commissioner. In case the licensee shall be convicted a second time of a violation of law, the bank commissioner shall revoke such license; provided that the second offense shall have occurred after a prior conviction. (R. S. c. 55, § 192.)

Sec. 213. Transaction of business under other name or at other place than stated in license; removal of licensee.—No person, copartnership or corporation licensed under the provisions of section 211 shall make any loan or transact any business provided for by sections 210 to 227, inclusive, under any other name or at any other place of business than that named in the license. Not more than 1 office or place of business shall be maintained under the same license, but the bank commissioner may issue more than 1 license to the same person upon the payment of an additional license fee and the filing of an additional bond for each license. In case of the removal of a licensee, he shall at once give written notice thereof to the bank commissioner, who shall attach to the license his consent in writing to the removal. (R. S. c. 55, § 193.)

Sec. 214. Investigations by bank commissioner.—The bank commissioner for the purpose of discovering violations of any of the provisions of sections 210 to 227, inclusive, may either personally, or by any person designated by him, at any time and as often as he may desire, investigate the loans and business of every licensee thereunder and of every person, copartnership and corporation by whom or by which any such loan shall be made, whether such person, copartnership or corporation shall act, or claim to act, as principal, agent or broker, or under, or without the authority of sections 210 to 227, inclusive;

and for that purpose he shall have free access to the books, papers, records and vaults of all such persons, copartnerships and corporations; he shall also have authority to examine, under oath, all persons whose testimony he may require relative to such loans or business. (R. S. c. 55, § 194.)

Sec. 215. Bank commissioner to prescribe manner of keeping records; records preserved.—The licensee under the provisions of section 211 shall keep such books and records as in the opinion of the bank commissioner will enable the commissioner to determine whether the provisions of sections 210 to 227, inclusive, are being observed, and shall report to the bank commissioner monthly all outstanding loans, the principal of which shall exceed $10. Every such licensee shall preserve the records of final entry used in such business, including cards used in the card system, if any, for a period of at least 2 years after the making of any loan recorded therein. (R. S. c. 55, § 195.)

Sec. 216. False statements as to rates, etc., distributed by licensee.—In the soliciting of loans in any manner or advertising the business in any manner, no person, copartnership or corporation licensed under the provisions of section 211 shall print, publish, broadcast, telecast or cause to be printed, published, broadcast, telecast or distributed in any manner whatsoever, any written or printed statement with regard to the rates, terms or conditions for the lending of money, credit, goods or choses in action, in amounts of $2,500 or less, which is false, misleading or deceptive. (R. S. c. 55, § 196. 1953, c. 215, § 2.)

Sec. 217. Amount of loan and rate of interest.—Every person, copartnership and corporation licensed under the provisions of sections 210 to 227, inclusive, may loan any sum of money, goods or choses in action not exceeding in amount or value the sum of $2,500, any lower limitation of amount in its charter notwithstanding, and may charge, contract for and receive thereon interest at a rate not to exceed 3% per month on that part of the unpaid principal balance of any loan not in excess of $150, 2½% per month on that part of the unpaid principal balance in excess of $150, but not exceeding $300, and 1½% per month on any remainder of such unpaid principal balance; provided, however, that a minimum charge of not exceeding 25¢ shall be allowable in all cases. No person shall owe any licensee at any time more than $2,500 for principal. No licensee shall induce or permit any borrower to split up or divide any loan, and all sums owed by any person at any 1 time shall be considered as 1 contract of loan for the purpose of computing the interest payable thereon. No licensee shall induce or permit any person, nor any husband and wife, jointly or severally, to become obligated, directly or contingently or both, under more than 1 contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by this section. (R. S. c. 55, § 197. 1953, c. 215, § 3.)

Sec. 218. Interest; additional charges except lawful fees prohibited.—Interest payable under the provisions of sections 210 to 227, inclusive, shall not be payable in advance or compounded, and shall be computed on unpaid balances. In addition to the interest herein provided for, no further or other charge or amount whatsoever for any examination, service, brokerage, commission or other thing, or otherwise, shall be directly or indirectly charged, contracted for or received, except lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing or recording in any public office any instrument securing the loan, which fees may be collected when the loan is made, or at any time thereafter. If interest or charges in excess of those permitted by sections 217 and 218 shall be charged, contracted for or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest or charges whatsoever. (R. S. c. 55, § 198.)

Sec. 219. Duties of licensee.—Every licensee shall:

I. Deliver to the borrower, at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the rate of interest charged. Upon such statement there shall be printed in English a copy of sections 217 and 218;

II. Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made; and

III. Upon repayment of the loan in full, mark indelibly every paper signed by the borrower with the word "paid" or "canceled," and discharge any mortgage, restore any pledge, return any note and cancel any assignment given by the borrower as security. (R. S. c. 55, § 199.)

Sec. 220. Restrictions upon licensee.—No licensee under the provisions of sections 210 to 227, inclusive, shall take any confession of judgment or any power of attorney; nor shall he take any note, promise to pay or security that does not state the actual amount of the loan, the time for which it is made and the rate of interest charged, nor any instrument in which blanks are left to be filled after execution. (R. S. c. 55, § 200.)

Sec. 221. Assignment of wages.—No assignment of any salary or wages, earned or to be earned, given to secure a loan made under the provisions of sections 210 to 227, inclusive, shall be valid unless in writing signed in person by the borrower; nor, if the borrower is married, unless it shall be signed in person by both husband and wife; nor shall such assignment be valid unless given to secure a debt contracted simultaneously with its execution. All such assignments shall be subject to the provisions of section 10 of chapter 119. (R. S. c. 55, § 201.)

Sec. 222. Interest greater than 12% annually; attempted evasion by pretended purchase.—No person, copartnership or corporation, except as authorized by sections 210 to 227, inclusive, shall, directly or indirectly, charge, contract for or receive any interest or consideration greater than 12% per year upon the loan, use or forbearance of money, goods or choses in action, or upon the loan, use or sale of credit, of the amount or value of $2,500 or less. The foregoing prohibition shall apply to any person who, as security for any such loan, use or forbearance of money, goods or choses in action, or for any such loan, use or sale of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who, by any device or pretense of charging for his services, or otherwise, seeks to obtain a greater compensation than is authorized by the provisions of sections 210 to 227, inclusive. (R. S. c. 55, § 202. 1953, c. 215, § 4.)

Sec. 223. Penalty.—Whoever either individually or as the officer or employee of any corporation or association violates any of the provisions of sections 210 to 227, inclusive, shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or by both such fine and imprisonment. (R. S. c. 55, § 203.)

Sec. 224. Loans made in this state in violation of §§ 210-227, inclusive; wherever made, not enforceable in this state.—No loan of the character defined or limited in sections 210 to 227, inclusive, made in this state shall be valid; and no such loan wherever made shall be enforceable in this state. Any person in anywise participating in the making of such loans in this state shall be subject to the provisions of the aforesaid sections. (R. S. c. 55, § 204.)

Sec. 225. Exceptions.—Sections 210 to 227, inclusive, shall not apply to

any person, copartnership or corporation doing business under any law of this state or of the United States relating to national banks, savings banks, industrial banks, trust companies or loan and building associations. (R. S. c. 55, § 205. 1947, c. 49.)

Sec. 226. Examiner appointed to enforce law; compensation.—For the enforcement of the provisions of sections 210 to 227, inclusive, the bank commissioner is authorized to appoint, subject to the provisions of the personnel law, an examiner, who shall also receive in addition to his salary his necessary traveling expenses. The salary, traveling expenses and all expenses of administration and enforcement of the provisions of said sections shall be paid out of such amounts as the legislature may appropriate. Fees received from licenses issued under the provisions of said sections shall be paid to the treasurer of state for deposit in the general fund. (R. S. c. 55, § 206. 1945, c. 297, § 22.)

Sec. 227. Acting as agent to evade usury laws in another state; loans in violation of this section. — No person, corporation or partnership shall engage within this state in the business of acting as the agent or attorney of nonresident borrowers of money in sums of $2,500 or less, with intent to evade the usury laws in force in the foreign state or territory in which the actual borrower has his residence when such loan, or any contract in connection therewith, is made. All such loans made or contracted for by such agent or attorney for a foreign principal, in violation of the provisions of this section, shall be voidable at the option of the debtor, such option to be exercised by him in any foreign jurisdiction where any contract or promise made by him in connection with the making or procuring of such loan is attempted to be enforced. (R. S. c. 55, § 207. 1953, c. 215, § 5.)

Registration of Dealers in Securities.

Legislation such as §§ 228-240 is called "Blue Sky Laws" because it tends to "stop the sale of stock that represents nothing but blue sky—nothing terrestial or tangible." State v. Cushing, 137 Me. 112, 15 A. (2d) 740.

Sec. 228. Dealers in securities and salesmen registered.—No dealer in securities shall in this state, by direct solicitation or through agents or salesmen, or by letter, circular or advertising, sell, offer for sale or invite offers for or inquiries about securities, unless registered as a dealer under the provisions of the following sections. No salesmen or agent shall in this state, in behalf of any dealer, sell, offer for sale or invite offers for or inquiries about securities, unless registered as a salesman or agent of such dealer under the provisions of the following sections. (R. S. c. 55, § 208.)

Cross reference.—See c. 56, § 22, re consumers' cooperatives.

Applied in State v. Cushing, 137 Me. 112, 15 A. (2d) 740.

Sec. 229. Application; nonresident dealers to file power of attorney; notice and proceedings on application; issue of certificate. — Any dealer in securities desiring registration shall file written application therefor with the bank commissioner, which shall be in such form as may be prescribed by the said commissioner, and shall state the principal place of business, the name or style of doing business and the address of the dealer, the names, residences and business addresses of all persons interested in the business as principals, officers, directors or managing agents, specifying as to each his capacity and title, and the length of time during which the dealer has been engaged in the business. Each application shall be accompanied by certificates or other evidence of the dealer's good repute and, if required by the said commissioner, a copy of the securities to be sold, a statement in detail of the assets and liabilities of the issuer of such securities, a statement in such form as the commissioner may prescribe of the general affairs of the dealer and issuer, copies of any mortgage

or instrument creating a lien by which such securities are secured, a full statement of the earnings and expenses of each issuer for 3 years prior to the filing of the application, a copy of any contract to underwrite the securities to be offered for sale, the names and addresses of all persons holding 10% or more of the capital stock of the issuer, a statement in detail of the plan on which the business of the dealer is to be conducted, and such other information as the commissioner may deem necessary in considering the application.

Every nonresident shall file a power of attorney, irrevocable, properly authorized, and with satisfactory certificates or other evidence of the authorization, appointing the commissioner agent for the service of legal process upon the dealer in any actions in the courts of this state, based upon or arising in connection with any sale of, attempt to sell, or advertising of securities in this state, or any violation of the provisions of sections 228 to 240, inclusive.

Upon the filing of the application, the commissioner shall forthwith give notice of the fact and date of such application, and of the name, principal place of business and address of the dealer, by advertisement inserted once in the state paper, and once in a newspaper of general circulation where the dealer's place of business is located, if it is elsewhere in this state than in the city of Augusta. The registration certificates shall not be issued before the expiration of 2 weeks from the last publication. Any person may, within such period of 2 weeks, file objection to the proposed registration.

If the commissioner is satisfied that the dealer is of good repute, and that the proposed plan of business of the dealer is not unfair, unjust or inequitable, and that the dealer intends to honestly and fairly conduct his business, with disclosure of pertinent facts sufficient to enable intending purchasers to form a judgment of the nature and value of the securities, and without intent to deceive or defraud, and that the securities that he proposes to issue or sell are not such as in his opinion will work a fraud upon the purchasers thereof, he shall register the dealer unless objection to such registration shall be filed with the commissioner within the period of 2 weeks succeeding the publication of the dealer's application.

If the commissioner is not so satisfied, or if, within the period of 2 weeks succeeding the publication aforesaid, objection shall be made to the proposed registration, the commissioner shall give notice of either fact to the dealer, and upon request from the dealer shall fix a time and place for hearing, and at such hearing opportunity shall be given to said dealer, and to any other persons interested or objecting, to offer further evidence relating to the dealer's application. If satisfied, as aforesaid, as a result of such hearing, the commissioner shall thereupon register the dealer. Registration may be granted upon such reasonable conditions as may be imposed by the commissioner.

Before granting registration to any dealer, the bank commissioner shall require the filing with the department of a bond in favor of the state in such form and with such sureties as the commissioner may approve, or in lieu thereof, furnish proof satisfactory to said commissioner of said dealer's financial responsibility, such bond to be in an amount not exceeding $10,000. Such bond shall be conditioned that the dealer or any licensed salesman of the dealer shall pay, satisfy and discharge any judgment or decree that may be rendered against him in a court of competent jurisdiction in a suit or action brought by a purchaser of securities in which it shall be found or adjudged that such purchaser was defrauded in the sale of such securities. Any person claiming to have been damaged by fraudulent misrepresentations in the sale of any security by such dealer or salesman may maintain an action at law against the dealer or salesman making such fraudulent misrepresentations; or against both the dealer and salesman, where the salesman makes such fraudulent representations; and may join as parties defendant the sureties on the bonds hereinabove provided for. Such bond may be drawn to cover the original license or any renewal or renewals thereof,

and the commissioner may, in his discretion, require a dealer to execute a bond in an amount not exceeding $10,000 for each particular year's transactions. The commissioner may prescribe regulations respecting the qualifications of sureties, release of sureties, surrender of bonds, substitution of bonds and other matters relating to bonds.

Upon registration of any dealer, a registration certificate shall be issued stating the name, principal place of business and address of the dealer, the names, residences and business addresses of all persons interested in the business as principals, officers, directors or managing agents, and the fact that the dealer has been registered for the current calendar year as a dealer in securities. The certificate shall in other respects be in such form as the commissioner may determine, but shall state in bold type that the commissioner does not recommend and assumes no responsibility for securities offered by the dealer. Changes in the certificate, necessitated by changes in the personnel of a partnership or in the principals, officers, directors or managing agents of any dealer, may be made at any time upon written application to the commissioner, accompanied by statement of the facts necessitating the change. Upon the issue of the amended certificates, the original certificate and the certified copies thereof outstanding shall be promptly surrendered to the commissioner.

Public utilities whose securities have been authorized by the Maine public utilities commission shall be registered as dealers in such securities upon written application and payment of the fee prescribed in section 242 without filing any data or information other than an affidavit showing the approval of such securities by the Maine public utilities commission. Said registration shall cover any further issue of securities of said public utilities authorized by the Maine public utilities commission during the period that said registration or renewal thereof is in force. (R. S. c. 55, § 209.)

Sec. 230. Registration of agents or salesmen.—Upon written application by a registered dealer, the bank commissioner may register, as agents or salesmen of such dealer, such persons as the dealer may request. The application shall be in such form as the said commissioner may prescribe, and shall state the residences and addresses of the persons whose registration is requested. The said commissioner shall issue to each person so registered a registration certificate, stating his name, residence and address, the name, principal place of business and the address of the dealer, and the fact that he is registered for the current calendar year as agent or salesman, as the case may be, of the dealer. The certificate shall in other respects be in such form as the bank commissioner shall determine, but shall state in bold type that the said commissioner does not recommend or assume any responsibility for securities offered by the dealer or the dealer's agents or salesmen. Upon application by the dealer, the registration of any agent or salesman shall be canceled. (R. S. c. 55, § 210.)

Sec. 231. "Dealer" and "securities" defined. — As used in sections 228 to 240, inclusive, the term "dealer" shall mean any individual, partnership, association or corporation engaging in the business of selling or offering for sale securities, except to, or through the medium of, or as agent or salesman of, a registered dealer; but sales made by, or in behalf of, a vendor in the ordinary course of bona fide personal investment, or change of investment, shall not constitute such vendor, or the agent of such vendor, if not otherwise engaged either permanently or temporarily in selling securities, a dealer in securities.

The term "securities" shall include all stocks, bonds, debentures or certificates of participation, all ship shares, all documents of title and certificates of interest in any profit-sharing agreement, or in any oil, gas or mining lease, royalty, right or interest, or in the title to or any profits or earnings from land or other property situated outside of Maine, and all other forms of securities, except that it shall not be held to include commercial paper or other evidence

of debt running not more than 9 months, or notes secured by mortgage of real estate in this state, or the shares of loan and building associations organized under the laws of this state. The term "securities" shall further include documents of title to and certificates of interest in real estate, including cemetery lots, and personal estate when the sale and purchase thereof is accompanied by or connected in any manner with any contract, agreement or conditions, other than a policy of title insurance issued by a company authorized to do a title insurance business in this state, under the terms of which the purchaser is insured, guaranteed or agreed to be protected against financial loss, or is promised financial gain.

Persons regularly employed by public utilities whose securities are authorized by the public utilities commission, and by corporations whose securities are legal for purchase by savings banks under the statutes of any New England state, shall not be deemed security dealers, agents or salesmen if the occasional sale by such employee of securities issued by the employer utility or corporation, or issued by a corporation operating in Maine and owning or controlling such employer utility or corporation, is only incident to, and not a part of the usual duties of such employment. (R. S. c. 55, § 211. 1945, c. 378, § 56.)

Section specifically defines offense.—To constitute an offense under this section, the sale of a document or certificate by an unregistered dealer must be accompanied by or connected in some manner with a "contract, agreement or conditions (other than a policy of title insurance issued by a company authorized to do a title insurance business in the state of Maine), under the terms of which the purchaser is insured, guaranteed or agreed to be protected against financial loss or is promised financial gain." State v. Cushing, 137 Me. 112, 15 A. (2d) 740.

The validity of the title or interest is not an essential element of the offense, and sale of indenture by unregistered dealer is sale of a document of title to realty within this section, regardless of whether the indenture conveyed or affected some actual title to or constituted and created some actual interest in realty, or of whether the description of the realty in the indenture was sufficient to convey. True, language of the section refers to title and to interest but it pertains as well to bad as to good title or interest. State v. Cushing, 137 Me. 112, 15 A. (2d) 740.

Sec. 232. Registrations to expire at close of calendar year; renewals. — All registrations for a dealer in securities shall expire at the close of the calendar year, but new registrations for the succeeding year may be issued as of course upon written application of the dealer, and payment of the fee hereinafter provided, without the filing of further statements or furnishing any further information, unless specifically requested by the commissioner; provided that applications for renewal of registration shall be made on or before the 1st day of March in each year, and if not so made, applications thereafter received shall be treated as, and be subject to the same fees provided for, original registrations. (R. S. c. 55, § 212.)

Sec. 233. List of dealers published.—The bank commissioner shall, at least twice during each year, publish in the state paper a list of the then registered dealers in securities, and of their registered agents or salesmen, and shall also at any time, on request by mail or otherwise, inform any inquirer as to whether or not any individual, partnership, corporation or association is registered either as dealer, agent or salesman. (R. S. c. 55, § 213.)

Sec. 234. Certificate shown to prospective purchasers.—Any dealer in securities may, and any person named in a registration certificate as above provided may, in behalf of any dealer, sell, offer for sale or invite offers for or inquiries about securities in this state, but shall at all times when so engaged carry with him the registration certificate or a copy thereof certified by the commissioner, which shall at any time be shown to any prospective customer upon request. No dealer, agent or salesman shall advertise publicly the fact of his registration or use such fact or the registration certificate in connection with any sale or effort to sell securities, except by statement of the fact or by exhibiting the certificate or a certified copy thereof. (R. S. c. 55, § 214.)

Sec. 235. Commissioner may require dealer to file list of securities, and statements of assets and earnings.—The bank commissioner may at any time require a dealer in securities to file with him a list of the securities which he has offered for sale or advertised within the preceding 6 months, or which he is at the time offering for sale or advertising, or any portion thereof; and may require the filing of statements of assets and earnings, or any other facts he may deem pertinent in relation to any of the securities offered or to be offered by the dealer, or the associations or corporations issuing them; and may require the filing of copies or any or all printed or otherwise reduplicated circulars or printed advertisements relating to securities which the dealer has within 6 months offered for sale or which the dealer shall thereafter offer for sale; and, thereupon, unless satisfied that all such offerings of the dealer have been and are to be made honestly and in good faith, and with disclosure of pertinent facts sufficient to enable intending purchasers to form a judgment of the nature and value of the securities, and without intent to deceive or defraud, and that such securities will not work a fraud upon the purchasers thereof, may prohibit the dealer from selling or offering the securities, or any of them, or in any way advertising them. (R. S. c. 55, § 215.)

Sec. 236. Dealer's registrations revoked. — The bank commissioner may, unless furnished with satisfactory evidence as provided in the preceding section, or in case of violation of any provision of sections 228 to 239, inclusive, or in case of dishonest, deceitful or fraudulent conduct on the part of the dealer in securities in connection with the carrying on of the business, revoke the dealer's registration; and may, having reasonable cause to believe that the dealer may have been guilty of violation of the provisions of said sections, or of dishonest, deceitful or fraudulent conduct in connection with the carrying on of the business, suspend the dealer's registration until satisfied to the contrary. In either case, the dealer shall not be regarded as registered under the provisions hereof until restored to registration by the said commissioner, either on his own initiative or upon order of court as hereinafter provided.

The revocation or suspension of the dealer's registration shall constitute a revocation or suspension of the registration of any agent or salesman of the dealer. (R. S. c. 55, § 216.)

Sec. 237. Agent's registration revoked.—The bank commissioner may, in case of violation of any provision of sections 228 to 239, inclusive, or in case of dishonest, deceitful or fraudulent conduct on the part of any agent or salesman in connection with the business, revoke the agent's or salesman's registration; and may, having reasonable cause to believe that the agent or salesman may have been guilty of violation of any of the provisions of said sections, or of dishonest, deceitful or fraudulent conduct in connection with the business, suspend the agent's or salesman's registration until satisfied to the contrary. In either case, the agent or salesman shall not be regarded as registered under the provisions hereof until restored to registration by the said commissioner, either on his own initiative or upon order of court as hereinafter provided.

In case of suspension or revocation of registration, all certificates shall at once be surrendered to the commissioner upon his request. (R. S. c. 55, § 217.)

Sec. 238. Service of notices.—Notice of any requirement or decision of the commissioner shall be sufficient if sent by mail addressed to the dealer, agent or salesman, as the case may be, at the address designated in the application for registration. (R. S. c. 55, § 218.)

Sec. 239. Appeals.—Appeals may be taken by any person aggrieved by any decision of the commissioner under the provisions of sections 228 to 239, inclusive, to a justice of the superior court, by petition addressed to that court, stating the decision complained of. No such appeal from a refusal to grant regis-

tration shall lie until after formal hearing, which formal hearing, however, the commissioner in his discretion may waive for the purpose of expediting the appeal. Upon such petition, citation shall be issued to the commissioner, who shall file an answer to the petition, stating therein his reasons for the decision. The court may, in its discretion, after hearing the commissioner or his representative, suspend the order of the commissioner, pending the determination of the petition upon its merits, and may, after final hearing thereon, make such decree in connection with the matter complained of as justice may require. The court shall make provision for summary hearing and determination of such petitions so far as in its discretion seems desirable. (R. S. c. 55, § 219.)

Sec. 240. Penalties; violations enjoined.—Any dealer or any person violating any provision of sections 228 to 239, inclusive, or knowingly filing with the commissioner or furnishing to him any false or misleading statements or information, shall be punished upon conviction thereof by a fine of not more than $1,000 or by imprisonment for not more than 60 days, or by both such fine and imprisonment, and municipal courts shall have original and concurrent jurisdiction with the superior court. The foregoing penalties shall be in addition to, and not a substitute for, any civil or criminal liability now or hereafter existing. Authorization is conferred upon the supreme judicial court and the superior court in equity to enjoin, upon application by the bank commissioner or any party in interest, any violation or threatened violation of any of the foregoing provisions of this chapter. (R. S. c. 55, § 220.)

Sec. 241. Assistant commissioner; examiners. — The bank commissioner is authorized to appoint, subject to the provisions of the personnel law, an assistant commissioner and one or more examiners who shall, under his directions, have charge of the enforcement of the provisions of sections 228 to 239, inclusive, and make any necessary investigations thereunder. The salaries and traveling expenses of the assistant commissioner and examiners and all expenses of administration and enforcement of sections 228 to 239, inclusive, shall be paid out of such amounts as the legislature may appropriate. (R. S. c. 55, § 221. 1945, c. 297, § 23.)

Sec. 242. Fees.—Applicants for registration as dealer in securities, except in cases of renewal applications, shall pay to the bank commissioner, for the use of the state, filing fees of $50 each. Dealers in securities shall pay to the bank commissioner, for the use of the state, fees as follows, to wit: for registration or renewal of registration of dealers in securities, $50; for registration or renewal of registration of salesman or agent of dealers in securities, $10 each; for certified copy of dealer's certificates, 50¢ each. (R. S. c. 55, § 222.)

See c. 56, § 22, re fee for registration of consumers' cooperatives.

Common Trust Funds.

Sec. 243. Common trust funds.—Any bank or trust company qualified to act as fiduciary in this state may establish common trust funds for the purpose of furnishing investments to itself as fiduciary or to itself and others, as co-fiduciaries; and may, as such fiduciary or co-fiduciary, invest funds which it lawfully holds for investment in interests in such common trust funds, if such investment is not prohibited by the instrument, judgment, decree or order creating such fiduciary relationship, and if, in the case of co-fiduciaries, the bank or trust company procures the consent of its co-fiduciaries to such investment. Any person acting as a co-fiduciary with any such bank or trust company is authorized to consent to the investment in such interests. (1951, c. 358, § 1.)

Sec. 244. Court accountings.—Unless ordered by decree of the supreme judicial court or of the superior court, in equity, the bank or trust company

operating such common trust funds is not required to render a court accounting with regard to such funds; but it, as accountant, may by petition to the supreme judicial court, the superior court or the probate court, in the county where the accountant has its principal place of business, secure approval of such accounting on such conditions as the court may establish. Whenever a petition for the allowance of such an account is presented, the judge of the court having jurisdiction thereof shall assign a time and place for hearing and shall cause public notice thereof to be given, meaning thereby notice published 3 weeks successively in a newspaper published in the county whose court has jurisdiction; and in addition thereto said judge shall, except to such extent as the several instruments creating the trusts participating in such common trust fund provide otherwise, order personal notice upon all known beneficiaries of the participating trust estates who have a place of residence known to the accountant. Personal notice to known beneficiaries having a place of residence known to the accountant shall denote service by a written notice deposited in the mails addressed to each such known beneficiary at such known place of residence at least 14 days before the time of hearing, or by a written notice either in hand or left at such known place of residence 14 days at least before the time of hearing; the method of service and the form of such notice to be as the court shall order. "Place of residence known to the accountant" as used in this section shall include only places of residence actually known to the accountant, and shall not include residences which could be discovered upon investigation but which do not in the due course of business come to the actual knowledge of the accountant. The allowance of such an account shall be conclusive as to all matters shown therein upon all persons then or thereafter interested in the funds invested in said common trust funds. (1951, c. 358, § 1.)

Sec. 245. Effective date.—Sections 243 to 245, inclusive, shall take effect September 1, 1951 and shall apply to fiduciary relationships then in existence or thereafter established. (1951, c. 358, § 1.)