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Chapter 92.

Taxation Laws Relating to Towns.

Municipal officers annually levy or assess taxes on persons and property within their bounds, for the state, their county and their municipality. Frankfort v. Waldo Lumber Co., 128 Me. 1, 145 A. 241.

Municipality considered agent of state.—When the power of taxation is delegated by the legislature to a municipal corporation, the latter is considered as pro hac vice, the agent of the state, acting for the benefit of the municipality. In other words, the municipality, in the eye of the law, is the hand of the state by which the tax is laid and collected. Frankfort v. Waldo Lumber Co., 128 Me. 1, 145 A. 241.

And, whenever taxes are imposed, whether by a municipality or the state, it is, in legal contemplation, the act of the state, acting either by her own officers or other agents designated for the purpose. Frankfort v. Waldo Lumber Co., 128 Me. 1, 145 A. 241.

Municipal officers must proceed as authorized.—When assessing and collecting such taxes municipal officers are the agents of the state, which is sovereign. And in so doing, they proceed only under such agency, and they shall proceed strictly as authorized and empowered. Frankfort v. Waldo Lumber Co., 128 Me. 1, 145 A. 241.

All taxing power in the municipality is derived from legislative enactment, there being no such thing as taxation by implication. Portland Terminal Co. v. Hinds, 141 Me. 68, 39 A. (2d) 5.

Delegation of taxing power is proper one.—In this state, the revenue necessary to maintain local government has been raised, since earliest times, both by poll taxes and by taxes on property, assessed locally under general authorization contained in the public laws or statutes. That this delegation of the taxing power by the legislature is a proper one has never been called in question so long as the constitutional mandate of equal apportionment and assessment has been observed, and the limitations as to the purposes for which taxes may properly be levied have not been transgressed. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

General Provisions.

Cross References.—See c. 16, § 104, re poll taxes in unorganized territory; c. 36, § 96 et seq., re Maine Forestry District taxes; c. 102, § 13, re assessment of taxes in deorganized municipalities.

Sec. 1. Poll tax.—A poll tax shall be assessed upon every male inhabitant of the state above the age of 21 years whether a citizen of the United States or an alien, in the manner provided by law, unless he is exempted therefrom by the provisions of this chapter, which said poll tax shall be $3. The poll tax shall be assessed on each taxable person in the place where he is an inhabitant on the 1st day of each April. No person shall be considered an inhabitant of a place on account of residing there as a student in an educational institution.

Satisfaction of the poll tax obligation shall be a prerequisite to granting of motor vehicle operator's license and registration of motor vehicle under the provisions of chapter 22. (R. S. c. 81, § 1.)

Cross references.—See § 33, re rules for assessment of taxes; § 66, re time for payment; § 146, re suit for taxes; § 68, re receipt for payment of poll tax; c. 22, §§ 15, 61, re poll tax prerequisite to granting of operator's license and motor vehicle license; c. 37, § 39, sub-§ VIII, re poll tax prerequisite to granting of fishing and hunting licenses.

No exemptions from poll tax.—By the

provisions of this section it is unmistakably apparent that it was the legislative intention that every male inhabitant of this state should be taxed. No person is to be exempt. No one should be. The payment of taxes is the price paid for the protection which government gives to a person and to property. The state affords security to all persons. It protects all property. The burden of maintaining government should be coextensive with the benefits conferred. Littlefield v. Brooks, 50 Me. 475.

This section assumes that every inhabitant of the state is an inhabitant of some place therein. Littlefield v. Brooks, 50 Me. 475.

Taxpayer not estopped from showing nonresidence in town of assessment.—In an action by a collector of taxes to recover a poll tax assessed upon a person in a town where he was not an inhabitant at the time the tax was assessed, the defendant is not estopped from showing his nonresidence in defense, although all the proceedings of the town, including the warrant to the officer, are upon their face formal and regular. McCrillis v. Mansfield, 64 Me. 198.

Sec. 2. Real and personal estate taxable. — All real property within the state, all personal property of inhabitants of the state and all personal property hereinafter specified of persons not inhabitants of the state is subject to taxation as hereinafter provided. (R. S. c. 81, § 2.)

All real and personal property subject to taxation.—By this section and §§ 3 and 5, the intention is clearly exhibited to subject all real and personal property of the inhabitants of this state to taxation, unless it is specially exempted. Augusta Bank v. Augusta, 36 Me. 255; East Livermore v. Livermore Falls Trust & Banking Co., 103 Me. 418, 69 A. 306; Opinion of the Justices, 141 Me. 442, 42 A. (2d) 47.

In this state all real estate is expressly made subject to taxation, unless specifically exempted. Portland, Saco & Portsmouth R. R. v. Saco, 60 Me. 196; Orono v. Sigma Alpha Epsilon Society, 105 Me. 214, 74 A. 19; Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94; Bangor v. Brewer, 142 Me. 6, 45 A. (2d) 434.

And buildings are taxable irrespective of whether they are real or personal property. Portland Terminal Co. v. Hinds, 141 Me. 68, 39 A. (2d) 5.

The term "inhabitants," as used in this section, embraces bodies corporate as well as individuals. Baldwin v. Trustees of Ministerial Fund, 37 Me. 369.

History of section. — See Bangor v. Brewer, 142 Me. 6, 45 A. (2d) 434.

Cited in Oldtown v. Blake, 74 Me. 280.

Sec. 3. Real estate includes; lien. — Real estate for the purposes of taxation, except as provided in section 6, shall include all lands in the state and all buildings erected thereon or affixed to the same, together with the water power, shore privileges and rights, forest and mineral deposits appertaining thereto, and all townships and tracts of land, the fee of which has passed from the state since the year 1850, and all interests in timber upon public lands derived by permits granted by the commonwealth of Massachusetts; interest and improvements in land, the fee of which is in the state; and interest by contract or otherwise in land exempt from taxation; also transmission lines of electric light and power companies. There shall be a lien to secure the payment of all taxes legally assessed on real estate as defined in this section, which shall take precedence of all other claims on said real estate and interests and shall continue in force until said taxes are paid or until said lien is otherwise terminated by law. Buildings on leased land or on land not owned by the owner of the buildings, when situated in any city, town or plantation shall be considered real estate for purposes of taxation and shall be taxed in the town, city or plantation where said land is located; but when such buildings are located in the unorganized territory they shall be assessed and taxed as personal property in the place where located on April 1st annually. (R. S. c. 81, § 3.)

Cross references.—See § 93, re lien for taxes; § 98, re alternative method for enforcement of lien; § 155, re sale of real estate for taxes; c. 16, § 93, re treasurer of state may sue to enforce lien.

History of section. — See Bangor v. Brewer, 142 Me. 6, 45 A. (2d) 434.

Real estate, for the purpose of taxation, includes all lands in the state and all buildings erected on or affixed to the same.

Portland Terminal Co. v. Hinds, 141 Me. 68, 39 A. (2d) 5.

The court gives very wide scope to the definition of real estate, for the purposes of taxation. Paris v. Norway Water Co., 85 Me. 330, 27 A. 143.

Buildings taxed as realty.—In this state, for general purposes, buildings erected on the land of another are considered personal property, but it is within legislative authority, for the purpose of taxation, to provide that real estate shall be assessed as personalty or that personalty shall be taxed as realty. Such buildings are taxable as real estate under this section. Portland Terminal Co. v. Hinds, 141 Me. 68, 39 A. (2d) 5.

But buildings and land regarded as separate for purposes of taxation.—This section makes all buildings erected on or affixed to land, real estate for the purposes of taxation. Such erections are taxable, as real estate, and the land on which they rest is also taxable. For the purposes of taxation each is separate and distinct from the other. The exemption of the land from taxation does not imply the exemption of the buildings erected thereon, any more than the exemption of the buildings implies the exemption of the land. As respects taxation, the two descriptions of property are as separate and distinguishable as real estate is from personal property. Portland, Saco & Portsmouth R. R. v. Saco, 60 Me. 196.

And building taxable to lessee.—The interest of the owner of a building is a property right separate and distinct from the ownership of the land and, for purposes of taxation, a lessee is the owner of the building and to such lessee the building is taxable. Portland Terminal Co. v. Hinds, 141 Me. 68, 39 A. (2d) 5.

Railroad depots and other buildings erected upon the land of railroad corporations are to be regarded as real estate for the purposes of taxation. Portland, Saco & Portsmouth R. R. v. Saco, 60 Me. 196. See now § 4.

Aqueducts are part of land.—Aqueducts above or under ground are but conditions suited for carrying water, undefiled, through or over the soil. They are fixtures, permanent in character and part of the land that sustains them. Size, capacity and the material used in their construction do not change their nature. They are a constituent part of the freehold, and so long as they remain the property of the owner of the fee, their character as real estate will not be questioned. Paris v. Norway Water Co., 85 Me. 330, 27 A. 143.

A tax lien is statutory. At common law there was no lien. Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665.

And not to be extended by implication or enlarged by judicial construction. A tax is a lien on property only so far as expressly made a lien by the statute. It exists and attaches only according to such terms and conditions as are prescribed by the statute creating it. Scavone v. Davis, 142 Me. 45, 45 A. (2d) 787.

And it is only by proper assessment that a lien can be created under the provisions of this section. Unless a tax is properly assessed, it cannot create a lien available for enforcement by any form of process. Vigue v. Chapman, 138 Me. 206, 24 A. (2d) 241.

Unless a tax is properly assessed, no lien attaches to the property against which the tax is assessed. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

No lien of realty for collection of tax on personalty.—Under our law, there is no lien on real estate for the enforcement of payment of personal property taxes. A man's real estate cannot be forfeited by lien process to enforce collection of a tax on personal property. Scavone v. Davis, 142 Me. 45, 45 A. (2d) 787.

Tax lien is upon land itself.—A tax upon real estate is primarily a pecuniary imposition upon the owner. The lien upon the real estate is simply a security established by statute of which the tax collector may avail himself in default of payment. Apart from statute, no such lien exists. The lien thus created by statute is upon the land itself, not upon the interest of the person assessed. The purpose of granting the lien is to allow the land to be taken and sold for nonpayment of taxes. The tax lien must be commensurate with the tax; it covers the thing for which the tax is assessed and it covers nothing else. Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665.

And lays foundation for title paramount to that derived from deed or mortgage.—Taxes legally assessed upon an estate create a lien thereon, and lay the foundation for a title paramount to that derived by deed or mortgage. They constitute a legal charge upon the estate, not upon the mortgagee. Williams v. Hilton, 35 Me. 547.

The interest of a mortgagee cannot under any circumstances or by any proof be made superior to the lien for taxes. Snell v. Libby, 137 Me. 62, 15 A. (2d) 148.

But it gives no title until enforced in statutory manner. — Undoubtedly, a tax duly assessed is an incumbrance upon the

land. But it is a limited or an inchoate one. It gives no title to or interest in the land until it has been enforced in the way provided by statute. Preston v. Wright, 81 Me. 306, 17 A. 128.

Tax lien constitutes breach of covenant against incumbrances.—An unpaid tax lawfully assessed upon a parcel of land is a lien upon the land from the date of the assessment, and constitutes an incumbrance and a breach of a covenant against incumbrances. Maddocks v. Stevens, 89 Me. 336, 36 A. 398.

Where the assessment is a unit, a lien is created upon the entire property for the whole tax, upon the leased as well as the unleased portion, and the lien can be enforced against either portion or both. Murray v. Ryder, 120 Me. 471, 115 A. 256.

Former provisions of section.—For a consideration of this section when it made provision for liens only on land belonging to resident proprietors, see Hobbs v. Clements, 32 Me. 67.

Formerly, this section provided that, for the purposes of taxation, real estate included "all lands in this state and all buildings or other things erected on or affixed to the same." It was then held that a boom, consisting of a line of permanent piers across a river, and logs fastened to the piers and shores by iron chains, was taxable as real estate (Hall v. Benton, 69 Me. 346; Oldtown v. Blake, 74 Me. 280), as was a bridge (Kittery v. Portsmouth Bridge, 78 Me. 93, 2 A. 847, overruled on another point in Stevens v. Dixfield and Mexico Bridge Co., 115 Me. 402, 99 A. 94).

Applied in Foxcroft v. Straw, 86 Me. 76, 29 A. 950; Orono v. Sigma Alpha Epsilon Society, 105 Me. 214, 74 A. 19; Kelley v. Jones, 110 Me. 360, 86 A. 252.

Quoted in Pejepscot Paper Co. v. State, 134 Me. 238, 184 A. 764.

Cited in Augusta Bank v. Augusta, 36 Me. 255; Bresnahan v. Sherwin-Burrill Soap Co., 108 Me. 124, 79 A. 376.

Sec. 4. Railroad buildings, etc., as nonresident land.—The buildings of every railroad corporation or association, whether within or without the located right-of-way, and its lands and fixtures outside of its located right-of-way are subject to taxation by the cities and towns in which the same are situated, as other property is taxed therein, and shall be regarded as nonresident land. (R. S. c. 81, § 4.)

History of section.—See Portland Terminal Co. v. Hinds, 134 Me. 434, 187 A. 716.

The land within the located right-of-way of a railroad corporation is exempt from taxation. Portland Terminal Co. v. Portland, 129 Me. 264, 151 A. 460.

Irrespective of its use.—This section is explicit. Land within the limits of the located right-of-way is not taxable. The use to which the land is put is immaterial. The exemption from taxation depends solely upon its location. Portland Terminal Co. v. Portland, 129 Me. 264, 151 A. 460.

Land within the located right-of-way of a railroad company is exempted from taxation even though temporarily used for other than railroad purposes. Portland Terminal Co. v. Portland, 129 Me. 264, 151 A. 460.

But not buildings within right-of-way.—A railroad location, but not buildings on it, is exonerated from local taxation. In re Maine Central R. R., 134 Me. 217, 183 A. 844.

Right-of-way does not include all lands appropriated for public use.—"The located right-of-way" does not comprehend all lands which the railroad corporation has appropriated and holds for public use under the exercise of its power of eminent domain for its authorized and essential purposes. Portland Terminal Co. v. Hinds, 134 Me. 434, 187 A. 716.

But only four-rod strip referred to in c. 45, § 26.—The "located right-of-way" is limited to the four-rod strip referred to in c. 45, § 26, and all land outside of it is taxable. Portland Terminal Co. v. Hinds, 134 Me. 434, 187 A. 716.

And is distinct from terminal facilities.—The right-of-way of a railroad for the purposes of this section is regarded as something distinct from its terminal facilities and from property acquired for incidental purposes. Portland Terminal Co. v. Hinds, 134 Me, 434, 187 A. 716.

Railroad's land subject to laws governing taxation of nonresident's land.—The meaning of the provision in this section that the real estate of a railroad company "shall be regarded as nonresident land," is that such land is subject to the laws which govern the taxation of any nonresident's land. Portland Terminal Co. v. Portland, 129 Me. 264, 151 A. 460.

This section provides that, irrespective of location, the land shall be "regarded" as nonresident land or land of a nonresident, thus conferring upon a railroad a nonresi-

dent status for the purposes of taxing its real estate. Portland Terminal Co. v. Portland, 129 Me. 264, 151 A. 460.

Former provision of section.—For a consideration of this section when it provided that "the track of the road and the land on which it is constructed, shall not, for the purposes of taxation, be deemed real estate," see Portland, Saco & Portsmouth R. R. v. Saco, 60 Me. 196.

Quoted in State v. Boston & Maine R. R., 123 Me. 48, 121 A. 541.

Cited in Opinion of the Justices, 136 Me. 525, 2 A. (2d) 451; Portland Terminal Co. v. Hinds, 141 Me. 68, 39 A. (2d) 5.

Sec. 5. Personal estate includes.—Personal estate for the purposes of taxation includes all goods, chattels, moneys and effects, wheresoever they are; all vessels at home or abroad; all obligations for money or other property; money at interest and debts due the persons to be taxed more than they are owing; all public stocks and securities; all shares in moneyed and other corporations within or without the state, except as otherwise provided by law; all annuities payable to the person to be taxed when the capital of such annuity is not taxed in this state; and all other property included in the last preceding state valuation for the purposes of taxation. (R. S. c. 81, § 5.)

Cross references.—See c. 16, § 113, re taxation of railroad companies; c. 59, § 2, re taxation of banks.

History of section.—See Taylor v. Caribou, 102 Me. 401, 67 A. 2.

This section should not be read by itself. It is only a part of the statutes upon taxation. It should be read in connection with the other statutes prior and contemporaneous, and also in the light of contemporaneous and subsequent practical construction by the taxing officers and business public. East Livermore v. Livermore Falls Trust & Banking Co., 103 Me. 418, 69 A. 306; Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94.

Shares in corporation not to be taxed twice.—The language of this section is explicit that all shares in moneyed corporations shall be taxed, but it does not necessarily follow that they are to be taxed twice, or so taxed that the result would be a double taxation of them. The section is equally explicit that "all goods, chattels, moneys and effects ... all obligations for money or other property ... all public stocks and securities" shall be taxed. If it follows from this that all such property is to be taxed to a corporation whose shares representing the same property are taxed to the shareholders, there would be a double taxation of crushing weight and all corporations subject to such taxation would be crushed out of existence. East Livermore v. Livermore Falls Trust & Banking Co., 103 Me. 418, 69 A. 306; Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94.

A tax is not to be assessed at the same time upon all the personal property of a corporation to the corporation and also upon all shares to the shareholders. East Livermore v. Livermore Falls Trust & Banking Co., 103 Me. 418, 69 A. 306.

The legislature intended to include in the description "money at interest and debts due the persons to be taxed," all debts whether bearing interest or not. Taylor v. Caribou, 102 Me. 401, 67 A. 2.

Money owed by taxpayer deducted from money he has at interest and debts due him.—In the assessment of personal property for taxation under this section, the amount which the person to be taxed is owing is to be deducted from the money which he has at interest and the debts due him. Taylor v. Caribou, 102 Me. 401, 67 A. 2.

The section makes no distinction between money at interest and debts due the person to be taxed as to his right to have the same reduced in the assessment by the amount of debts which he is owing. Taylor v. Caribou, 102 Me. 401, 67 A. 2.

Award against foreign state not "debt due" until money appropriated.—An award by a committee of arbitration on a claim against a foreign state does not constitute a "debt due," to be taxed under the provisions of this section, until an appropriation is made by the foreign state for the payment of the award. Bucksport v. Woodman, 68 Me. 33.

Constitutionality of proposed amendment.—For a consideration of the constitutionality of a proposed amendment of the section which would have limited personal estate to tangible property, see Opinion of the Justices, 141 Me. 442, 42 A. (2d) 47.

Applied in Abbott v. Bangor, 54 Me. 540; Stetson v. Bangor, 56 Me. 274.

Cited in Augusta Bank v. Augusta, 36 Me. 255.

Sec. 6. Exemptions.—The following property and polls are exempt from taxation:

I. The property of the United States so far as the taxation of such property is prohibited under the constitution and laws of the United States, and the property of this state and the property of any public municipal corporation of this state appropriated to public uses, if located within the corporate limits and confines of such public municipal corporation, and also the pipes, fixtures, hydrants, conduits, gatehouses, pumping stations, reservoirs and dams, used only for reservoir purposes, of public municipal corporations engaged in supplying water, power or light if located outside of the limits of such public municipal corporations, but nothing herein contained shall abridge any power of taxation possessed by any city or town by virtue of any special act; also all airports and landing fields, structures erected thereon or contained therein of public municipal corporations whether located within or without the limits of such public municipal corporations. (1945, c. 90)

Cross references.—See c. 1, § 11, re land acquired by U. S. for public buildings; c. 36, § 34, sub-§ VI, re powers of park commission; c. 91, § 135, re armories, etc.

History of subsection.—See Bangor v. Brewer, 142 Me. 6, 45 A. (2d) 434; Boothbay v. Boothbay Harbor, 148 Me. 31, 88 A. (2d) 820.

Only property appropriated to public uses is tax exempt under this section. Boothbay v. Boothbay Harbor, 148 Me. 31, 88 A. (2d) 820.

But a use otherwise public does not become private by reason of ownership by a town. Boothbay v. Boothbay Harbor, 148 Me. 31, 88 A. (2d) 820.

And the property of a private water company is appropriated to a public use, and hence can be exempt from tax. Boothbay v. Boothbay Harbor, 148 Me. 31, 88 A. (2d) 820.

Outside property of public municipal corporation must be used for corporate or municipal purposes.—The exempt outside property of a public municipal corporation "engaged in supplying water, etc." must form part of a utility system for either corporate or municipal purposes. Boothbay v. Boothbay Harbor, 148 Me. 31, 88 A. (2d) 820.

And property used as private enterprise not exempt.—Where a public municipal corporation has been endowed with authority to act in a dual capacity, one as a public municipal corporation so far as a particular town and its inhabitants are concerned, and the other as a private enterprise in furnishing electric current to other towns and their inhabitants for their convenience and for its private gain, there is no reason why the company should be exempt from taxation upon its property used solely in the transmission and distribution of electricity outside the limits of the particular town. Greaves v. Houlton Water Co., 140 Me. 158, 34 A. (2d) 693.

Enumerated items not regarded as constituent portions of property.—In appraising the property for the purposes of assessing a tax, the enumerated items in this subsection, from pipes to reservoir dams both inclusive, should not be regarded as constituent portions. Whiting v. Lubec, 121 Me. 121, 115 A. 896.

"Fixtures" defined.—The term "fixtures" in this subsection is wide-reaching. A fixture is that which was once a chattel, but which, by being affixed to realty or appurtenances, at least by juxtaposition, for use in connection therewith, has become part and parcel of it. Whiting v. Lubec, 121 Me. 121, 115 A. 896.

"Fixtures" includes poles and transmission lines.—The term "fixtures" in this subsection includes poles and transmission lines. Greaves v. Houlton Water Co., 140 Me. 158, 34 A. (2d) 693.

Subsection applies to quasi municipal corporation.—A body politic and corporate, created for the sole purpose of performing one or more municipal functions, is a quasi municipal corporation, and is deemed a municipal corporation within the meaning of this subsection. The phrase "municipal corporation" is now generic, and it should be held to include municipal corporations proper, and such quasi municipal corporations, as cities, towns, school districts, water, fire and other municipal districts. Augusta v. Augusta Water District, 101 Me. 148, 63 A. 663.

Legislature not precluded from taxing some publicly owned property.—Public property of the state and that of its governmental divisions is presumptively immune from taxation, but that immunity does not result from a want of legislative power to impose taxation on some publicly owned property at its election.

Bangor v. Brewer, 142 Me. 6, 45 A. (2d) 434.

And land owned by one municipality within the confines of another is not exempt from taxation under this subsection. Bangor v. Brewer, 142 Me. 6, 45 A. (2d) 434.

Property of municipal corporation exempt by implication prior to enactment of this subsection.—For a case prior to the enactment of this subsection holding that buildings and other property owned by municipal corporations and appropriated to public uses were but the means and instrumentalities used for municipal and governmental purposes, and were, therefore, exempt for general taxation, not by express statutory prohibitions but by necessary implication, see Camden v. Camden Village Corp., 77 Me. 530, 1 A. 689.

Applied in Greaves v. Houlton Water Co., 143 Me. 207, 59 A. (2d) 217.

II. All bonds, notes and other obligations issued after the 1st day of February, 1909, by the state of Maine or any county, municipality, village corporation, light and power district or water or sewerage district therein.

III. All property which by the articles of separation is exempt from taxation; real and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by the state; by literary and scientific institutions; by posts of the American Legion, Veterans of Foreign Wars, Grand Army of the Republic, Spanish War Veterans, Disabled American Veterans, Navy Clubs of the U. S. A.; by chambers of commerce or boards of trade in this state; and by the American National Red Cross and its chapters in this state; and none of these shall be deprived of the right of exemption by reason of the source from which its funds are derived or by reason of limitation in the classes of persons for whose benefit such funds are applied; provided, however, as further condition of the right of exemption that no director, trustee, officer or employee of any organization claiming exemption shall receive directly or indirectly any pecuniary profit from the operation thereof, excepting reasonable compensation for services in effecting its purposes or as a proper beneficiary of its strictly benevolent or charitable purposes, and that all profits derived from the operation thereof and the proceeds from the sale of its property are devoted exclusively to the purposes for which it is organized, and that the institution, association or corporation claiming exemption under the provisions of this subsection shall file with the tax assessors upon their request a report for its preceding fiscal year in such detail as the tax assessors may reasonably require, and provided further, however, that no exemption shall be allowed hereunder in favor of an agricultural fair association holding pari mutuel racing meets unless it has qualified the next preceding year as a recipient of the "stipend fund" provided in section 17 of chapter 32. Any college in this state authorized to confer the degree of bachelor of arts or of bachelor of science and having real estate liable to taxation shall, on the payment of such tax and proof of the same to the satisfaction of the governor and council, be reimbursed from the state treasury to the amount of the tax so paid; provided, however, that the aggregate amount so reimbursed to any college in any 1 year shall not exceed $1,500 and that this right of reimbursement shall not apply to real estate bought after April 12, 1889. (1947, c. 142. 1951, c. 141. 1953, c. 37; c. 203, § 1)

I. General Consideration.
II. Property of Benevolent and Charitable Institutions.
A. In General.
B. Property Must Be Occupied or Used for Institution's Own Purposes.
III. Property of Literary and Scientific Institutions.

Cross References.

See c. 32, § 19, re requirements of agricultural fair associations; c. 60, § 253, re nonprofit hospital service organizations.

I. GENERAL CONSIDERATION.

History of subsection.—See O'Connor v. Wassookeag Preparatory School, 142 Me. 86, 46 A. (2d) 861.

This subsection is the general law which now exempts from taxation the real and personal property of certain named organizations, like the Red Cross and American Legion, and also exempts the real and personal property of all benevolent and charitable institutions incorporated by the state. MacDonald v. Stubbs, 142 Me. 235, 49 A. (2d) 765.

No limit of amount of realty exempt.—This subsection contains no limitation of the amount of real estate that may be held exempt from taxation, and there is no authority under which, or rule by which, the court can affix any such limitation. The only condition upon which the exemption depends is the proviso as to the purposes for which the real estate is occupied. Osteopathic Hospital of Maine v. Portland, 139 Me. 24, 26 A. (2d) 641.

Subsection not applicable to religious societies.—Religious societies are not included in the enumeration of this subsection, and the exemption of their property from taxation is found in subsection V. It is impossible to extend by construction the operation of this subsection to religious societies. Osteopathic Hospital of Maine v. Portland, 139 Me. 24, 26 A. (2d) 641.

II. PROPERTY OF BENEVOLENT AND CHARITABLE INSTITUTIONS.

A. In General.

A charitable institution to be exempted from taxation must be a purely charitable one. Bangor v. Rising Virtue Lodge, No. 10, 73 Me. 428.

Charity and charitable uses are expressions recognized and well understood in the law. The object of the legislature was to favor societies existing exclusively for charitable purposes, or for purposes purely charitable, not a society existing for other and distinct purposes, and with other and different objects to be attained. Bangor v. Rising Virtue Lodge, No. 10, 73 Me. 428.

What constitutes "charity."—The word "charity" is not to be taken in its widest sense, denoting all the good affections which men ought to bear to each other, nor in its restricted and usual sense, signifying relief to the poor, but is to be taken in its legal signification, as derived chiefly from the statute of 43 Eliz., c. 4. Those purposes are deemed charitable which are enunciated in that act, or which by analogy are deemed within its spirit and intendment. Maine Baptist Missionary Convention v. Portland, 65 Me. 92.

"Benevolent" and "charitable" synonymous.—This subsection uses the word "benevolent" but there is no question that this word, when used in connection with "charitable," is to be regarded as synonymous with it and as defining and limiting the nature of the charity intended. Bangor v. Rising Virtue Lodge No. 10, 73 Me. 428.

A corporation carrying on the diffusion and inculcation of the Christian religion is primarily a benevolent and charitable institution, and falls within the class of institutions included within the realm of public charities. And the real property of such corporation, when occupied for its own purposes, is exempt from taxation. Ferry Beach Park Ass'n v. Saco, 127 Me. 136, 142 A. 65.

Thus, missionary societies, foreign or domestic, are, in a legal sense, charitable institutions. Maine Baptist Missionary Convention v. Portland, 65 Me. 92.

An organization, the main purpose and design of which is the promulgation and diffusion of Christian knowledge and intelligence through its agency as an institution of domestic missions, falls within the description of charitable institutions intended by this subsection. Maine Baptist Missionary Convention v. Portland, 65 Me. 92.

But a corporation established to manage and apply a fund towards the support of a minister is not a charitable institution within the meaning of this subsection. Gorham v. Trustees of Ministerial Fund, 109 Me. 22, 82 A. 890. See § 14, IX.

And cemeteries are not included within the general exemption from taxation, granted to benevolent and charitable institutions by this subsection. In re Estate of Hill, 131 Me. 211, 160 A. 916. See note to c. 58, § 1, re cemetery corporations not included in statutory provisions relating to charities.

Institution must be incorporated by Maine.—A charitable institution not shown to be incorporated by this state, or under its laws, cannot claim the statutory exemption of this subsection. Marsh River Lodge v. Brooks, 61 Me. 585.

Thus property of voluntary unincorporated association not exempt.—A voluntary unincorporated association and a corporation duly organized under the law of the state, cannot be regarded as identical. The property of the former is not exempt from taxation; that of the latter may be. Marsh River Lodge v. Brooks, 61 Me. 585.

But reason for incorporating in Maine immaterial.—If the evidence clearly shows that the corporation seeking an exemption under this subsection is a "benevolent and charitable institution incorporated by the

state," it is entirely immaterial what influenced the organization of the corporation. And, that it was organized in Maine, because its incorporators were suited with Maine laws, or wished to receive the benefits of them, should not be used against it to debar it of its rights under those laws. Camp Emoh Associates v. Lyman, 132 Me. 67, 166 A. 59.

B. Property Must Be Occupied or Used for Institutions's Own Purposes.

Exemption applies only to property occupied by institution for its own purposes.—The exemption of this subsection is subject to the limitation that the exemption applies only to property occupied by the corporation for its own purposes. Ferry Beach Park Ass'n v. Saco, 136 Me. 202, 7 A. (2d) 428; Calais Hospital v. Calais, 138 Me. 234, 24 A. (2d) 489.

So much of the real estate owned by benevolent and charitable corporations, which is not occupied by them for their own purposes, shall be taxed. MacDonald v. Stubbs, 142 Me. 235, 49 A. (2d) 765. See Foxcroft v. Straw, 86 Me. 76, 29 A. 950; Auburn v. Young Men's Christian Ass'n, 86 Me. 244, 29 A. 992.

Property is not exempt from taxation merely because it is owned by a benevolent and charitable institution. Freedom from assessment extends only to property which the institution occupies or uses for its own purposes. Camp Emoh Associates v. Lyman, 132 Me. 67, 166 A. 59.

When the property of an institution is by legislative grant exempted from taxation, the exemption must be held as applying only to such property as is occupied by such institutions for their own purposes. In this state this doctrine has been written into the tax statute, appearing in this subsection as a limitation or exception appended to the general exemption granted benevolent and charitable institutions. Ferry Beach Park Ass'n v. Saco, 127 Me. 136, 142 A. 65.

Thus, properties from which revenue is derived and which are clearly not occupied by the institution for its own purposes are taxable. Ferry Beach Park Ass'n v. Saco, 127 Me. 136, 142 A. 65.

Property used by an association exempt from taxation for deriving revenue and for purposes alien to its own purposes as contemplated by this subsection is taxable. Lewiston v. All Maine Fair Ass'n, 138 Me. 39, 21 A. (2d) 625.

Property of a benevolent institution used for the stabling of horses for hire, let for victualing purposes and for the use of cottages is not occupied by the institution for its own purposes within the meaning of this subsection. It is property from which revenue is derived—just as much business property as a store or mill would be. Foxcroft v. Piscataquis Valley Campmeeting Ass'n, 86 Me. 78, 29 A. 951.

And land unoccupied and unused for the exempt corporation's purposes is taxable. Lewiston v. All Maine Fair Ass'n, 138 Me. 39, 21 A. (2d) 625.

Limitation applicable to all benevolent and charitable institutions.—The clause of this subsection limiting the exemption to such real estate as is occupied by certain corporations for their own purposes applies to all charitable and benevolent corporations alike. Auburn v. Young Men's Christian Ass'n, 86 Me. 244, 29 A. 992.

Purpose of limitation.—The purpose of the legislature in making the exception as to property not occupied by the institution for its own purposes was that such portions of the property as are intended to be used and are used for other purposes, commercial or otherwise, should not be subject to the exemption, but should bear their just proportion of the burden of taxation. Curtis v. Androscoggin Lodge, No. 24, I. O. O. F., 99 Me. 356, 59 A. 518.

Occupation by institution must be actual.—The occupation contemplated by this subsection must undoubtedly be an actual occupation, and something more is required than that which results merely from ownership and possession on the part of the institution, or from the use of the property for investment purposes. Curtis v. Androscoggin Lodge, No. 24, I. O. O. F., 99 Me. 356, 59 A. 518.

Immunity from assessment depends, not upon simple ownership and possession of property, nor necessarily upon the extent or length of the actual occupancy thereof, although this is entitled to consideration, but upon occupation of such a nature as, within the meaning of this subsection, contributes immediately to the promotion of benevolence and charity, and the advancement thereof. Camp Emoh Associates v. Lyman, 132 Me. 67, 166 A. 59; Ferry Beach Park Ass'n v. Saco, 136 Me. 202, 7 A. (2d) 428.

But need not be exclusive.—It was not the intention of the legislature that only such real estate of benevolent and charitable institutions as is occupied by them exclusively should be exempt from taxation. Curtis v. Androscoggin Lodge, No. 24, I. O. O. F., 99 Me. 356, 59 A. 518; Calais Hospital v. Calais, 138 Me. 234, 24 A. (2d) 489.

And use by others for rental does not

preclude exemption.—Where a building of a charitable or benevolent association is designed for use by it for its own purposes, and a substantial use is made of all of the building by the association for its own purposes, in good faith, the property is exempt from taxation under this subsection, notwithstanding such occupation may not be exclusive, and the owner may sometimes allow other associations and individuals to use some portions of the property for a rental, when it can be done without interfering with the use of the same by the owner for its own purposes. Curtis v. Androscoggin Lodge, No. 24, I. O. O. F., 99 Me. 356, 59 A. 518; Osteopathic Hospital of Maine v. Portland, 139 Me. 24, 26 A. (2d) 641.

Property covered by this subsection is exempt for taxation even though the corporation owning it sometimes allows other persons or corporations to temporarily and occasionally use a part of the property for a rental or occasionally itself has used a part of it for purposes foreign to the conduct of its purposes when this could be done without interfering with its general occupation and use of the same property. Lewiston v. All Maine Fair Ass'n, 138 Me. 39, 21 A. (2d) 625; Calais Hospital v. Calais, 138 Me. 234, 24 A. (2d) 489.

An arrangement as to the use of one room in a building of an institution which benefited the institution in carrying forward its work without additional expense, which segregated no portion to the exclusive use of another, but left the institution in dominant control, did not constitute a use which is independent of and alien to the normal functions of the institution even though it was also of advantage to the person so using the room. Calais Hospital v. Calais, 138 Me. 234, 24 A. (2d) 489.

Property need not have been in actual use when assessed.—The property need not have been in actual use on the day of the assessment. To hold that to secure exemption it must have then been in actual use, would ignore the spirit and intendment of the law. Actual use on that particular day is not the test. Camp Emoh Associates v. Lyman, 132 Me. 67, 166 A. 59.

It is error on the part of the referee to restrict the application of the exempting statute to land actually and physically currently used by the plaintiff for its own purposes. Osteopathic Hospital of Maine, v. Portland, 139 Me. 24, 26 A. (2d) 641.

But appropriation for use of institution is the test.—The rule that the use of property at the time a tax is assessed determines whether the property is or is not exempt from taxation is not arbitrarily controlling or decisive. It is the actual appropriation of its property by a benevolent institution for the use for which the institution is organized and not the physical use on the exact day of the assessment which controls. Osteopathic Hospital of Maine v. Portland, 139 Me. 24, 26 A. (2d) 641.

If the property is not used at all for other purposes, it must be determined whether use was made thereof for its own purposes, which may be shown by incidental uses and by actual appropriation to the purposes of the owner with a definite intention to broaden the scope of its use thereof in the future. Osteopathic Hospital of Maine v. Portland, 139 Me. 24, 26 A. (2d) 641.

And exemption not precluded by uncertainty as to when purposes for which property appropriated will be attained.—That the purposes of which the property was appropriated have not all attained fruition and uncertainty as to the exact time of fulfillment of a definite scheme of development to which the corporation has distinctly committed itself does not preclude exemption. Osteopathic Hospital of Maine v. Portland, 139 Me. 24, 26 A. (2d) 641.

What property required for institution's purposes determined by its officers.—In construing and applying the proviso of this section as to use of the property for the corporation's own purposes, the court cannot restrict it to the limit of necessity. The statute does not indicate such an intention on the part of the legislature; and no considerations of public policy require the court to confine the exemption to narrower limits than the terms of the statute fairly imply. What lands are reasonably required, and what uses of land will promote the purposes for which the institution was incorporated must be determined by its own officers. The statute leaves it to be so determined, by omitting to provide any other mode. In the absence of anything to show abuse, or otherwise to impeach their determination, it is sufficient that the lands are intended for and in fact appropriated to those purposes. Osteopathic Hospital of Maine v. Portland, 139 Me. 24, 26 A. (2d) 641.

The dominant purposes of the managing officers of the corporation, in the use of the property which they direct or permit, are often, although not always, controlling. So long as they act in good faith and not unreasonably in determining how to occupy and use the real estate of the corpo-

ration, their determination cannot be interfered with by the courts. Osteopathic Hospital of Maine v. Portland, 139 Me. 24, 26 A. (2d) 641.

III. PROPERTY OF LITERARY AND SCIENTIFIC INSTITUTIONS.

Property must be occupied by institution for its own purposes.—Not all the real estate of literary and scientific institutions is exempt from taxation. It is only such as is "occupied by them for their own purposes." Orono v. Sigma Alpha Epsilon Society, 105 Me. 214, 74 A. 19; Orono v. Kappa Sigma Society, 108 Me. 320, 80 A. 831. See this note, analysis line II B.

Property owned by independent fraternity organization not exempt.—Property owned by an independent fraternity corporation whose corporate purposes are neither literary nor scientific is not exempt under this section though located on the campus of a literary or scientific institution. Orono v. Sigma Alpha Epsilon Society, 105 Me. 214, 74 A. 19.

Nor is property occupied by such organization under contract of purchase from literary or scientific institution.—Where a literary or scientific institution erects a building and allows a fraternity to occupy it under a contract of purchase for its own purposes and the fraternity is neither a literary nor a scientific institution, the property is not exempt from taxation under this subsection. Orono v. Kappa Sigma Society, 108 Me. 320, 80 A. 831.

The University of Maine is a literary or scientific institution within the meaning of this subsection. Orono v. Kappa Sigma Society, 108 Me. 320, 80 A. 831.

IV. The household furniture excluding radios and television sets of each person, not exceeding $500 to any 1 household, his wearing apparel, farming utensils and mechanics' tools necessary for his business. (1949, c. 182. 1953, c. 193)

"Household furniture" means those things provided for, and appropriated to uses in the house. Holden v. James, 136 Me. 115, 3 A. (2d) 431, holding that a radio is "household furniture" and was exempt under this subsection prior to its specific exclusion from the exemption.

No uncertainty exists as to the intent of the legislature to exempt household furniture to the aggregate amount of $500. The term is comprehensive instead of particular, generic rather than specific. It refers to articles which, by common acceptation, are included in the general classification. It is not confined to such as may have constituted household furniture at the time of the passage of this subsection. The scope of the law is broad enough to include modern inventions which come within its meaning. Holden v. James, 136 Me. 115, 3 A. (2d) 431.

And exemption not limited to head of family or household.—The exemption of this subsection is not to the head of a family or household, but applies to the individual. There is no implication that articles which are avowedly within the class, as beds, chairs, tables, must be for the common use of members of the family in order to be entitled to exemption. The single apartment of an unmarried person may well constitute his abiding place, his home, and contain his household furniture. Holden v. James, 136 Me. 115, 3 A. (2d) 431.

V. Houses of religious worship, including vestries, and the pews and furniture within the same, except for parochial purposes; tombs and rights of burial; and property owned and used by a religious society as a parsonage to the value of $6,000, and personal property not exceeding $6,000 in value; but all other property of any religious society, both real and personal, and so much of any parsonage as is rented is liable to taxation the same as other property. (1951, c. 62)

The exemption of this subsection applies only to houses of religious worship and parsonages. Ferry Beach Park Ass'n v. Saco, 136 Me. 202, 7 A. (2d) 428.

It relates to local parishes, and not to an institution chiefly engaged in missionary work. Maine Baptist Missionary Convention v. Portland, 65 Me. 92. See note to sub-§ III, re exemption of missionary societies as charitable institutions.

Exemption includes land on which buildings stand.—The term "real estate" is not found in the exemption of this subsection. The central purpose is to exempt the church or house of worship and a parsonage of limited value. But the subsection is interpreted as including the land on which the buildings stand and such as may be necessary for convenient ingress and egress, light, air or appropriate and decent

ornamentations. Osteopathic Hospital of Maine v. Portland, 139 Me. 24, 26 A. (2d) 641.

Applied in Foxcroft v. Piscataquis Valley Campmeeting Ass'n, 86 Me. 78, 29 A. 951; Auburn v. Young Men's Christian Ass'n, 86 Me. 244, 29 A. 992.

Cited in In re Estate of Hill, 131 Me. 211, 160 A. 916.

VI. All mules and horses less than 6 months old, and all colts of draught type under 3 years old, and neat cattle 18 months old and under, and all sheep to the number of 35, and swine to the number of 10, and domestic fowl to the number of 50 and all goats to the number of 35 and all kids less than 1 year old. (1945, c. 258, § 1. 1947, c. 231, § 2. 1949, c. 386)

See § 36, re inventory by assessors of sheep, swine, neat cattle, colts, fowl and goats.

VII. Hay, grain, potatoes, orchard products and wool owned by and in possession of the producer.

Quoted in Donnell v. Webster, 63 Me. 15.

VIII. The polls and estates of only those Indians who reside on tribal reservations; and the polls of persons under guardianship, or blind. (1947, c. 191)

IX. The polls of persons in active service in the armed forces of the United States of America.

X. The polls and estates of all persons who by reason of age, infirmity or poverty are in the judgment of the assessors unable to contribute toward the public charges; the estates up to the value of $3,500 of all persons determined to be blind within the definition provided by sections 298 to 318, inclusive, of chapter 25 who are receiving aid under the provisions of said sections; but no property conveyed to any person for the purpose of obtaining exemption from taxation under this subsection shall be so exempt, and the obtaining of such exemption by means of fraudulent conveyance shall be punished by a fine of not less than $100 and not more than 2 times the amount of the taxes evaded by such fraudulent conveyance whichever amount is greater; and in case any person entitled to such exemption has property taxable in more than 1 city or town of the state such proportion of such total exemption shall be made in each city or town, as the value of the property taxable in such city or town bears to the value of the whole of the property of such person taxable in the state. (1953, c. 291, § 1)

Stated in part in State v. Montgomery, 92 Me. 433, 43 A. 13.

XI. The polls of all soldiers, sailors and marines who served in the army or navy of the United States in the Philippine Insurrection or any federally recognized war period prior thereto, or who receive state pension; the polls of all soldiers, sailors or marines who served in World Wars I or II or the Korean Campaign who are receiving pension or retirement pay or compensation or vocational training from the United States government on account of disability incurred in or aggravated by service in said wars; and the estates up to the value of $3,500 of veterans who served in the armed forces of the United States during any federally recognized war period, including the Korean Campaign, who were honorably discharged or honorably separated and retired to the reserve, when they shall have reached the age of 62 years or are receiving any form of pension or compensation from the United States government for total disability, service connected or non-service connected, as a veteran; and the estates up to the value of $3,500 of the unremarried widow or minor child of any veteran who would be entitled to such exemption if living, or who is in receipt of a pension or compensation from the federal government as the widow or minor child of a veteran; provided, however,

that no person shall qualify for such exemption unless the veteran upon whose record the exemption is claimed was a legal resident of this state when he entered the military service of the United States or unless such veteran or his widow has been a legal resident of this state for at least 10 years prior to making the claim for exemption; and provided further that any person hereinbefore enumerated who desires to secure this exemption shall file written proof of entitlement on or before the 1st day of April with the assessors of the town in which he resides, whereupon the assessors shall grant such exemption to such person while so qualified or until notified of reason or desire for discontinuance; but no property conveyed to any person for the purpose of obtaining exemption from taxation under this subsection shall be so exempt, and the obtaining of such exemption by means of fraudulent conveyance shall be punished by a fine of not less than $100 and not more than 2 times the amount of the taxes evaded by such fraudulent conveyance whichever amount is greater; and in case any person entitled to such exemption has property taxable in more than 1 city or town of the state, such proportion of such total exemption shall be made in each city or town, as the value of the property taxable in such city or town bears to the value of the whole of the property of such person taxable in the state.

Cities and towns granting such exemptions shall have a valid claim against the state to recover 70% of the taxes lost by reason of this exemption as exceeds 3% of the total local tax levy, upon proof of the facts in form satisfactory to the commissioner of finance and administration; and such claims shall be presented to the legislature next convening. (1947, c. 29. 1951, c. 157, § 13; c. 160. 1953, c. 265, § 6; c. 291, § 2)

Property in excess of $3500 taxable.—Under this subsection, if an honorably discharged soldier possesses property of greater value than $3500, so much of it as is not otherwise exempt from taxation must be assessed. Athens v. Whittier, 122 Me. 86, 118 A. 897.

Former provisions of subsection. — For a consideration of this subsection when the exemption to veterans was only for those whose property did not exceed a specified amount, see Mechanic Falls v. Millett, 121 Me. 329, 117 A. 93.

The former proviso as to the residence requirement provided merely that "no exemption shall be allowed hereunder in favor of any person who is not a legal resident of this state." Under this provision it was held that, unless the person claiming the exemption was a legal resident of the state of Maine when the several taxes were assessed, he was not entitled to the exemption. See Stockman v. South Portland, 147 Me. 376, 87 A. (2d) 679.

A former provision of this subsection granted an exemption to widows of Civil War veterans. It was held that the word "widow," as used in that provision, meant a woman whose husband was dead and who had not remarried. On her remarriage, the woman ceased to be the widow of her first husband, and she did not revert to that status on the death of her second. Solon v. Holway, 130 Me. 415, 157 A. 236.

XII. The aqueducts, pipes and conduits of any corporation supplying a town with water are exempt from taxation, when such town takes water therefrom for the extinguishment of fires without charge; but this exemption does not include therein the capital stock of such corporation, any reservoir or grounds occupied for the same or any property, real or personal, owned by such company or corporation other than as hereinabove enumerated.

Cross reference.—See c. 52, § 7 et seq., re use of aqueducts by towns in case of fire.

An exemption under this subsection cannot be sustained where the evidence fails to show that water is taken by the town without charge. Dover v. Maine Water Co., 90 Me. 180, 38 A. 101.

XIII. Whenever a landowner plants or sets apart for the growth and production of forest trees any cleared land or lands from which the primitive forest has been removed and successfully cultivates the same for 3 years, the trees being not less in numbers than 640 on each acre and well distributed over the

same, then, on application of the owner or occupant thereof to the assessors of the town in which such land is situated, in which is set forth his statement that such land is set apart for the sole purpose of reforestation for the benefit of the state, and if the assessors find upon hearing and inspection that such is the exclusive purpose, the same shall be exempted from taxation for 20 years, after the expiration of said 3 years, provided that said applicant at the same time files with said assessors a correct plan of such land with a description of its location and a statement of all the facts in relation to the growth and cultivation of said incipient forest; provided further, that such grove or plantation of trees is during that period kept alive and in thriving condition.

XIV. Mines of gold, silver or of the baser metals, when opened and in process of development, are exempt from taxation for 10 years from the time of such opening; but this exemption does not affect the taxation of the lands or the surface improvements of the same at the same rate of valuation as similar lands and buildings in the vicinity.

XV. All loans of money made by any individual or corporation and secured by mortgage on real estate situated in this state.

See c. 34, § 7, re soil conservation districts.

XVI. All radium used in the practice of medicine.

XVII. Property in the possession of a common carrier while in interstate transportation or held en route awaiting further transportation to the destination named in a through bill of lading; and food products while stored in the custody of a warehouseman as defined in chapter 44, awaiting shipment outside the state, provided said food products were packed within the state and provided the principal ingredients thereof were grown or produced within the state or brought to the state directly from the sea. (1953, c. 140)

XVIII. Provided the owner or owners of a privately owned airport or airports, the use of which is approved by the Maine aeronautics commission, grant free uses of the landing area to the public; such landing area shall be exempt from real estate property taxation. [1947, c. 241]. (R. S. c. 81, § 6. 1945, c. 90; c. 258, § 1. 1947, cc. 29, 142, 191; c. 231, § 2; c. 241. 1949, cc. 182, 386. 1951, cc. 62, 141; c. 157, § 13; c. 160. 1953, cc. 37, 140, 193; c. 203, § 1; c. 265, § 6; c. 291, §§ 1, 2.)

Editor's note.—The following annotations are applicable to the entire section and not simply to the last subsection.

This statute of exemption from taxation is very broad in its terms. Maine Baptist Missionary Convention v. Portland, 65 Me. 92.

Section constitutional.—See Augusta v. Augusta Water District, 101 Me. 148, 63 A. 663.

Legislature to determine what property exempt.—What property shall be exempted from taxation rests exclusively with the legislature to say, without any limitations except such as are imposed by express constitutional provisions. In re Maine Central R. R., 134 Me. 217, 183 A. 844; Greaves v. Houlton Water Co., 143 Me. 207, 59 A. (2d) 217.

But intent to exempt property must be clear.—In order to entitle any kind of property to exemption from taxation, the intention of the legislature to exempt it must be expressed in clear and unambiguous terms; taxation is the rule; exemption is the exception. Portland, Saco & Portsmouth R. R. v. Saco, 60 Me. 196. See MacDonald v. Stubbs, 142 Me. 235, 49 A. (2d) 765.

And exemption strictly construed.—Taxation is the general rule; exemption from taxation the exception. Statutes violating the general rule such as this section are to be construed strictly. The statute creating the exemption must be clear, precise and definite, so as to satisfy the court beyond all doubt that the exemption claimed was within the intention of the legislature, as every exemption is repugnant to equal and impartial taxation. All exemptions are to be construed strictly. Such special privileges are in conflict with the universal obligation of all to contribute a just proportion toward

the public burdens. Bangor v. Rising Virtue Lodge, No. 10, 73 Me. 428.

The exemption, as an exception, must always be construed strictly. Orono v. Sigma Alpha Epsilon Society, 105 Me. 214, 74 A. 19.

All tax exemption statutes should be strictly construed. O'Connor v. Wassookeag Preparatory School, 142 Me. 86, 46 A. (2d) 861.

And all doubt and uncertainty as to the meaning of a statute is to be weighed against exemption. Taxation is the rule and exemption the exception. Gorham v. Trustees of Ministerial Fund, 109 Me. 22, 82 A. 890.

Admissions or acts of assessors not evidence of exemption.—The existence of an exemption depends upon the existence of the facts entitling the property owner thereto. If those facts exist, the right to the exemption is absolute. The exemption is granted by the statute, not by act of the assessors. Neither the admissions nor the acts of the assessors in office are competent evidence of the existence of the exemption or any of the facts upon which its existence depends. Stockman v. South Portland, 147 Me. 376, 87 A. (2d) 679.

Payment of tax on exempt property by guardian does not prejudice rights of ward.—While it is the duty of the guardian to pay taxes legally assessed upon his ward's property to save it from forfeiture it is likewise his duty to resist, in behalf of his ward, the collection of taxes which are not legally assessed. If he has knowledge that property of his ward is exempt from taxation, it is his duty to assert and claim the exemption. If the tax is assessed upon the exempt property, it is his duty to take the proper steps to resist the payment thereof. However, the voluntary payment by a guardian of a tax upon the exempt property of his ward is not a voluntary payment thereof by the ward. It does not have the same effect as does a voluntary payment by a taxpayer who is sui juris. It cannot prejudice the right of the ward to recover from the city the amount so paid to it by his guardian. Stockman v. South Portland, 147 Me. 376, 87 A. (2d) 679.

Even if tax paid with knowledge of exemption.—Even if the guardian has paid the several taxes with full knowledge on his part that the plaintiff's property on which they were assessed was exempt from taxation, such action on his part cannot prejudice the rights of his ward. Stockman v. South Portland, 147 Me. 376, 87 A. (2d) 679.

The burden is on the taxpayer to establish its right to exemption. Camp Emoh Associates v. Lyman, 132 Me. 67, 166 A. 59; Calais Hospital v. Calais, 138 Me. 234, 24 A. (2d) 489.

Exemption is a special favor conferred. The party claiming it must bring his case unmistakably within the spirit and intent of the act creating the exemption. Bangor v. Rising Virtue Lodge, No. 10, 73 Me. 428.

The rule is universal that he who claims exemption must show, affirmatively, an exemption expressly declared and that the claimant is clearly embraced within the terms of the exemption. Stockman v. South Portland, 147 Me. 376, 87 (2d) 679.

And exemption never presumed.—An exemption from taxation will never be presumed, and the burden is on the claimant to establish clearly his right to an exemption. Stockman v. South Portland, 147 Me. 376, 87 A. (2d) 679.

Remedy for inclusion of exempt property in assessment is by abatement proceedings.—See note to § 40.

Tax exemption statute always subject to modification or repeal.—See note to Me. Const., Art. 9, § 9.

Cited in Pushor v. Hilton, 123 Me. 225, 122 A. 673.

Sec. 7. Profits from state owned lands.—In towns where the state owns land as the result of acquisition of such land through the use of federal aid funds under the Pittman-Robertson Federal Aid to Wildlife Act and upon which natural products are sold or leased, 50% of the net profits received by the state from the sale or lease of such natural products shall be paid by the state to the town wherein such land is located. (1953, c. 342.)

Sec. 8. Lists of employees furnished.—Every person, association or corporation employing more than 25 men in any city or town in the state shall, within 10 days after receiving a written request therefor from the assessors of taxes of the city or town where said men are so employed, furnish to said assessors a complete list of all men so employed by said person, association or corporation in said city or town on the 1st day of the preceding April. Upon

neglect or refusal to do so, said person, association or corporation shall be liable to a penalty of $50 to be recovered in an action of debt; and the treasurer of said city or town shall upon request of the assessors of taxes bring such action in his name for the benefit of said city or town. (R. S. c. 81, § 7.)

Sec. 9. Real estate, where taxed.—Taxes on real estate shall be assessed in the town where the estate lies to the owner or person in possession thereof on the 1st day of each April. In cases of mortgaged real estate, the mortgagor, for taxation, shall be deemed the owner until the mortgagee takes possession, after which the mortgagee shall be deemed the owner. Whenever a purchaser of real estate assumes and agrees with the previous owner or party to whom the land is formerly assessed to pay the pro rata or proportional share of taxes, the taxable year of such assessed taxes shall be from April to April. (R. S. c. 81, § 8.)

Cross reference.—See § 20, re mortgaged personal property.

Assessment made, warrant issued, etc. after April 1st.—Taxes on real estate are to be assessed in the town where the estate lies to the person who is the owner or in possession thereof on the first day of April. The assessment must necessarily be made, the warrant for collection issued and the taxes collected, after that date. The liability of the estate to taxation relates back to that time. Egery v. Woodard, 56 Me. 45.

Real estate must be taxed to the owner or person in possession. Wheeler v. Waldo County Com'rs, 88 Me. 174, 33 A. 983.

Tax may be assessed against lessee.—The tax might be assessed directly against the lessee in the first instance, as being the person in possession, this section permitting the assessment against either the owner or the person in possession. Murray v. Ryder, 120 Me. 471, 115 A. 256.

A cottage and the land on which it stands might properly be assessed as real estate to the tenant in possession. Foxcroft v. Straw, 86 Me. 76, 29 A. 950.

Who is obliged to pay the whole.—If the tax is assessed against the lessee as the person in apparent possession, he is obliged to pay the whole for his own protection and look to the owner for his share. Murray v. Ryder, 120 Me. 471, 115 A. 256.

Or it may be assessed against the owner in possession of a life estate. Kelley v. Jones, 110 Me. 360, 86 A. 252.

But mortgagee not in possession cannot be taxed.—A town or city tax cannot lawfully be assessed to the mortgagee of land, who is not in possession, and has never entered to foreclose. And if so assessed, a sale made by the collector for payment of the tax gives no title. Coombs v. Warren, 34 Me. 89.

The mortgagee holds the title for security and may recover possession of the estate, but when his debt is paid he ceases to have any claim upon it. He cannot therefore be taxed as the owner of the estate, the ownership for that purpose being in the mortgagor, but may be for the money due to him upon the mortgage. If he is in possession, by the terms of this section, he may be taxed for the land mortgaged. Coombs v. Warren, 34 Me. 89.

Where the mortgagee never had actual seizin or possession of the mortgaged lands, or any of them, the mortgagors were taxable under this section. Canton v. Livermore Falls Trust Co., 136 Me. 103, 3 A. (2d) 429.

Applied in Hemingway v. Machias, 33 Me. 445; Williams v. Hilton, 35 Me. 547; Paris v. Norway Water Co., 85 Me. 330, 27 A. 143; Orono v. Kappa Sigma Society, 108 Me. 320, 80 A. 831.

Quoted in part in Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94.

Stated in part in Readfield Tel. & Tel. Co. v. Cyr, 95 Me. 287, 49 A. 1047; Snell v. Libby, 137 Me. 62, 15 A. (2d) 148.

Cited in Oldtown v. Blake, 74 Me. 280; Whiting v. Lubec, 121 Me. 121, 115 A. 896; Portland Terminal Co. v. Hinds, 141 Me. 68, 39 A. (2d) 5.

Sec. 10. Taxes upon mortgaged real estate.—Any person, firm or corporation, holding a mortgage on real estate on which said real estate any taxes remain unpaid for a period of 8 months after said taxes are assessed, may pay said taxes, and the amount so paid together with interest and costs thereon 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 any mort-

gage on said real estate held by any such person, firm or corporation so paying said taxes. (R. S. c. 81, § 9.)

Sec. 11. Standing wood, bark and timber taxed to purchaser; lien. —Whenever the owner of real estate notifies the assessors that any part of the wood, bark and timber standing thereon has been sold by contract in writing and exhibits to them proper evidence, they shall assess such wood, bark and timber to the purchaser. A lien is created on such wood, bark and timber for the payment of such taxes; and may be enforced by the collector by a sale thereof when cut, as provided in section 83. (R. S. c. 81, § 10.)

Sec. 12. Landlord and tenant to pay equally.—When a tenant paying rent for real estate is taxed therefor, he may retain out of his rent half of the taxes paid by him; and when a landlord is assessed for such real estate, he may recover half of the taxes paid by him and his rent in the same action against the tenant, unless there is an agreement to the contrary. (R. S. c. 81, § 11.)

Quoted in Murray v. Ryder, 120 Me. 471, 115 A. 256.

Sec. 13. Personal property, where taxed; in trade. — All personal property within or without the state, except in cases enumerated in the following section, shall be assessed to the owner in the town where he is an inhabitant on the 1st day of each April; provided, however, that personal property employed in trade shall be taxed on the average amount kept on hand for sale during the preceding year or any portion of that period when the business has not been carried on for a year. (R. S. c. 81, § 12.)

All personal property intended to be taxed.—By this section it is unmistakably apparent that it was the legislative intention that all personal property of Maine citizens, with certain exceptions, should be taxed. The payment of taxes is the price paid for the protection which government gives to person and to property. The state affords security to all persons. It protects all property. The burden of maintaining government should be co-extensive with the benefits conferred. Littlefield v. Brooks, 50 Me. 475.

How section construed. — It is the court's duty to give to this section and § 14 such construction as shall be most convenient and likely to insure the collection of a just tax upon all property liable to be assessed, and at the same time shall not injuriously affect the taxpayer by exposing him to a double assessment for the same property. Ellsworth v. Brown, 53 Me. 519.

The taxpayer is taxable for all his personal property in the town in which he resides, unless within one of the exceptions named in § 14. Gower v. Jonesboro', 83 Me. 142, 21 A. 846; Dead River Co. v. Assessors of Houlton, 149 Me. 349, 103 A. (2d) 123.

To sustain a tax in a city other than the taxpayer's residence, it must appear that he was within one of the exceptions enumerated in § 14. Martin v. Portland, 81 Me. 293, 17 A. 72.

Under this section, all personal property of the taxpayer, wherever situated, is taxable to him in the town of his residence. Creamer v. Bremen, 91 Me. 508, 40 A. 555.

To render a person liable to assessment for taxes on personal property, it is essential to demonstrate that he is an inhabitant of a definite town. Gilmartin v. Emery, 131 Me. 236, 160 A. 874.

The relation of inhabitant is mainly a political relation. Gilmartin v. Emery, 131 Me. 236, 160 A. 874.

Person has but one domicil.—A person may have at one time several residences, meaning houses equipped for use as his dwellings; but for the purpose of fixing his status as subject to municipal taxation he shall be deemed to have but one domicil at a time. Gilmartin v. Emery, 131 Me. 236, 160 A. 874.

And change of domicil must be proved. —It is settled that the burden of proving change of domicil is upon the one who asserts such change, and the presumption of continuance of domicil is enough, until disproved. Gilmartin v. Emery, 131 Me. 236, 160 A. 874.

A tax on personal property creates a right in the taxing municipality and subjects the owner to a duty. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

This section fixes the liability of persons and property to municipal taxation

for the municipal year. The law takes no note of a subsequent change of residence or ownership until the regular periodical time of making a new assessment. Bucksport v. Woodman, 68 Me. 33.

And all the conditions regulating municipal taxation are to be considered as they exist on the first day of April, and the liability determined accordingly; and the assessments for the year by relation take that date regardless of the particular time when actually made and completed. Bucksport v. Woodman, 68 Me. 33.

The language of this section embraces corporations as well as persons. Portland v. Union Mut. Life Ins. Co., 79 Me. 231, 9 A. 613.

And corporate property taxed where corporation has its business.—By this section, personal property, except in certain enumerated cases, must be assessed to the owner in the town where he is an inhabitant. If the property belongs to a corporation, and does not compose a part of its capital stock, it is liable to be taxed where the corporation has its place of business. Portland, Saco & Portsmouth R. R. v. Saco, 60 Me. 196.

Pleasure vessels of resident owners taxed under this section.—The exception contained in § 14, sub-§ II, shows that it was the intention to tax yachts and pleasure vessels of resident owners under the provisions of this section. McFarland v. Mason, 136 Me. 206, 7 A. (2d) 618.

Applied in Augusta Bank v. Augusta, 36 Me. 255; Baldwin v. Trustees of Ministerial Fund, 37 Me. 369; Hathaway v. Addison, 48 Me. 440; Church v. Rowell, 49 Me. 367; Abbott v. Bangor, 54 Me. 540; Parsons v. Bangor, 61 Me. 457; Rockland v. Farnsworth, 83 Me. 228, 22 A. 103.

Quoted in part in Farmingdale v. Berlin Mills Co., 93 Me. 333, 45 A. 39; East Livermore v. Livermore Falls Trust & Banking Co., 103 Me. 418, 69 A. 306; Norway v. Willis, 105 Me. 54, 72 A. 733; McCann v. Minot, 107 Me. 393, 78 A. 465; Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94; Leeds v. Maine Crushed Rock & Gravel Co., 127 Me. 51, 141 A. 73.

Stated in New Limerick v. Watson, 98 Me. 379, 57 A. 79; Boothbay v. E. I. DuPont deNemours Powder Co., 109 Me. 236, 83 A. 663.

Sec. 14. Exceptions. — The excepted cases referred to in the preceding section are the following:

I. All personal property employed in trade, in the erection of buildings or vessels, or in the mechanic arts shall be taxed in the town where so employed on the 1st day of each April; provided that the owner, his servant, subcontractor or agent so employing it occupies any store, storehouse, shop, mill, wharf, landing place or shipyard therein for the purpose of such employment, except as hereinafter otherwise provided in this subsection. For the purposes of this subsection, "personal property employed in trade" shall include liquefied petroleum gas installations together with tanks or other containers used in connection therewith. Portable mills, logs in any town to be manufactured therein, and all manufactured lumber excepting lumber in the possession of a transportation company and in transit, all potatoes stored awaiting sale or shipment except those owned by and in the possession of the producer, house trailers not properly to be taxed as stock in trade, store fixtures, office furniture, furnishings, fixtures and equipment, and professional libraries, apparatus, implements and supplies, and coin-operated vending or amusement devices, and boats other than those used exclusively in tidal waters, and all manufactured merchandise except products either intended for manufacture into other products or used or for use in connection therewith and except merchandise in the possession of a transportation company or other carrier for the purpose of transporting the same shall be taxed in the town where situated on the 1st day of April each year. (1945, c. 258, § 2. 1949, c. 431. 1951, cc. 185, 294, 307. 1953, c. 308, § 96)

I. General Consideration.
II. Property Employed in Trade or Mechanic Arts.
III. Owner Must Occupy Store, Mill, etc.
IV. Manufactured Lumber.

I. GENERAL CONSIDERATION.

Purpose of subsection.—The apparent purpose and design of this subsection is to prevent certain kinds of property, held

and managed at a distance from the place of the owner's residence, from thereby escaping taxation. Georgetown v. Hanscome, 108 Me. 131, 79 A. 379; Dead River Co. v. Assessors of Houlton, 149 Me. 349, 103 A. (2d) 123.

The theory of the subsection is based upon the reasonable ground that the municipal officers of the town where the personal property is located on the first day of April are more apt to discover it than the municipal officers in the resident town of the owner, which may be many miles away. Georgetown v. Hanscome, 108 Me. 131, 79 A. 379.

The object of this subsection is that taxes on the capital named shall be assessed, where the investment is made, the business done, and the profits gained. This would seem to be in accordance with the principles of equity. Hartshorn v. Ellsworth, 60 Me. 276.

The apparent design of this exception is to prevent certain kinds of property, held and managed at a distance from the place of the owner's residence, from thereby escaping taxation, and the method adopted seems to be the substitution of an established place of business for the personal residence of the owner on the first day of April, to determine the place where certain kinds of property thus situated shall be taxed. Ellsworth v. Brown, 53 Me. 519.

Subsection liberally construed. — This subsection is to be construed liberally in order to effectuate the object to be accomplished by its provisions; instead of placing such a construction upon it as would leave it in the power of the owner of such property successfully to evade taxation for it anywhere. Georgetown v. Hanscome, 108 Me. 131, 79 A. 379.

Property taxable distinct from store, shop, mill, etc.—The personal property which may or may not be subject to taxation under this subsection is movable property wholly distinct from the "store, shop, mill, wharf, landing place or shipyard" which by virtue of the proviso must be occupied. Norway v. Willis, 105 Me. 54, 72 A. 733; Leeds v. Maine Crushed Rock & Gravel Co., 127 Me. 51, 141 A. 73. One and the same thing cannot at the same time serve as personal property employed and as the building or place in which it is employed. Norway v. Willis, 105 Me. 54, 72 A. 733, wherein it was held that a portable mill was not taxable under this subsection, prior to the addition of the last sentence.

History of subsection.—See McCann v. Minot, 107 Me. 393, 78 A. 465.

Applied in Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

Quoted in part in Curtis v. Potter, 114 Me. 487, 96 A. 786.

II. PROPERTY EMPLOYED IN TRADE OR MECHANIC ARTS.

Meaning of "trade".—The appropriate meaning of "trade," as used in this subsection, embraces any sort of dealings by way of sale or exchange; commerce; traffic. Gower v. Jonesboro', 83 Me. 142, 21 A. 846.

This subsection looks to the real employment, and not to the preparations for it. Bradley v. Penobscot Chemical Fibre Co., 104 Me. 276, 71 A. 887.

Employment in trade under this subsection means trade in the town where it is when prepared for market. Where the evidence does not disclose any local market or any intent or expectation to sell locally, and that the things, when prepared for market, are to be sold, not where prepared but in the town where the owner's main business is located, the property is not "employed in trade" in the town where it is when prepared. Leeds v. Maine Crushed Rock & Gravel Co., 127 Me. 51, 141 A. 73.

Goods merely in transit are not "employed in trade" within the meaning of this subsection. Creamer v. Bremen, 91 Me. 508, 40 A. 555; Peru v. Forster, 109 Me. 226, 83 A. 670.

But property need not be situated on landing place on April 1st.—Under this subsection, personal property to be employed in trade for the purposes of taxation need not be actually situated upon the landing place on the first day of April. It may be situated in any part of the town in contemplation of being later conveyed to the landing place for sale or shipment. Georgetown v. Hanscome, 108 Me. 131, 79 A. 379.

And this subsection does not require the property to be within the taxing town on April 1st, but only that the property be employed in trade in that town on that day. Farmingdale v. Berlin Mills Co., 93 Me. 333, 45 A. 39.

Personal property, although situated on the first day of April along a river in several different towns, if intended for manufacture and sale at a mill situated in another town, is subject to taxation in the latter town. Georgetown v. Hanscome, 108 Me. 131, 79 A. 379.

And property employed in the mechanic arts is not taxable in the town where found on April first, if it is so employed in some

other town in the state. Boothbay v. E. I. DuPont DeNemours Powder Co., 109 Me. 236, 83 A. 663; Desjardins v. Jordan Lumber Co., 124 Me. 113, 126 A. 486.

And property in transit to mill is employed in trade or mechanic arts.—Property intended for manufacture in a mill, and in transit to the mill, may be fairly considered as employed in the trade or business of the mill within the meaning and purpose of this subsection. Farmingdale v. Berlin Mills Co., 93 Me. 333, 45 A. 39.

Logs which are intended by the owner for manufacture in a mill in a town other than that in which the owner resides, and which are in transit to the mill, but which have not, on the first day of April, arrived in the town where the mill is situated, are employed in the trade or business of that mill on that day, within the meaning and purpose of this subsection, and so, taxable in that town. Ellsworth v. Brown, 53 Me. 519; Bradley v. Penobscot Chemical Fibre Co., 104 Me. 276, 71 A. 887; Machias Lumber Co. v. Machias, 122 Me. 304, 119 A. 805.

Wood, though still in transit from the forest to the mill, and not yet having arrived within the town in which was the mill where it was designed to reduce it to pulp, was nevertheless "employed," within the meaning of the statute, "in the mechanic arts," and was so employed in the town in which was the mill which was its ultimate destination. Bradley v. Penobscot Chemical Fibre Co., 104 Me. 276, 71 A. 887.

Machinery may be actually articles of "trade" of the owner, within the meaning of this subsection. Leeds v. Maine Crushed Rock & Gravel Co., 127 Me. 51, 141 A. 73.

And property on landing to be sold is employed in trade.—Property upon the taxpayer's landing to be sold or disposed of either in small quantities or by the whole lot, as might be found expedient, is employed in trade within the meaning of this subsection. Gower v. Jonesboro', 83 Me. 142, 21 A. 846.

But goods stored awaiting shipment are not so employed.—Goods simply stored in a storehouse awaiting shipment after contracts for their sale are made elsewhere, are not employed in trade in the town where stored. New Limerick v. Watson, 98 Me. 379, 57 A. 79.

Toothpicks stored by a manufacturer thereof in a storehouse preparatory to shipment in the general course of business are not taxable under this subsection as personalty "employed in trade." Peru v. Forster, 109 Me. 226, 83 A. 670.

Evidence insufficient to show property "employed in trade."—See Morton v. Wilson, 115 Me. 70, 97 A. 219.

The manufacture of lumber into boxes is a mechanic art within the meaning of this subsection. Boothbay v. E. I. DuPont DeNemours Powder Co., 109 Me. 236, 83 A. 663; Desjardins v. Jordan Lumber Co., 124 Me. 113, 126 A. 486.

Finished manufactured product not employed in mechanic arts.—While the precise meaning of the phrase "employed in the mechanic arts" may be somewhat obscure, a finished manufactured product, which has been entirely completed prior to April 1, and as to which nothing further is to be done except to be sold when the opportunity offers, and which is kept because unsold until April, cannot be said to be "employed in the mechanic arts" on the first day of April, within the meaning of that phrase in this subsection. New Limerick v. Watson, 98 Me. 379, 57 A. 79.

III. OWNER MUST OCCUPY STORE, MILL, ETC.

Owner must occupy place named in subsection.—It is not sufficient that the taxpayer carries on business in the city. It must be shown that he occupied one of the places named in the subsection in which he employed his personal property in trade. Martin v. Portland, 81 Me. 293, 17 A. 72.

It is necessary, before personal property can be taxed in a town other than that in which the owner is an inhabitant under this subsection, that he should occupy in that town a mill for the employment of such property in the mechanic arts, or a store for the purpose of its employment in trade. New Limerick v. Watson, 98 Me. 379, 57 A. 79.

The occupation of the store, shop, mill or wharf, on the first day of April, in the year for which the tax is assessed, is the essential thing. Ellsworth v. Brown, 53 Me. 519; Norway v. Willis, 105 Me. 54, 72 A. 733.

If an inhabitant of one town has goods, wares, merchandise, or other stock in trade, in another town, with which he is engaged in trade or business in such other town, such stock in trade is taxable in such other town, not if it is merely kept there, or traded in there, but only in case the owner occupies a store in which he carries on a trade or traffic in such stock in trade as he has there. Peru v. Forster, 109 Me. 26, 83 A. 670.

The right to make an assessment under

this subsection depends upon the fact whether the taxpayer then occupied any store, shop, mill or wharf in the town on the first of April. Desmond v. Machias Port, 48 Me. 478.

Occupancy must be actual.—This subsection requires an actual occupancy, implying something more than a mere right to make temporary deposits from time to time, or to pass in common with others, over the wharf, with goods, wares, merchandise or lumber, for the purpose of immediate shipment. Desmond v. Machias Port, 48 Me. 478; Peru v. Forster, 109 Me. 226, 83 A. 670.

And such as would constitute occupant owner pro hac vice.—Under this subsection, in order to lay the foundation of the right to tax a nonresident, the store, shop, mill or wharf must be occupied under such circumstances as will constitute the occupant, during his occupancy, the owner pro hac vice, as against other persons. It must be used by the occupant, as if it were his own for the time being. Desmond v. Machias Port, 48 Me. 478; Creamer v. Bremen, 91 Me. 508, 40 A. 555.

"Occupy," as used in this subsection, must be construed to mean having the control of in whole or in part; having a special right to use. Georgetown v. Hanscome, 108 Me. 131, 79 A. 379.

And entitled to rent or wharfage.—The design of this subsection was to render liable to taxation the property of individuals who so occupy a mill or wharf that they should be entitled to receive and not liable to pay mill rent or wharfage. Campbell v. Machias, 33 Me. 419; Desmond v. Machias Port, 48 Me. 478.

Thus, paying wharfage is not sufficient to occupy a wharf within the meaning of this subsection. Campbell v. Machias, 33 Me. 419; Stockwell v. Brewer, 59 Me. 286.

Nor does payment to a mill owner for sawing lumber constitute the occupancy of a mill. Campbell v. Machias, 33 Me. 419.

But this subsection does not make the liability to be taxed depend upon the purpose for which the goods were piled upon the wharf. Such purpose is only one of the ingredients by which the court may determine the character of the occupancy, and whether it was merely occasional and temporary, being subject to the direction and control of another, or fixed, certain and entire without such direction and control. Desmond v. Machias Port, 48 Me. 478.

Occupation under written lease held sufficient.—The fact that the taxpayer's limits were assigned by metes and bounds; that the right to use the premises was fixed and certain, for a long period of time, without interruption from the owners; and that the premises were in fact so used under a written lease, satisfactorily shows that he was an occupant of the wharf within the meaning of this subsection. Desmond v. Machias Port, 48 Me. 478.

Mill, store, etc., not in existence on April 1 cannot be occupied on that date.—A mill, store, shop, storehouse, wharf, or landing place not actually in existence on April 1st, but intended to be constructed later, even though preparation for construction has already begun, is not constructively in existence and occupied as of the first day of April in order to meet the requirements of this subsection. Machias Lumber Co. v. Machias, 122 Me. 304, 119 A. 805.

The words "store" and "shop" as used in this subsection must be construed according to the common meaning of the language. The appropriate meaning of "store" is "any place where goods are sold either by wholesale or retail." "Shop," as used in this subsection, can have no broader meaning. Martin v. Portland, 81 Me. 293, 17 A. 72.

And mere desk privilege not occupancy of store or shop.—Where a taxpayer has merely a desk privilege, in a room mostly occupied by others as insurance offices, and he keeps goods or merchandise which he sells or exhibits, he does not occupy a "store" or "shop" within the meaning of the subsection. Martin v. Portland, 81 Me. 293, 17 A. 72.

The word "mill" as used in the proviso of this subsection means the house or building that contains the machinery for grinding, etc. Norway v. Willis, 105 Me. 54, 72 A. 733.

What constitutes "landing place."—At the time the term "landing" was first incorporated into this subsection, it had two well known significations. It meant a place on a river or other navigable water for lading and unlading goods, or for taking on or letting off passengers. "The place where any kind of a craft lands." It also meant "a place for storing logs for the winter." Both of these kinds of places are within the meaning of the statutory term "landing" or "landing place." The word landing is also used to designate the top of a staircase, and the platform of a railway station, etc. But these uses are clearly not within the statute. McCann v. Minot, 107 Me. 393, 78 A. 465.

A landing place is a place where logs or other things are collected and deposited

for transportation or shipment from that place, whether it be by water or rail. McCann v. Minot, 107 Me. 393, 78 A. 465; Leeds v. Maine Crushed Rock & Gravel Co., 127 Me. 51, 141 A. 73, holding that machinery used to prepare rock and sand for shipment cannot be said to be "collected and deposited" within the meaning of this subsection.

Mere ownership of river bank not "landing place."—It is not the mere ownership of a river bank where logs may be hauled out, but a landing place set apart, prepared and occupied for the purpose on April 1st that fulfills the requirement of this subsection. Machias Lumber Co. v. Machias, 122 Me. 304, 119 A. 805.

Nor is a place where lumber is "stuck up" for seasoning on ground some distance from the railroad a "landing place." McCann v. Minot, 107 Me. 393, 78 A. 465; Georgetown v. Hansome, 108 Me. 131, 79 A. 379.

The practice of manufacturing lumber by means of portable sawmills, and the consequent practice of "sticking up" the lumber in fields and pastures, near the mills, was not prevalent, if it existed at all, when the word "landing" was first used in this subsection. And the language cannot be extended to include this operation. McCann v. Minot, 107 Me. 393, 78 A. 465.

But land from which water shipments can be made and which is leased for that purpose is landing place.—Land abutting upon water, from which water shipments can be made, and leased for that purpose, with privileges of piling lumber, is a landing place, within the meaning of this subsection. Georgetown v. Hanscome, 108 Me. 131, 79 A. 379.

IV. MANUFACTURED LUMBER.

Manufactured lumber not limited to that manufactured by portable mills.—"Manufactured lumber", as used in the last sentence of this subsection, means all manufactured lumber whatever its source and is not limited to lumber manufactured by portable mills. Desjardins v. Jordan Lumber Co., 124 Me. 113, 126 A. 486.

Logs and manufactured lumber distinguished by subsection.—Although all logs have had something done to them changing them from their original state of growing trees, this subsection carefully distinguishes between logs and manufactured lumber. Dead River Co. v. Assessors of Houlton, 149 Me. 349, 103 A. (2d) 123.

And pulpwood is not "manufactured lumber" within the meaning of the subsection. Rather does it fall within the meaning of "logs" as used therein. And where pulpwood logs are in a town other than the residence of the owner and are not there "to be manufactured therein," and are not "employed in trade" or "in the mechanic arts" in such town, in connection with any "store, storehouse, shop, mill, wharf, landing place or ship yard," they are taxable in the town wherein the taxpayer resides. Dead River Co. v. Assessor of Houlton, 149 Me. 349, 103 A. (2d) 123.

But boards are manufactured lumber.—The word "manufactured" is used in the last sentence of this subsection in its ordinary sense as distinguished from "unmanufactured." When the logs have passed through the mill and been converted into boards they no longer remain logs or unmanufactured lumber. They are manufactured though not perhaps fully so. Desjardins v. Jordan Lumber Co., 124 Me. 113, 126 A. 486.

As are railroad ties.—Railroad ties prepared for final use are "manufactured lumber" within the meaning of this subsection and, if they are not "in the possession of a transportaion company and in transit," they are taxable to the owner in the town where they are situated. Dead River Co. v. Assessors of Houlton, 149 Me. 349, 103 A. (2d) 123.

II. Personal property, including yachts and pleasure vessels whether propelled by sail, steam, gasoline or otherwise, which on the 1st day of each April is within the state and owned by persons residing out of the state or by persons unknown; except vessels built, in process of construction or undergoing repairs, and hides and the leather, the product thereof, when it appears that the hides were sent into the state to be tanned, and to be carried out of the state when tanned; shall be taxed either to the owner, if known, or to the person having the same in possession, or to the person owning or occupying any store, storehouse, shop, mill, wharf, landing, shipyard or other place therein where said property is on said day, and a lien is created on said property in behalf of such person, which he may enforce for the repayment of all sums by him lawfully paid in discharge of the tax. A lien is also created upon the property for the payment of the tax, which may be enforced by the constable

or collector to whom the tax is committed by a sale of the property as provided in sections 83, 84 and 85. If any person pays more than his proportionate part of such tax or if his own goods or property are applied to the payment and discharge of the whole tax, he may recover of the owner such owner's proper share thereof. Persons engaged in tanning leather in the state shall, on or before the 1st day of each April, furnish to the assessors of the town where they are carrying on said business, a full account on oath of all hides and leather on hand received by them from without the state and all hides and leather on hand from beasts slaughtered in the state, which last named hides and leather shall be taxed in the town where they were tanned. The words "vessels built" in this subsection shall not be construed to include pleasure vessels or boats. Provided, however, that pleasure vessels or boats in the state on the 1st day of each April whose owners reside without the state, and which are left in this state temporarily by the owners for the purposes of repairs, shall not be taxable under the provisions of this section.

Applied in Boothbay v. E. I. DuPont DeNemours Powder Co., 109 Me. 236, 83 A. 663; Curtis v. Potter, 114 Me. 487, 96 A. 786.

Stated in part in McFarland v. Mason, 136 Me. 206, 7 A. (2d) 618.

III. Machinery employed in any branch of manufacture, goods manufactured or unmanufactured and real estate belonging to any corporation, except when otherwise expressly provided, shall be assessed to such corporation in the town or place where they are situated or employed; and in assessing stockholders for their shares in any such corporation, their proportional part of the assessed value of such machinery, goods and real estate shall be deducted from the value of such shares.

Property of corporations not exempt from taxation.—It is quite apparent that no property of corporations in this state, except that of literary, benevolent charitable and scientific institutions (§ 6, sub-§ III), is intended to be exempted from assessment to them, when not assessed to the owners of their shares. Baldwin v. Trustees of Ministerial Fund, 37 Me. 369.

And realty liable to taxation as such notwithstanding charter provisions.—Notwithstanding the charter of the plaintiff corporation required that the whole property of the corporation should be divided into shares, and that such shares should in all respects be considered as personal estate, the real estate of the corporation, as such, was liable to taxation. Portland, Saco & Portsmouth R. R. v. Saco, 60 Me. 196.

But double taxation obviated by this subsection.—The liability to double taxation, or taxation of the real estate and taxation of the shares which represent it, is obviated by this subsection, which provides that in assessing the stockholders for their shares in the corporation, the proportional part of the assessed value of the real estate shall be deducted from the value of such shares. Portland, Saco & Portsmouth R. R. v. Saco, 60 Me. 196.

If the real estate is first taxed to the corporation and then taken into account in fixing the value of the shares, it results in double taxation. This is not only contrary to the spirit and policy of the law of taxation but also to this subsection. Wheeler v. Waldo County Com'rs, 88 Me. 174, 33 A. 983.

What constitutes manufactured article.—Application of labor to an article either by hand or mechanism does not make the article necessarily a manufactured article within the meaning of this subsection. To make an article manufactured, the application of the labor must result in a new and different article with a distinctive name, character or use. Leeds v. Maine Crushed Rock & Gravel Co., 127 Me. 51, 141 A. 73.

Rock crushing machinery not employed in manufacturing. — Crushing, grinding and preparing rock, gravel and sand for market are not manufacturing and machinery used for such purposes is not "employed in any branch of manufacture." Leeds v. Maine Crushed Rock & Gravel Co., 127 Me. 51, 141 A. 73.

Applied in Cumberland Marine Ry. v. Portland, 37 Me. 444; Kittery v. Portsmouth Bridge, 78 Me. 93, 2 A. 847, overruled in Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94.

Stated in Augusta Bank v. Augusta, 36 Me. 255.

IV. All mules, horses, neat cattle and domestic fowl shall be taxed in the town

where they are kept on the 1st day of each April to the owner or person who has them in possession at that time. All such animals, which are in any other town than that in which the owner or possessor resides for pasturing or any other temporary purpose on said 1st day of April, shall be taxed to such owner or possessor in the town where he resides; and all such animals, which are out of the state or in any unincorporated place in the state on said 1st day of April, but owned by or in charge and possession of any person residing in any town, shall be taxed to such owner or possessor in the town where he resides. If a town line so divides a farm that the dwelling house is in 1 town and the barn or outbuildings or any part of them is in another, such animals kept for the use of said farm shall be taxed in the town where the house is. (1947, c. 231, § 1)

Applied in Hemingway v. Machias, 33 Me. 445; Monroe v. Condon, 107 Me. 532, 80 A. 1132.

Quoted in part in Ellsworth v. Brown, 53 Me. 519.

V. Personal property belonging to minors under guardianship shall be assessed to the guardian in the place where he is an inhabitant. The personal property of all other persons under guardianship shall be assessed to the guardian in the town where the ward is an inhabitant.

Cross references.—See note to § 6, re payment by guardian of tax on exempt property not prejudicial to ward; note to § 30, re supplemental assessment not made to guardian appointed after April 1.

Quoted in Sweetsir v. Chandler, 98 Me. 145, 56 A. 584.

VI. Personal property held in trust by an executor, administrator or trustee, but such personal property, when the income arising therefrom is to be paid free of trusts to any other person, shall be assessed to such other person to the extent of his beneficial interest therein, if a resident, in the place where the person to whom the income is payable as aforesaid is an inhabitant. Provided, however, that in the event any of the income arising therefrom is to be paid free of trusts to a nonresident, such personal property shall be taxable to the executor, administrator or trustee in the place where he resides to the extent of the beneficial interest of such nonresident. (1953, c. 208)

This subsection does not apply to real estate, but only to personal estate. Gould v. Graves, 80 Me. 509, 15 A. 63.

And it does not apply to personal estate when held for the ordinary purposes of administration. It applies only to personal property held in trust and the income of which is payable to another person. But when personal property is so held, it applies to executors and administrators as well as trustees. Gould v. Graves, 80 Me. 509, 15 A. 63.

This subsection cannot affect trustees and property situated outside the state even though the beneficiaries should reside in the state. And that nonresident owners in trust of property without the state derive their title from a devise under a Maine will through confirmation by a Maine probate court, and have agreed to render accounts in that court, does not bring them or the property fairly and effectively within the purview of this subsection. Augusta v. Kimball, 91 Me. 605, 40 A. 666.

Quoted in Peru v. Forster, 109 Me. 226, 83 A. 670.

VII. Personal property placed in the hands of any corporation as an accumulating fund for the future benefit of heirs or other persons shall be assessed to the person for whose benefit it is accumulating if within the state, otherwise to the person so placing it or his executors or administrators, until a trustee is appointed to take charge of it or its income, and then to such trustee.

Deposit may be of stock or money.—The deposit so placed may be of a kind of property, such as stocks, to be returned in individuo, with its income, or it may be money to be invested at interest and a like sum with its accumulations returned at the time stipulated. In either case the obligation is absolute. Portland v. Union Mut. Life Ins. Co., 79 Me. 231, 9 A. 613.

Subsection not applicable to premiums for life insurance.—The premiums paid as the consideration for a contract of life insurance are not personal property placed in the hands of the insurance company as an accumulating fund for the future benefit of heirs or other persons within the meaning of this subsection. The premiums are paid absolutely to the corporation as the consideration for the policy of insurance. They, with their accumulations, are not to be paid to heirs or other persons at some future day; but the sum to be paid by the special contract on the happening of the death of the insured is fixed and absolute, having no regard to the amount of premiums paid or their accumulations. Portland v. Union Mut. Life Ins. Co., 79 Me. 231, 9 A. 613.

VIII. The personal property of deceased persons in the hands of their executors or administrators not distributed shall be assessed to the executors or administrators in the town where the deceased last dwelt, until they give notice to the assessors that said property has been distributed and paid to the persons entitled to receive it. If the deceased at the time of his death did not reside in the state, such property shall be assessed in the town in which such executors or administrators live. Before the appointment of executors or administrators the property of deceased persons shall be assessed to the estate of the deceased in the town where he last dwelt if in the state, otherwise in the town where the property is on the 1st day of April, and the executors or administrators subsequently appointed shall be liable for the tax so assessed.

Cross reference.—See note to § 116, re mistake in designation of taxpayer's representative capacity harmless.

Taxes assessed in conformity with the provisions of this subsection are a personal charge against the persons assessed. Fairfield v. Woodman, 76 Me. 549.

But to subject the administrator or executor to personal liability, the tax must be assessed against him. Fairfield v. Woodman, 76 Me. 549; Dresden v. Bridge, 90 Me. 489, 38 A. 545.

Personal property in the hands of the executor can be taxed only to the executor personally, and such assessment makes the executor personally liable. Eliot v. Prime, 98 Me. 48, 56 A. 207.

And suit to recover taxes should be brought against him personally.—An assessment under this subsection makes the executor or administrator personally liable for the tax. Being personally liable, a suit for the tax should be brought against him personally, and not against the property of the deceased in his hands. Dresden v. Bridge, 90 Me. 489, 38 A. 545.

Assessment against deceased's estate not sufficient to hold representative personally liable.—An assessment against a deceased's estate is not sufficient to show an assessment against the representative so as to hold him personally liable. See Dresden v. Bridge, 90 Me. 489, 38 A. 545. And the error of assessment against the estate is not cured by § 116. See note to § 116.

Applied in Bath v. Reed, 78 Me. 276; Rockland v. Farnsworth, 111 Me. 315, 89 A. 65.

IX. Personal property held by religious societies shall be assessed to the treasurer thereof in the town where they usually hold their meetings; but any corporation or society in this state holding personal property as a fund for the support of the ministry in any town in the state and liable to taxation therefor shall, on payment of such tax and proof of the same to the satisfaction of the governor and council, be reimbursed from the state treasury to the amount of the tax so paid.

The provisions of this subsection relate to local parishes, and not to an institution chiefly engaged in missionary work. Maine Baptist Missionary Convention v. Portland, 65 Me. 92.

History of subsection.—See Gorham v. Trustees of Ministerial Fund, 109 Me. 22, 82 A. 890.

X. Personal property in another state or country on the 1st day of each April and legally taxed there, except as provided in the following subsection.

XI. Money of residents of this state deposited in any bank without this state on interest shall be assessed to such owner as provided in section 13; provided, however, if any state exempts similar deposits in banks in this state, including interest thereon, to owners residing in that state, the provisions of

this subsection shall not apply to deposits in that state. (R. S. c. 81, § 13. 1945, c. 258, § 2. 1947, c. 231, § 1. 1949, c. 431. 1951, cc. 185, 294, 307. 1953, c. 208; c. 308, § 96.)

Editor's note.—The following annotations are applicable to the entire section and not simply to the last subsection.

Intent of section.—It was the intention of the legislature to provide by the enumerated cases in this section for the taxation of personal property not taxable under § 13. Boothbay v. E. I. DuPont DeNemours Powder Co., 109 Me. 236, 83 A. 63.

This section is to be construed liberally in order to effectuate the object to be accomplished by its provisions, instead of placing such a construction upon it as would leave it in the power of the owner of such property successfully to evade taxation for it anywhere. Gower v. Jonesboro', 83 Me. 142, 21 A. 846.

To determine under which paragraph of the enumerated cases in this section property shall be taxed, it should be ascertained if the property, its condition and situation are such as are described in subsection I of the section. If not, are they such as are described in subsection II, and so on until the property is described in one of the paragraphs of the section. Boothbay v. E. I. DuPont DeNemours Powder Co., 109 Me. 236, 83 A. 63; Leeds v. Maine Crushed Rock & Gravel Co., 127 Me. 51, 141 A. 73.

Property taxed under one subsection cannot be taxed under another.—When property is included within one of the subsections of this section, it is taxable as therein stated, and all similar property similarly situated must be taxed under that subsection, and cannot be taxed under any other. It being the intention of the legislature by each subsection to provide for the taxation of the property therein mentioned, it follows that, when the property is included within the cases mentioned in one of the subsections, it shall be taxed under that subsection and cannot be taxed under any other. Boothbay v. E. I. DuPont DeNemours Powder Co., 109 Me. 236, 83 A. 63; Leeds v. Maine Crushed Rock & Gravel Co., 127 Me. 51, 141 A. 73.

Sec. 15. Stock of toll bridges.—The stock of toll bridges shall be taxed as personal property to the owners thereof in the towns where they reside, except stock owned by persons residing out of the state which shall be taxed in the town where the bridge is located, and where such bridge is in 2 towns, ½ of such stock so owned by persons residing out of the state shall be assessed and taxed in each town. (R. S. c. 81, § 14.)

History of section.—See Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94.

This section makes ample provision for the taxation of all toll bridge property, namely by taxing the shares of stock to the owners thereof, because the shares of stock represent the corporate property. Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94.

And the real estate of a toll bridge corporation is not taxable to the corporation. To so hold would create double taxation, which is obnoxious to the spirit of our tax laws. Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94.

The provision for the taxation of the stock impliedly negatives the power to tax the property. Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94.

The tax must be imposed upon the stock of toll bridge corporations in the hands of its owners, and not upon the real estate in the hands of the corporations. Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94.

Sec. 16. Clerks failing to make returns, property deemed corporate; such property, how taxable.—When the clerk of a corporation holding property liable to be taxed fails to comply with any provisions of law requiring the presentation to any taxing authority of a list of its stockholders, such property for the purposes of taxation shall be deemed corporate property liable to be taxed to the corporation, although its stock has been divided into shares and distributed among any number of stockholders.

Such property, both real and personal, is taxable for state, county, city, town and school district taxes, to be assessed and collected in the same manner and with the same effect as upon similar taxable property owned by individuals. If the corporation has the right to receive tolls, such right or franchise may be

taken and sold on warrant of distress for payment of such taxes, as such property is taken and sold on execution. (R. S. c. 81, § 15.)

Applied in Wheeler v. Waldo County Com'rs, 88 Me. 174, 33 A. 983.

Sec. 17. Blood animals.—Blood animals, brought into the state and kept for improvement of the breed, shall not be taxed at a higher rate than stock of the same quality and kind bred in the state. (R. S. c. 81, § 16.)

Sec. 18. Stock of companies invested in other stock.—When an insurance or other incorporated company is required by law to invest its capital stock or any part thereof in the stock of a bank or other corporation in the state for the security of the public, such investments shall not be liable to taxation except to the stockholders of the company so investing as making a part of the value of their shares in the capital stock of said company. (R. S. c. 81, § 17.)

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

Sec. 19. Investments of insurance companies. — When the capital stock of any insurance company incorporated in the state is taxed at its full value, the securities and pledges held by said company to the amount of said stock are exempt from taxation; but if the pledge or security consists of real estate in a town other than that where the stockholder resides, it shall be taxed where it lies and the stock shall be exempt to the amount for which it is assessed. (R. S. c. 81, § 18.)

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

Sec. 20. Mortgaged personal property; loan secured by deed. — When personal property is mortgaged or pledged, it shall for purposes of taxation be deemed the property of the party who has it in possession and it may be distrained for the tax thereon. Money or personal property, loaned or passed into the hands or possession of another by any person residing in the state, secured by an absolute deed of real estate, shall be taxed to the grantee, as in case of a mortgage, although the land is taxed to the grantor or other person in possession. (R. S. c. 81, § 19.)

This section is not applicable when the property in question was not under mortgage when the tax was assessed. Howard v. Augusta, 74 Me. 79.

This section contemplates a distress upon the identical and specific property mortgaged and taxed. It is not enough that the mortgage should be so made that it would include as between the parties, other property purchased to take the place of that sold. Howard v. Augusta, 74 Me. 79.

Sec. 21. Real estate of deceased. — The undivided real estate of a deceased person may be assessed to his heirs or devisees without designating any of them by name, until they give notice to the assessors of the division of the estate and the names of the several heirs or devisees; and until such notice is given, each heir or devisee shall be liable for the whole of such tax and may recover of the other heirs or devisees their portions thereof when paid by him; and in an action for that purpose, the undivided shares of such heirs or devisees in the estate, upon which such tax has been paid, may be attached on mesne process or taken on execution issued on a judgment recovered in an action therefor; or such real estate may be assessed to the executor or administrator of the deceased, and such assessment shall be collected of him the same as taxes assessed against him in his private capacity and it shall be a charge against the estate and shall be allowed by the judge of probate; but when such executor or administrator notifies the assessors that he has no funds of the estate to pay such

taxes and gives them the names of the heirs and the proportions of their interests in the estate to the best of his knowledge, the estate shall no longer be assessed to him. (R. S. c. 81, § 20.)

Purpose of section.—Recognizing the inconvenience, or perhaps impossibility, of ascertaining correctly and seasonably the names of heirs or devisees, this section provides that the assessment may be made to the heirs or devisees, as the case may be, without designating any of them by name, until notice is given of a division and of the names of the several heirs or devisees. This provision seems to be ample for the convenient and legal assessment of taxes when change of ownership is occasioned by death. Morrell v. Lovett, 95 Me. 165, 49 A. 666.

This section applies solely to the taxation of real estate. Eliot v. Prime, 98 Me. 48, 56 A. 207.

Taxes assessed in conformity with the provisions of this section are a personal charge against the persons assessed; but to render such person liable, the tax must be assessed to him. Fairfield v. Woodman, 76 Me. 549.

Section does not require assessment without naming heirs or devisees.—This section permits the assessment of a tax to the heirs or devisees of a deceased person without naming them until they give notice of the division of the estate. It does not require that the assessment should be so made. Kramer v. Linneus, 144 Me. 239, 67 A. (2d) 536.

And devisees may be named.—As assessment to the devisees designated in or acting under a will by naming them is a proper assessment and does not contravene the provisions of this section. Kramer v. Linneus, 144 Me. 239, 67 A. (2d) 536.

An heir is one who takes by descent. A devisee is one who takes by will. Elliot v. Spinney, 69 Me. 31.

And this section does not mean that the estate may be taxed to the heirs when it has been given to devisees. Certainly it could never have been the intention of the legislature to allow real estate to be taxed to devisees, when the deceased owner has died intestate and there are no devisees; and it would be equally unreasonable to suppose that the legislature intended to allow real estate to be taxed to heirs, which has been disposed of by will, and there are no heirs. Elliot v. Spinney, 69 Me. 31.

The true construction of this section is that the undivided real estate of a person deceased may be taxed to his heirs without naming them when, and only when, it descends to them by operation of law; and that it may be taxed to devisees without naming them when, and only when, it comes to them by will. Elliot v. Spinney, 69 Me. 31; Eliot v. Prime, 98 Me. 48, 56 A. 207.

And an assessment "to the heirs of" or "devisees of," in the alternative cannot be sustained, as each phrase designates a party against whom a tax can be legally assessed. Eliot v. Prime, 98 Me. 48, 56 A. 207.

Applied in Rockland v. Ulmer, 87 Me. 357, 32 A. 972; Bucksport v. Swazey, 132 Me. 36, 165 A. 164.

Stated in Paradis, Appellant, 134 Me. 333, 186 A. 672.

Sec. 22. Personal estate of partners. — Partners in business, whether residing in the same or different towns, may be jointly taxed under their partnership name in the town where their business is carried on for all personal property enumerated in subsection I of section 14 employed in such business; and if they have places of business in 2 or more towns, they shall be taxed in each town for the portion of property employed therein; except that if any portion of such property is placed, deposited or situated in a town other than where their place of business is, under the circumstances specified in said subsection, they shall be taxed therefor in such other town; and in such cases they shall be jointly and severally liable for such tax. (R. S. c. 81, § 21.)

Firm is owner for purposes of taxation.—For the purpose of taxation, the firm, and not an individual member of the firm, is the owner, as seen by this section. Stockwell v. Brewer, 59 Me. 286.

And property of a partnership can only be taxed to the firm "in the town where their business is carried on." Stockwell v. Brewer, 59 Me. 286.

To sustain an assessment against partnership property, it must appear:

1. That the partners were, at the time of the assessment, carrying on business in the assessing town and that the property assessed was employed in that business, or

2. If their place of business was in some

other town, that the property so employed was placed, deposited or situated in the assessing town; also, in either case,

3. That the property assessed was employed in trade, in the erection of buildings or vessels, or in the mechanic arts; and

4. In case the place of business was in some other town than that in which the property was deposited, that the plaintiffs, their servants, subcontractors or agents, so employing the property, occupied, for the purpose of the employment, a store, shop, mill, wharf, landing place, or shipyard in the assessing town. McCann v. Minot, 107 Me. 393, 78 A. 465. See § 14, sub-§ 1 and note.

It will be noticed that under the first alternative in this section, "all personal property enumerated in subsection I of section 14, employed in the business" is to be taxed, and this without reference to the conditions of occupation, while under the second alternative only such property is to be taxed as is deposited "under the circumstances specified in said subsection" which phrase relates to the conditions of occupancy. McCann v. Minot, 107 Me. 393, 78 A. 465.

Sec. 23. Lands assessed to owners or tenants; part owners taxed and pay, separately.—All real estate, and such as is usually called real but is made personal by statute, may be taxed to the tenant in possession or to the owner whether living in the state or not in the town where it is; and when a state, county or town tax is assessed on lands owned or claimed to be owned, in common or in severalty, any person may furnish the collector or treasurer, to whom the tax is to be paid, an accurate description of his part of the land in severalty or his interest in common, and pay his proportion of such tax; and thereupon his land or interest shall be free of all lien created by such tax. (R. S. c. 81, § 22.)

The tax upon real estate may be legal, notwithstanding the person to whom it is assessed may have been only a tenant in possession. Hobbs v. Clements, 32 Me. 67.

But person to whom land taxed must be named.—This section was passed to authorize the taxing of land possessed by a lessee, either to him or to the owner thereof, unquestionably by name. It would not, in common parlance, be taxed to him unless he was named as the person taxed. Brown v. Veazie, 25 Me. 359.

Applied in Wescott v. McDonald, 22 Me. 402; Cumberland Marine Ry. v. Portland, 37 Me. 444.

Stated in part in Coombs v. Warren, 34 Me. 89.

Cited in Oldtown v. Blake, 74 Me. 280; Portland Terminal Co. v. Hinds, 141 Me. 68, 39 A. (2d) 5.

Sec. 24. Assessment continued until notice of transfer; tenant in common considered owner.—When assessors continue to assess real estate to the person to whom it was last assessed, such assessment is valid although the ownership or occupancy has changed, unless previous notice is given of such change and of the name of the person to whom it has been transferred or surrendered; and a tenant in common or joint tenant may be considered sole owner for the purpose of taxation, unless he notifies the assessors what his interest is. (R. S. c. 81, § 23.)

In the absence of statutory modifications, a tax assessed to one not the owner is void. Morrill v. Lovett, 95 Me. 165, 49 A. 666.

But this section authorizes assessment to person with no interest in land.—Under this section a tax upon real estate may be legal notwithstanding the person to whom it is assessed may have parted with all his interest in the land taxed before the assessment. Hobbs v. Clements, 32 Me. 67.

Purpose of section.—To compel the assessors to inquire into the existence of voluntary changes in ownership, at the peril of making void assessments, would be intolerable, and would afford one thus inclined too easy a method of avoiding the payment of a tax. It is good policy, then, to declare an owner liable to taxation until he had given notice of a transfer. Morrill v. Lovett, 95 Me. 165, 49 A. 666.

This section does not apply in cases where the change in ownership arises from the death of the owner, and the estate thereby passes to heirs or devisees. Morrill v. Lovett, 95 Me. 165, 49 A. 666.

The assessors may continue to assess the real estate to the "person" to whom it was last assessed. The natural and obvious signification of the word "person" in a statute is a living being. When the statutes speak of one who is dead, they

speak of him as a "deceased person," or a "person deceased." The section, in providing for notice of the change of ownership, required also notice of the name of the person to whom the property had been "transferred or surrendered." These words imply a change of ownership by the act of the owner, or by a statute sale, rather than a change by death. Morrill v. Lovett, 95 Me. 165, 49 A. 666.

The operation of this section is limited to transfers made in the lifetime of the owner; while § 21 prescribes the rule in case of change of ownership by death. The two provisions together cover the whole ground. Morrill v. Lovett, 95 Me. 165, 49 A. 666.

And assessors cannot lawfully continue to assess real estate to a former owner, after death. The change of ownership is limited to transfers, voluntary or involuntary, by living persons, or by prescription and does not include a change in ownership occasioned by the death of the owner. Morrill v. Lovett, 95 Me. 165, 49 A. 666.

Unjust enrichment is only theory on which taxes paid could be recovered from true owner.—If taxes assessed to a former owner under the provisions of this section and § 115 and paid by him can be recovered by him from the true owner under any circumstances it is only upon the theory of unjust enrichment. In such a case the burden is upon the plaintiff to prove the extent to which the defendant has been unjustly enriched by him. Unlike actions brought to recover for an invasion of the plaintiff's right and where nominal damages are recoverable if the invasion of the plaintiff's right is established, in actions brought to recover for unjust enrichment for benefits conferred by act of the plaintiff and retained by the defendant, the plaintiff can only recover for such benefits as he proves are actually conferred upon and retained by the defendant. McDougal v. Hunt, 146 Me. 10, 76 A. (2d) 857.

Applied in Snell v. Libby, 137 Me. 62, 15 A. (2d) 148.

Cited in Keyes v. State, 121 Me. 306, 117 A. 166; Tozier v. Woodworth, 135 Me. 46, 188 A. 771.

Sec. 25. Property of manufacturing, mining and smelting corporations, and of stock raising corporations.—The buildings, lands and other property of manufacturing, mining and smelting corporations, not exempt from taxation, and all stock used in factories shall be taxed to the corporation, or to the person having possession of its property or stock, in the town or place where the buildings and lands are situated and where the property is kept, or where the stock is manufactured; and the buildings and lands and other property of agricultural and stock raising corporations shall be taxed to the corporation, or to the person having possession of its property, in the town where the buildings and lands are situated and where the personal property is kept; and there shall be a lien for 1 year on such property and stock for payment of such tax; and it may be sold for payment thereof as in other cases; and shares of the capital stock of such corporations shall not be taxed to their owners. (R. S. c. 81, § 24.)

Sec. 26. Property of corporations organized for dealing in real estate; lien.—The buildings, lands and all other property, real and personal, including all reserve funds, accumulations and undivided profits of corporations organized for the purpose of buying, selling and leasing real estate, shall be taxed to the corporation or the persons having possession of such property in the place where such land and other property are situated, and there shall be a lien for 1 year on such property for the payment of such tax and the same may be sold for payment thereof as in other cases; and shares of the capital stock of such corporations shall not be taxed to the owners thereof. (R. S. c. 81, § 25.)

Sec. 27. Sailing vessels and barges, rate; steam barges excepted.—All sailing vessels and barges registered or enrolled under the laws of the United States or foreign governments, owned wholly or in part by inhabitants of this state, shall be taxed upon an appraised value of $20 a ton, gross tonnage, for new vessels and barges completed on or before the 1st day of April of each year. Vessels or barges 1 year old or more shall be reduced in value at the rate of $1 a ton a year for each additional year of age until they shall have reached the age of 17 years, at and after which time said vessels and barges shall be taxed

upon an appraised value of $3 a ton, gross tonnage. The provisions of this section shall not apply to steam barges. (R. S. c. 81, § 26.)

Section applies only to sailing vessels and barges.—It is apparent that this section does not include within its terms all vessels. The word "vessel" is not used in its broadest sense, and the section applies only to "sailing vessels and barges." McFarland v. Mason, 136 Me. 206, 7 A. (2d) 618.

And does not apply to private yacht.— A private yacht, though propelled with sails, is not what is commonly known as a sailing vessel. A sailing vessel was a rather well known object in our harbors at the time this section was enacted and, to the seafaring men of our coast, was a craft quite different from present-day pleasure boats. McFarland v. Mason, 136 Me. 206, 7 A. (2d) 618.

Sec. 28. Rebuilt vessels and barges. — Vessels and barges when rebuilt shall be taxed on the same valuation as vessels and barges of ½ the age of such rebuilt vessels or barges. A vessel or barge shall be regarded as rebuilt only on an expenditure being made of not less than 40% of the cost of such vessel or barge if built entirely new. Vessels and barges if repaired to the extent of 25% of the cost of such vessel or barge if built entirely new shall be taxed upon the same valuation as vessels and barges of ⅝ the age of such repaired vessel or barge. The provisions of this section shall not apply to steam barges. (R. S. c. 81, § 27.)

Cited in McFarland v. Mason, 136 Me. 206, 7 A. (2d) 618.

Sec. 29. Real estate of banks.—All real property in the state owned by any bank incorporated by this state, or by any national bank or banking association, or by any corporation organized under the laws of this state for the purpose of doing a loan, trust or banking business and having a capital divided into shares shall be taxed in the place where the property is situated, to said bank, banking association or corporation for state, county and municipal taxes according to its value like other real estate. This section does not apply to loan and building associations. (R. S. c. 81, § 28.)

See c. 59, § 3, re deposits in banks and capital dues of loan and building associations.

Sec. 30. Omitted assessments and reassessments of taxes. — When any polls or estates liable to taxation have been omitted from assessment within 5 years from the last assessment date, the assessors for the time being may, by a supplement to the invoice and valuation and the list of assessments, assess such polls and estates their proportion of such tax according to the principles on which the assessment was made, certifying that they were omitted. Such supplemental assessments shall be committed to the collector for the time being with a certificate under the hands of the assessors stating that they were omitted and that the powers in the previous warrant, naming the date of it, are extended thereto, and the collector has the same power and is under the same obligation to collect them as if they had been contained in the original list; and all assessments shall be valid, notwithstanding that by such supplemental assessment the whole amount exceeds the sum to be assessed by more than 5% or alters the proportion of tax allowed by law to be assessed on the polls.

When a tax is invalid or void by reason of illegality, error or irregularity in assessment, the tax may be assessed, at any time within 5 years from the date of the original assessment, by the assessors for the time being to the person to whom the property should have been assessed in the same amount and for the year in which erroneously taxed. A tax so assessed shall be committed to the collector for the time being by a supplemental assessment to the original list with a certificate under the hands of the assessors stating the name of the person to whom originally assessed and that such assessment was invalid. The powers

in the original warrant shall extend to the collector for the time being who shall have the same power and be under the same obligation to collect taxes so assessed as original or omitted taxes.

The lien on real estate created by section 3 is enforcible by and shall terminate as provided in section 94.

Persons subjected to a tax under the provisions of this section shall be deemed to have received sufficient notice if the notice required by section 36 was given. (R. S. c. 81, § 29.)

Cross references.—See note to § 35, re that section not applicable to supplemental assessment; § 80, re bond of collector; note to § 146, re allegation that tax assessed by supplemental assessment not necessary and failure to extend powers of original warrant to supplemental list does not preclude action by town to collect tax; c. 36, § 69, re assessment and collection of expense of white pine blister work; c. 91, § 10, re errors in tax lists, etc., how amended.

Under this section the supplementary tax becomes a part of the original assessment. In the language of the section it is "a supplement to the invoice and valuation and the list of assessments." The polls and estates are omitted from the original, and by the supplementary assessment they are simply added to it. The powers in their previous warrant are extended to the assessments and "the collector has the same power and he is under the same obligation to collect them as if they had been contained in the original list." Every attribute of the supplementary relates back to, and becomes a part of, the original assessment. Without it there could be no supplement. Eliot v. Prime, 98 Me. 48, 56 A. 207.

And assessment may be proved by supplemental list. — A legal assessment may be proven as well by a supplemental list as by the original one, if the necessary steps have been complied with. A supplemental list legally made becomes a part of the original list. Athens v. Whittier, 122 Me. 86, 118 A. 897.

And declaration alleging tax due under either assessment sufficient. — Under this section, the two assessments for legal purposes become one, and a declaration which intelligibly sets out that a tax is due under either is sufficient. Eliot v. Prime, 98 Me. 48, 56 A. 207.

Supplemental assessment made as of April 1.—A supplemental assessment is a part of the original; an amendment of it —a supplement to it. Like the original it must be made as of April 1, and it must be made to the same person as it would have been if it had been made on April 1. Sweetsir v. Chandler, 98 Me. 145, 56 A. 584.

Hence assessment not made to guardian appointed after April 1.—If a guardian is appointed for the taxpayer subsequent to April 1 and prior to the supplemental assessment, such assessment is not made to the guardian under § 14, sub-§ V, but to the taxpayer, since it is part of the original and relates back to April 1, at which time there was no guardian. See Sweetsir v. Chandler, 98 Me. 145, 56 A. 584.

The supplementary assessment may relate back and cure a fatal omission in the original assessment. Eliot v. Prime, 98 Me. 48, 56 A. 207.

Such as failure of assessors to sign original list.—Where the tax list was not under the hands of the assessors, as § 48 requires, a supplementary or additional tax list, correcting certain errors or omissions in the first list, and expressly referring to it as containing the assessment for that year, which is signed by a majority of the assessors and committed to the collector, cures the error of the original list. Eliot v. Prime, 98 Me. 48, 56 A. 207.

But this section relates only to an omission from the original assessment. Dresden v. Bridge, 90 Me. 489, 38 A. 545.

And the assessors cannot by a supplemental assessment revise and correct their estimate of the value of an estate, which they had once estimated and assessed. Dresden v. Bridge, 90 Me. 489, 38 A. 545.

The omission contemplated by this section is of some specific item, as one parcel of land, or a building so situated as to be personal property, or a ship, when the items of personal property are named and separately appraised in the inventory. It is omission, and not erroneous judgment, that the section provides for. The omission may be supplied by a supplemental assessment; the erroneous judgment cannot be corrected in that way. Dresden v. Bridge, 90 Me. 489, 38 A. 545.

Where a personal estate was valued and assessed in gross, and not by items, a supplemental assessment also in gross and covering the same personal estate is not

authorized. Dresden v. Bridge, 90 Me. 489, 38 A. 545.

To sustain the validity of a supplemental assessment it must appear that the items of property assessed were not assessed in the original assessment. It must appear that the property itself had not been assessed at all, and that it had been omitted. It is not sufficient that the assessors, through lack of information or otherwise, have erred in their judgment of the quantity, quality or value of the thing assessed. If the assessors have once assessed that property, that assessment cannot be revised by a supplemental assessment. Sweetsir v. Chandler, 98 Me. 145, 56 A. 584.

That the assessors later discovered that the property of the taxpayer is of greater value than they had at first supposed does not authorize the imposing of an additional tax in the form of a supplemental assessment. Under such circumstances there was no omission, simply an undervaluation. Athens v. Whittier, 122 Me. 86, 118 A. 897.

Thus error in determining amount of money at interest not cured by supplemental assessment.—If the assessors have erred in determining the amount of money at interest, they cannot cure their error by securing a revaluation through a supplemental assessment, even though their error arose from their ignorance of the specific kinds of securities in which the money at interest was invested. Sweetsir v. Chandler, 98 Me. 145, 56 A. 584.

But erroneous inclusion in original list does not preclude supplemental assessment.—To include property in the original list, if erroneously done, does not make it a part thereof so as to preclude a supplemental assessment. Athens v. Whittier, 122 Me. 86, 118 A. 897.

And the omission of property from the list of estates actually taxed and its addition thereto under the heading of "Property Not Taxed" is an omission within the contemplation of this section, and a supplemental assessment is authorized. Athens v. Whittier, 122 Me. 86, 118 A. 897.

Original assessment not to be modified or limited by evidence aliunde.—In determining what was assessed in the first place, the court must be governed not by what the assessors intended to do, nor by what they thought they did do, but by what they did do. And in determining what was done by them the court is controlled by the official record of their doings, that is by the assessment itself. The assessment cannot be modified or limited by evidence aliunde. Sweetsir v. Chandler, 98 Me. 145, 56 A. 584.

Supplemental assessment must be accompanied by certificate.—Under this section, supplemental assessments, when they are committed to the collector, must be accompanied with a certificate under the hands of the assessors, stating that they were omitted. Topsham v. Purinton, 94 Me. 354, 47 A. 919.

To countenance the practice of interpolating in the record of original assessments an unsigned list of supplemental taxes without a certificate that they were omitted from the first assessment would induce an unwarrantable laxity in the methods of performing official duties, which would too often result in oral controversies, uncertainty and doubt in regard to the regularity and validity of the assessment. Topsham v. Purinton, 94 Me. 354, 47 A. 919.

And signatures on original record not sufficient authentication. — The assessors have no right to adopt their signatures on the original record to support a later assessment and there is not a sufficient authentication of the supplemental assessment by the signatures on the original record. Topsham v. Purinton, 94 Me. 354, 47 A. 919.

Amendment of supplemental list. — See Athens v. Whittier, 122 Me. 86, 118 A. 897.

Former provision of section.—This section formerly provided for a supplemental assessment of property omitted from the original "by mistake" and made no mention of illegal assessments. It was then held that, if the action of the assessors in an original assessment was totally void, then the property sought to be assessed was not assessed, but was omitted from the original assessment by mistake, which omission gave the assessors authority to include the estate in a supplementary assessment. See Rockland v. Ulmer, 87 Me. 357, 32 A. 972.

Applied in Gould v. Monroe, 61 Me. 544.

Cited in Farnsworth Co. v. Rand, 65 Me. 19.

Sec. 31. Warrants for state tax; interest.—When a state tax is ordered by the legislature, the treasurer of state shall forthwith send his warrants directed to assessors of each town or other place, requiring them to assess upon the polls and estates of each its proportion of such state tax for the current year;

and shall in like manner send like warrants for the state tax for the succeeding year, forthwith upon the expiration of 1 year from the time such tax is so ordered. The tax for each year shall be separately ordered and apportioned; and the amount of such proportion shall be stated in the warrants. On the 1st day of January, first occurring after any 1st day of December on which taxes are due to the state from cities, towns and plantations, interest at 6% shall begin to run on such unpaid balances as are due to the state. All provisions of law that relate to the collection of taxes by the state shall apply to the collection of the interest due on overdue taxes. (R. S. c. 81, § 30.)

Cross reference.—See c. 16, § 93, et seq., re actions by state tax assessor.

The assessors' authority to assess and commit the tax does not depend upon the state treasurer's warrant. The issuance of the warrant is a ministerial act, and such warrant is not the only nor the best evidence of the amount of the state tax that is to be assessed in the town. If the assessors see fit to complete the assessment, including the state tax for the current year, and commit the same to the collector before the issuance of the state treasurer's warrant, the taxpayer can find no fault. Rowe v. Friend, 90 Me. 241, 38 A. 95.

State tax added to local taxes.—The proportion of the state tax, as determined by the legislature, which each city, town and plantation shall pay, respectively, is required to be added to the local taxes, assessed and collected locally, and paid to the state. Burkett v. Youngs, 135 Me. 459, 199 A. 619.

Sec. 32. Requirements of warrant.—The treasurer of state in his warrant shall require the assessors of each town or other place to make a fair list of their assessments, setting forth in distinct columns against each person's name, how much he is assessed for a poll, how much for real estate and how much for personal estate, distinguishing any sum assessed to such person as guardian or for any estate in his possession as executor, administrator or trustee; to insert in such list the number of acres of land assessed to each nonresident proprietor and the value at which they have estimated them; to commit such list, when completed and signed by a majority of them, to the collector or constable of such town or other place, with their warrants in due form requiring them to collect and pay the same to the treasurer of such town or other place, at such times as the legislature in the act authorizing such tax directed them to be paid; and to return a certificate of the names of such officers and the amount so committed to each, 2 months at least before the time at which they are required to pay in such tax. (R. S. c. 81, § 31.)

Sec. 33. Rules for assessment of taxes.—In the assessment of all state, county, town, plantation, parish or society taxes, assessors shall govern themselves by the provisions of this chapter, except in parishes and societies where different provision for assessing their taxes is made; and shall assess on the taxable polls therein, in accordance with the provisions of section 1, such part of the whole sum to be raised as they deem expedient; and the residue of such taxes shall be assessed on the estates according to their value. (R. S. c. 81, § 32.)

Cited in Packard v. Lewiston, 55 Me. 456.

Personal Liability and Duties of Assessors.

Sec. 34. Assessors responsible for personal faithfulness only.—Assessors of towns, plantations, school districts, parishes and religious societies are not responsible for the assessment of any tax which they are by law required to assess; but the liability shall rest solely with the corporation for whose benefit the tax was assessed and the assessors shall be responsible only for their own personal faithfulness and integrity. (R. S. c. 81, § 33.)

Purpose of section.—In order to understand the object of the framers of this section, it should be kept in mind that previous thereto assessors were not only answerable for their own neglects, but also for the omissions or illegal acts of others.

If they assessed a tax, void by reason of irregularity in the proceedings of the town, or parish, or its officers, the assessors were held responsible to the individual assessed, provided the assessment was enforced. The object of the section was, no doubt, to relieve them from this hazardous accountability for the omission of others, permitting them to remain answerable only for their own misdoings. Mosher v. Robie, 11 Me. 135.

Previous to the enactment of this section, actions of trespass on the case were the usual remedy against assessors for an illegal assessment by which a person's property had been taken, or his body arrested under a warrant from the assessors, directed to a collector, for the purpose of enforcing the collection of the money. It often proved grievous to men of irreproachable characters, elected to serve the towns, or parishes, etc., that they should be harrassed with lawsuits arising, generally, from a desire to execute the duty assigned to them. A conviction of this truth induced the legislature to pass this section. Trafton v. Alfred, 15 Me. 258.

Until the enactment of this section, any person unlawfully assessed had an election of remedies. He might proceed by an action of trespass against the assessors, and recover all the damages occasioned by their wrongful acts; or he might waive the tort and bring assumpsit against the corporation, and recover the amount of money which had gone into its possession or to its benefit under the direction of its lawful agents. The leading purpose of the statute was not to give a new remedy as against corporations, but was to relieve faithful town officers from liability, and to provide that the remedy then resting upon corporations should be the only one to which the party injured should be entitled in all cases to which the statute applies. Hathaway v. Addison, 48 Me. 440.

The spirit of this provision is that those who occasioned the wrong should be answerable for its consequences. Emerson v. Washington County, 9 Me. 88.

And the true construction of this section is to leave the assessors answerable for their own misdoings, and relieve them from all liability, arising from the misdoings of others. Mosher v. Robie, 11 Me. 135.

Section does not protect assessors for assessments not authorized. — If assessors assess what they are not, by the corporation of which they are assessors, required or authorized to assess, the protecting statute does not reach them. It could not have been intended that in such a case the individual aggrieved should be without redress. Mosher v. Robie, 11 Me. 135.

Nor for requiring excessive collection. —It is not a faithful discharge of the assessors' duty to require a collection greater than is authorized by the vote of the town or parish, and the additional five per cent allowed by law. Mosher v. Robie, 11 Me. 135.

Person illegally acting as assessor liable for acts of collector.—Persons undertaking to act as assessors of a town, without having been legally elected as such, are personally liable for the acts of a collector to whom they have issued a warrant for the collection of taxes assessed by them. The provisions of this section do not apply to such a case. Allen v. Archer, 49 Me. 346.

School district not liable for errors of town.—By the provisions of this section the assessors of a town, who are required to assess a tax upon a school district, are exempted from any personal liability, when they act with faithfulness and integrity; and any further liability is to rest solely upon the district. But this does not exempt the town from liability incurred by its own acts, or make the district liable for the errors of the town. Powers v. Sanford, 39 Me. 183.

Former provision of section.—For a consideration of this section when it did not apply to school districts, but only to towns, plantations, parishes and religious societies, see School District No. 1 v. Bailey, 12 Me. 254.

Applied in Patterson v. Creighton, 42 Me. 367; Herriman v. Stowers, 43 Me. 497; Rowe v. Friend, 90 Me. 241, 38 A. 95.

Sec. 35. Tax illegal, unless raised at legal meeting.—No assessment of a tax by a town is legal unless the sum assessed is raised by vote of the voters at a meeting legally called and notified. (R. S. c. 81, § 34.)

Cross reference.—See § 165, re suit by nonresident.

The provisions of this section were not intended to apply to supplemental assessments, but to original ones, and a supplemental assessment may be laid on property omitted in the original assessment, even though it may result in a surplus in the town treasury. Sweetsir v. Chandler, 98 Me. 145, 56 A. 584.

Cited in Boothbay v. Race, 68 Me. 351.

Sec. 36. Lists of taxable property; if no lists are brought in, no claim for abatement.—Before making an assessment, the assessors shall give seasonable notice in writing to the inhabitants by posting notifications in some public place in the town or shall notify them, in such other way as the town directs, to make and bring in to them true and perfect lists of their polls and all their estates, real and personal, not by law exempt from taxation, of which they were possessed on the 1st day of April of the same year. If any resident owner after such notice, or any nonresident owner after being reasonably requested thereto by the assessors, does not bring in such list, he is thereby barred of his right to make application to the assessors or the county commissioners for any abatement of his taxes, unless he offers such list with his application and satisfies them that he was unable to offer it at the time appointed. The request upon nonresident owners may be proved by a notice sent by mail directed to the last known address of the taxpayer or given by any other method that brings notice home to the taxpayer. (R. S. c. 81, § 35.)

Cross reference.—See c. 32, § 175, re lists of persons keeping bees.

Purpose of section.—The purpose of this section, which requires notice by the assessors and the furnishing of lists by the taxpayer, is to assist the assessors in making a correct and complete assessment. The lists are used by the assessors, in arriving at the amount of property and values, in making their assessments. By the notice, the assessors require these lists to be brought in within a time specified so that they can make a valuation, and if no lists are supplied they estimate according to their best information and belief. Perry v. Lincolnville, 145 Me. 362, 75 A. (2d) 851; Dead River Co. v. Assessors of Houlton, 149 Me. 349, 103 A. (2d) 123.

History of section.—See Perry v. Lincolnville, 145 Me. 362, 75 A. (2d) 851.

Failure to bring in list precludes application for abatement.—No person is entitled to apply to the county commissioners for an abatement of his tax, unless, when duly notified, he brings in to the assessors a true and perfect list of his taxable estate, or can make it appear that he was unable to do so. Lambard v. Kennebec County Com'rs, 53 Me. 505; Freedom v. Waldo County Com'rs, 66 Me. 172; Fairfield v. County Com'rs, 66 Me. 385; Orland v. County Com'rs, 76 Me. 462; Portland Terminal Co. v. Portland, 129 Me. 264, 151 A. 460.

If no lists are supplied, the assessors must use their own judgment on information they may otherwise obtain, and the owner of property has no right to make application for abatement if he files no lists. Perry v. Lincolnville, 145 Me. 362, 75 A. (2d) 851.

In order to entitle a person to apply to the county commissioners or to the superior court for relief from assessment of taxes it must affirmatively appear that he made and brought into the assessors, as required by their written notice, a true and perfect list of all his property not by law exempt from taxation, of which he was possessed on April first of the same year, or can make it appear that he was unable to do so. Powell v. Old Town, 108 Me. 532, 81 A. 1068.

In default of having complied with the law requiring the filing of a list of his property, the taxpayer has no right to be heard in abatement proceedings. Portland Terminal Co. v. Portland, 129 Me. 264, 151 A. 460.

Filing with the assessors a list of taxable property, as required by this section, is a condition precedent to an appeal from an assessment. Portland Terminal Co. v. Portland, 129 Me. 264, 151 A. 460.

Notwithstanding failure was for good cause.—This section does not permit an application for abatement to be entertained upon "reasonable excuse," or "good cause," being shown for the omission to furnish the list seasonably. It requires proof that the applicant "was unable" to furnish the list. If the facts do not show that the petitioner was unable to furnish the list, however good in reason and morals its excuse for not doing so, remedy by abatement is barred. Edwards Mfg. Co. v. Farrington, 102 Me. 140, 66 A. 309, holding that, where a taxpayer deliberately elects not to furnish the required list, even though he made this election under a misapprehension of his right and duty in the premises, he cannot escape the consequences.

And mandamus will not issue to compel action on application.—A writ of mandamus should not be issued to compel municipal assessors of taxes to act upon an application made to them for an abatement of a tax, when it appears from the petition for the writ that the application is barred by the unjustified omission of the applicant to furnish the assessors with a

list of his taxable property at the time appointed. Edwards Mfg. Co. v. Farrington, 102 Me. 140, 66 A. 309.

Even though decision of assessors was unjust.—This section is strict and the court has no authority to order an abatement even though the decision of the assessors was manifestly unjust, if a list was not provided as required by this section. Calais Hospital v. Calais, 138 Me. 234, 24 A. (2d) 489.

Requirement of lists imposed on nonresidents.—The statutory requirement as to the production of lists is a rigorous one. The statute clearly requires the production of "true and perfect lists * * * of all their estates real and personal, not by law exempt from taxation," and this requirement is imposed on nonresident owners by reasonable request made by the assessors by mail or in some form brought to the actual notice of the nonresident. Dead River Co. v. Assessors of Houlton, 149 Me. 349, 103 A. (2d) 123.

For cases concerning a nonresident's right to apply for abatement when no list was brought in prior to the addition of the provisions concerning nonresidents to this section, see Squire & Co. v. Portland, 106 Me. 234, 76 A. 679; Portland Terminal Co. v. Portland, 129 Me. 264, 151 A. 460.

No particular time for giving of notice.—This section does not provide when the notice shall be given other than that it shall be given "before making an assessment" and that it be "seasonable." If the notice given by the assessors is given seasonably, and given before they make the assessment in question, the validity of the tax lien cannot be successfully attacked on the ground that the assessors did not give the notice required by this section. Perry v. Lincolnville, 149 Me. 173, 99 A. (2d) 294.

And notice not condition precedent to valid assessment.—Since the passage of § 116 defining the remedy for a party illegally assessed, the requirement of this section that the assessors shall give notice to the inhabitants of a town to bring in their lists of taxable property before proceeding to make an assessment, is no longer a condition precedent to a valid assessment. And an action may be maintained by a town against a taxpayer to recover the amount of his tax without proof that this direction with regard to the proceedings of the assessors has been complied with. Boothbay v. Race, 68 Me. 351.

Failure to give the notice provided for in this section does not render an assessment invalid. Perry v. Lincolnville, 149 Me. 173, 99 A. (2d) 294.

And lists may be presented without notice.—Citizens might present their lists seasonably to the assessors of their town when notice has not been given with the same effect as if it had been. Boothbay v. Race, 68 Me. 351.

The lists, if filed, are the basis of the assessment but are not conclusive. Perry v. Lincolnville, 145 Me. 362, 75 A. (2d) 851. See note to § 39.

Assessors may rely on list.—The owner is in the best position to know the facts as to title and related matters, and surely he is in far better position to know the facts than are the assessors. The assessors must be given the right to rely on the truth and perfection of the lists and their accuracy, at least until the contrary appears, and to act on that reliance. If there is doubt, as for example where a title is in dispute or in litigation, the taxpayer may state the facts and thereby disclose the existence of property which may be taxable and avoid that secrecy and concealment which are the great impediment to tax assessment and which this section and § 39 are designed to remove. Dead River Co. v. Assessors of Houlton, 149 Me. 349, 103 A. (2d) 123.

And taxpayer estopped from denying ownership after list filed.—Where one files a list or otherwise gives information to assessors upon inquiry, at least in the absence of fraud, accident or mistake, the taxpayer is later estopped to deny his ownership or such other basic and essential facts upon which the assessors relied in making their assessment. Dead River Co. v. Assessors of Houlton, 149 Me. 349, 103 A. (2d) 123.

List need not be personally brought in.—The words "to make and bring in," referring to the list of polls and estates asked for by the assessors in their notice to the inhabitants of the town, do not mean that the lists must be carried to the assessors personally by the individual taxpayer. Perry v. Lincolnville, 145 Me. 362, 75 A. (2d) 851, overruling Winslow v. Kennebec County Com'rs, 37 Me. 561.

The legislature never intended that in these days the taxpayer must personally carry to the assessors his list in order to obtain the benefit of his right to an appeal. The taxpayer need only file such list with the assessors at the time appointed, and stand to make oath and give other information if required, in accordance with the provisions of § 39. Perry v. Lincolnville, 145 Me. 362, 75 A. (2d) 851, overruling Winslow v. Kennebec County Com'rs, 37 Me. 561.

And it is sufficient compliance with this

section if the taxpayer furnishes his list by sending it registered mail. Perry v. Lincolnville, 145 Me. 362, 75 A. (2d) 851, overruling Winslow v. Kennebec County Com'rs, 37 Me. 561.

List need not include estimation of value.—The "true and perfect list" of taxable estate, real and personal, which this section requires a taxpayer to bring in to the assessors as a condition precedent to a right of appeal to the county commissioners for any abatement of tax, comprises a true enumeration, description and specification only of the property. No appraisement or estimation of the value is essential. Orland v. County Com'rs, 76 Me. 460.

Applied in Mussey v. White, 3 Me. 290; Winslow v. Kennebec County Com'rs, 37 Me. 561; Gilpatrick v. Saco, 57 Me. 277; Dresden v. Bridge, 90 Me. 489, 38 A. 545; Eliot v. Prime, 98 Me. 48, 56 A. 207; Sweetsir v. Chandler, 98 Me. 145, 56 A. 584; Rockland v. Farnsworth, 111 Me. 315, 89 A. 65.

Stated in Maine Unemployment Compensation Comm. v. Androscoggin Junior, Inc., 137 Me. 154, 16 A. (2d) 252.

Cited in Preston v. Wright, 81 Me. 306, 17 A. 128; Paris v. Norway Water Co., 85 Me. 330, 27 A. 143; Crabtree v. Ayer, 122 Me. 18, 118 A. 790.

Sec. 37. Inventory to include sheep, swine, neat cattle, colts, fowl and goats. — Assessors of taxes shall include in the inventory required to be taken on April 1st the number and value of all neat cattle 18 months old and under, all sheep to the number of 35, swine to the number of 10, draft colts to the age of 3 years, domestic fowl to the number of 50, all goats to the number of 35 and all kids less than 1 year old, stated separately. Said property shall not be included in the tax list. (R. S. c. 81, § 36. 1951, c. 266, § 100.)

Sec. 38. Value of estate ascertained.—The assessors shall ascertain as nearly as may be the nature, amount and value of the estate, real and personal, for which in their judgment the owner is liable to be taxed, and shall estimate and record separately the land value, exclusive of buildings, of each parcel of real estate. (R. S. c. 81, § 37.)

Sec. 39. Persons required to swear to lists; refusal bars appeal.—The assessors or any of them may require the person presenting the list required by section 36 to make oath to its truth, which oath any of them may administer, and any of them may require him to answer all proper inquiries in writing as to the nature, situation and value of his property liable to be taxed in the state, and a refusal or neglect to answer such inquiries and subscribe the same bars an appeal to the county commissioners, but such list and answers shall not be conclusive upon the assessors. (R. S. c. 81, § 38.)

Assessors may require oath and further information.—The lists required under the notice and given to the assessors are to furnish correct information to the assessors, and if the assessors desire, they have the right to require the individual, who files the list, to make oath to the same and to furnish other and additional information. Perry v. Lincolnville, 145 Me. 362, 75 A. (2d) 851; Dead River Co. v. Assessors of Houlton, 149 Me. 349, 103 A. (2d) 123.

And refusal to answer proper inquiries made at a proper time bars the right of appeal. Powell v. Old Town, 108 Me. 532, 81 A. 1068.

Before a taxpayer can exercise the statute right of making application to the county commissioners for any abatement of his taxes, he must not only make and bring in to the assessors a "true and perfect list of his poll, and all his estates real and personal, not by law exempt from taxation," but, if required by the assessors, make oath to its truth, and also answer all proper inquiries in writing, as to the nature and situation of his property, and if required, subscribe and make oath thereto. Freedom v. Waldo County Com'rs, 66 Me. 172; Orland v. County Com'rs, 76 Me. 462.

If a taxpayer refuses to submit to the examination which the law has wisely provided to test the truth of the tax list, he is in no condition to complain if he finds himself overrated. Lambard v. Kennebec County Com'rs, 53 Me. 505. See Powell v. Old Town, 108 Me. 532, 81 A. 1068.

But this section does not require lists to be personally brought in.—All that the assessors require is that the lists be filed with or furnished to them in some manner at a time specified in their notice. With modern mail service and with the tele-

phone it is a simple matter to notify the maker of a furnished list to come before the board to make oath, or to give further or other information. Perry v. Lincolnville, 145 Me. 362, 75 A. (2d) 851, overruling Winslow v. Kennebec County Com'rs, 37 Me. 561. See note to § 36.

No precise formula need to be used by the assessors in their inquiries. No stereotyped language need be employed. They must, of course, make the individual understand the nature and purpose of their inquiry. Powell v. Old Town, 108 Me. 532, 81 A. 1068.

And all proper inquiries must be answered.—It is not enough that the taxpayer answered "certain proper inquiries," unless they comprised "all" such as were put to him by the assessors. Levant v. Penobscot County Com'rs, 67 Me. 429.

The assessors should have and do have a reasonable time to examine the furnished lists. Perry v. Lincolnville, 145 Me. 362, 75 A. (2d) 851.

And inquiries need not be made at time and place designated in notice.—This section fixes no time within which such inquiries must be made. The authority of the assessors is not limited to the time and place designated in their written notice, but continues for a reasonable time thereafter. It is often impracticable to make all the examinations in one day, and time should be given the assessors to make careful investigations of the furnished lists which are not conclusive. Powell v. Old Town, 108 Me. 532, 81 A. 1068. See Freedom v. Waldo County Com'rs, 66 Me. 172.

The assessors continue to have the right of proper inquiry at least until, working with reasonable speed, the assessment lists are finished and committed to the collector. Powell v. Old Town, 108 Me. 532, 81 A. 1068.

List not conclusive on assessors.—The list is not conclusive and the assessors may proceed upon such information as they deem satisfactory without regard to the taxpayer's oath. Boothbay v. Race, 68 Me. 351.

The oath is not to be taken as conclusively true and the assessors are at liberty to assess property not included in the lists sworn to, but of which the person exhibiting the list might be the owner. Gilpatrick v. Saco, 57 Me. 277.

Former provision of section.—For a consideration of a former provision of this section concerning when the list was to be taken as true, see Lambard v. Kennebec County Com'rs, 53 Me. 505.

Sec. 40. Abatements; record in book form and open to public inspection; report. — The assessors for the time being, on written application stating the grounds therefor within 1 year from date of commitment, may make such reasonable abatement as they think proper, except that no abatement of any void or invalid real estate tax shall be required if property has been sold for non-payment under the provisions of section 155, or the notice under section 93 has been filed or the certificate under the provisions of sections 98 and 99 has been recorded. If after 2 years from the date of assessment a collector is satisfied that a poll tax, or tax upon personal property, or any portion of any tax committed to him or to any of his predecessors in office for collection, cannot be collected by reason of the death, absence, poverty, insolvency, bankruptcy or other inability of the person assessed to pay, he shall notify the assessors thereof in writing, under oath, stating the reason why such tax cannot be collected. The assessors, after due inquiry, may abate such tax or any part thereof and shall certify such abatement in writing to the collector; and said certificate shall discharge the collector from further obligation to collect the tax so abated. When such abatement is made, a record thereof together with the name of the party or parties benefited by the abatement and the amount of the abatement, together with the reasons for such abatement shall, within 30 days after such abatement, be made and kept in suitable book form open to the public at reasonable times, and a report of the same be made to the town at its annual meeting and to the mayor and aldermen of cities by the 1st Monday in each March. (R. S. c. 81, § 39.)

Cross reference.—See c. 16, § 72, re right to petition and appeal from reassessment ordered by state tax assessor.

Assessors attempting abatement must proceed under rigid rules set out in this section. Frankfort v. Waldo Lumber Co., 128 Me. 1, 145 A. 241.

A town has no power to abate a tax. The only tribunals authorized to grant abatements are the board of assessors, the appellate tribunal and the county commissioners. Thorndike v. Camden, 82 Me. 39, 19 A. 95. See §§ 42, 43.

And proceedings to abate taxes cannot

be commenced by a bill in equity. Neither the supreme judicial court nor the superior court sitting in equity has authority to abate taxes, that is, relieve from an over valuation of the property assessed. The power to abate taxes in the first instance is in the board of assessors upon application therefor. Perry v. Lincolnville, 149 Me. 173, 99 A. (2d) 294.

Abatement available only in cases of overtaxation. — The remedy by application to the assessors for an abatement applies only where there has been overtaxation, where there was authority to tax, and not where the whole tax was unauthorized and illegal. Herriman v. Stowers, 43 Me. 497; Talbot v. Wesley, 116 Me. 208, 100 A. 937.

But in such cases abatement is only remedy. — Overtaxation can only be remedied by abatement proceedings that are ample to give the necessary relief. Foxcroft v. Piscataquis Valley Campmeeting Ass'n, 86 Me. 78, 29 A. 951.

Where a party is rightfully taxed for any personal or any real estate, his remedy and his only remedy for an excess of taxation is by application for abatement. Rockland v. Rockland Water Co., 82 Me. 188, 19 A. 163.

In cases of mere overtaxation, the remedy is not by an action of assumpsit, but by application for an abatement to the assessors, and, upon their refusal, to the county commissioners. Hemingway v. Machias, 33 Me. 445.

Whether excess is caused by including property not owned or by overvaluation. —Whether the excess is caused by including in the valuation property of which the person taxed is not the owner, or that for which he is not liable to be taxed, or by an overvaluation of property taxable, the only remedy is by an application for an abatement pursuant to this section. Gilpatrick v. Saco, 57 Me. 277.

Where a party is wrongfully taxed for any personal or real estate, the remedy, and his only remedy, for any excess of taxation, is by application for abatement, whether the excess arises from including in the valuation property of which the person taxed is not the owner, for which he is not liable to be assessed, or for placing an undue and disproportionate value upon that of which he is the owner. Talbot v. Wesley, 116 Me. 208, 100 A. 973; Portland Terminal Co. v. Portland, 129 Me. 264, 151 A. 460.

If a tax against an individual is illegal simply by reason of some irregularity in its assessment, as for instance on account of overvaluation, or if laid on property which the taxpayer did not own at the time, he would then have ample remedy by a seasonable application for an abatement. Carlton v. Newman, 77 Me. 408, 1 A. 194.

If property which the taxpayer did not own was taxed to him, it was merely an overvaluation of his property; a hardship which could be avoided in only one way, and that would be by petition to the assessors for an abatement, and, if unsuccessful before them, by an appeal to the county commissioners. An overvaluation may consist in assessing to a person property which he does not own, as well as in estimating too highly that which he does own. In neither class of overvaluation is an excess of jurisdiction assumed by the assessors, and in each case the remedy can be only by appeal from the assessors to the commissioners. Bath v. Whitmore, 79 Me. 182, 9 A. 119.

And the inclusion of exempt property in an assessment is an overvaluation which can be remedied by abatement proceedings under this section. When a tax is assessed in gross, if any part of the property assessed is taxable, in an action of debt, judgment for the tax must be entered. Overvaluation is not a defense. Lewiston v. All Maine Fair Ass'n, 138 Me. 39, 21 A. (2d) 625. See Portland Terminal Co. v. Portland, 129 Me. 264, 151 A. 460.

As is inclusion of property taxable in another town.—If one who is properly assessed for certain personal property in a town, is also assessed therein for certain other personal property alleged to be taxable therein, but which in fact is taxable in an adjoining town, and pays the tax upon the last-mentioned property under protest, an action does not lie against the town therefor. His proper remedy is by application for abatement. Gilpatrick v. Saco, 57 Me. 277; Waite v. Princeton, 66 Me. 225; Portland Terminal Co. v. Portland, 129 Me. 264, 151 A. 460.

But if no property located in taxing town abatement is not proper remedy.— Where a taxpayer has been taxed by a town where he has no taxable property, an action at law, and not an application for an abatement upon the ground of overvaluation, is his proper remedy. Creamer v. Bremen, 91 Me. 508, 40 A. 555.

Former provision of this section. — For a consideration of the necessity of written application under this section when it did

not, in terms, require the application to be in writing, see Levant v. Penobscot County Com'rs, 67 Me. 429.

Applied in Orland v. County Com'rs, 76 Me. 462; Calais Hospital v. Calais, 138 Me. 234, 24 A. (2d) 489; Bangor v. Brewer, 142 Me. 6, 45 A. (2d) 434.

Cited in Edwards Mfg. Co. v. Farrington, 102 Me. 140, 66 A. 309; Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

Sec. 41. Notice of decision. — The assessors shall give to any person applying to them for an abatement of taxes notice in writing of their decision upon such application within 10 days after they take final action thereon. (R. S. c. 81, § 40.)

Applied in Penobscot Chemical Fibre Co. v. Bradley, 99 Me. 263, 59 A. 83; Edwards Mfg. Co. v. Farrington, 102 Me. 140, 66 A. 309.

Cited in Machias Lumber Co. v. Machias, 122 Me. 304, 119 A. 805.

Sec. 42. Appeal.—If the assessors refuse to make the abatement asked for, the applicant may apply to the county commissioners at their next meeting and, if they think that he is overated, he shall be relieved by them and be reimbursed out of the town treasury the amount of their abatement, with incidental charges. The commissioners may require the assessors or town clerk to produce the valuation by which the asssessment was made, or a copy of it. If the applicant fails, the commissioners shall allow costs to the town, taxed as in a suit in the superior court, and issue their warrant of distress for collection thereof against him; either party may appeal from the decision of said county commissioners to the superior court, under the same conditions that an appeal lies from the assessors to the superior court. (R. S. c. 81, § 41.)

Appeal is only remedy where assessors refuse abatement for overvaluation. — If the assessors of a town, through an error in judgment, make upon one of the inhabitants an overvaluation of his property, and thereby assess him too much in the town list of taxes, or tax him for property not belonging to him, his remedy is not by an action at law, but by an appeal to the county commissioners, upon a refusal of the assessors to make the proper abatement. Gilpatrick v. Saco, 57 Me. 277. See note to § 40.

When one person, having in his possession as the apparent owner the property of another, is overrated, his remedy is by appeal to the commissioners under this section, and not by an action at law. Stickney v. Bangor, 30 Me. 404.

But section provides remedy for overvaluation only.—It is to be presumed that, barring the imperfections of human judgment, all property is rated at its just value, and the legislature had that presumption in mind and intended to provide a remedy only for him whose property is rated for more than its value. Penobscot Chemical Fibre Co. v. Bradley, 99 Me. 263, 59 A. 83.

And this does not mean overvaluation by comparison to other property.—"Overrated," as used in this section, does not mean overrated by comparison with the valuation placed upon some other specific piece of property. It means overrated with reference to the property's just value. Penobscot Chemical Fibre Co. v. Bradley, 99 Me. 263, 59 A. 83.

Thus, evidence tending to show merely a disproportionate valuation is not admissible on appeal for that purpose. Penobscot Chemical Fibre Co. v. Bradley, 99 Me. 263, 59 A. 83.

But overvaluation need not have been intentional.—Under this and the following section, it is not necessary for the appellant to prove fraud or intentional overvaluation. If the taxpayer is found to be overrated he may be granted such abatement as the county commissioners or the superior court may deem reasonable. Spear v. Bath, 125 Me. 27, 130 A. 507.

The application for appeal must be made to the commissioners at their next meeting. Orland v. County Com'rs, 76 Me. 462.

And it must be in writing.—This section does not in terms require the application to the commissioners to be in writing. The board, however, is a quasi court of record, having the same clerk in the respective counties as the judicial courts, who keeps a record of its official proceedings, renders judgments, and issues legal processes, etc. The application to this board, making a part of its record, must necessarily be in writing. Levant v. Penobscot County Com'rs, 67 Me. 429.

A decision by the assessors is a statutory prerequisite to appeal. Edwards Mfg. Co. v. Farrington, 102 Me. 140, 66 A. 309.

And taxpayer must show proper application to assessors and their refusal.—In an appeal, the taxpayer must show that, on written application, stating the grounds therefor, within one year from the commitment, the assessors refused to make the abatement asked for. Orland v. County Com'rs, 76 Me. 462.

An appeal from the assessment of taxes is a privilege, not a constitutional right, and can only be granted by the sovereign power. Auburn v. Paul, 110 Me. 192, 85 A. 571.

And appellant must show right to relief.—The burden is upon the appellant. An appeal under this section or § 43 does not vacate the assessment. If the appeal is sustained, and an abatement granted, the town is still entitled to judgment for the amount of the tax assessed, less the abatement, unless the tax has been paid. What is called an appeal is really a petition for an abatement, and the appellant must show that it is entitled to relief. Penobscot Chemical Fibre Co. v. Bradley, 99 Me. 263, 59 A. 83.

The appellant must prove that the valuation having reference to just value is manifestly wrong, and he must establish indisputably that he is aggrieved. Spear v. Bath, 125 Me. 27, 130 A. 507.

The taxpayer must show that he was overrated either on the value of his property, or for property which he did not possess on April 1. Orland v. County Com'rs, 76 Me. 462.

And city need not support assessors' appraisal.—In an appeal, it is not incumbent upon the city to support the assessors' appraisal. The appellant has the burden of proving the valuation to be manifestly wrong. Spear v. Bath, 125 Me. 27, 130 A. 507.

Application failing to set out jurisdictional facts may be considered.—While all of the jurisdictional facts ought to be set forth in the application for appeal and the commissioners might properly decline to receive and order notice upon an application which does not contain all these allegations, still, if without objection all the facts are proved, the application might be entertained, for it is the whole record which is to be examined. Orland v. County Com'rs, 76 Me. 462.

Applied in Hemingway v. Machias, 33 Me. 445; Shawmut Mfg. Co. v. Benton, 123 Me. 121, 122 A. 49; Ferry Beach Park Ass'n v. Saco, 127 Me. 136, 142 A. 65.

Cited in Carlton v. Newman, 77 Me. 408, 1 A. 94; Crabtree v. Ayer, 122 Me. 18, 118 A. 790; Cumberland County Power & Light Co. v. Hiram, 125 Me. 138, 131 A. 594; Perry v. Lincolnville, 145 Me. 362, 75 A. (2d) 851.

Sec. 43. Appeals from assessors to superior court.—Any person entitled to make a complaint to the county commissioners for an abatement of his taxes may, if he so elect, appeal under the same terms and conditions from the decision of the assessors to the superior court for the county in which the city or town, in which the property of such person is assessed, is situated. (R. S. c. 81, § 42.)

Appeals under this section are entered in the superior court of the law side of the court, and may be brought forward to the supreme judicial court on exceptions in the manner provided in the statutes. Perry v. Lincolnville, 149 Me. 173, 99 A. (2d) 294.

And such an appeal is a judicial proceeding established by law, and imports a state of facts which furnishes an occasion for the exercise of the jurisdiction of a court of justice. S. D. Warren Co. v. Fritz, 138 Me. 279, 25 A. (2d) 645.

In an abatement appeal, there are parties having adverse interests. That, itself, makes a case calling for the exercise of judicial power to properly dispose of the matter. S. D. Warren Co. v. Fritz, 138 Me. 279, 25 A. (2d) 645.

Applied in Saco Water Power Co. v. Buxton, 98 Me. 295, 56 A. 914; Taylor v. Caribou, 102 Me. 401, 67 A. 2; Talbot v. Wesley, 116 Me. 208, 100 A. 937; Cumberland County Power & Light Co. v. Hiram, 125 Me. 138, 131 A. 594; McKay Radio & Tel. Co. v. Cushing, 131 Me. 333, 162 A. 783; S. D. Warren Co. v. Gorham, 138 Me. 294, 25 A. (2d) 471.

Cited in Shawmut Mfg. Co. v. Benton, 123 Me. 121, 122 A. 49; Bangor v. Brewer, 142 Me. 6, 45 A. (2d) 434.

Sec. 44. Entry of appeal; hearing. — The appeal provided for in the preceding section shall be entered at the term first occurring not less than 30 days after the assessors shall have given to the appellant notice in writing of their decision upon his application for such abatement, and notice thereon shall be or-

dered by said court in term time or by any justice thereof in vacation, and said appeal shall be tried, heard and determined by the court without a jury in the manner and with the rights provided by law in other civil cases so heard. (R. S. c. 81, § 43.)

Where no notices have been ordered by a justice in vacation the court must issue an order of notice on each appeal, upon request of the moving party. S. D. Warren Co. v. Fritz, 138 Me. 279, 25 A. (2d) 645.

The court is not charged with the duty of inspecting the docket and files each term to ascertain if any cases have been entered requiring notice, and issuing orders of notice, of its own motion, on all tax abatement appeals found to have been entered. The parties themselves, and their attorneys, have some duties to perform. They are charged with knowledge of the docket entries, and, in the absence of statute to the contrary, it is their duty to look after their pending cases, ascertain what has been done with them, and take such proper steps in connection therewith as may be required. S. D. Warren Co. v. Fritz, 138 Me. 279, 25 A. (2d) 645.

Premature entry of appeal will not defeat court's jurisdiction. — Although this section provides that an appeal from the decision of tax assessors denying tax abatement "shall be entered at the term first occurring not less than thirty days after the assessors shall have given notice in writing of their decision" a premature entry will not be permitted to defeat jurisdiction of the appellate court but will be treated as though made on the proper day for entry, when all necessary steps have been taken to perfect the appeal. S. D. Warren Co. v. Gorham, 138 Me. 294, 25 A. (2d) 471.

The provision for entry at the return day first occurring not less than thirty days after notice is only for the convenience of the city or town concerned as party to the litigation, and does not go to the jurisdiction of the court in such a sense that the court is not at liberty to proceed with the case if an early entry is allowed to be made without objection. S. D. Warren Co. v. Gorham, 138 Me. 294, 25 A. (2d) 471.

Applied in Taylor v. Caribou, 102 Me. 401, 67 A. 2.

Cited in Sweet v. Auburn, 134 Me. 28, 180 A. 803; Bangor v. Brewer, 142 Me. 6, 45 A. (2d) 434.

Sec. 45. Proceedings and judgment; lien to continue for 30 days.— If upon the trial provided for in the preceding section it appears that the appellant has complied with all provisions of law, he may be granted such abatement as said court may deem reasonable, under the same circumstances as an abatement may be granted by the county commissioners. If no abatement is granted, judgment shall be rendered in favor of the city or town, and for its costs, to be taxed by the court. If an abatement is granted, judgment shall be rendered in favor of the city or town for such amount, if any, as may be due after deducting the abatement, and the court may make such order relating to the payment of costs as justice shall require. In either case execution shall issue. The lien created by statute on real estate to secure the payment of taxes shall be continued for 30 days after the rendition of judgment, and may be enforced by sale of said real estate on execution in the same manner as attachable real estate may be sold under the provisions of section 31 of chapter 171, and with the same right of redemption. Claims for abatement on several parcels of real estate may be embraced in 1 appeal, but judgment shall be rendered and execution shall issue for the amount of taxes due on each several parcel. The final judgment of the court shall be forthwith certified by the clerk to the assessors of the town or city where such tax was assessed, and such assessors shall in all cases carry into full effect the judgment of the appellate court in the same manner as if made by themselves. If it shall be alleged in the application that the applicant has paid the taxes for which he has been assessed, and if the court shall so find, judgment for the amount of the abatement granted shall be rendered against the city or town, and execution therefor and for such costs as may be awarded shall issue as in civil actions. (R. S. c. 81, § 44.)

Abatement granted only where court finds over valuation.—When an appeal is taken to the court, the appellant "may be granted such abatement as the court may

deem reasonable, under the same circumstances as an abatement may be granted by the county commissioners." This means that the court may grant such abatement as it deems reasonable, if it finds that the appellant has been overrated. Penobscot Chemical Fibre Co. v. Bradley, 99 Me. 263, 59 A. 83.

It is not sufficient for an appellant to show merely that the taxing board has made an error, even though such mistake may result in a lack of uniformity. The court is not a board of review to correct errors. It is solely where there is evident a systematic purpose on the part of a taxing board to cast a disproportionate share of the public burden on one taxpayer, or one class of taxpayers, that the court will intervene. Sweet v. Auburn, 134 Me. 28, 180 A. 803.

Applied in Taylor v. Caribou, 102 Me. 401, 67 A. 2; Calais Hospital v. Calais, 138 Me. 234, 24 A. (2d) 489.

Cited in Spear v. Bath, 125 Me. 27, 130 A. 507; Cumberland County Power & Light Co. v. Hiram, 125 Me. 138, 131 A. 594; Bangor v. Brewer, 142 Me. 6, 45 A. (2d) 434.

Sec. 46. Trial and exceptions.—The appeal provided for in section 43 shall be tried at the term to which the notice is returnable, unless delay shall be granted at the request of such city or town for good cause; and said court shall, if requested by such city or town, advance the case upon the docket so that it may be tried and decided with as little delay as possible. Either party may file exceptions to the decisions and rulings of the court upon matters of law arising upon the trial, in the same manner and with the same effect as is allowed in the superior court in the trial of cases without a jury. (R. S. c. 81, § 45.)

This section is directory only and not mandatory. S. D. Warren Co. v. Gorham, 138 Me. 294, 25 A. (2d) 471.

And it is not absolutely essential that the trial take place at the return term. S. D. Warren Co. v. Gorham, 138 Me. 294, 25 A. (2d) 471.

And jurisdiction is not defeated by reason of nontrial of the appeal at the return term. S. D. Warren Co. v. Gorham, 138 Me. 294, 25 A. (2d) 471.

The legislature did not intend to deprive the presiding justice of the control of his trial docket and forbid continuances of tax appeals for whatever reason, particularly where there might be a general appearance, at least an implied consent to a continuance, and in fact no insistence upon trial by either party. S. D. Warren Co. v. Gorham, 138 Me. 294, 25 A. (2d) 471.

The provision for early trial is for the respondent's benefit, can be waived by him and does not go to the jurisdiction of the court. S. D. Warren Co. v. Gorham, 138 Me. 294, 25 A. (2d) 471.

Applied in Bangor v. Brewer, 142 Me. 6, 45 A. (2d) 434.

Quoted in part in S. D. Warren Co. v. Fritz, 138 Me. 279, 25 A. (2d) 645.

Cited in Machias Lumber Co. v. Machias, 122 Me. 304, 119 A. 805; Hadlock, Petitioner, 142 Me. 116, 48 A. (2d) 628.

Sec. 47. Appeals to superior court referred to state tax assessor or commissioner appointed.—All appeals to the superior court under the provisions of section 43 may be referred by the court to the state tax assessor, who shall hear the parties and report his findings to the court together with a transcript of the evidence. Such report shall be prima facie evidence of the facts thereby found; or the court may in its discretion appoint a commissioner to hear the parties and to report to the court the facts, or the facts with the evidence. Such report shall be prima facie evidence of the facts thereby found. The fees of the commissioner shall be paid in the same manner as those of auditors appointed by the court. (R. S. c. 81, § 46.)

Stated in S. D. Warren Co. v. Gorham, 138 Me. 294, 25 A. (2d) 471.

Cited in Ferry Beach Park Ass'n v. Saco, 127 Me. 136, 142 A. 65.

Sec. 48. Assessments and commitment.—The assessors shall assess upon the polls and estates in their town all town taxes and their due proportion of any state or county tax, according to the rules in the latest act for raising a state tax and in this chapter; make perfect lists thereof under their hands; and commit the same to the constable or collector of their town, if any, otherwise to the sheriff

of the county or his deputy, with a warrant under their hands in the form hereinafter prescribed. (R. S. c. 81, § 47.)

Cross references.—See note to § 93, re description necessary for action to enforce lien; note to § 116, re error in name in assessment and list cured by that section.

The law contemplates that when the taxes are committed all things have been done by the assessors to complete the assessment. Sandy River Plantation v. Lewis, 109 Me. 472, 84 A. 995.

The assessments to be committed are to be under the hands of the assessors, or the major part of them. Foxcroft v. Nevens, 4 Me. 72; Vigue v. Chapman, 138 Me. 206, 24 A. (2d) 241.

And, if the list of taxes committed to the collector is not authenticated by the signatures of the assessors the commitment is void. Pearson v. Canney, 64 Me. 188. See Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665.

In a suit for the collection of taxes, one of the things to be established is the making by the assessors, not merely of an assessment, but of a list of the assessments "under their hands" as required by this section. Norridgewock v. Walker, 71 Me. 181.

It is absolutely essential that there be a tax list signed by a majority of the assessors. It may be the one retained by them under § 51, or it may be another committed to the collector under this section. Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665.

A lawful tax list requires the signatures of at least a majority of the assessors. Cassidy v. Aroostook Hotel, 134 Me. 341, 186 A. 665.

And a list with the signature of only one assessor upon it does not constitute a lawful list. It has no more value as a tax list than a piece of blank paper. Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665.

And signatures must show intent to give assessors official sanction.—It is not important in what manner the lists of assessments are signed, whether at the beginning or the end of the list, but they must be signed in some form by at least a majority of the assessors, and in such a manner as to show that they intended to give them their official sanction. Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665.

The intention or object of the signature must clearly appear. It must be a signing for the purpose of special authentication. Johnson v. Goodridge, 15 Me. 29.

In this section the language used is not subscribed, or signed; it is, "Make perfect lists under their hands." All that can reasonably be required, is to accomplish the object designed by the section, which is, that the lists should bear upon them the official sanction of a majority of the assessors, evidenced by their signatures. If a majority sign the lists in such a manner as to show that the intention was thereby to give them their official sanction, that may be sufficient, on whatever part of the lists it be made. Johnson v. Goodridge, 15 Me. 29.

The signing of a warrant to the collector is not sufficient under this section. The list of assessments must also be signed. Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665.

But commitment incorporated in lists is sufficient authentication. — A commitment prefixed to and incorporated in the lists, and specially referring to them is a sufficient authentication and compliance with the requirements of this section. Lowe v. Weld, 52 Me. 588; Norridgewock v. Walker, 71 Me. 181.

The failure of the assessors to sign the lists cannot be cured by amendment under c. 91, § 10. Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665.

But such failure may be cured by a supplemental assessment. See note to § 30.

Selectmen becoming assessors may sign assessment.—If the assessment is signed by the assessors, it is immaterial whether they become assessors by a legal choice of the inhabitants, or by the operation of § 53 and as a consequence of their having been previously duly chosen as selectmen. In either event they were assessors, and there can be no objection to their signing their assessments as such. Gould v. Monroe, 61 Me. 544.

Lists and warrant sufficient to show assessment.—In an action by a collector for the collection of taxes, it is competent for proving the assessment of taxes upon the person sued to produce merely the lists of taxes which were committed with accompanying warrant to the collector by the assessors. Other record evidence need not be produced. Howe v. Moulton, 87 Me. 120, 32 A. 781.

The papers committed to the collector's hands are just as much original papers as are those to be filed in the office of the assessors under § 51. Each set is original evidence of what is contained in them. Howe v. Moulton, 87 Me. 120, 32 A. 781.

Municipality not liable for failure to assess particular person or property.—See Rockland v. Farnsworth, 93 Me. 178, 44 A. 681.

Stated in part in Lunt v. Wormell, 19 Me. 100; Coombs v. Warren, 34 Me. 89; Topsham v. Purinton, 94 Me. 354, 47 A. 919.

Cited in Rockland v. Rockland Water Co., 82 Me. 188, 19 A. 163; Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94.

Sec. 49. State and county taxes added.—The assessors may add their proportion of the state and county tax to any of their other taxes and make 1 warrant and their certificates accordingly. (R. S. c. 81, § 48.)

Stated in Norridgewock v. Walker, 71 Me. 181.

Sec. 50. Overlay not to exceed 5%.—The assessors may assess on the polls and estates such sum above the sum committed to them to assess, not exceeding 5% thereof, as a fractional division renders convenient, and certify that fact to their town treasurer. (R. S. c. 81, § 49.)

Cross reference.—See § 30, re omitted assessments and reassessments of taxes.

An overlay not exceeding five per cent is authorized in the assessment of state, county, and town taxes by this section. Such an overlay is allowed to avoid inconvenient fractions, and should be permitted in the assessment of village corporation taxes as well as state, county, and town taxes. Lord v. Parker, 83 Me. 530, 22 A. 392.

The assessment of more than five per cent. above the sums voted to be raised, makes the assessment illegal and void. Mosher v. Robie, 11 Me. 135.

Sec. 51. Record of assessment and valuation deposited in assessors' office.—The assessors shall make a record of their assessment and of the invoice and valuation from which it was made; and before the taxes are committed to the officer for collection, they shall deposit it or a copy of it in the assessors' office, if any, otherwise with the town clerk, there to remain; and any place where the assessors usually meet to transact business and keep their papers or books shall be considered their office. (R. S. c. 81, § 50.)

The record required by this section is not required to be under the hands of the assessors; a copy will answer. Norridgewock v. Walker, 71 Me. 181.

Failure to lodge record in assessors' or clerk's office not fatal.—The failure to lodge the record in the assessors' or town clerk's office before making the commitment of the warrant and list to the collector, should not be regarded as fatal, under the provisions of § 116. Norridgewock v. Walker, 71 Me. 181.

And sale of land for taxes not illegal because of such failure.—The sale of land for taxes will not be illegal, because it does not affirmatively appear that a record of the assessment and of the invoice and valuation from which it was made, or a copy of it, was deposited in the assessors' or clerk's office, before the taxes were committed to the proper officer for collection. Greene v. Lunt, 58 Me. 518. But see Baker v. Webber, 102 Me. 414, 67 A. 144, wherein it was said that the failure of the report to show any proper record of an assessment of the tax as required by this section is a fundamental defect in the proceedings which must be deemed fatal to the validity of the tax deed.

Applied in Mussey v. White, 3 Me. 290; Brown v. Veazie, 25 Me. 359.

Quoted in Topsham v. Purinton, 94 Me. 354, 47 A. 919; Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665.

Stated in Howe v. Moulton, 87 Me. 120, 32 A. 781.

Sec. 52. Certificates sent to treasurer of state and county treasurer.—When the assessors have assessed any county tax and committed it to the officer for collection, they shall return to the county treasurer a certificate thereof with the name of such officer. When they have so assessed and committed a state tax, they shall return a like certificate to the treasurer of state; and if this is not done and any part of such tax remains unpaid for 60 days after the time fixed for its payment, the treasurer of state shall issue his warrant to the sheriff or his deputy to collect the sum unpaid of the inhabitants of the town or place. (R. S. c. 81, § 51.)

Sec. 53. Selectmen to act as assessors.—If any town does not choose assessors, the selectmen shall be the assessors and each of them shall be sworn as an assessor. (R. S. c. 81, § 52.)

Cross references.—See note to § 48, re assessment may be signed by selectmen becoming assessors; c. 91, § 13, re compensation of town officers; c. 91, § 41, re vacancies in town offices.

Where, at a legal town meeting, the inhabitants duly chose certain individuals as selectmen, and then voted to pass the articles for the choice of assessors and that "the selectmen be assessors," the law is fully complied with whether the assessors are regarded as duly chosen or acting as such by virtue of this section. Gould v. Monroe, 61 Me. 544.

Selectmen must be sworn as assessors.—Where no assessors are elected, the selectmen must, each of them, be sworn as assessors before they can legally assess a tax. As officers de facto, they cannot make an assessment which will sustain an action for taxes. Dresden v. Goud, 75 Me. 298. See note to § 146.

The proper oath is a condition precedent to the authority of the assessors to assess. Dresden v. Goud, 75 Me. 298.

With oath distinct from that of selectmen.—This section requires that "each of them shall be sworn as an assessor." The fact that this office devolves upon them by virtue of their election as selectmen does not make the two one office, but each retains its distinct character and requires its distinct and proper oath. Dresden v. Goud, 75 Me. 298.

Oath held sufficient. — The persons chosen as selectmen made oath that "they would faithfully and impartially discharge the duties of selectmen and assessors .... to the best of their abilities and according to law." This was a full and complete compliance with this section. Gould v. Monroe, 61 Me. 544.

Applied in Gerry v. Herrick, 87 Me. 219, 32 A. 882.

Sec. 54. Neglect to choose.—Any town neglecting to choose selectmen or assessors forfeits to the state not less than $100 nor more than $300, as the superior court orders. (R. S. c. 81, § 53.)

Sec. 55. When no assessors, county commissioners may appoint.—In case a town has neglected to choose assessors and when the selectmen and assessors chosen by a town do not accept the trust, the county commissioners may appoint 3 or more suitable persons in the county to be assessors of taxes, and such assessors, being duly sworn, shall assess upon the polls and estates in the town their due proportion of state and county taxes and said penalty, and not exceeding $2.50 a day each for their own reasonable charges for time and expense in said service; and shall issue a warrant under their hands for collecting the same and transmit a certificate thereof to the treasurer of state, with the name of the person to whom it is committed; and the assessors shall be paid their charges as allowed by said commissioners out of the state treasury. (R. S. c. 81, § 54.)

Sec. 56. Such assessors to obey warrants.—All assessors, chosen or appointed as above provided, shall observe all warrants received by them while in office from the treasurer of state or the county commissioners of their county. (R. S. c. 81, § 55.)

Sec. 57. Neglect to make assessments of state tax.—If assessors of a town refuse or neglect to assess any state tax apportioned on it and required by the warrant of the treasurer of state to be assessed by them, they forfeit to the state the full sum mentioned in such warrant; and such treasurer shall issue his warrant to the sheriff of the county to levy said sum by distress and sale of their real and personal estate. (R. S. c. 81, § 56.)

Sec. 58. Neglect to assess county tax.—If assessors neglect to assess the county tax required in the warrant of the county commissioners to be assessed by them, they forfeit that sum to the county; and it shall be levied by sale of their real and personal estate by virtue of a warrant issued by the county treasurer to the sheriff of the county for that purpose. (R. S. c. 81, § 57.)

Sec. 59. Assessors arrested and other assessors appointed. — If the

sheriff cannot find property of said assessors to satisfy the sum due on either of said warrants authorized in the preceding section, he may arrest and imprison them until they pay the same; and the county commissioners shall forthwith appoint other proper persons to be assessors of such state and county taxes, who shall be sworn and perform the same duties and be liable to the same penalties as the former assessors. (R. S. c. 81, § 58.)

Cited in State v. Bangor, 98 Me. 114, 56 A. 589.

Sec. 60. Towns neglecting to assess, treasurer to issue warrant to sheriff to collect.—If the inhabitants of a town of which a state tax is required neglect for 5 months, after having received the warrant of the treasurer of state for assessing it, to choose assessors to assess it and cause the assessment thereof to be certified to such treasurer for the time being, he shall issue his warrant, under his hand, to the sheriff of the same county, who shall proceed to levy such sums on the real and personal property of any inhabitants of such town, observing the regulations provided for satisfying warrants against delinquent collectors as prescribed in sections 66 to 170, inclusive. If the assessors thereof, within 60 days from the receipt of a copy of such warrant from the officer, deliver to him a certificate according to law of the assessment of the taxes required by the warrant and pay him his legal fees, he shall forthwith transmit the certificate to the treasurer of state and return the warrant unsatisfied. (R. S. c. 81, § 59.)

Sec. 61. For like neglect, county treasurer to issue warrant.—If the inhabitants of a town of which a county tax is required neglect to choose and keep in office assessors to assess it as the law requires, the county treasurer for the time being, after 5 months from the time when they received the county commissioners' warrant for assessing it, shall issue his warrant to the sheriff, requiring him to levy and collect the sum mentioned therein; and he shall execute it, observing the regulations and subject to the conditions provided in the preceding section. (R. S. c. 81, § 60.)

Sec. 62. Warrants issued to collect of inhabitants, if not collected of assessors.—If the voters of a town of which a state or county tax is required choose assessors, who neglect to assess the tax required by the warrant issued to them and to certify it as the law directs, and if the estates of such assessors are insufficient to pay such taxes as are already provided, the treasurer of state or of the county, as the case may be, for the time being shall issue his warrant to the sheriff of such county, requiring him to levy by distress and sale such deficiency on the real and personal estates of such inhabitants; and the sheriff or his deputy shall execute such warrants, observing all the provisions mentioned in section 60. (R. S. c. 81, § 61.)

See § 153, re owners of real estate taken by default may recover its value from town.

Sec. 63. Assessors refusing oath; vacancy.—Any assessor, chosen and notified to take the oath of office, unreasonably refusing to be sworn forfeits to the town $15, to be recovered by their treasurer in an action of debt; and the selectmen shall forthwith call a town meeting to fill the vacancy. (R. S. c. 81, § 62.)

See c. 91, § 38, re penalty for refusing to take oath.

Assessment of Taxes in Plantations.

Cross Reference.—See c. 36, § 99, re forestry district taxes.

Sec. 64. Plantations taxed, have power of towns; officers.—All plantations required to pay any part of the public taxes are vested with the same power as towns so far as relates to the choice of clerk, assessors and collector of taxes;

and any person, chosen assessor therein and refusing to accept or to take the legal oath after due notice, is liable to the same penalty, to be recovered in the manner mentioned in the preceding section; and the other assessors shall forthwith call a plantation meeting to fill the vacancy.

If any such plantation neglects to choose a clerk, assessors and collector of taxes or if the assessors chosen neglect their duty, it shall be subject to the same penalties and proceeded against in the same manner as towns deficient in the same respect.

The clerk, assessors and collector shall be sworn as similar officers chosen by a town and shall receive the same compensation, unless otherwise agreed. (R. S. c. 81, § 63.)

Cross reference.—See c. 101, §§ 8-10, re duties of plantation officers.

Applied in Bessey v. Unity Plantation, 65 Me. 342.

Sec. 65. Neglect to be sworn.—Plantation officers neglecting to be sworn when notified are liable to the same penalties as town officers so neglecting, to be recovered in the same manner. (R. S. c. 81, § 67.)

See c. 91, § 38, re penalty for refusing to take oath.

Collection of Taxes in Incorporated Places.

Sec. 66. Time for payment; interest; poll tax due.—Towns, at their annual meetings, may determine when the lists named in section 48 shall be committed and when their taxes shall be payable, and that interest shall be collected thereafter; provided, however, that any town or city may provide at its annual meeting that the poll taxes shall be due and payable on the 1st day of May and the commitment of the lists of poll tax payers shall be made to the collector prior to that date. (R. S. c. 81, § 68. 1945, c. 293, § 19.)

Cross reference.—See § 146, re municipal officers may direct suit for taxes.

History of section.—See Rockland v. Rockland Water Co., 82 Me. 188, 19 A. 163.

No interest allowed absent vote imposing it.—It not appearing from the report that any vote was passed by the town that interest should run on unpaid taxes from and after a date specified, none is allowed. Athens v. Whittier, 122 Me. 86, 118 A. 897.

At time tax imposed.—No interest can be recovered if the resolve imposing interest was not passed by the city at the time of imposing the tax. Rockland v. Ulmer, 87 Me. 357, 32 A. 972.

It would be an unreasonable construction of this section that would give a city council power, at any time during the municipal year, even after the taxes have been assessed and committed for collection, to vote interest upon those that might be overdue and unpaid. That could never have been the intention of the legislature. Rockland v. Rockland Water Co., 82 Me. 188, 19 A. 163.

And vote fixing date for payment of taxes.—A compulsory collection of interest cannot be justified without a definite and distinct vote fixing the time when the taxes are payable. A vote declaring that interest shall be collected after a certain time named is not sufficient. Interest may, and generally does, commence to run before the principal is payable; and a vote declaring when interest shall commence is by no means equivalent to a vote fixing a time when the principal shall be payable. Snow v. Weeks, 77 Me. 429, 1 A. 243.

Where there has been no distinct vote by the city council determining when the taxes should be payable, the payment of interest cannot lawfully be enforced. This section and § 67 are explicit, and make it a condition precedent, that the town or city shall first fix the time when the taxes are payable. Snow v. Weeks, 77 Me. 429, 1 A. 243.

If the town did not vote to fix the date when taxes for a particular year should be payable or that interest should be collected thereafter, no interest is allowed. Bucksport v. Swazey, 132 Me. 36, 165 A. 164; Cushing v. McKay Radio & Tel. Co., 132 Me. 324, 170 A. 60.

Section applicable to cities.—This section authorizes towns at their annual meetings, when the necessary levies for taxes are voted, to determine when the taxes shall become payable and what interest shall thereafter accrue. In applying this section to cities, the expressed limitations in it should be imposed, so far as they can

be. City councils, after obtaining the estimates of the necessary expenditures for the municipal year, vote to raise the money to be assessed precisely as towns do at their annual meetings; and the same reasons apply with equal force to both, requiring them to then determine, if at all, when the taxes shall become payable, and what rate of interest thereafter shall accrue. Rockland v. Rockland Water Co., 82 Me. 188, 19 A. 163.

And city must determine when taxes payable.—Cities, under this section and § 67, must determine, at the time when the money is raised and not afterwards, when their taxes shall become payable and what rate of interest thereafter shall accrue. Rockland v. Rockland Water Co., 82 Me. 188, 19 A. 163.

Cited in Scavone v. Davis, 142 Me. 45, 45 A. (2d) 787.

Sec. 67. Rate of interest.—The rate of such interest, not exceeding 8% a year, shall be specified in the vote and shall be added to and become part of the taxes. (R. S. c. 81, § 69.)

History of section.—See Rockland v. Rockland Water Co., 82 Me. 188, 19 A. 163.

Sec. 68. Receipt for payment of poll tax.—In order to facilitate the issuance of motor vehicle operators' licenses and the registration of motor vehicles, the collector of taxes or such other person as a city or town may designate shall issue a receipt separate from any other tax payments to each person who has paid a poll tax. If any inhabitant is exempt from payment of a poll tax or if his said tax has been abated, the assessors of the city or town whereof he is an inhabitant shall on request issue or cause to be issued a certificate that he is exempt from payment of a poll tax, or that it has been abated. Such receipt or requested certificate shall be either delivered or mailed to the person within 48 hours thereafter. (1945, c. 173.)

See c. 22, §§ 15, 61, re poll tax prerequisite to granting of operator's license and motor vehicle license; c. 37, § 39, sub-§ VIII, re poll tax receipt or certificate prerequisite to granting of hunting or fishing licenses.

Sec. 69. Collection of state taxes.—All state taxes hereafter assessed shall be collected by the collectors or constables of the several towns and paid by them to the treasurers of their respective towns as other taxes are paid. Said treasurers shall pay such taxes to the treasurer of state. (R. S. c. 81, § 70.)

Sec. 70. Warrants for state tax.—On or before the 1st day of September in each year, the treasurer of state shall issue his warrant to the treasurer of each town therein requiring him to transmit and pay said town's proportion of the state tax for the year 19 , to , treasurer of state, or to his successor in office, on or before the time at which they are required to pay such tax. (R. S. c. 81, § 71.)

Sec. 71. Warrants to collect taxes of delinquent towns.—When the time for the payment of a state tax to the treasurer of state has expired and it is unpaid, the treasurer of state shall give notice thereof to the municipal officers of any delinquent town, and unless such tax shall be paid within 60 days, the treasurer of state may issue his warrant to the sheriff of the county, requiring him to levy by distress and sale upon the real and personal property of any of the inhabitants of the town; and the sheriff or his deputy shall execute such warrants, observing the regulations provided for satisfying warrants against delinquent collectors prescribed by sections 66 to 170, inclusive. (R. S. c. 81, § 72.)

Sec. 72. Collection of county taxes; interest.—All county taxes hereafter assessed shall be collected by the collectors or constables of the several towns and paid by them to the treasurers of their respective towns as other taxes are paid. Said treasurers shall pay such taxes to the county treasurers of their respective counties. On the 1st day of January, first occurring after the day on which taxes are due to the county from the cities, towns and plantations, interest

at 6% shall begin to run on such unpaid balances as are due to the county. All provisions of law that relate to the collection of taxes by the counties shall apply to the collection of the interest due on overdue taxes. (R. S. c. 81, § 73.)

Sec. 73. Warrants for collection of county taxes.—On or before the 1st day of September of each year, the county treasurer shall issue his warrants to the treasurers of the several towns in his county, requiring them to transmit and pay their town's proportion of the county tax for the year 19 to , county treasurer, or his successor in office, on or before the time fixed by law for said payment. If said town treasurer fails to pay such county tax for 40 days after the time fixed therefor, said county treasurer shall issue his warrant directed to the sheriff of the county, requiring him to levy it by distress and sale on real and personal property of any of the inhabitants of the town. The sheriff or his deputy shall execute such warrants, observing all the provisions mentioned in section 60. (R. S. c. 81, § 74.)

Sec. 74. Form of warrant for collection of state taxes.—The warrant to be issued by selectmen or assessors for collection of state taxes shall be in substance as follows:

ss. A. B., constable or collector of the town of , within the county of : Greeting:

In the name of the state of Maine, you are hereby required to levy and collect of each of the several persons named in the list herewith committed unto you, his respective proportion therein set down, of the sum total of such list, it being said town's proportion of the state tax for the year 19 ; and to transmit and pay the same to , the treasurer of your town, or to his successor in office, and to complete and make an account of your collections of the whole sum on or before the day of next. And if any person refuses or neglects to pay the sum which he is assessed in said list, you shall distrain his goods or chattels to the value thereof, and keep the distress so taken for four days at the cost and charge of the owner; and if he does not pay the sum so assessed within said four days, then you shall sell at public vendue such distress for payment thereof with charges; first giving forty-eight hours' notice thereof by posting advertisements in some public place in the town or plantation, as the case may be; and the overplus arising by such sale, if any, beyond the sum assessed and the necessary charges of taking and keeping the distress, you shall immediately restore to the owner; and for want for twelve days, of goods and chattels whereon to make distress, except implements, tools and articles of furniture exempt from attachment for debt, you shall take the body of such person so refusing or neglecting and him commit to the jail of the county, there to remain until he pays the same, or such part thereof as is not abated by the assessors for the time being or the county commissioners for said county.

Given under our hands, by virtue of a warrant from the treasurer aforesaid, this day of nineteen hundred and .

Assessors.

And a certificate of the assessment of any state tax shall be in substance as follows:

Pursuant to a warrant from the treasurer of the state of Maine dated the day of , nineteen hundred and , we have assessed the polls and estates of the of , the sum of dollars and cents, and have committed lists thereof to the of said , viz: to , with warrants in due form of law for collecting and paying the same to , town treasurer of , or his successor in office, on or before the day of , next ensuing.

In witness whereof, we have hereunto set our hands at this day of , nineteen hundred and .

Assessors.

No error or informality in the warant so far as it relates to the description of

the officer to whom any tax is to be paid by the collector shall render the same invalid, or relieve the collector from the duty of complying with the provisions of the statute in that behalf or from liability on account of failure to do so. (R. S. c. 81, § 75.)

A collector's warrant is his protection against all illegality but his own, and his return is prima facie evidence in his favor of the facts therein stated. Caldwell v. Hawkins, 40 Me. 526.

And he must obey warrant without regard to anterior proceedings.—The collector, having a warrant from competent authority, is bound to proceed under it. With the anterior proceedings he has no concern. An officer appointed to collect the public revenue must, ex necessitates rei, obey his warrant, and he will be protected in so doing. He holds in his hands the sinews of government, and neither his fears that individuals may be injured, nor his doubts about the validity of anterior proceedings, will excuse him. The collector has no judicial power. He is only to know whether his warrant proceeds from competent authority. If so, he must fulfill it as he is commanded. School District in Tremont v. Clark, 33 Me. 482.

The collector is bound to obey a warrant in due form, and issuing from the assessors, though they may not have complied with every requisition of law anterior to issuing it. Kellar v. Savage, 20 Me. 199.

But need not obey warrant which gives no power to distrain.—A warrant must be regarded as defective if it gives no authority to commit nor to distrain. And, as the collector cannot legally enforce the collection of the taxes committed to him under such a warrant, he cannot be regarded as in fault for not collecting. Frankfort v. White, 41 Me. 537.

It is well settled that a collector cannot be regarded as in fault for not enforcing the collection of taxes committed to him, when his warrant confers no authority to distrain. Boothbay v. Giles, 68 Me. 160.

Or which circumscribes such power within less than statutory limit.—A warrant which directs an exemption from distress of "those animals, implements, tools, articles of furniture, and other goods and chattels exempted from attachment for debt," while the form or warrant provided by this section exempts only those "implements, tools, and articles of furniture exempted from attachment for debt," is bad. The collector is by such a warrant, circumscribed within less than the statutory limit of the articles to be distrained in case of the nonpayment of taxes. Orneville v. Pearson, 61 Me. 552.

If the warrant accompanying the tax lists was not, in substance, the one prescribed by this section in that it exempted from distress "animals" and "other goods and chattels" exempted from attachment for debt in addition to those exempted in this section, it being thus defective, the collector is excusable for not proceeding under it, and he cannot be held liable for non-collection of taxes. Boothbay v. Giles, 68 Me. 160.

Presumption that warrant duly signed.—In the absence of proof, the court will presume that the tax list and the warrant for collection were duly signed by the assessors. Kellar v. Savage, 20 Me. 199.

Life of warrant not dependent on official life of assessors or collectors.—The virtue and life of a warrant do not depend on the official life of the assessors who sign it, or of the collectors to whom it is directed and delivered. Mussey v. White, 3 Me. 290.

And it need not be delivered to collector during year for which he and assessors elected.—It is not necessary to the validity of a warrant for the collection of taxes, that it be delivered to the collector during the year for which he and the assessors were elected; it being sufficient if they made and signed it while in office. Mussey v. White, 3 Me. 290.

Warrant to be liberally construed.—The expression "in substance" used in this section was inserted to prevent the evil consequences which would probably follow in every town in the state, if strict formality were in all cases required. The court, therefore, is authorized and bound to give a fair and liberal construction of the words used, and of the conduct of officers in framing the instruments alluded to in the section. Mussey v. White, 3 Me. 290.

Omission of certain words held harmless.—The words "In the name of the State of Maine" and the sentence beginning with the words "it being this town's proportion of a tax," etc., in the form of the warrant for collecting taxes are matters of form only, the omission of which does not vitiate the warrant. Mussey v. White, 3 Me. 290.

Certificate is official act and presumed to be true.—By this section, assessors of towns are required to obey a warrant from the state treasurer, by assessing the state

taxes, and committing the lists to a collector, with a warrant for their collection. By the same section, a form of certificate is provided for assessors to furnish to the state treasurer, in which they are to declare that they have assessed the polls and estates as directed, and have committed the bills, "with warrant in due form of law," to a collector for collection. This certificate is an official act, issued by sworn officers, who are presumed to properly perform their official duty. Upon the evidence furnished by this official return or certificate, the state treasurer is not only authorized, but he is compelled to act. He must take it for granted that the certificate is true. Snow v. Winchell, 74 Me. 408.

And state treasurer may assume from it that warrant legally issued.—When a collector has accepted a warrant from the assessors and acted under it, a state treasurer has the right to assume, upon the strength of the certificate sent to him, that the warrant was rightfully issued and in lawful form. It would cripple the administration of the law and endanger the collection of the revenues of the state, if its treasurer may be liable as a trespasser for this performance of so plain a public duty. Snow v. Winchell, 74 Me. 408.

Applied in Bethel v. Mason, 55 Me. 501.

Stated in part in Gorham v. Hall, 57 Me. 58; Norridgewock v. Walker, 71 Me. 181.

Cited in Farnsworth Co. v. Rand, 65 Me. 19; Wellington v. Lawrence, 73 Me. 125; Brunswick v. Snow, 73 Me. 177; Bath v. Whitmore, 79 Me. 182, 9 A. 119.

Sec. 75. Warrant for county and town taxes.—The warrant for collection of county or town taxes shall be made by the assessors in the same tenor, with proper changes. (R. S. c. 81, § 76.)

Certificates required from assessors.—By this section, warrants for the collection of county or town taxes are to be made out in the same tenor as warrants for the collection of state taxes, and, by implication, certificates of like tenor, mutatis mutandis, are required from the assessors to county and town treasurers. Snow v. Winchell, 74 Me. 408.

Stated in Mussey v. White, 3 Me. 290; Norridgewock v. Walker, 71 Me. 181.

Cited in Frankfort v. White, 41 Me. 537; Wellington v. Lawrence, 73 Me. 125; Brunswick v. Snow, 73 Me. 177.

Sec. 76. New warrant in case of loss.—When an original warrant issued by assessors and delivered to a constable or collector for collection of a tax has been lost or destroyed by accident, the assessors may issue a new warrant for that purpose, which shall have the same force as the original. (R. S. c. 81, § 77.)

Stated in Bath v. Whitmore, 79 Me. 182, 9 A. 119.

Sec. 77. Compensation of collectors.—When towns choose collectors, they may agree what sum shall be allowed for performance of their duties. Provided, however, that if the basis of compensation agreed upon is a percentage of tax collections, such percentage shall be computed only upon the cash collections of taxes committed to him, but the tax liens filed by such collector and not redeemed and the amounts paid by the town to the collector upon the sale of tax deeds shall not be included in computing such percentage. Nothing herein shall be construed as relieving the tax collector from the duty of perfecting liens for the benefit of the town by one of the methods prescribed by law in all cases where taxes on real estate remain unpaid. (R. S. c. 81, § 78.)

Sec. 78. Fees of collector.—In case of distress or commitment for nonpayment of taxes, the officer shall have the same fees which sheriffs have for levying executions, except that travel in case of distress shall be computed only from the dwelling house of the officer to the place where it is made. (R. S. c. 81, § 79.)

Sec. 79. Collector to receive warrant. — Every collector or constable required to collect taxes shall receive a warrant from the selectmen or assessors of the kind hereinbefore mentioned and shall faithfully obey its directions. (R. S. c. 81, § 80.)

Stated in Scarborough v. Parker, 53 Me. 252; Gorham v. Hall, 57 Me. 58.

Sec. 80. Bond of collector; record. — The assessors shall require such constable or collector required to collect taxes to give a corporate surety bond for the faithful discharge of his duty to the inhabitants of the town, in the sum and with such sureties as the municipal officers approve; and bonds of collectors of plantations shall be given to the inhabitants thereof, approved by the assessors, with like conditions; provided, however, that the constable or collector may furnish a bond signed by individuals, if such individuals submit to the municipal officers a detailed sworn statement as to their personal financial ability which shall be found acceptable by the municipal officers.

The bond provided under the provisions of this section shall cover all taxes assessed under the provisions of section 30.

Such bond shall, after its approval and acceptance, be recorded by the clerk in the town or plantation records, and such record shall be prima facie evidence of the contents of such bond, but a failure to so record shall be no defense in any action upon such bond. (R. S. c. 81, § 81.)

I. General Consideration.
II. Actions on Bond.
A. For Failure to Collect Taxes.
B. For Failure to Pay Over Money Collected.

I. GENERAL CONSIDERATION.

Requirement of bond is reasonable.—As towns are bound by law to respond at the treasury of the state for all deficiencies of their collectors, it is reasonable that they should protect themselves by requiring sufficient bonds of the persons entrusted with the collection of their money. Morrell v. Sylvester, 1 Me. 248.

Form of bond fixed by section. — The requisite bond contemplated by this section is not such a bond as the assessors shall require. The section states that the bond required of the collector shall be for the faithful discharge of his duty. The form of the bond is fixed by the section and not by the widely varying ideas of each board of assessors as to what may be required in the premises. Smith v. Randlette, 98 Me. 86, 56 A. 199, holding that a bond which contains the condition that the collector will well and faithfully perform all the duties of his office is a bond "for the faithful discharge of his duty," within the meaning of these words as used in this section.

And bond conforming to section treated as statute bond.—A bond which in terms conforms to the requirements of this section, is accepted by the selectmen, and both parties act under it as a statute bond, must be treated as a statute bond. Gorham v. Hall, 57 Me. 58.

The refusal to give bond is a nonacceptance of the office of collector. Morrell v. Sylvester, 1 Me. 248; Gould v. Monroe, 61 Me. 544. But see Scarborough v. Parker, 53 Me. 252, wherein it was said that "in the case of a treasurer, the neglect or refusal to give bond is by statute declared equivalent to a refusal to accept the office (see c. 91, § 30 and note). But there is no such provision in relation to the collector and his bond."

But giving of bond not condition precedent to assuming duties in absence of demand.—The giving of an official bond by a collector is not, in the absence of a demand therefor, a condition precedent to his assuming the duties of his office, this section being only directory. Scarborough v. Parker, 53 Me. 252; Boothbay v. Giles, 68 Me. 160.

And collector may act though bond not given.—If the assessors fail to require the bond as directed, the collector, having a valid warrant, may nevertheless proceed to perform his duties, and no taxpayer would be exonerated from the payment of his tax by reason of the deficiency. Scarborough v. Parker, 53 Me. 252.

Bond given several years after election good at common law.—Where a collector is chosen and proceeds to carry out the duties of his office without giving the bond required by this section, is not unlawful for the town authorities, several years later and while the collector is still acting as such, to request him to give a bond. If given, such bond would be good at common law. Scarborough v. Parker, 53 Me. 252.

The official bond required by this section must be sealed. Boothbay v. Giles, 68 Me. 160, holding that the fact that it contains the words "witness our hands and seals," when there is no seal attached, does not make it a bond or sealed instrument.

But contract made in lieu of sealed instrument has effect of bond.—A contract voluntarily and deliberately made and de-

livered in lieu of a sealed instrument containing the same terms as an official bond has the same effect as a bond. Its acceptance by the assessors in lieu of a statute bond is a sufficient consideration to cover all official delinquencies, so far as not paying over money actually collected after such acceptance is concerned. Boothbay v. Giles, 68 Me. 160.

The liability of the sureties depends upon the legal construction of the condition of the bond. Foxcroft v. Nevens, 4 Me. 72.

And court cannot extend such liability.—The court cannot extend the liability of the sureties by construction beyond the bounds by which it is expressly qualified and limited in plain and explicit terms. Foxcroft v. Nevens, 4 Me. 72.

Money collected cannot be appropriated to make up deficiency of prior year without surety's consent.—Where the same person was collector of taxes in a town for several successive years, and failed to pay over or account for a portion of the taxes committed to him the first year, moneys collected and paid over by him, arising from the taxes committed in the subsequent years, cannot be appropriated to make up the deficiency of the first year, so as to affect the relative rights and liabilities of the sureties on his several bonds, without their consent. Porter v. Stanley, 47 Me. 515.

Collector not responsible for irregularities on part of others.—The collector is not considered as responsible for any irregularities on the part of others, antecedent to the commitment of the assessment to him for the purpose of collection. His warrant is his protection against all illegality but his own. Ford v. Clough, 8 Me. 334. See note to § 74.

And sureties do not bind themselves to indemnify against such irregularities.—The sureties do not bind themselves to indemnify the town against the consequences of any irregularities on the part of the town in its corporate transactions, or any irregularities or neglects on the part of the selectmen, or assessors or constable. Ford v. Clough, 8 Me. 334.

Effect of erasure of one surety's name from bond after others had signed.—See Readfield v. Shaver, 50 Me. 36.

Applied in Mussey v. White, 3 Me. 290; Bethel v. Mason, 55 Me. 501.

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

II. ACTIONS ON BOND.

A. For Failure to Collect Taxes.

Failure to collect not breach of bond if mode of collection prevented by assessors' error.—An error on the part of the assessors that deprives the collector of one of the modes which he would otherwise have of collecting the tax will relieve him of the duty of collecting it, and his neglect to collect it will not be a breach of his official bond and, consequently, will not support an action against his sureties. Harpswell v. Orr, 69 Me. 333.

Plaintiff must show legal warrant.—To render a collector liable upon his bond for omitting to act, the plaintiffs must show that he had been armed with a legal warrant, by which collection could be enforced. Trescott v. Moan, 50 Me. 347.

As illegal warrant discharges collector and sureties from liability for uncollected assessments. — When an illegal warrant is issued to the collector, he is excused from any further service under it, and he and his sureties are discharged from liability as far as the uncollected assessments are concerned. Orneville v. Pearson, 61 Me. 552.

Not sufficient to show commitment conferring no authority.—Where the commitment to the collector conferred upon him no authority, and imposed upon him no official duty, it is not sufficient for the plaintiffs in an action on his bond to make out their case to show such a commitment. They must go further and show that he had received money for which he had not accounted. Boothbay v. Giles, 64 Me. 403.

Inability of person to pay tax no defense to action on bond if collector has not exhausted his authority.—In general, a collector of taxes becomes chargeable for all taxes committed to him, in respect to which he has not exhausted his authority to enforce payment during the period allotted for their collection, if the town insists upon his liability, and requires payment from him. It is no defense to a suit on a collector's bond for such delinquency, that the individuals against whom such taxes were assessed were not, at any time after the tax bills were placed in his hands, of sufficient ability to pay the same, and that a levy of a warrant of distress upon them would have been unavailing. Gorham v. Hall, 57 Me. 58.

B. For Failure to Pay Over Money Collected.

Bond requires collector to pay over money collected.—A bond conditioned for "the faithful performance of the duties of collector" will hold him and his sureties to pay over money which he has actually collected after the delivery of the bond. Boothbay v. Giles, 68 Me. 160; Brunswick v. Snow, 73 Me. 177.

And failure to pay over constitutes breach of bond.—One of the duties re-

quired of the collector is to pay over the money collected to the treasurer. If he does not perform that duty, it is a clear breach of his bond, unless he is excused by some neglect on the part of the officers of the town, in doing what the bond or contract between the parties required of them. Johnson v. Goodridge, 15 Me. 29.

Even though assessment was defective.—A collector violates the condition of the bond by not paying over the sums collected, even though the assessment was defective. After having collected the money, he cannot be permitted to deny the legality of the assessment. Ford v. Clough, 8 Me. 334.

It is no defense to a suit on a collector's bond that the assessment preparatory to issuing the tax list and the warrant accompanying the same, were not signed by the assessors. Kellar v. Savage, 20 Me. 199; Orono v. Wedgewood, 44 Me. 49.

And he received no warrant.—A collector of taxes is bound to pay over money voluntarily paid to him by the inhabitants, although the tax bills committed to him are imperfect and illegal, and although he has received no collector's warrant. Johnson v. Goodridge, 15 Me. 29; Orono v. Wedgewood, 44 Me. 49.

Or warrant was defective.—While the collector is under no obligation to execute a warrant irregular on its face, the taxpayers may waive any formal defects and pay their taxes to the collector; and if he receives them, the defective warrant is no defense against the claim of the town for the money thus actually received. Boothbay v. Giles, 68 Me. 160.

A defect in the warrant issued to the collector excuses the collector from collecting, but does not excuse him from paying over what is paid to him. This still remains a duty devolved upon him by virtue of his office. It is optional for him to proceed in the collection of the taxes, and exhaust what authority was given him for that purpose, or decline to do so. But, electing to proceed, he must proceed as collector, and can do so in no other capacity. Whatever money he receives upon the taxes, he receives as collector. If there has been a failure to pay over the money collected, there has in that respect been a failure to perform the duties of his office, and a breach of his bond. If there has been a breach on his part, the sureties must be equally liable with the principal. That is the covenant which they made, the contract to which they became parties. Brunswick v. Snow, 73 Me. 177.

And collector and sureties estopped from denying legality of election in suit on bond.—A collector of taxes, having acted in that capacity and given bond, is estopped to deny the legality of his election. Orono v. Wedgewood, 44 Me. 49.

The sureties cannot, in an action on the bond for not paying over moneys collected, controvert the legality of the meeting at which the collector was chosen. Orono v. Wedgewood, 44 Me. 49.

Damages in suit for money collected on defective warrant.—In a suit against the sureties on a collector's bond for money actually received as taxes by the collector under a defective warrant, and not paid over, the measure of damages is the amount actually collected as taxes and interest, and interest on the same from date of demand, deducting all payments made by the collector to the treasurer (not including orders and receipts for discounts or abatements) and any amount collected on a warrant of distress, and paid over, also deducting such compensation as the collector is entitled to receive for his services for the collections actually made and paid over by him. Brunswick v. Snow, 73 Me. 177.

Sec. 81. Receipts for taxes.—When a tax is paid to a collector or constable, he shall give a receipt therefor on demand; and if he neglects or refuses to do so, he forfeits $5 to the aggrieved party, to be recovered in an action of debt. (R. S. c. 81, § 82.)

Receipt is original evidence.—The giving of a receipt for taxes by the collector is an official act which this section requires him to perform. The manifest purpose of the statute is to furnish the taxpayer with written evidence of payment. The receipt is therefore original evidence; not conclusive, but sufficient until invalidated by proof. Campbell v. Whitehouse, 122 Me. 409, 120 A. 529.

Sec. 82. Plantations may choose collectors.—All plantations, required to pay any portion of the public taxes, have all the powers of towns so far as relates to the choice of constables and collectors and the requiring of bonds from them. (R. S. c. 81, § 83.)

See § 64, re assessment of taxes in plantations.

Sec. 83. Collectors to distrain; notice of sale.—If a person refuses to pay any part of the tax assessed against him in accordance with the provisions of sections 66 to 170, inclusive, the person whose duty it is to collect the same may distrain him by any of his goods and chattels not exempt, for the whole or any part of his tax, and may keep such distress for 4 days at the expense of the owner, and if he does not pay his tax within that time, the distress shall be openly sold at vendue by the officer for its payment. Notice of such sale shall be posted in some public place in the town, at least 48 hours before the expiration of said 4 days. (R. S. c. 81, § 84.)

There is no law requiring property to be sold in the town where it is distrained. In such cases town lines are of no importance. Carville v. Additon, 62 Me. 459.

The authority conferred by this section does not extend to the sale of more of the distress than is ample for the purposes for which the authority is conferred. Seekins v. Goodale, 61 Me. 400.

The words "the distress shall be openly sold," as used in this section, are not to be construed as authorizing a collector of taxes to sell any additional articles after enough have been sold to pay the tax committed to him and the expense of sale. Seekins v. Goodale, 61 Me. 400.

An officer is not authorized to decide that property sold by him is bid off for more or less than its value. It is his duty to obtain the best price he can for it. When he has sold sufficient property and can have his pay for it, he is not authorized to proceed and sell more. Such a course might subject the owner to unnecessary losses. The residue of the property should be restored to the owner. Williamson v. Dow, 32 Me. 559.

But the collector is liable as a trespasser ab initio only for the sale of so much of the goods as were sold in excess, and not for those sold in pursuance of authority. Seekins v. Goodale, 61 Me. 400.

Collector keeping property more than 4 days regarded as trespasser ab initio.—If the collector, after distraining the taxpayer's goods, keeps them beyond the 4 days at the expiration of which, according to the requirements of this section, they should have been sold, he must be regarded as a trespasser ab initio and liable to have the property taken out of his hands. Brachett v. Vining, 49 Me. 356; Farnsworth Co. v. Rand, 65 Me. 19; Cressey v. Parks, 75 Me. 387.

In computing time under this section, the day of the seizure is not to be reckoned. Cressey v. Parks, 75 Me. 387.

But Sunday is to be reckoned as a day under this section. The section provides that the distress is to be kept "for 4 days at the expense of the owner," and if the tax be not paid within that time, the distress shall be sold at vendue by the officer for its payment. The expression, "4 days," excludes no day. It implies consecutive days. Cressey v. Parks, 75 Me. 387.

When the statute prescribes the number of days within which an act is to be done, and nothing is said about Sunday, it is to be included. Cressey v. Parks, 75 Me. 387.

It is no objection to the legality of the collector's proceedings that one of the four days during which the distress is kept is Sunday. Cressey v. Parks, 75 Me. 387.

Although distress or sale cannot be made on Sunday.—The distress for taxes may be made on any day of the week, Sunday excepted. The law has not prohibited seizure on any week day. But the property seized cannot be sold on Sunday, not because Sunday is not a day, but because it is a day on which, by statute, the execution of civil process is prohibited (c. 112, § 89). No sale can be made on the preceding Saturday, when the seizure was made on Wednesday, because that would be against the provision of the statute requiring the officer to keep the property distrained four days. When, then, is the sale in such case to be made? The statutes must be construed together. The seizure may be made on any secular day. The property seized must be kept four days by statute. Its sale is prohibited on Sunday. Being lawfully seized, it must be sold. As it cannot be legally sold within three days, it must be sold on Monday because all official or executive action is prohibited on Sunday. Cressey v. Parks, 75 Me. 387.

If property distrained is returned first distraint does not preclude another.—The plaintiffs' counsel contends that the defendant, having once taken sufficient property of the plaintiffs to satisfy the tax, cannot hereafter make another distraint for the same tax. This cannot be so in a case where the property distrained has been returned to the owner, on account of a defect in the proceedings, with costs and damages for taking it, and without being in any manner appropriated to the dis-

charge of the tax. Farnsworth Co. v. Rand, 65 Me. 19.

Cited in Frankfort v. Waldo Lumber Co., 128 Me. 1, 145 A. 241.

Sec. 84. Disposition of surplus. — The officer, after deducting the tax and expense of sale, shall restore the balance to the former owner with a written account of the sale and charges. (R. S. c. 81, § 85.)

Balance must be returned to owner.—Assuming that the collector of taxes had a right to seize and sell the plaintiff's property to pay the taxes that were then due and unpaid, it was clearly his duty, after deducting the tax and expense of sale, to restore the balance to the plaintiff. Carter v. Allen, 59 Me. 296.

And failure renders collector trespasser ab initio.—A collector of taxes who, after selling a distress, fails to restore the balance to the former owner, after deducting the unpaid taxes and legal expenses of sale, is a trespasser ab initio. Carter v. Allen, 59 Me. 296.

As does failure to return account of sales and charges.—The overplus must be tendered to the owner of the goods distrained, "with a written account of the sale and charges." This is required by the provisions of this section. The collector cannot make out a justification without showing that he has complied with the provisions of the section. Failing to do so, he becomes a trespasser ab initio. Blanchard v. Dow, 32 Me. 557; Carter v. Allen, 59 Me. 296.

Sec. 85. Arrest after 12 days' notice; demand immediate payment. —If a person assessed in accordance with the provisions of sections 66 to 170, inclusive, for 12 days after demand refuses or neglects to pay his tax and to show the constable or collector sufficient goods and chattels to pay it, such officer may arrest and commit him to jail until he pays it or is discharged by law.

If the assessors think that there are just grounds to fear that any person so assessed may abscond before the end of said 12 days, the constable or collector may demand immediate payment and, on refusal, he may commit him as aforesaid. (R. S. c. 81, § 86.)

Cross reference.—See § 150, re collector may distrain before tax is due.

Arrest unwarranted if debtor shows sufficient goods to pay tax.—By this section, an arrest would be unwarranted if the debtor should show sufficient goods and chattels to the collector to pay his tax. Orneville v. Pearson, 61 Me. 552.

Or if assessors had no jurisdiction.—The officer is not justified in making the arrest if the assessors had no jurisdiction of either person or property. Bowker v. Lowell, 49 Me. 429.

Debtor has 12 full days after demand to pay or show property.—The phrase "for 12 days after demand," in the common meaning of language, gives the taxpayer 12 full days after the day of demand within which to pay the tax or point out property. In other words, the day of demand being excluded, 12 full days must pass before the time "after 12 days" can begin to run. Fenlason v. Shedd, 109 Me. 326, 84 A. 409.

And he cannot be arrested until expiration of 12th day.—A tax debtor cannot lawfully be arrested until twelve full days have expired after the day of demand. Where a person is given a certain number of days after an event in which to perform an act, he has up to the last minute of the last day in which to perform it. Durstin v. Dodge, 138 Me. 12, 20 A. (2d) 671.

It is intended by this section that the tax should be payable on the 12th day and that the taxpayer is entitled to the whole of the 12th day for the performance of his engagement. No process can be served upon him before the 12th day expires. Fenlason v. Shedd, 109 Me. 326, 84 A. 409.

And exemption not waived by refusal to pay prior to that time.—The taxpayer does not waive his claim of exemption from arrest for the full length of time prescribed by this section by declining to pay the tax. The 12 days is predicted upon a refusal by the taxpayer to pay. The refusal contemplated by the section is presumed to continue for 12 days. Refusal to pay during the whole 12 days is the basis of arrest. There cannot be a waiver of the very thing which the section contemplates the taxpayer must do in order to make himself amenable to arrest. Fenlason v. Shedd, 109 Me. 326, 84 A. 409.

A demand in person is contemplated by this section. Clark v. Gray, 113 Me. 443, 94 A. 881; Curtis v. Potter, 114 Me. 487, 96 A. 786.

And general tax bill not sufficient.—General tax bills are sent out by common

practice and one mailed under such a practice cannot constitute a compliance with the statutory official demand required as the foundation for arrest. Clark v. Gray, 113 Me. 443, 94 A. 881; Curtis v. Potter, 114 Me. 487, 96 A. 786.

The ordinary form sent to every taxpayer, to the financially responsible as well as to the financially irresponsible, as the first step towards collection, is not sufficient demand to authorize arrest. It is neither sent by the collector as the statutory demand preliminary to arrest, nor is it so considered by the recipient. Otherwise, after the lapse of twelve days every taxpayer would be liable to immediate arrest unless he pays his tax or shows the collector sufficient goods and chattels to pay it. Clark v. Gray, 113 Me. 443, 94 A. 881.

But any intimation of the taxpayer that a payment is desired is sufficient demand under this section. It need not be in absolute words a demand; anything that informs the taxpayer that the collector has a warrant and desires the payment of his taxes, is a demand. Miller v. Davis, 88 Me. 454, 34 A. 265.

Cited in Jones v. Emerson, 71 Me. 405; Frankfort v. Waldo Lumber Co., 128 Me. 1, 145 A. 241.

Sec. 86. Set off against unpaid taxes.—Subject to the approval of such officers of the city or town as are legally qualified to draw warrants directed to the treasurer or other disbursing officer for the disbursement of the funds of the city or town, the treasurer or any disbursing officer of any city or town may, and if so requested by the collector shall, withhold payment of any money then due and payable to any person or legal entity whose taxes are then due and wholly or partially unpaid, to an amount not in excess of the unpaid taxes together with any interest and costs. The sum withheld shall be paid to the collector who shall, if required, give a receipt in writing therefor to the officer paying and to the person or entity taxed. The collector's rights under the provisions of this section shall not be affected by any assignment or trustee process. (R. S. c. 81, § 87.)

See c. 113, § 76, re setoff of unpaid taxes.

Sec. 87. Assignees, receivers, administrators and executors to pay taxes.—If a person assessed for a personal property tax has died, has made an assignment for the benefit of creditors or has gone into receivership before the payment thereof, or if a personal property tax has been assessed upon the estate of a deceased person, the assignee, receiver, executor or administrator shall, from any money which has come to his hands as such assignee, receiver, executor or administrator, over and above the reasonable expense of administration, pay the said personal property tax so assessed to the extent of the money so coming to his hands, but in the case of an executor or administrator only after he has paid the funeral expenses and satisfied the first 3 priorities set forth in section 1 of chapter 157, and until the said tax shall have been satisfied in full if the said money is sufficient therefor, and in default of such payment to the extent of the said money in his hands, the said assignee, receiver, executor or administrator shall be personally liable for the said tax to the extent of the said money which has passed through his hands, with allowance in the case of an executor or administrator for the above priorities. (R. S. c. 81, § 88.)

Sec. 88. When payable by installments, whole demanded of one about to remove.—When a tax is made payable by installments and any person, who was an inhabitant of the town at the time of making such tax and assessed therein, is about to remove therefrom before the time fixed for any payment, the collector or constable may demand and levy the whole tax though the time for collecting any installment has not arrived; and in default of payment he may distrain for it or take the course provided in section 85. (R. S. c. 81, § 89.)

Cross reference.—See § 150, re collector may distrain before tax is due.

Cited in Tozier v. Woodworth, 135 Me. 46, 188 A. 771.

Sec. 89. Former collectors to complete collections.—When new constables or collectors are chosen and sworn before the former officers have per-

fected their collections, the latter shall complete the same as if others had not been chosen and sworn. (R. S. c. 81, § 90.)

Quoted in Hartland v. Church, 47 Me. 169.

Stated in Scarborough v. Parker, 53 Me. 252.

Sec. 90. Shares of corporation distrained; duty of officers. — For non-payment of taxes, the collector or constable may distrain the shares owned by the delinquent in the stock of any corporation; and the same proceedings shall be had as when like property is seized and sold on execution.

The proper officer of such corporation, on request of such constable or collector, shall give him a certificate of the shares or interest owned by the delinquent therein and issue to the purchaser certificates of such shares according to the by-laws of the corporation. (R. S. c. 81, § 91.)

Sec. 91. Collectors may collect in any part of state of persons removed.—When a person taxed in a town in which he was living at the time of assessment removes therefrom before paying his tax, such constable or collector may demand it of him in any part of the state and, if he refuses to pay, may distrain him by his goods, and for want thereof may commit him to the jail of the county where he is found, to remain until his tax is paid; and he shall have the same power to distrain property and arrest the body in any part of the state as in the place where the tax is assessed. (R. S. c. 81, § 92.)

Stated in Clark v. Gray, 113 Me. 443, 94 A. 881.

Sec. 92. Sue for taxes by collector or administrator.—Any collector of taxes or his executor or administrator may, after demand for payment, sue in his own name for any tax in an action of debt, and no trial justice or judge of any municipal court before whom such suit is brought is incompetent to try the same by reason of his residence in the town assessing said tax. Where before suit the person taxed dies or removes to any other town or place in the state or, being an unmarried woman, marries, the aforesaid demand is not requisite but the plaintiff shall recover no costs unless payment was demanded before suit. (R. S. c. 81, § 93.)

Cross reference.—See note to § 48, re assessment proved by lists committed by assessors.

Right to sue must be given by statute.—The general rule is well established that the collector of taxes cannot compel their payment by suit except in those cases in which the right of action is given by statute. Packard v. Tisdale, 50 Me. 376.

And section authorizes action of debt only.—The method of enforcing the collection of taxes is wholly statutory. There is no method of enforcing a tax on personal property in equity. The duty to pay and the right to collect such tax may be enforced in the courts only by an action at law, viz., an action of debt either in the name of the collector under this section or in the name of the municipality under § 146. Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

Action cannot be maintained on promise to pay tax in consideration of collector's forbearance to collect in manner required by law.—An action cannot be maintained by a town collector upon a promise to pay him a tax in consideration that he will forbear to collect the same in the manner required by law, although by such neglect he becomes liable to account for the tax and actually pays it to the town. Packard v. Tisdale, 50 Me. 376.

Section authorizes suit by village corporation collectors. — This section declares that "any collector" may sue in his own name for any tax in an action of debt. This language is sufficiently comprehensive to include village corporation collectors, and there is no reason why it should not be applied to them as well as to town collectors. It is a better and more convenient remedy than an arrest of the person or a distraint of property, and it should not be unnecessarily restricted in its application. Lord v. Parker, 83 Me. 530, 22 A. 392.

In a suit under this section, it is essential to show demand as well as a legal tax. Embden v. Lisherness, 89 Me. 578, 36 A. 1101.

And defendant may show lack of demand.—It is competent for the defendant in an action under this section to show that no demand had been given before the bringing of the suit. Embden v. Lisherness, 89 Me. 578, 36 A. 1101.

Special demand required.—A special demand was intended by the legislature. The design was to prevent the indulgence of a temptation to make costs. The idea of notice is that by reason of the demand the taxpayer may know that by a refusal or neglect to pay the taxes he may be sued for them. Parks v. Cressey, 77 Me. 54; Curtis v. Potter, 114 Me. 487, 96 A. 786.

And it should be personal.—A written request mailed to the person taxed is not sufficient. It should be a personal demand, made by the collector or some authorized agent. Parks v. Cressey, 77 Me. 54; Clark v. Gray, 113 Me. 443, 94 A. 881; Curtis v. Potter, 114 Me. 487, 96 A. 786.

Unless excused for good reason.—A personal demand by a collector or his authorized agent might be excused by the absence of the debtor from home or by some other good reason. Parks v. Cressey, 77 Me. 54; Curtis v. Potter, 114 Me. 487, 96 A. 786.

And of such character as to inform taxpayer of collector's purpose.—The demand required by this section should be commensurate with the object to be attained and should be of such a character as to fully inform the delinquent of the collector's purpose. Curtis v. Potter, 114 Me. 487, 96 A. 786.

And so explicit that taxpayer may know that suit may follow.—This section requires a demand so formal and explicit that the taxpayer may know that a suit might follow his noncompliance with the demand. Parks v. Cressey, 77 Me. 54; Clark v. Gray, 113 Me. 443, 94 A. 881; Curtis v. Potter, 114 Me. 487, 96 A. 786.

But it need not inform the taxpayer that he will be sued if he does not pay. Parks v. Cressey, 77 Me. 54.

Sufficiency of demand depends upon circumstances of case.—The facts and circumstances of each case must be taken into consideration, and what might be deemed an adequate demand under one state of facts, as upon a nonresident, might not be under another, as upon a resident. Curtis v. Potter, 114 Me. 487, 96 A. 786.

A personal demand by the collector is not required in the case of a nonresident. Curtis v. Potter, 114 Me. 487, 96 A. 786.

A demand which seasonably and fully apprises the nonresident of the action which his neglect or refusal will lead to is sufficient. To require more than this would prevent the collection of taxes on personal property from nonresidents by suit, and would effectually thwart the legislative intent. Curtis v. Potter, 114 Me. 487, 96 A. 786, holding that the demand was sufficient where the collector did not rest upon the ordinary tax bill sent nor upon a second bill sent accompanied by a letter requesting payment; but also sent the nonresident a third tax bill accompanied by a registered letter.

Verdict for taxpayer because of insufficient demand does not preclude action by town.—An action by the tax collector under this section, wherein the verdict is for the taxpayer because sufficient demand was not made, does not preclude an action by the town under § 146. See Embden v. Lisherness, 89 Me. 578, 36 A. 1101.

Disqualification for such interests as are common to all taxpayers may be removed by the legislature. Auburn v. Paul, 110 Me. 192, 85 A. 571.

Applied in Gould v. Monroe, 61 Me. 544.

Stated in Orono v. Emery, 86 Me. 362, 29 A. 1095.

Cited in Carlton v. Newman, 77 Me. 408, 1 A. 194; Topsham v. Blondell, 82 Me. 152, 19 A. 93.

Sec. 93. Lien for taxes enforced by action of debt; notice to taxpayers; judgment and costs; redemption.—The lien on real estate created by the provisions of section 3 may be enforced in the following manner; provided, however, that in the inventory and valuation upon which the assessment is made there shall be a description of the real estate taxed, sufficiently accurate to identify it. Any officer to whom a tax has been committed for collection may, after the expiration of 8 months from the date of commitment to him of said tax, give to the person against whom said tax is assessed or leave at his last and usual place of abode, if then a resident of the town where said real estate lies, a notice in writing signed by said officer stating the amount of such tax, describing the real estate on which the tax is assessed and demanding the payment of such tax within 10 days after service of such notice. After the expiration of said 10 days, in case of a resident, and in all cases within 1 year after the date of commitment to him of said tax, such officer may bring an action of debt for the collection of said tax,

in his own name, in the county where the land lies, against the person against whom said tax is assessed. Such action shall be begun by writ of attachment commanding the officer serving it to specially attach the real estate upon which the lien is claimed, which shall be served as other writs of attachment to enforce liens on real estate. The declaration in such action shall contain a statement of such tax, a description of the real estate contained in said notice and an allegation that a lien is claimed on said real estate to secure the payment of the tax. If no service is made upon the defendant or if it shall appear that other persons are interested in such real estate, the court shall order such further notice of said action as appears proper, and shall allow such other persons to become parties thereto. If it shall appear upon trial of said action that such tax was legally assessed on said real estate and is unpaid, and that there is an existing lien on said real estate for the payment of such tax, judgment shall be rendered for such tax, interest and costs of suit against the defendants and against the real estate attached, and execution issued thereon to be enforced by sale of such real estate in the manner provided for a sale on execution of real estate attached on original writs. Provided, however, that when the officer sells the real estate on such execution, he shall sell the least undivided fractional part thereof that any person bidding will take and pay the amount due on the execution with all necessary charges of sale; and he shall convey by his deed to the purchaser such part so sold to him, subject to redemption according to law, and the deed shall be construed to convey the right of entry and seizin in such part in common and undivided of such property assessed. In all actions brought in the superior court under the provisions of this section or of section 93 of chapter 16, full costs shall be recovered notwithstanding the amount of the judgment be $20 or less. Any person interested in said real estate may redeem the same at any time within 1 year after the sale of the same by the officer on such execution, by paying the amount of such judgment and all costs on such execution with interest at the rate of 10% a year. This section shall not affect any other provision of law for the enforcement and collection of taxes upon real estate. (R. S. c. 81, § 94.)

Section replaces former summary proceedings.—Prior to the enactment of this section, authorizing the collector of taxes to enforce by judicial process the tax lien upon the real estate assessed, he assumed the existence of the lien and enforced it summarily and directly by a sale of the real estate, giving the owner no opportunity to question the lien. In such proceedings he was held to great strictness since he was enforcing a forfeiture. Under this section, however, the collector may proceed less summarily, and give the landowner an opportunity to show cause against the proceedings. Mason v. Belfast Hotel Co., 89 Me. 384, 36 A. 624.

To sustain an action under this section it is incumbent upon the plaintiff to establish the following propositions: (1) That the tax was legally assessed. (2) That it was legally committed to an officer for collection. (3) That the defendant was the owner or person in possession of the property described in the writ. Bresnahan v. Sherwin-Burrill Soap Co., 108 Me. 124, 79 A. 376.

Collector is but nominal plaintiff.—The collector of taxes, when he brings suit for the recovery of a tax under this section is but a nominal plaintiff. He has no interest whatever in the result of the suit, distinct from that of any other citizen. Inasmuch as he has all the facts at hand, he may be more appropriately designated as a plaintiff than any other person. Bresnahan v. Sherwin-Burrill Soap Co., 108 Me. 124, 79 A. 376.

And section does not require him to be technically qualified.—The language of this section omits to require any statutory qualification of the officer to whom the tax is committed to enable him to maintain suit. It rather assumes that the substantial function of the section is the legal commitment of a legally assessed tax to the officer for collection, and not whether the officer, who is merely an agent to bring suit, is in all respects technically qualified. Bresnahan v. Sherwin-Burrill Soap Co., 108 Me. 124, 79 A. 376.

And his incapacity must be raised by plea in abatement.—Incapacity of a tax collector to sue to enforce a tax lien, on the ground that the vacancy to which he was elected did not legally exist, must be raised by plea in abatement, and cannot,

under the general issue, be raised upon the question of proof. Bresnahan v. Sherwin-Burrill Soap Co., 108 Me. 124, 79 A. 376.

It is immaterial to the taxpayer whether the plaintiff who brings an action under this section is technically qualified or not. It cannot affect his rights in the least. The section then does not relieve the defendant from the duty of contesting the capacity of the plaintiff to sue by plea in abatement. Bresnahan v. Sherwin-Burrill Soap Co., 108 Me. 124, 79 A. 376.

As a plea of the general issue admits his capacity to bring an action under this section. Bresnahan v. Sherwin-Burrill Soap Co., 108 Me. 124, 79 A. 376.

Description in inventory and valuation necessary to enforce lien.—This section specifically requires that there shall be a description of the real estate taxed "in the inventory and valuation upon which the assessment is made." Unless there be such description in a lawful inventory and valuation, the enforcement of the lien is impossible because it is not known to what it applies. Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665.

In the assessment which establishes the lien, and which is the foundation on which rest all the subsequent proceedings, the land taxed must be definitely and distinctly described. Greene v. Lunt, 58 Me. 518; Kelley v. Jones, 110 Me. 360, 86 A. 252.

And parol evidence cannot supply deficiency.—The collector must obtain his information from the assessment. He has no authority to add to or take from it; nor can the assessors, after the completion of the tax, add to the description so as to make that certain which was before uncertain. The assessment must be complete of itself as much as a deed or contract. Parol proof may be resorted to for the purpose of applying the terms of the description to the face of the earth, but no further. It cannot supply any deficiency in the buts of bounds. These must be ascertained from what is written and from that alone. Greene v. Lunt, 58 Me. 518.

Realty attached must be that on which lien is a charge.—In order for a lien claimant to obtain a judgment in remedy against a particular piece of real estate under this section, on which to levy to satisfy his lien, he must establish as a fact that the real estate specially attached is that on which his lien is a charge. Cassidy v. Aroostook Hotels, 134 Me. 341, 186 A. 665.

Section requires written demand for payment.—As a preliminary to enforcing a lien upon real estate under this section, the collector is specifically directed to give to the taxpayer, or leave at this last and usual place of abode, a statement in writing, demanding payment within ten days after the service of such notice. Clark v. Gray, 113 Me. 443, 94 A. 881.

Mortgagee must protect his interests.—If the mortgagee fails to protect his mortgage either by making known to the court having jurisdiction over the tax lien proceedings that he is an interested party or by redeeming the real estate from the tax sale as provided by the statute, he must abide the consequences of his failure so to do. Snell v. Libby, 137 Me. 62, 15 A. (2d) 148.

And service upon him and his joinder not required until court acts.—As a reading of this tax lien enforcement statute makes apparent, the only provision therein for joinder of or notice to those interested in the real estate upon which the tax is laid, other than the person against whom the tax is assessed, is that when it shall appear that such other persons are interested the court shall order such notice of the action as appears proper and allow them to become parties. Neither here nor elsewhere in the statutes is express direction found for service of process upon and joinder of a mortgagee as an interested third party unless and until the court takes action. Such a direction cannot be implied. Snell v. Libby, 137 Me. 62, 15 A. (2d) 148.

A tax judgment rendered by a court of general jurisdiction is not open to collateral attack. Snell v. Libby, 137 Me. 62, 15 A. (2d) 148.

The defense of nonownership or nonpossession is not open in a suit under this section to enforce the lien for taxes prescribed by § 3. Bresnahan v. Sherwin-Burrill Soap Co., 108 Me. 124, 79 A. 376.

Former provision of section. — For a consideration of a former provision of this section which required an action to collect a county tax to be brought in the county adjoining that in which the land was located, see Mason v. Belfast Hotel Co., 89 Me. 384, 36 A. 624.

Applied in Stevens v. Dixfield & Mexico Bridge Co., 115 Me. 402, 99 A. 94; Tozier v. Woodworth, 136 Me. 364, 10 A. (2d) 454.

Cited in Maddocks v. Stevens, 89 Me. 336, 36 A. 398; Roberts v. Moulton, 106 Me. 174, 76 A. 283; Tozier v. Woodworth, 135 Me. 46, 188 A. 771; York County Sav. Bank v. Wentworth, 136 Me. 330, 9 A. (2d) 265; Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

Sec. 94. Enforcement of supplemental assessments. — When taxes are assessed under the provisions of section 30, the lien upon real estate shall be enforced as provided in sections 93, 98 and 99, except that if real estate shall have been alienated to a bona fide purchaser for value since the assessment was omitted or invalidly made to an owner other than a city or town, and record of transfer duly recorded or notice of the transfer with a description of the property is given in writing to the assessors, the lien shall terminate unless the tax thus assessed is committed within 1 year from the assessment date of the year involved; otherwise it shall continue in full force and effect. (R. S. c. 81, § 95.)

Sec. 95. Records as to tax mortgages.—When a tax mortgage has been quitclaimed but no reference was given in such quitclaim to relate the tax mortgage to it, the selectmen and treasurer for the time being of the town which claimed the tax mortgage may make a statement in writing under oath of such relationship, which statement may be recorded in a proper registry of deeds. (1953, c. 55.)

Sec. 96. Fees.—The register of deeds shall receive a fee of $1 for recording the statement mentioned in section 95 containing 25 names or less, plus $1 for each additional 25 names or fraction thereof. (1953, c. 55.)

Sec. 97. Duties of tax collectors.—Collectors of taxes and city and town treasurers on receipt of information that a tax may be invalid by reason of error, omission or irregularity in assessment shall at once notify the assessors in writing stating the name of the proper party to be assessed, if known, in order that an assessment may be made as provided in section 30. (R. S. c. 81, § 96.)

Applied in Dolloff v. Gardiner, 148 Me. 176, 91 A. (2d) 320.

Sec. 98. Alternative method for enforcement of liens for taxes on real estate. — Liens on real estate created by section 3, in addition to other methods previously established by law, may be enforced in the following manner; provided, however, that in the inventory and valuation upon which the assessment is made there shall be a description of the real estate sufficiently accurate to identify it. Any officer to whom a tax has been committed for collection or his successor in office in case of his death or disability may, after the expiration of 8 months and within 1 year after the date of the original commitment of said tax, give to the person against whom said tax is assessed, or leave at his last and usual place of abode or send by registered mail to his last known place of abode, a notice in writing signed by said officer stating the amount of such tax, describing the real estate on which the tax is assessed, alleging that a lien is claimed on said real estate to secure the payment of the tax and demanding the payment of said tax within 10 days after service or mailing of such notice with $1 for said officer for making the demand. In the case of taxes supplementally assessed, said officer may give said notice after the expiration of 8 months and within 1 year after the date of the original commitment of such supplementally assessed taxes.

If an owner or occupant of real estate to whom said real estate is taxed shall die before such demand is made on him, such demand may be made upon the executor or administrator of his estate or upon any of his heirs or devisees. After the expiration of said 10 days and within 10 days thereafter, said officer shall record in the registry of deeds of the county or registry district where said real estate is situated, a certificate signed by said officer setting forth the amount of such tax, a description of the real estate on which the tax is assessed and an allegation that a lien is claimed on said real estate to secure the payment of said tax, that a demand for payment of said tax has been made in accordance with the provisions of this and the following section and that said tax remains unpaid. When the undivided real estate of a deceased person has been assessed to his heirs or devisees

without designating any of them by name it will be sufficient to record in said registry said certificate in the name of the heirs or the devisees of said decedent without designating them by name.

At the time of the recording of the certificate in the registry of deeds as herein provided, in all cases such officer shall file with the town treasurer a true copy of said certificate and also at the time of recording as aforesaid, the said officer shall mail by registered letter to each record holder of a mortgage on said real estate, addressed to him at his place of last and usual abode, a true copy of said certificate. If the real estate has not been assessed to its record owner, the officer shall send by registered mail a true copy of said certificate to the record owner.

The costs to be paid by the town and charged to the taxpayer shall be $1 for the notice, plus registered mail fees and $1 for filing lien, said sums to be payable to the tax collector, and $1 payable to the register of deeds for recording. (R. S. c. 81, § 97. 1947, c. 143. 1949, c. 404, § 4. 1951, c. 83. 1953, c. 150.)

Purpose of this section and § 99. — The intent of this section was to reduce the number of acts required on the part of the authorities and to shorten the period when forfeiture would become absolute. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

This section was designed, according to legislative pronouncement incorporated therein, to provide a method, additional to those already established, for the enforcement of liens on real estate created by the assessment of taxes pursuant to § 3. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

This section and § 99 are designed to facilitate the enforcement of tax liens; to speed the payment and collection of taxes; and to furnish increased assurance of the regular flow of tax dollars into the coffers of municipal treasuries. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

The provisions of this section, establishing an additional method for the enforcement of tax liens, show legislative intent to dispense with the use of deeds and the formalities incident thereto. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

Statute must be complied with.—While the tax lien law applicable to real estate has simplified enforcement procedures, yet the principle still obtains that there must be strict compliance with statutory requirements to divest property owners of their titles for nonpayment of taxes. Vigue v. Chapman, 138 Me. 206, 24 A. (2d) 241; Scavone v. Davis, 142 Me. 45, 45 A. (2d) 787.

And notice to taxpayer must be given.— Notice to the taxpayer is required by this section both by delivery in hand or at his last and usual place of abode, or by registered mail. Kramer v. Linneus, 144 Me. 239, 67 A. (2d) 536, holding a former provision of this section unconstitutional because it provided for a forfeiture of the title of nonresident owners of real estate without giving to them any notice.

Assessment must be valid.—The alternative or additional method for the enforcement of tax liens provided by this section and § 99 is not a cure-all for municipal officers. The tax title derived by compliance with its requirements can be no better than the tax assessment on which it is based; and if that assessment is defective, no title can accrue by going through the formality of recording a tax lien certificate. The process is available only as to property properly described and necessarily only if a lien has attached by proper assessment. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

Reference to record in registry of deeds may constitute sufficient description.— When, for the purpose of describing real estate assessed for taxation, reference is made "in the inventory and valuation upon which the assessment is made" and in the notice and claim of lien to a record in the registry of deeds for the county in which the land lies by volume and page, such reference is a sufficient description of said real estate and meets the requirements of this section with respect thereto, provided and upon condition that the record referred to contains a description of the real estate sufficiently accurate to identify it. Perry v. Lincolnville, 149 Me. 173, 99 A. (2d) 294.

Land which a man now owns may be as well described in a lien notice by referring therefor to the record of a deed by which he has previously conveyed the land away as by referring to the deed by which he has reacquired the same. The deed by which he conveyed the same away might contain a description of the land by metes and bounds, while the deed by which he reacquired the same might describe the land by merely referring to the description in the prior deed. In fact, a lien notice would

be sufficient if it referred for a description of the land on which the lien is claimed to the record of a deed between strangers. Perry v. Lincolnville, 149 Me. 173, 99 A. (2d) 294.

Notice required sufficient to meet requirements of due process.—The notice required by this section, when given, is more than sufficient to meet the requirements of due process in the particular field to which the legislature relates. It is very generally recognized both by text writers and decided cases that legislation designed to speed and secure tax collections is a thing apart and that an entirely different and lesser test of due process is to be applied in that limited field as distinguished from other laws of general application. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

Certificate is legislative creation.—The certificate required to be used under the present law by those who seek thereunder to enforce the tax lien which attaches to real property to secure the payment of a duly assessed tax is, without doubt, a new legislative creation which has no counterpart in earlier law. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

And only requirement as to form is that it be signed.—The only recital in this section as to the form of either the notice or the certificate is that the certificate shall be signed by the collector. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

And formalities of deed not required.—The provision for enforcement by recording such an informal instrument as a certificate clearly evidences intent that the formalities of a deed are not requisite. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

This section does not purport to create a new lien or encumbrance. It recognizes that a lien attaches by law to real property as the result of the assessment of a tax thereon and provides for the enforcement of that lien by the filing of a signed certificate, if the tax remains unpaid after a stated interval. There is no mention of a seal, or of acknowledgment. There is no requirement for the meaning of parties, for the recital of any consideration, for habendum or testimonium clauses, or for delivery. Legislative declaration is that the filing of the certificate shall be deemed to create and shall create a mortgage (§ 99). Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

Thus, certificate need not be sealed.—There can be no doubt of adequate authority in the legislative department of government to give a certificate the effect of enforcing tax lien without requiring that it be executed by sealing. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

Constitutionality of proposed amendment.—For a consideration of the constitutionality of a proposed amendment to this section, see Opinion of the Justices, 139 Me. 420, 38 A. (2d) 561.

Applied in Vigue v. Chapman, 138 Me. 206, 24 A. (2d) 241; Dolloff v. Gardiner, 148 Me. 176, 91 A. (2d) 320.

Cited in Ashland v. Wright, 139 Me. 283, 29 A. (2d) 747.

Sec. 99. Filing of certificate to create mortgage; foreclosure; notice; discharge; redemption.—The filing of the certificate provided for in section 98 in the registry of deeds as aforesaid shall be deemed to create and shall create a mortgage on said real estate to the town in which the real estate is situated, having priority over all other mortgages, liens, attachments and encumbrances of any nature, and shall give to said town all the rights usually incident to a mortgagee, except that the mortgagee shall not have any right of possession of said real estate until the right of redemption provided for in this and the preceding section shall have expired.

If said mortgage, together with interest and costs, shall not be paid within 18 months after the date of the filing of said certificate in the registry of deeds as provided for in this and the preceding section, the said mortgage shall be deemed to have been forcelosed and the right of redemption to have expired.

The filing of said certificate in said registry of deeds shall be sufficient notice of the existence of the mortgage provided for in this and the preceding section.

In the event that said tax, interest and costs shall be paid within the period of redemption provided for in this and the preceding section, the town treasurer or assignee of record shall discharge said mortgage in the same manner as is now provided for the discharge of real estate mortgages.

After the foreclosure of such mortgage and the expiration of the right of redemption therefrom has expired, the record holder of a mortgage on said real

estate or his assignee and the record owner, if the said real estate has not been assessed to him or the person claiming under him, in the event the notice provided for such record holder of a mortgage and such record owner has not been given as provided in section 98, shall have the right to redeem the said real estate at any time within 3 months after receiving actual knowledge of the recording of the certificate by payment or tender of the mortgage, together with interest and costs and the registry fee for recording and discharging said mortgage, which shall be discharged by the owner under said mortgage at the time of redemption in manner provided for the discharge of mortgages of real estate.

The mortgage shall be prima facie evidence in all courts in all proceedings by and against the town, its successors and assigns of the truth of the statements therein and, after the period of redemption has expired, of the title of the town to the real estate therein described and of the regularity and validity of all proceedings with reference to the acquisition of title by such mortgage and the foreclosure thereof. (R. S. c. 81, § 98. 1945, c. 274, § 1.)

Cross reference.—See note to § 98.

Section constitutional.—There is no requirement in the fundamental law, either of this state or of the United States, which prohibits legislative action establishing a policy that the taxpayer shall lose his entire property by failure to pay all taxes properly assessed thereon, provided, as is the fact under this section, that adequate provision is made to give the taxpayer opportunity for redemption, and the language used by the legislature in this section shows that such was clearly the legislative intention. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

After the expiration of the eighteen months' period any right to redeem cannot be asserted. On the theory of the statute, the town is then the owner, absolutely. Dolloff v. Gardiner, 148 Me. 176, 91 A. (2d) 320.

And landowner divested of title by mere lapse of time.—Under this section, if the provisions of the statute have been complied with, the landowner can be divested of his title by the mere lapse of time after the recording of the lien in the registry of deeds. Kramer v. Linneus, 144 Me. 239, 67 A. (2d) 536.

And he is not entitled to hearing before forfeiture.—Any delinquent taxpayer who received notice that his taxes on a described parcel of real property were in arrears and that a lien was claimed thereon should be held to know that nonpayment in ten days would result in the filing of a tax lien certificate which, after the expiration of eighteen months from the date of recordation, would foreclose his right to redeem the property. Having assented to the amount of the tax by a failure to assert any right to partial abatement, and possessing still a right to recover the tax after payment, if he could show any part of the proceeds assessed for an improper purpose, such a delinquent should not be entitled to hearing before forfeiture of his title. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

Successive mortgages may be created.—If, upon filing the tax lien certificate, a mortgage is created, there is no reason why successive mortgages cannot be created in a like manner. Until the mortgage matures and the right of redemption is lost, it is the duty of the assessors to assess the property. The town does not waive its rights under the tax lien certificates by filing and recording tax liens in successive years. Dolloff v. Gardiner, 148 Me. 176, 91 A. (2d) 320.

And foreclosure does not vest title until assessment for following year.—Each tax lien certificate, when recorded, constitutes a new mortgage based on a new tax assessment and inasmuch as the statutory language which extends the time beyond one year before title will vest if the mortgage is not paid, it must be assumed that the legislature, when it enacted the legislation, had in contemplation that the foreclosure of the lien or mortgage could not vest title before the time of assessment of taxes for the following year. Dolloff v. Gardiner, 148 Me. 176, 91 A. (2d) 320.

False certificate defeats mortgage.—It is provided by this section that the filing of a tax lien certificate shall be deemed to create a mortgage upon the real estate to the town in which the real estate is situated; and, if said mortgage shall not be paid within eighteen months after the date of filing, the mortgage shall be deemed to have been foreclosed, and the right of redemption to have expired. A false certificate, which includes a non-lien item, vitiates the instrument, no mortgage is thereby created and there is nothing to ripen into a foreclosure. Scavone v. Davis, 142 Me. 45, 45 A. (2d) 787.

Applied in Canton v. Livermore Falls

Trust Co., 136 Me. 103, 3 A. (2d) 429; Vigue v. Chapman, 138 Me. 206, 24 A. (2d) 241.

Cited in Ashland v. Wright, 139 Me. 283, 29 A. (2d) 747.

Sec. 100. Waiver of foreclosure of tax mortgages.—The town treasurer when so authorized by the inhabitants of the town, or in the case of a city by the legislative body thereof, may waive the foreclosure of a tax lien or mortgage under the provisions of sections 98 and 99 by recording a waiver of foreclosure thereof in the registry of deeds in which the mortgage is recorded before the right of redemption thereof shall have expired. The waiver of foreclosure shall be substantially in the following form:

The foreclosure of the tax lien or mortgage on real estate for a tax assessed against ..... to ..... dated ..... and recorded in
(name) (name of town)
..... registry of deeds in Book ....., Page .... is hereby waived.
Dated this ..... day of ..... 19 .....

Treasurer of .....

State of Maine

..... ss. ..... 19 .....

Then personally appeared the above named ....., Treasurer and acknowledged the foregoing instrument to be his free act and deed in his said capacity.

Before me,

.....
Justice of the Peace
Notary Public.

The mortgage, after the recording of such waiver, shall then continue to be in full force and effect and may be foreclosed by an action in equity as hereinafter provided in sections 101 to 109, inclusive. There shall be included in the amount secured by the mortgage a charge to the town of 50c for the waiver of foreclosure and the charges of the registry of deeds for the recording thereof not in excess of 50c. (1945, c. 67.)

Sec. 101. Foreclosure in equity.—If said mortgage together with interest and costs shall not be paid within 6 months after the date of recording the waiver of foreclosure thereof, the mortgage may be foreclosed in an action in equity. (1945, c. 67.)

Sec. 102. Presumption of validity.—In an action in equity to foreclose a mortgage under the provisions of sections 100 to 109, inclusive, the proceedings from and including the assessment of the tax upon which such mortgage is based to and including the time of filing the bill of complaint in such action need not be set forth in the bill, pleaded or proved, and shall be presumed to be valid. A defendant alleging any invalidity or defect in such proceedings must specify in his answer such invalidity or defect and must establish such defense. (1945, c. 67.)

Sec. 103. Right of redemption.—In such action the court shall provide a period for the exercise of the right of redemption from the mortgage which shall expire in not less than 90 days from the decree of the court and in no event before the expiration of 18 months from the date of filing of the tax lien certificate in the registry of deeds as provided in section 98. (1945, c. 67.)

Sec. 104. Foreclosure in rem in equity.—In addition to and as an alternative to the proceedings for foreclosure of a mortgage under the provisions of section 101, a town may foreclose such mortgage or mortgages held by the town for a period of at least 4 years from the date of filing of said certificate in the registry of deeds by an action in rem in equity. (1945, c. 67.)

Sec. 105. Procedure in rem in equity.—Such actions in rem in equity

may be commenced on or before the 1st day of April in each year and each such action shall relate only to mortgages arising from taxes assessed in a given year. The action in rem in equity shall be entitled substantially as follows: (name of town) against all persons having, or claiming to have, an interest in sundry parcels of real estate in (name of town) for the foreclosure of mortgages arising from taxes assessed in the year ..... The defendants in said action shall be described as aforesaid in lieu of naming them. (1945, c. 67.)

Sec. 106. Procedure in rem in equity continued.—The town shall set forth in substance in the bill of complaint the following:

I. That the town holds the mortgages referred to in the bill;

II. That the mortgages arose from taxes assessed in a given year;

III. That the real estate described in the mortgages is located in (name of town), and the mortgages are recorded in a named registry of deeds.

The town shall further set forth in the bill of complaint with respect to each mortgage in substance the following: name of person against whom the tax was assessed; tax lien certificate or mortgage filed in said registry of deeds on .... and recorded in Book ....., Page .....; Tax $...., Costs $....., Interest at ..... per cent per annum from ..... (date); description of property ..... bounded and described as follows: (description in mortgage). (1945, c. 67.)

Sec. 107. Notice in action in rem.—The court shall order notice of the pendency of the bill of complaint be given to the defendants:

I. By publication of a true copy of the bill and the order of notice thereon, attested by the clerk of courts, in a newspaper published or printed in whole or in part in the county where the town is situated if any, or if none, in the state paper, once a week for 3 successive weeks with the last publication not less than 30 days before the time set for appearance of the defendants; and

II. By posting a true copy of the bill and the order of notice thereon, attested by the clerk of courts, in at least 3 public places within the town not less than 30 days before the time set for appearance of the defendants. (1945, c. 67.)

Sec. 108. Judgment in actions in rem; severance.—In an action in rem in equity, no personal judgment against a defendant shall be entered. Each person answering the bill of complaint shall have the right to the severance of the action as to the parcel of real estate in which he is interested. (1945, c. 67.)

Sec. 109. Applicability of other sections.—The provisions of sections 100 to 109, inclusive, so far as applicable shall apply to an action in rem in equity except as may otherwise be provided in said sections. (1945, c. 67.)

Sec. 110. Equity suit by town after period of redemption.—A town which has become the purchaser of land at a sale of lands for non-payment of taxes or which as to any land has pursued the alternative method for the enforcement of liens for taxes provided in sections 98 and 99, whether in possession of such land or not, after the period of redemption from such sale or lien has elapsed may maintain a suit in equity against any and all persons who claim or may claim some right, title or interest in the premises adverse to the estate of such town. (1945, c. 75.)

Sec. 111. Service by publication if defendants unknown.—If any persons named as defendants in such suit are described as being unascertained, not in being unknown or out of the state, or whose whereabouts are unknown, or who cannot be actually served with process and made personally amenable to the decree of the court, service may be made upon them by publication or otherwise as the court may order. (1945, c. 75.)

Sec. 112. Decree when recorded to have effect of deed of quitclaim from defendants.—The plaintiff town in such suit shall pray the court to establish and confirm its title to the premises described in the bill as against all the defendants named or described therein, and if upon hearing the court shall find the plaintiff's title so to be good, it shall make and enter its decree accordingly, which decree when recorded in the registry of deeds for the county or district where the land lies shall have the effect of a deed of quitclaim of the premises involved in the suit from all the defendants named or described therein to the plaintiff town. (1945, c. 75.)

Sec. 113. Issues of fact tried by jury.—At the trial of the cause, issues of fact may be framed upon application of any party to be tried by a jury whose verdict shall have the same effect as the verdict of a jury in actions at law. (1945, c. 75.)

Sec. 114. Amendment of record, deed or certificate when error or defects.—At the trial of any action for the collection of taxes, or of any action at law or in equity involving the validity of any sale of real estate for non-payment of taxes, and of any tax lien certificate under the provisions of sections 98 and 99 and of the title to real estate acquired upon foreclosure of such certificate, if it shall appear that the tax in question was lawfully assessed, the court may permit the collector or other officer to amend his record, return, deed or certificate in accordance with the fact when circumstantial errors or defects appear therein; provided that the rights of third parties are not injuriously affected thereby. If a deed be so amended and the amended deed be thereupon recorded, it shall have the same effect as if it had been originally made in its amended form. (R. S. c. 81, § 99. 1945, c. 274, § 2.)

Applied in Bresnahan v. Sherwin-Burrill Soap Co., 108 Me. 124, 79 A. 376.

Sec. 115. In suits to collect tax on real estate, if record title appears in defendant, he shall not deny his title.—In all suits to collect a tax on real estate, if it appears that at the date of the list on which such tax was made the record title to the real estate listed was in the defendant, he shall not deny his title thereto; provided, however, if any owner of real estate who has conveyed the same shall forthwith file a copy of the description as given in his deed with the date thereof and the name and residence of his grantee in the registry of deeds where such deed should be recorded, he shall be free from any liability under this section. (R. S. c. 81, § 100.)

Cross reference.—See note to § 24, re unjust enrichment only theory on which former owner taxed under this section could recover amount paid from true owner.

Assessors need not further examine the record.—This section, making the owner of a record title to real estate assessable, does not include an obligation of the assessors to make a further examination of the record. Canton v. Livermore Falls Trust Co., 136 Me. 103, 3 A. (2d) 429.

Sec. 116. Assessments not void although they include sums raised for an illegal object; persons paying illegal tax may recover of town.—If money not raised for a legal object is assessed with other moneys legally raised, the assessment is not void; nor shall any error, mistake or omission by the assessors, collector or treasurer render it void; but any person paying such tax may bring his action against the town in the superior court for the same county and shall recover the sum not raised for a legal object, with 25% interest and costs, and any damages which he has sustained by reason of the mistakes, errors or omissions of such officers. (R. S. c. 81, § 101.)

Cross reference.—See note to § 36, re failure to give notice to bring in lists does not render assessment void.

Section liberally construed.—This section is construed with great liberality, because it is important that all persons and

estates liable to taxation should pay their just proportion of the public charges and not escape because of harmless errors and frivolous objections. Rockland v. Farnsworth, 111 Me. 315, 89 A. 65.

And it covers errors of omission as well as commission. Rockland v. Farnsworth, 111 Me. 315, 89 A. 65.

But there must be assessment under hands of assessors.—In order to make the healing provisions of this section applicable there must first be an assessment under the hands of the assessors as required by § 48. Norridgewock v. Walker, 71 Me. 181; Topsham v. Purinton, 94 Me. 354, 47 A. 919.

Assessment not rendered void by errors of officers.—This section shows conclusively the legislative intention that no error, mistake or omission of the assessors or other officers shall render an assessment void, and remits the taxpayer for the preservation of his rights to a suit against the town to recover any damages he has sustained by reason of the mistakes, errors or omissions of such officers. Boothbay v. Race, 68 Me. 351.

It was the primary purpose of this enactment to provide that assessments of taxes should not be vitiated by mere errors, mistakes and irregularities on the part of assessors in making their assessments and commitments. Emery v. Sanford, 92 Me. 525, 43 A. 116.

Under this section objections against the collector's warrant or the proceedings of the collector or assessors do not render the tax invalid, if it appears that the assessors had jurisdiction. Foss v. Whitehouse, 94 Me. 491, 48 A. 109.

Those liable to taxation should bear their just proportion of the public burdens, as well as share the benefits of taxation upon others, and they should not escape by subtle technicalities, or slight mistakes which the lawmakers have declared should not vitiate proceedings of this nature. Bath v. Reed, 78 Me. 276, 4 A. 688.

Under this section, no error, mistake or omission by the assessors shall render the assessment void if any part of the money is legally raised. Boothbay v. Race, 68 Me. 351.

And this section covers all cases of error in the name and applies to cases where the mistake arises from the name being omitted as well as to cases of misnomer. Bath v. Reed, 78 Me. 276, 4 A. 688.

A mistake in the name assessment and tax list is fairly within the mischief to be remedied by this section. Farnsworth Co. v. Rand, 65 Me. 19.

If the party is liable to taxation, and is in fact the party whom the assessors intended to tax, it would be manifestly unjust that he should escape taxation for so trivial a cause as an error, mistake or omission in his designation, when his identity with the party designed to be taxed can be established. Farnsworth Co. v. Rand, 65 Me. 19; Bath v. Reed, 78 Me. 276, 4 A. 688.

And it is not absolutely essential that corporations should be described by their true names, as to place them in this respect on a different footing from natural persons. Farnsworth Co. v. Rand, 65 Me. 19.

And mistake in designation of representative capacity not fatal.—A mistake in the designation of the taxpayer's representative capacity is fairly within the scope and spirit of this section, and is one of the evils intended to be remedied by it. Bath v. Reed, 78 Me. 276, 4 A. 688.

Where the tax purports to be against the legal representative of an estate and he is designated as an administrator, when he is an executor, such error is rendered harmless by this section. Dresden v. Bridge, 90 Me. 489, 38 A. 545.

Nor is failure to name estate.—Under this section, the fact that the assessment contained simply the designation, "Executrix," without naming the estate, is not fatal. Rockland v. Farnsworth, 111 Me. 315, 89 A. 65.

But section does not cure erroneous assessment against estate instead of representative.—In an action against a legal representative personally for taxes on the deceased's estate, this section does not operate to cure an erroneous assessment against the estate instead of against the representative. See Dresden v. Bridge, 90 Me. 489, 38 A. 545.

Section precludes retention of money paid on illegal assessment.—This section would seem to represent full assurance that machinery for the enforcement of tax liens cannot serve to retain any money which was paid by a taxpayer against an illegal assessment. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

And tax illegally assessed may be recovered without special demand.—If one pays a tax illegally assessed on him and the money goes into the treasury of the town, he may recover the amount in an action against the town, without first making a special demand therefor. Look v. Industry, 51 Me. 375.

But sum must have been assessed with other moneys legally raised.—In an action against a town to recover a sum raised for

an illegal object, such sum which the taxpayer was compelled to pay for the illegal object must have been assessed "with other moneys legally raised." Trim v. Charleston, 41 Me. 304.

In an action for errors of officers only question is that of damages.—Under this section, if a taxpayer has suffered damages by reason of the mistakes, errors or omissions of the assessors, collector or treasurer, the tax is not void, but he may recover damages in an appropriate action against the town. Upon this ground as a basis for the action, the only question which can arise is that of damages. It is not the tax or any portion of it as such, which he recovers, but only "damages he has sustained by reason of the mistakes, errors or omissions of such officers." Gilman v. Waterville, 59 Me. 491.

And a taxpayer has not suffered damages if it does not appear that he has paid any more than his tax, or any more than he would have done if such mistakes, errors or omissions had not occurred, or that he has in his person or property suffered any injury on that account. Gilman v. Waterville, 59 Me. 491.

Section gives no remedy for excessive valuation.—It could not have been the intention to include in this section any error in judgment made by the assessors respecting the amount or value of personal property for which a person was liable to be assessed. The correction of such errors is to be obtained by an appeal to the county commissioners. Stickney v. Bangor, 30 Me. 404. See §§ 40, 42 and notes.

This section does not authorize an action at law to be maintained against a town, whenever its assessors make an excessive assessment by including in the valuation personal property not liable to be assessed. Stickney v. Bangor, 30 Me. 404.

Or for failure to tax all property.—In view of the mischief obviously designed to be prevented and the object sought to be accomplished by this section, it could never have been intended to authorize an action for damages by every taxpayer in the town, for failure of the assessors to reach and include in their assessment all the taxable property in the town. Emery v. Sanford, 92 Me. 525, 43 A. 116.

The word "omission" in this section should be considered in connection with the words "error" and "mistake" which precede it, and be interpreted with reference to the rule of ejusdem generis. It was intended to signify an absence of the requisite formalities in assessments and commitments, and a failure to observe the regulations of the statute which were intended to promote method, system, and uniformity in the mode of proceeding. It was clearly never in the contemplation of the legislature that it would be extended to apply to cases of omission to include in the assessment all the property which ought to be taxed. Emery v. Sanford, 92 Me. 525, 43 A. 116.

And the omission to tax any particular individual who may be liable does not render the whole tax illegal and void. Greenville v. Blair, 104 Me. 444, 72 A. 177.

Tax held not raised for illegal object.—See Gilman v. Waterville, 59 Me. 491.

Applied in Greene v. Lunt, 58 Me. 518; Hayford v. Belfast, 69 Me. 63; Carlton v. Newman, 77 Me. 408, 1 A. 194; Topsham v. Blondell, 82 Me. 152, 19 A. 93; Rowe v. Friend, 90 Me. 241, 38 A. 95; Brownville v. United States Pegwood & Shank Co., 123 Me. 379, 123 A. 170.

Quoted in Rogers v. Greenbush, 58 Me. 390.

Cited in Smyth v. Titcomb, 31 Me. 272.

Sec. 117. Collection of taxes from nonresident owners of improved lands.—When the owner of improved lands living in this state, but not in the town where the estate lies, is taxed and neglects for 6 months after the lists of assessment are committed to an officer for collection to pay his tax, such officer may distrain him by his goods and chattels, and for want thereof may commit him to jail in the county where he is found. (R. S. c. 81, § 102.)

Applied in Hartland v. Church, 47 Me. 169.

Stated in Brown v. Veazie, 25 Me. 359.

Cited in Oldtown v. Blake, 74 Me. 280.

Sec. 118. Collection of taxes on personal property of nonresidents.—When the owner or possessor of goods, wares and merchandise, logs, timber, boards and other lumber, stock in trade, including stock employed in the business of any of the mechanic arts, horses, mules or neat cattle resides in any other town than the one in which such personal property is kept and taxed, the constable or collector having a tax on any such property for collection may demand it of such owner or possessor in any part of the state and on his refusal to pay may distrain

him by his goods, and for want thereof may commit him to jail in the county where he is found until he pays it or is discharged by law. (R. S. c. 81, § 103.)

Applied in Hartland v. Church, 47 Me. 169.

Sec. 119. Collectors may demand aid.—Any collector impeded in collecting taxes in the execution of his office may require proper persons to assist him in any town where it is necessary, and any person refusing when so required shall, on complaint, pay not exceeding $6 at the discretion of the justice before whom the conviction is had, if it appears that such aid was necessary; and on default of payment, the justice may commit him to jail for 48 hours. (R. S. c. 81, § 104.)

Sec. 120. Collectors to make monthly settlements with treasurer.—Every collector of taxes shall on the last day of each month pay to the treasurer of the town all money collected by him, and once in 2 months at least shall exhibit to the municipal officers or, where there are none, to the assessors of his town, a just and true account of all moneys received on taxes committed to him and produce the treasurer's receipt for money by him paid; and for neglect he forfeits to the town 2½% on the sums committed to him to collect. (R. S. c. 81, § 105.)

Cross reference.—See note to § 80, re collector's duty to pay over money collected.

This section imposes a public duty upon all collectors of taxes. Bragdon v. Freedom, 84 Me. 431, 24 A. 895.

Forfeiture enforced by action of debt.—No statute authorizes the enforcement of the forfeiture here set up in any other way than by action of debt, brought within a year. Bragdon v. Freedom, 84 Me. 431, 24 A. 895.

And cannot be interposed by way of recoupment in action for collector's compensation.—The penalty imposed by this section cannot be interposed by way of recoupment in a defense to an action by a collector of taxes to recover of the town his agreed compensation for collecting the town's taxes. Bragdon v. Freedom, 84 Me. 431, 24 A. 895.

This section inflicts a penalty for violation of the duty imposed that accrues primarily to the particular town, but not exclusively, for c. 112, § 102, limits suits for penalties or forfeitures under a penal statute in behalf of the person to whom the penalty is given in whole or in part, to one year; but provides that "if no person so prosecutes, it may be recovered by suit, indictment, or information, in the name and for the use of the state," within two years. Bragdon v. Freedom, 84 Me. 431, 24 A. 895.

The penalty provided by this section may be recovered by action of debt, authorized by c. 113, § 31, within one year, or it would then accrue to the state under c. 112, § 102. Bragdon v. Freedom, 84 Me. 431, 24 A. 895.

Applied in Boothbay v. Giles, 68 Me. 160.

Sec. 121. Collectors removed or removing required to give up tax bills and settle; warrant to new collector.—When a collector having taxes committed to him to collect has removed or, in the judgment of the municipal officers, assessors or treasurer of a town, is about to remove from the state before the time set in his warrant to make payment to such treasurer, or when the time has elapsed and the treasurer has issued his warrant of distress, in either case, said officers or committee may call a meeting of such town to appoint a committee to settle with him for the money that he has received on his tax bills, to demand and receive of him such bills and to discharge him therefrom. At said meeting another constable or collector may be elected and the assessors shall make a new warrant and deliver it to him with said bills to collect the sums due thereon, and he shall have the same power in their collection as the original collector.

If such collector or constable refuses to deliver the bills of assessment and to pay all moneys in his hands collected by him, when duly demanded, he forfeits

$200 to the town and is liable to pay what remains due on said bills of assessment. (R. S. c. 81, § 106.)

Provisions of section are permissive.—The provisions for demanding the bills of a delinquent collector, and committing them to another collector, and for issuing a warrant of distress against him are not mandatory, but permissive; cumulative remedies to be resorted to or not, at the discretion of the municipal authorities. It is not for such delinquent collector to complain that he has not been dealt with in a more severe and summary manner. Gorham v. Hall, 57 Me. 58.

Cited in Carville v. Additon, 62 Me. 459; Thorndike v. Camden, 82 Me. 39, 19 A. 95.

Sec. 122. Collector becoming incapable; sums by him overpaid, restored. — When a constable or collector of taxes dies, becomes insane, has a guardian or by bodily infirmities is incapable of performing the duties of his office before completing the collection, the municipal officers may demand and receive the tax bills of any person in possession thereof and deliver them to the new collector.

When it appears that such insane or disqualified constable or collector had paid to the treasurer a larger sum than he had collected from the persons in his list, the assessors in their warrant to such new constable or collector shall direct him to pay such sum to the guardian of such insane or to such disqualified constable or collector. (R. S. c. 81, § 107.)

Applied in Gerry v. Herrick, 87 Me. 219, 32 A. 882.

Cited in Carville v. Additon, 62 Me. 459; Vassalboro v. Nowell, 75 Me. 242; Thorndike v. Camden, 82 Me. 39, 19 A. 95.

Sec. 123. Warrant for completion of collection of taxes.—The warrant to be issued by the assessors for the completion of the collection of taxes under the provisions of sections 121 and 122 shall be in substance as follows:

ss. A. B., constable or collector of the town of within the county of :

In the name of the state of Maine, you are hereby required to levy and collect of each of the several persons named in the list herewith committed unto you, his respective proportion therein set down, of the sum total of such list, amounting in the aggregate to dollars and cents, it being the unpaid portion of the taxes assessed in the town of for the year , for state, county and town purposes, and to pay the same to , treasurer of said town of , or to his successor in office, and to complete and make an account of your collections of the whole sum on or before the day of next. If any person refuses or neglects to pay the sum which he is assessed in said list, you will distrain his goods or chattels to the value thereof. In making such distress, and for want of goods and chattels whereon to make distress, except such as are exempt by the provisions of section seventy-four of chapter ninety-two of the revised statutes, you will in all matters proceed as prescribed in section seventy-four of chapter ninety-two of the revised statutes as fully as if the same were herein set forth.

Given under our hands, by virtue of the law in such cases provided, this day of in the year of our Lord nineteen hundred and .

Assessors.

(R. S. c. 81, § 108.)

Sec. 124. Warrant against a delinquent collector by treasurer of state.—When the time for collecting a state tax has expired and it is unpaid, the treasurer of state shall, at the request of the municipal officers of any town, issue a warrant of distress signed by him against any constable or collector of such town to whom the town's proportion of a state tax has been committed for collection, and who is negligent in paying to the town treasurer the money required within the time limited by law; such warrant shall be directed to the sheriff of the county in which the delinquent officer lives, or to his deputy, returnable in

3 months from its date and shall require such sheriff or deputy to cause the sum due with interest from the date fixed for payment, together with 50c for the warrant and his own legal fees, to be levied by distress and sale of such delinquent officer's real or personal estate, returning any overplus that there may be, and for want of such real or personal estate, to commit him to jail until he pays said sums and the sheriff shall obey such warrant. Warrants not satisfied may be renewed for the amount unpaid and shall be of like validity and executed in like manner. (R. S. c. 81, § 109.)

The provisions of this section are directory. Richmond v. Toothaker, 69 Me. 451.

The provisions for demanding the bills of a delinquent collector, and committing them to another collector, and for issuing a warrant of distress against him are not mandatory, but permissive; cumulative remedies to be resorted to or not, at the discretion of the municipal authorities. It is not for such delinquent collector to complain that he has not been dealt with in a more severe and summary manner. Gorham v. Hall, 57 Me. 58.

Certificate of assessors justifies treasurer's action.—A certificate issued by the assessors to the state treasurer declaring that they put into the hands of the collector a list of the assessments "with a warrant in due form of law," is the treasurer's justification for acting under this section. Snow v. Winchell, 74 Me. 408.

The assessors' certificate under § 74 and the provisions of this section are of just as much authority to the state treasurer as any warrant from any court would be. Snow v. Winchell, 74 Me. 408.

And he has no discretion in the matter.—The treasurer is merely a ministerial officer; he has no authority to pause in the execution of his duty on the suggestion of errors or mistakes in the proceedings. If the facts upon which he is to act are properly certified to him, he has no discretion, but is obliged to issue his warrant. Whether the tax be legal or illegal, whether duly assessed or not, are not subjects for him to inquire about. If there be a tax, an assessment, a warrant to the collector, all certified to him by assessors duly qualified to act, his duty is clear and he is peremptorily commanded by the law to discharge it. Snow v. Winchell, 74 Me. 408.

And his action not controlled by vote of town.—The treasurer, under this section, proceeds not under any vote of the town, but independent of it and under statute authority. It would be his duty to act, when the occasion arises, even in spite of a vote of a town. Thorndike v. Camden, 82 Me. 39, 19 A. 95.

Applied in Daggett v. Everett, 19 Me. 373.

Sec. 125. Warrant against a delinquent collector by county treasurer.—When 40 days after the time fixed for collecting a county tax has expired and it is unpaid, the county treasurer shall, at the request of the municipal officers of any town in his county, issue his warrant of distress against any constable or collector of such town to whom the town's proportion of a county tax has been committed for collection and who has not paid to the town treasurer the money required within the time limited by law, returnable in 3 months from its date, directed to the sheriff or his deputy, requiring him to collect the tax with 6% interest thereon from the time it was payable, 50c for the warrant and his own legal fees. (R. S. c. 81, § 110.)

Treasurer not governed by vote of town.—The treasurer, under this section, proceeds not under any vote of the town, but independent of it and under statute authority. It would be their duty to act, when the occasion arises, even in spite of a vote of the town. Thorndike v. Camden, 82 Me. 39, 19 A. 95.

Sec. 126. Town to pay when collector fails; new assessment; warrant against inhabitants.—If a delinquent constable or collector has no estate which can be distrained, and his person cannot be found within 3 months after a warrant of distress issues from the treasurer of state or, if being committed to jail, he does not within 3 months satisfy it, his town shall within 3 months more pay to the state the sums due from him.

The assessors having written notice from such treasurer of the failure of their constable or collector shall forthwith, without any further warrant, assess the sum so due upon the inhabitants of their town as the sum so committed was as-

sessed and commit it to another constable or collector for collection; and if they neglect, the treasurer of state shall issue his warrant against them for the whole sum due from such constable or collector, which shall be executed by the sheriff or his deputy as other warrants issued by such treasurer. If after such 2nd assessment the tax is not paid to the treasurer within 3 months from the date of its commitment, the treasurer may issue his warrant to the sheriff of the county requiring him to levy it on real and personal property of any inhabitants of the town, as hereinbefore provided. (R. S. c. 81, § 111.)

Cited in Richmond v. Toothaker, 69 Me. 451.

Sec. 127. Collector responsible to inhabitants.—A delinquent collector or constable shall at all times be answerable to the inhabitants of his town for all sums which they have been obliged to pay by means of his deficiency and for all consequent damages. (R. S. c. 81, § 112.)

The collector is indebted to the town for the sum due on a state tax paid by the town on default of the collector. Richmond v. Toothaker, 69 Me. 451.

Stated in Gorham v. Hall, 57 Me. 58.

Sec. 128. When collector dies, administrator to settle.—If a collector or constable of a town dies without settling his accounts of taxes committed to him to collect, his executor or administrator within 2 months after his acceptance of the trust shall settle with the assessors for what was received by the deceased in his lifetime; with the amount so received, such executor or administrator is chargeable as the deceased would be if living and if he fails to so settle, when he has sufficient assets in his hands, he shall be chargeable with the whole sum committed to the deceased for collection. (R. S. c. 81, § 113.)

Sec. 129. Form of warrant against delinquent collector.—If the constable or collector of any town to whom taxes have been committed for collection neglects to collect and pay them to the treasurer named in the warrant of the assessors by the time therein stated, such treasurer shall issue his warrant, returnable in 90 days and in substance as follows, to the sheriff of the county or his deputy, who shall execute it.

A. B., treasurer of the ..... of ....., in the county of ....., to the sheriff of said county, or his deputy,

Greeting.

Whereas C. D., of ..... aforesaid, on the .... day of ...., 19.., being a ..... of taxes granted and agreed on by the ..... aforesaid, had a list of assessments duly made by the assessors of the ..... aforesaid, amounting to the sum of $....., committed to him with a warrant under their hands, directing and empowering him to collect the several sums in said assessment mentioned, and pay the same to the treasurer of the ..... aforesaid by the .... day of ...., 19.., but the said C. D. has been remiss in his duty by law required, and has neglected to collect the several sums aforesaid, and pay them to the treasurer of the ..... aforesaid; and there still remains due thereof the sum of $....., and the said C. D. still neglects to pay it: You are hereby, in the name of the state, required forthwith to levy the aforesaid sum of $....., by distress and sale of the estate, real or personal, of said C. D., and pay the same to the treasurer of said ....., returning the overplus, if any, to said C. D. And for want of such estate, to take the body of said C. D., and him commit to the jail in the county aforesaid, there to remain until he has paid the said sum of $....., with forty cents for this warrant, together with your fees, or he is otherwise discharged therefrom by order of law; and make return of this warrant to myself, or my successor, as treasurer of said ....., within ninety days from this time, with your doings therein.

Given under my hand, this .... day of ...., in the year nineteen hundred and .....

...., Treasurer of .....

(R. S. c. 81, § 114.)

Before a warrant can be issued against a collector, he must have been delinquent in respect to taxes committed to him for collection. The commitment must have been such as the law requires; such as would authorize the collector to compel payment; for without authority, there can be no corresponding duty, and consequently no neglect. Pearson v. Canney, 64 Me. 188.

The tax committed is the only basis for fixing the amount due, and if none has been committed, it is clear there can be no foundation upon which the warrant can rest. Pearson v. Canney, 64 Me. 188.

Treasurer's duty to issue warrant.—On the neglect of the collector to complete the collection and payment of the tax in question by the time named in his warrant from the assessors, it becomes the duty of the treasurer to issue a warrant of distress to the delinquent, in the form prescribed by this section, to compel the collection, unless he has shown that sufficient cause existed for omitting to conform to the provisions of the statute in this particular. Smyth v. Titcomb, 31 Me. 272.

Without inquiry into prior proceedings.—The treasurer is required by law to issue a warrant of distress against the delinquent collector, without inquiry into the proceedings prior to the assessment and commitment of the tax, and if he neglects that duty, without sufficient cause, a peremptory mandamus must issue. Smyth v. Titcomb, 31 Me. 272.

Section applies to town treasurer.—By this section, a town treasurer is compelled to issue his warrant against a collector for his delinquencies in not paying into the town treasury town and school district taxes. Precisely the same obligation in this respect rests upon him as upon a state or county treasurer. Snow v. Winchell, 74 Me. 408.

And treasurer not governed by town vote.—The treasurer, under this section, proceeds not under any vote of the town, but independent of it and under statute authority. It would be their duty to act, when the occasion arises, even in spite of a vote of the town. Thorndike v. Camden, 82 Me. 39, 19 A. 95.

Applied in School District in Tremont v. Clark, 33 Me. 482.

Cited in Brunswick v. Snow, 73 Me. 177.

Sec. 130. Sheriff's duty respecting such warrants; alias warrant.—On each execution or warrant of distress issued by the treasurer of state, or by the treasurer of a county or town against a constable or collector or against the inhabitants of a town, and delivered to a sheriff or his deputy, he shall make return of his doings to such treasurer within a reasonable time after the return day therein mentioned, with the money if any that he has received by virtue thereof; and if he neglects to comply with any direction of such warrant or execution, he shall pay the whole sum mentioned therein. When it is returned unsatisfied, or satisfied in part only, such treasurer may issue an alias for the sum due on the return of the first; and so on, as often as occasion occurs. A reasonable time after the return day shall be computed at the rate of 48 hours for every 10 miles distance from the dwelling house of the sheriff or his deputy to the place where the warrant is returnable. (R. S. c. 81, § 115.)

Sec. 131. When sheriff delinquent, warrant to county attorney.—When a sheriff or deputy is delinquent as described in the preceding section, such treasurers may direct warrants to the county attorney of the county requiring him to distrain therefor upon the delinquent's real or personal estate; and the county attorney shall execute such warrants as a sheriff does on delinquent constables and collectors. (R. S. c. 81, § 116.)

Sec. 132. Property distrained sold as on execution.—Any officer selling personal property, distrained under a warrant from such treasurers against a sheriff, constable or collector, or against the inhabitants of a town, shall proceed as in the sale of such property on execution. (R. S. c. 81, § 117.)

Sec. 133. Notice of sale of real estate. — When a warrant of distress

from such treasurers is levied on the real estate of a delinquent constable, collector, sheriff or deputy sheriff, or against the inhabitants of a town for the purpose of sale, 14 days' notice of the sale and time and place shall be given, by posting advertisements in 2 or more public places in the town or place where the estate lies, and in 2 adjoining towns. (R. S. c. 81, § 118.)

Sec. 134. Proceedings at sale.—At that time and place, the officer having such warrant shall sell at public vendue so much of such estate, in common and undivided with the residue, if any, as is necessary to satisfy the sum named in the warrant, with all legal charges; and execute to the purchaser a sufficient deed thereof, which shall be as effectual as if executed by the delinquent owner. (R. S. c. 81, § 119.)

Sec. 135. Warrant not satisfied, collector arrested on an alias; privileges of common debtor.—If the proceeds of such sale do not satisfy such sum and legal charges, the treasurer who issued the warrant shall issue an alias warrant for the sum remaining due, and the officer executing it shall arrest such delinquent officer and proceed as on an execution for debt and such delinquent officer shall have the same rights and privileges as a debtor arrested or committed on execution in favor of a private creditor. (R. S. c. 81, § 120.)

Sec. 136. Assessors may demand copy of assessments of collector, and adjust amount.—When any constable or collector of taxes is taken on execution under the provisions of sections 66 to 170, inclusive, the assessors may demand of him a true copy of the assessments, which he received of them and then has in his hands unsettled, with the evidence of all payments made thereon. If he complies with this demand, he shall receive such credit as the assessors on inspection of the assessment adjudge him entitled to and account for the balance; but if he refuses, he shall forthwith be committed to jail by the officer who so took him or by a warrant from a justice of the peace, to remain there until he complies and the assessors shall take and use copies of the record of assessments instead of the copies demanded of him. (R. S. c. 81, § 121.)

Cited in Carville v. Additon, 62 Me. 459.

Sec. 137. Towns may choose another collector.—The same town may at any time proceed to the choice of another collector to complete the collection of the assessments, who shall be sworn and give the security required of the 1st collector; and the assessors shall deliver to him the uncollected assessments, with a proper warrant for their collection, and he shall proceed as before prescribed. (R. S. c. 81, § 122.)

It is not necessary that there should be a vacancy before the town may choose another collector. It is enough that the existing collector had not only neglected and refused to complete the collection, but had actually surrendered the lists committed to him to the assessors. Carville v. Additon, 62 Me. 459.

Cited in Gorham v. Hall, 57 Me. 58.

Sec. 138. When a person claims to have paid tax, proceedings.—When the tax of any person named in said assessment does not thereby appear to have been paid, but such person declares that it was paid to the former collector, the new collector shall not distrain or commit him without a vote of such town first certified to him by its clerk. (R. S. c. 81, § 123.)

Sec. 139. Sheriff to collect when no collector chosen.—When a town neglects to choose and the selectmen to appoint any constable or collector to collect a state or county tax, the sheriff of the county shall collect it on receiving an assessment thereof, with a warrant under the hands of the assessors of such town, duly chosen or appointed by the county commissioners, as the case may be. (R. S. c. 81, § 124.)

Sec. 140. Plantations, proceedings by and against. — When planta-

tions neglect to choose constables or collectors or those chosen and accepting their trust neglect their duty, such plantations shall be proceeded against as in the case of delinquent towns; and such delinquent constable or collectors are liable to the same penalties and shall be removed in the same manner as delinquent constables and collectors of towns. (R. S. c. 81, § 125.)

Sec. 141. Proceedings by sheriff.—The sheriff or his deputy, on receiving such assessment and warrant for collection as is mentioned in the 2 preceding sections, shall forthwith post in some public place in the town or plantation assessed an attested copy of such assessment and warrant, and shall make no distress for any of such taxes until after 30 days therefrom; and any person paying his tax to such sheriff within that time shall pay 5% over and above his tax for sheriff's fees, and no more; but those who do not pay within that time shall be distrained or arrested by such officer, as by collectors; and the sheriff may require aid for the purpose, and the same fees shall be paid for travel and service of the sheriff as in other cases of distress. (R. S. c. 81, § 126.)

Sec. 142. Attested copy of warrant to jailer; certification. — When an officer appointed to collect assessments by virtue of a warrant, for want of property, arrests any person and commits him to jail, he shall give an attested copy of his warrant to the jailer and certify under his hand the sum that he is to pay as his tax and the costs of arresting and committing, and that for want of goods and chattels whereon to make distress, he has arrested him; and such copy and certificate are a sufficient warrant to require the jailer to receive and keep such person in custody until he pays his tax, charges and 33¢ for the copy of the warrant; but he shall have the rights and privileges mentioned in section 135. (R. S. c. 81, § 127.)

Stated in Jones v. Emerson, 71 Me. 405.

Cited in Hussey v. Danforth, 77 Me. 17.

Sec. 143. When discharged from arrest, town liable for state and county taxes.—When a person, committed for non-payment of taxes due to the state or county, is discharged by virtue of any statute for the relief of poor prisoners confined in jail for taxes, the town whose assessors issued the warrant by which he was committed shall pay the whole tax required of it. (R. S. c. 81, § 128.)

Sec. 144. Collector liable for tax unless he commits within a year. —When a person imprisoned for not paying his tax is discharged, the officer committing him shall not be discharged from such tax without a vote of the town, unless he imprisoned him within 1 year after the taxes were committed to him to collect. (R. S. c. 81, § 129.)

There is an implication, in this section that the town may relieve a collector who has made a fruitless arrest after one year. Thorndike v. Camden, 82 Me. 39, 19 A. 95. **Cited** in Orneville v. Pearson, 61 Me. 552.

Sec. 145. Fees for commitment.—For commitments for non-payment of taxes, the officer shall have the same fees as for levying executions, but his travel shall be computed only from his dwelling house to the place of commitment. (R. S. c. 81, § 130.)

Sec. 146. Municipal officers may direct suit for taxes.—In addition to other provisions for the collection of taxes legally assessed, the mayor and treasurer of any city, the selectmen of any town and the assessors of any plantation to which a tax is due may in writing direct an action of debt to be commenced in the name of such city or of the inhabitants of such town or plantation against the party liable; but no such defendant is liable for any costs of suit unless it appears by the declaration and by proof that payment of said tax had been duly demanded before suit.

Execution issued on a judgment recovered for the collection of a poll tax shall run against the body of the judgment debtor. (R. S. c. 81, § 131.)

I. General Consideration.
II. Effect of Prior Proceedings on Right of Action.
III. Action Must Be Directed in Writing.
A. In General.
B. By Whom Directed.

Cross References.

See note to § 92, re action under that section does not preclude action under this section; c. 120, § 22, re disclosure.

I. GENERAL CONSIDERATION.

Purpose of section.—The intent of the legislature in enacting this section is obvious. It is the duty of tax collectors to collect, ordinarily at their own expense, the taxes committed to them for the compensation agreed upon. They may proceed by any of the methods provided by statute, and, if they deem it advisable, they may commence actions of debt in their own name. But there may be occasions when, for special reasons, such as the denial of liability, a question as to the validity of the assessment and for other reasons, it would be equitable and proper for the city or town to allow a suit to be brought in its name, pay the expenses and be liable for costs in case of defeat. Orono v. Emery, 86 Me. 362, 29 A. 1095; Rockland v. Farnsworth, 111 Me. 315, 89 A. 65.

Section gives additional remedy.—By the terms of this section the action is "in addition to other provisions for the collection of taxes legally assessed." York v. Goodwin, 67 Me. 260.

And does not repeal other remedies.—This section provided a new mode for the collection of taxes. It does not repeal the old methods, nor is it limited by them. Oldtown v. Blake, 74 Me. 280.

But action under it waives other remedies.—If a suit is brought under this section it must be regarded as a waiver of procedure by arrest or distraint, for resort cannot be had to both processes at the same time. This is an additional not a concurrent remedy. York v. Goodwin, 67 Me. 260.

Section does not interfere with vested rights.—This section only gives an additional remedy for the collection of taxes. It interferes with no vested right. It only furnishes another mode of compelling the taxpayer to do what, without compulsion, it is his duty to do. York v. Goodwin, 67 Me. 260.

The only essentials to recover in an action under this section are: assessors duly elected and qualified, jurisdiction of the assessors over property and person, a tax duly assessed on property subject to taxation and belonging to the defendant and the order of the selectmen that the suit be brought. Athens v. Whittier, 122 Me. 86, 118 A. 897.

Demand is collector's only act affecting action.—The only act to be performed by the collector which has any effect upon a suit under this section, and that only upon the right to recover costs, is the demand before suit is brought. Athens v. Whittier, 122 Me. 86, 118 A. 897.

Plaintiff must prove residence of defendant.—In an action brought directly by a city in its own name, to collect a tax by virtue of the authority conferred by this section, the plaintiff is bound to prove the defendant's residence in the city at the time of the assessment of the tax on personal property. If he was not an inhabitant of that city on the first day of April, he was not liable to be taxed there for personal property, and the action cannot be maintained. Rockland v. Farnsworth, 83 Me. 228, 22 A. 103.

In an action of debt under this section, to recover a tax assessed upon personal property, it is a material averment that the defendant was an inhabitant of the plaintiff town, etc., and it is incumbent upon the plaintiff to establish it by competent evidence. Rockland v. Farnsworth, 83 Me. 228, 22 A. 103.

For a consideration of the sufficiency of a declaration in an action under this section when the section specifically declared that it was against the inhabitants of towns, or parties liable to taxation therein, that an action of debt could be brought for taxes legally assessed, see Vassalboro v. Smart, 70 Me. 303.

State and county taxes recoverable by action.—Viewing the municipality in the light of an agent or trustee of the public, all the taxes to be assessed and collected through its agency may be said to be "due" to it as such agent or trustee. The right of action against the delinquent inhabitant, or property owner, is given to the municipality to enable it to perform its

duties as such agent, or trustee. State and county taxes assessed upon the municipality are within the purview of this section granting this remedy. Rockland v. Ulmer, 84 Me. 503, 24 A. 949; Sandy River Plantation v. Lewis, 109 Me. 472, 84 A. 995.

And fire district tax is within meaning of section. — The municipality acts as the agent of the state in collecting a fire district tax, and such tax is "due" the municipality. Sandy River Plantation v. Lewis, 109 Me. 472, 84 A. 995.

Action subject to general rules of pleading, practice, etc.—When the legislature created the additional remedy of an action of debt for the collection of taxes, it thereby gave the town its choice of remedies; and if the new remedy is elected, it is accepted with all of the general rules of pleading, practice and limitations which pertain to the action of debt. Topsham v. Blondell, 82 Me. 152, 19 A. 93.

Defendant not liable for costs unless demand for tax made prior to bringing the action.—Under this section, the defendant is not liable to costs unless the tax was demanded before the action was brought. But when, prior to the suit, the demand had been made by the collector having authority to discharge it, and when the refusal to pay was put upon other grounds than any want of qualification on his part, the court correctly awarded costs in favor of the plaintiffs. Oldtown v. Blake, 74 Me. 280.

If there was no demand made upon the defendant prior to bringing the action, the plaintiffs cannot recover costs. Topsham v. Blondell, 82 Me. 152, 19 A. 93.

Collector must make demand.—The section requires a demand to entitle the plaintiffs to recover their cost. But by whom is the demand to be made? By one who, in case of compliance with the demand, is authorized to receive the tax and to discharge the same. The collector is the person upon whom the duty of making a demand devolves. York v. Goodwin, 67 Me. 260.

Evidence sufficient to show demand.—See Rockland v. Ulmer, 84 Me. 503, 24 A. 949; Dover v. Maine Water Co., 90 Me. 180, 38 A. 101.

Applied in Stockton v. Staples, 66 Me. 197; Belfast v. Fogler, 71 Me. 403; Embden v. Lisherness, 89 Me. 578, 36 A. 1101; Auburn v. Union Water Power Co., 90 Me. 71, 37 A. 335; Whiting v. Lubec, 121 Me. 121, 115 A. 896; Cushing v. McKay Radio & Tel. Co., 132 Me. 324, 170 A. 60; Canton v. Livermore Falls Trust Co., 136 Me. 103, 3 A. (2d) 429.

Cited in Sears, Roebuck & Co. v. Portland, 144 Me. 250, 68 A. (2d) 12.

II. EFFECT OF PRIOR PROCEEDINGS ON RIGHT OF ACTION.

Tax must have been legally assessed.—This section requires, as a condition precedent to the maintenance of the action, that the tax should be "legally assessed." Dresden v. Goud, 75 Me. 298.

To the defendant.—An action in the name of the town for the collection of a tax may be maintained against the person liable therefor. But to sustain the action, it must be shown that the tax was so assessed as to make the defendant personally liable for its payment. If the taxes were not legally assessed to the defendant, no personal liability was created against him, and an action under this section cannot be maintained. Fairfield v. Woodman, 76 Me. 549.

And assessors' failure to take oath bars action.—Where selectmen purport to act as assessors under § 53, their failure to take the prescribed oath renders the assessment illegal and no action can be maintained to collect the tax under this section. Dresden v. Goud, 75 Me. 298. See note to § 53.

But proceeding liberally construed.—Where forfeitures are not involved, as in this section, proceedings for the collection of taxes should be construed practically and liberally. Bath v. Reed, 78 Me. 276, 4 A. 688; Bath v. Whitmore, 79 Me. 182, 9 A. 119; Topsham v. Blondell, 82 Me. 152, 19 A. 93.

And minor irregularities will not preclude action.—If it appears that the citizen was liable to taxation, and that the assessors had proper authority and jurisdiction which they did not exceed, minor irregularities in mere procedure, which did not increase his share of the public burden, nor occasion him any other loss, should not prevent a recovery under this section. Rockland v. Ulmer, 84 Me. 503, 24 A. 949.

The strict rules applied in testing the validity of arrests and sales of property for unpaid taxes are not applicable to an action under this section. When the liability of the defendant to taxation, and the jurisdiction of the assessors over him and the subject matter appear, then the general question is whether the omissions or irregularities pointed out in the proceedings have occasioned the defendant any loss or other injustice. If they have not, they will not be allowed to exempt him from bearing his proper share of the tax burden. Rockland v. Ulmer, 87 Me. 357, 32 A. 972.

An action under this section is not a proceeding wherein a forfeiture is sought to be enforced, but a suit at law for the recovery of unpaid taxes. Much greater particularity and precision are required in the former than in the latter; and the stringent rules which have been applied in testing the validity of arrests, and sales of property for unpaid taxes, are not applicable where the remedy sought is by ordinary suit at law to collect unpaid taxes. Charleston v. Lawry, 89 Me. 582, 36 A. 1103.

An action under this section, not being a case where the defendant's person or property is levied upon by direct warrant from the assessors, but being, instead an action for the tax, will not be defeated by any mere irregularities in the election of assessors or collector, or in the assessment itself, but only by such omissions or defects as go to the jurisdiction of the assessors, or deprive the defendant of some substantial right, or by some omission of an essential prerequisite to the bringing of the action. Greenville v. Blair, 104 Me. 444, 72 A. 177; Athens v. Whittier, 122 Me. 86, 118 A. 897.

Such as failure of collector to give bond.—An exception that it does not appear that the collector gave a bond does not apply to an action which is brought directly by the town under this section. Verona v. Bridges, 98 Me. 491, 57 A. 797.

Or failure to extend powers of original warrant to supplemental list.—The commitment of a supplemental list of taxes to the collector, to which list the powers of the original warrant have not been extended as required by § 30, does not prevent the town from maintaining in its own name an action for such taxes, such a proceeding being independent of the collector. Athens v. Whittier, 122 Me. 86, 118 A. 897.

And an allegation that the tax was assessed by a supplemental assessment is not necessary in an action under this section. Athens v. Whittier, 122 Me. 86, 118 A. 897.

Assessment need not contain particular description.—It is not necessary in an action under this section that the assessment contain a particular description of the property assessed or that separate valuations should be made in case there are several parcels as in a case where forfeiture might ensue. Georgetown v. Reid, 132 Me. 414, 171 A. 907.

III. ACTION MUST BE DIRECTED IN WRITING.

A. In General.

Written direction is prerequisite to bringing action.—Suit in the name of the inhabitants of a town to recover a tax is not authorized by this section, unless the selectmen of the town have in writing directed the same to be brought. Orono v. Emery, 86 Me. 362, 29 A. 1095; Milo v. Milo Water Co., 129 Me. 463, 152 A. 616.

A necessary prerequisite to the maintenance of an action under this section is that it should have been directed in writing by the selectmen of the town. Greenville v. Blair, 104 Me. 444, 72 A. 177.

And an oral direction will not be sufficient. When, in any case, an authority is required to be conferred in writing, an oral authority will not be sufficient. Such a requirement is calculated to avoid a dispute respecting the fact, and to protect towns against hasty and inconsiderate action by their selectmen. Cape Elizabeth v. Boyd, 86 Me. 317, 29 A. 1062.

Written direction must be alleged.—Written direction being necessary to the maintenance of the action, it must be alleged in the writ. It is a traversable fact, and is put in issue under the plea of the general issue. Wellington v. Small, 89 Me. 154, 36 A. 107; Milo v. Milo Water Co., 129 Me. 463, 152 A. 616.

And the omission of such an averment is a fatal defect in the declaration. Milo v. Milo Water Co., 129 Me. 463, 152 A. 616.

This section requires that the selectmen should, in writing, direct an action of debt to be commenced in the name of the inhabitants of the town, when this mode is resorted to for the collection of unpaid taxes. Such an averment is necessary to a proper declaration, and the omission of such averment would constitute a fatal defect in the declaration if advantage were taken by demurrer. Charleston v. Lawry, 89 Me. 582, 36 A. 1103.

Which cannot be cured by verdict.—Where the writ in a case under this section contains no allegation of written direction, such a defect is not, in any case, cured by the verdict. Milo v. Milo Water Co., 129 Me. 463, 152 A. 616.

But omission as to time and place of direction cannot be taken advantage of on general demurrer.—The only defect in this declaration is the omission to allege a time and place when and where the selectmen gave written direction to bring the suit. Such omission is a matter of form only, and cannot be taken advantage of on general demurrer. Wellington v. Small, 89 Me. 154, 36 A. 107.

And time and place need not be proved as alleged.—Good pleading requires that

written demand should be alleged with time and place, but time and place need not be proved as alleged, and are not traversable facts, in any case, except in those where they are essential elements in the cause of action. They are not such elements in a case under this section and need not be proved as alleged, and therefore are not traversable facts, but are matters of form. Wellington v. Small, 89 Me. 154, 36 A. 107.

Want of direction need not be specially pleaded.—The defendant does not waive the objection of want of sufficient direction by not taking advantage of it by proper and seasonable pleading. The requirement of direction is not intended for the benefit of the defendant. It is rather for the benefit of the town, that the town may not be rendered liable for expenses and costs except when the selectmen authorize it. Orono v. Emery, 86 Me. 362, 29 A. 1095.

But may be taken advantage of under plea of general issue. — The defendant should be allowed to raise an objection as to want of direction under his plea of the general issue, because the fact of a direction in writing or not, may have been within the exclusive knowledge of the plaintiffs. Orono v. Emery, 86 Me. 362, 29 A. 1095.

General direction not sufficient.—Each suit for the collection of taxes should receive a separate consideration. A general direction to the tax collector to commence actions against any and all taxpayers who refuse or fail to pay their taxes, is not sufficient. It is not sufficiently specific. It practically transfers to the collector the power to determine whether or not any particular action shall be commenced; and this the law will not allow. Cape Elizabeth v. Boyd, 86 Me. 317, 29 A. 1062; Rockland v. Farnsworth, 111 Me. 315, 89 A. 65. See this note, analysis, line III B.

A direction to "collect by due process of law, by suit or otherwise, all the taxes remaining unpaid to date," is insufficient to authorize a suit under this section. Orono v. Emery, 86 Me. 362, 29 A. 1095. And a general direction by the selectmen of a town to a tax collector to commence actions against "any and all taxpayers" who "refuse or fail" to pay their taxes, is not a compliance with this section. Cape Elizabeth v. Boyd, 86 Me. 317, 29 A. 1062.

But a separate written direction need not be given for each year's tax, and one direction may cover the taxes against the defendant for several years. Rockland v. Farnsworth, 111 Me. 315, 89 A. 65.

Direction may be given to solicitor.—This section does not prescribe the officer to whom the written direction shall be given. It might, doubtless, be given to the collector, but he, in turn, would need to notify the solicitor, the law officer of the city, and there is no reason why in such a case it cannot be given directly to the solicitor. Rockland v. Farnsworth, 111 Me. 315, 89 A. 65.

Direction must contain specific authority to institute action.—A direction to institute an action for the collection of taxes must contain specific authority to institute an action in the name of the municipality. Biddeford v. Cleary, 132 Me. 116, 167 A. 694.

And the particular parties against whom suit is to be brought should be named in the written direction. Rockland v. Farnsworth, 111 Me. 315, 89 A. 65; Biddeford v. Cleary, 132 Me. 116, 167 A. 694.

A direction under this section should be as to an action or actions against a particular party or parties. Orono v. Emery, 86 Me. 362, 29 A. 1095.

Direction held sufficient.—See Rockland v. Ulmer, 87 Me. 357, 32 A. 972; Charleston v. Lawry, 89 Me. 582, 36 A. 1103.

B. By Whom Directed.

Municipal officers are sole judges of sufficiency of reasons for bringing action.—As to the sufficiency of the reasons for bringing an action under this section, the selectmen of the town are the sole judges. If they see fit they "may in writing direct an action of debt to be commenced in the name of such city or of the inhabitants of such town or plantation against the party liable." Orono v. Emery, 86 Me. 362, 29 A. 1095; Rockland v. Farnsworth, 111 Me. 315, 89 A. 65.

And action must be directed by officers named in section.—No action can be commenced or maintained in the name of the town to recover taxes, unless its commencement is directed in writing by some one of the boards named in this section. Cape Elizabeth v. Boyd, 86 Me. 317, 29 A. 1062; Wellington v. Small, 89 Me. 154, 36 A. 107.

As their power cannot be delegated.—The power conferred by this section requires an exercise of judgment and discretion. A refusal to pay a tax is one thing. A failure to pay is another. The former may be the result of wilfulness or a denial of the legality of the tax. The latter may be the result of sickness and poverty and an utter inability to pay. In the former case, an action may be expedient. In the

latter, inexpedient. It is plain, therefore, that judgment and discretion are to be exercised in determining whether or not an action shall be commenced. And it is a familiar and well settled rule of law that when judgment and discretion are to be exercised, they must be exercised by the persons on whom the law has placed the power and authority to act. Their exercise cannot be transferred to another. Such powers are incapable of delegation. Cape Elizabeth v. Boyd, 86 Me. 317, 29 A. 1062; Biddeford v. Cleary, 132 Me. 116, 167 A. 694.

Thus action in name of city can only be directed by mayor and treasurer. — The right to bring a suit to collect taxes in the name of a city may only be conferred by directions in writing from the mayor and treasurer. Biddeford v. Cleary, 132 Me. 116, 167 A. 694.

And an order of the city government confers no power or authority on the treasurer to institute an action in the name of the city against delinquent taxpayers. Biddeford v. Cleary, 132 Me. 116, 167 A. 694.

Nor can city manager direct action.—In Eastport v. Jonah, 134 Me. 428, 187 A. 471, it was held that, under the charter of the city of Eastport, the city manager is but an administrative officer who acts under the direction and control of the city council, and that he does not succeed to the powers formerly exercised by the mayor and his direction to bring an action is not a compliance with this section.

Special Provisions.

Sec. 147. Abatement for voluntary payment of taxes, not exceeding 10%; notice posted.—At any meeting when it votes to raise a tax, a town may agree on the abatement to be made to those who voluntarily pay their taxes to the collector or treasurer at certain periods and the times within which they are so entitled, and a notification of such votes and the time when such taxes must be paid to obtain the abatement shall be posted by the treasurer in one or more public places in his town, within 7 days after such commitment, and all who so pay their taxes are entitled to such abatement, but no person shall receive an abatement of more than 10% of his tax. All taxes not so paid shall be collected by the collector or his deputy under the other provisions of sections 66 to 170, inclusive. (R. S. c. 81, § 132.)

Sec. 148. Prepayment of taxes; interest. — Towns at any properly called meeting may authorize their collectors or treasurers to accept prepayment of taxes not yet due or assessed and to pay thereon interest at not exceeding the rate of 8%. Any excess paid in over the amount finally assessed shall be repaid, with the interest due on the whole transaction, at the date that the tax finally assessed is due and payable. (R. S. c. 81, § 133.)

Sec. 149. Collector to issue warrant to sheriff.—The collector of taxes of any town or the treasurer of any town who is also a collector may issue his warrant to the sheriff of any county, or his deputy or to a constable of his town, directing him to distrain the person or property of any person not paying his taxes within 3 months after the date of the original commitment, which warrant shall be of the same tenor as that prescribed to be issued by municipal officers or assessors to collectors with the appropriate changes returnable to the collector or treasurer issuing the same in 30, 60 or 90 days. (R. S. c. 81, § 134.)

Former provision of section.—For a consideration of a former provision of this section which made the vote of the town fixing time for payment a condition precedent to the authority of the collector to issue his warrant of distress, see Jacques v. Parks, 96 Me. 268, 52 A. 763.

Stated in Clark v. Gray, 113 Me. 443, 94 A. 881.

Sec. 150. Distrain before tax due. — When such collector or treasurer thinks that there is danger of losing by delay a tax assessed on any individual, he may distrain his person or property before the expiration of the time named in the preceding section. (R. S. c. 81, § 135.)

Sec. 151. Ten days' notice before distraining. — Before such officer serves any such warrant, he shall deliver to the delinquent or leave at his last and usual place of abode a summons from said collector or treasurer, stating the amount of tax due and that it must be paid within 10 days from the time of leaving such summons, with $1, plus 20¢ a mile travel from the officer's place of abode to place of service for the officer for leaving the same; and if not so paid, the officer shall serve such warrant the same as collectors of taxes may do and shall receive the same fees as for levying executions in personal actions. (R. S. c. 81, § 136. 1945, c. 300.)

This section applies to warrants issued under § 149. Jacques v. Parks, 96 Me. 268, 52 A. 763.

A warrant which omits a direction to leave the summons required by this section is upon its face invalid and void. It therefore affords no protection to the officer. Jacques v. Parks, 96 Me. 268, 52 A. 763.

Stated in Clark v. Gray, 113 Me. 443, 94 A. 881.

Sec. 152. Affidavit of person posting notices of land sales, evidence. —The affidavit of any disinterested person as to posting notifications required for the sale of any land to be sold by the sheriff or his deputy, constable or collector, in the execution of his office, may be used in evidence in any trial to prove the fact of notice, if such affidavit, made on one of the original advertisements or on a copy of it, is filed in the registry of the county or district where the land lies within 6 months. (R. S. c. 81, § 137.)

Sec. 153. Owners of estate taken for default of others may recover its value; determination of value.—When the estate of an inhabitant of a town, who is not an assessor thereof, is levied upon and taken as mentioned in sections 52, 60, 61, 62, 71, 73 and 126, he may maintain an action against such town and recover the full value of the estate so levied on, with interest at the rate of 20% from the time it was taken, with costs; and such value may be proved by any other legal evidence, as well as by the result of the sale under such levy. (R. S. c. 81, § 138.)

Sec. 154. Warrants returnable in 3 months; renewal.—All warrants lawfully issued by a state or county treasurer shall be made returnable in 3 months and may be renewed for the collection of what appears due upon them when returned, including expenses incurred in attempting to collect them; and the power and duty of the sheriff shall be the same in executing such alias or pluries warrant as if it were the original. (R. S. c. 81, § 139.)

Sale of Land for Taxes in Incorporated Places.

The sale of land for taxes is the execution of a naked power. Old Town v. Robbins, 134 Me. 285, 186 A. 663.

Proceedings construed strictly. — The proceedings, which are intended to work a forfeiture of lands for nonpayment of taxes, are to be construed strictly in a controversy between the purchaser at a tax sale, and the original owner. The title acquired under such a sale is founded solely on the statute provisions and these must be strictly complied with. Bowler v. Brown, 84 Me. 376, 24 A. 879. See Lowden v. Graham, 136 Me. 341, 9 A. (2d) 659.

It is too well settled to require the citation of authorities that to establish a valid title under a sale of real estate, for the nonpayment of taxes, which is a proceeding essentially ex parte and in invitum, great strictness is required. Roberts v. Moulton, 106 Me. 174, 76 A. 283.

Lands can be sold only in cases authorized.—Collectors have no power to sell lands, by reason of the nonpayment of taxes assessed thereon, except in pursuance of the provisions contained in the statutes; and can sell only in the precise cases in which it has been so authorized. Brown v. Veazie, 25 Me. 359.

And statute must be strictly complied with. — All provisions of the statute, whether they relate to proceedings before or subsequent to the sale, must be strictly complied with, or the sale will be invalid. Roberts v. Moulton, 106 Me. 174, 76 A. 283; Old Town v. Robbins, 134 Me. 285.

186 A. 663. See Kelley v. Jones, 110 Me. 360, 86 A. 252; Lowden v. Graham, 136 Me. 341, 9 A. (2d) 659.

In the execution of a power given by a statute, there must be a strict conformity to its provisions, or the proceedings will be ineffectual. The person so authorized cannot adopt a different mode of proceeding, which he may judge would accomplish the same object in a different manner, and be more beneficial to those interested. Keene v. Houghton, 19 Me. 368.

It is only by a strict adherence to the mode prescribed by law, that real estate can be so conveyed for an inadequate consideration and against the will of the landowner. Whitmore v. Learned, 70 Me. 276. See Van Woudenberg v. Valentine, 136 Me. 209, 7 A. (2d) 623.

The sale of land for taxes is a procedure in invitum, and the provisions of the statute authorizing such sale must be strictly complied with or the sale will be invalid. French v. Patterson, 61 Me. 203; Lowden v. Graham, 136 Me. 341, 9 A. (2d) 659.

Sales of real estate for nonpayment of taxes must be regarded, in a great measure, as an ex parte proceeding. The owner is to be deprived of his land thereby; and a series of acts, preliminary to the sale, are to be performed to authorize it on the part of the assessors and collector, to which his attention may never have been particularly called; and experience and observation render it notorious that the amount paid by purchasers at such sales is uniformly trifling in comparison with the real value of the property sold. It has, therefore, been held, with great propriety, that, to make out a valid title under such sales, great strictness is to be required; and it must appear that the provisions of law preparatory to, and authorizing such sales, have been punctiliously complied with. Brown v. Veazie, 25 Me. 359; Phillips v. Phillips, 40 Me. 160; Lowden v. Graham, 136 Me. 341, 9 A. (2d) 659.

Sales for default in taxes must rightly adhere to statutory requirements. Those requirements, being designed for the security of property owners, or for their benefit, are mandatory and not directory. Van Woudenberg v. Valentine, 136 Me. 209, 7 A. (2d) 623.

To constitute a valid sale for the nonpayment of taxes, all the steps required by the statute must be taken. Hobbs v. Clements, 32 Me. 67.

Sec. 155. Sale of real estate for taxes; notice.—If any tax assessed on real estate or on equitable interests assessed under the provisions of section 3 remains unpaid on the 1st Monday in February next after said tax was assessed, the collector shall sell at public auction so much of such real estate or interest as is necessary for the payment of said tax, interest and all the charges, at 9 o'clock in the forenoon of said 1st Monday in February at the office of collector of taxes in cities, and at the place where the last preceding annual town meeting was held in towns. In case of the absence or disability of the collector, the sale shall be made by some constable of the town who shall have the same powers as the collector in carrying out the provisions of sections 66 to 170, inclusive. In the case of the real estate of resident owners, the collector may give notice thereof and of his intention to sell so much of said real estate or interest as is necessary for the payment of said tax and all charges, by posting notices thereof in the same manner and at the same places that warrants for town meetings are therein required to be posted, at least 6 weeks and not more than 7 weeks before such 1st Monday in February, designating the name of the owner if known, the right, lot and range, the number of acres as nearly as may be, the amount of tax due and such other short description as is necessary to render its identification certain and plain. In the case of taxes assessed on the real estate of nonresident owners, he shall cause said notices to be published in some newspaper, if any, published in the county where said real estate lies 3 weeks successively, such publication to begin at least 6 weeks before said 1st Monday in February and if no newspaper is published in said county, said notices shall be published in like manner in the state paper. He shall, in the advertisements so published, state the name of the town, and if within 3 years it has been changed for the whole or a part of the territory, both the present and former name shall be stated, and that if the taxes, interest and charges are not paid on or before such 1st Monday in February so much of the estate as is sufficient to pay the amount due therefor with interest and charges will be sold without further notice at public auction

on said 1st Monday in Feburary, at 9 o'clock in the forenoon at the office of the collector of taxes in cities, and at the place where the last preceding annual town meeting was held in towns. The date of the commitment shall be stated in the advertisement. In all cases, said collector shall lodge with the town clerk a copy of each such notice, with his certificate thereon that he has given notice of the intended sale as required by law. Such copy and certificate shall be recorded by said clerk and the record so made shall be open to the inspection of all persons interested. The clerk shall furnish to any person desiring it an attested copy of such record on receiving payment or tender of payment of a reasonable sum therefor; but notices of sales of real estate within any village corporation for unpaid taxes of said corporation may be given by notices thereof, posted in the same manner and at the same places as warrants for corporation meetings, and by publication as aforesaid. No irregularity, informality or omission in giving the notices required by this section, or in lodging copy of any of the same with the town clerk as herein required, shall render such sale invalid, but such sale shall be deemed to be legal and valid if made at the time and place herein provided and in other respects according to law, except as to the matter of notice. For any irregularity, informality or omission in giving notice as required by this section and in lodging copy of the same with the town clerk, the collector shall be liable to any person injured thereby. (R. S. c. 81, § 140.)

Provisions differ as to resident and nonresident land.—The statutes nowhere require the assessors to classify landowners assessed as "resident" or "nonresident." But in the provisions of statute regulating sales by collectors, such a classification is made. Different provisions are made for the sale of the real estate of a resident owner, than for the sale of the real estate of a nonresident owner. The difference relates to manner of giving notice of the sale, the time for delivering the deeds, and the time and prerequisites for redemption. As to the sale itself, and the certificates of notice and sale, the same provisions apply to both cases. Roberts v. Moulton, 106 Me. 174, 76 A. 283.

Only land upon which law gives lien can be sold.—The collector has authority to sell such and only such as the law gives a lien upon, and the lien attaches to such and only such as are legally assessed, and to the specific and definite parcel upon which the tax is laid. If there is no definite parcel taxed, there can be no lien, and if no lien there can be no legal sale. Greene v. Lunt, 58 Me. 518.

Purpose of notice requirement. — The manifest purpose of the notice requirement is not only to let the party charged with the tax know that there is such a tax against him and unpaid, but that his delinquency has continued so long after the date of the assessment that the law authorizes proceedings, in the manner prescribed, to obtain the sum required from the land upon which the tax was based. Without such notice, which is of substantial utility to the person against whom the tax remains undischarged, he is not informed in the manner which the legislature has provided that he is exposed to the costs which will arise from an attempt to obtain the tax from the land itself. Hobbs v. Clements, 32 Me. 67.

Notice to resident not required to extend beyond limits of town where land situated.—The notice of a sale for the purpose of obtaining payment of taxes assessed to resident proprietors is not required to extend beyond the limits of the town where the land is situated. Hobbs v. Clements, 32 Me. 67.

Notice should contain such description as will enable purchaser and owner to identify land.—The notice should contain such a description of the land as will enable the owner and purchaser to identify it with reasonable certainty. Nason v. Ricker, 63 Me. 381.

Notice of a collector's sale does not contain sufficient description of the estate to be sold, if it does not give the number of the lot, or the range, or any boundary or other facts by which a purchaser could obtain sufficient knowledge of the identity of the land to form an intelligent judgment of the value. Nason v. Ricker, 63 Me. 381.

It behooves collectors, in advertising lands to be sold for taxes, to give such a description as will enable owners to know that the lands advertised are theirs. It is not indispensable that the description should be precisely that which is given in the tax bill. It should be such, however, that the identity will be manifest. Brown v. Veazie, 25 Me. 359.

Description obtained from assessment.—The list of assessments committed to him is the source from which the collector

must obtain the information to enable him to give such "short description as necessary to render its identification certain and plain" in the notices of sale to be posted by him, and in the returns which he is required to make to the town clerk and treasurer. Burgess v. Robinson, 95 Me. 120, 49 A. 606.

And curative provisions of this section do not affect necessity of description in assessment.—The amendment which added the provision concerning irregularities did not attempt to modify the rule established in Greene v. Lunt, 58 Me. 518, and reaffirmed in all the subsequent decisions down to Green v. Alden, 92 Me. 177, 42 A. 358, that in the assessment which establishes the lien on land and forms the basis of all subsequent proceedings, there must be a definite and distinct description of the land upon which the tax is intended to be assessed. Indeed, it may fairly be said that a contrary intention affirmatively appears, for in the section is still found the provision authorizing the collector to post notices of the sale, "designating the name of the owner if known, the right, lot and range, the number of acres as nearly as may be, the amount of tax due, and such other short description as is necessary to render its identification certain and plain." Burgess v. Robinson, 95 Me. 120, 49 A. 606.

Purpose of provision relating to advertisement when town name changed.—The object of the provision of this section that, if the name of the place in which the land lies has been changed within three years next preceding the advertisement, both the old and the new names shall be given was to give effectual notice to all concerned and prevent any misconception by such an alteration in the name of the place as would essentially alter its description. Porter v. Whitney, 1 Me. 306.

Such provision applicable when land of one town annexed by another.—The provision of this section, requiring the notice of sale to give both the old and the new names if the name of the place where the land is situated has been changed within three years next preceding the advertisement, is applicable where the land has been taken from one town and annexed to another. In such a case, the names of both towns should be set out in the advertisement. Porter v. Whitney, 1 Me. 306.

Purpose of curative provisions of section.—By the enactment of the statute fixing the time and place of sale, with the curative provisions for irregularities, informalities or omissions, it was apparently sought to avoid some of the stumbling blocks which have lain in the way of towns in enforcing the collection of taxes, and to make the validity of tax sales and deeds more certain. Roberts v. Moulton, 106 Me. 174, 76 A. 283.

For cases concerning the effect of irregularities prior to the curative provisions of this section, see Wiggin v. Temple, 73 Me. 380; Ladd v. Dickey, 84 Me. 190, 24 A. 813; Bowler v. Brown, 84 Me. 376, 24 A. 879.

Such provision does not relieve collector of duties concerning return.—See note to § 162.

Section itself is notice of sale.—This section provides that "no irregularity, informality or omission in giving the notices required by this section .... shall render such sale invalid, but such sale shall be deemed to be legal and valid, if made at the time and place herein provided and in other respects according to law, except as to the matter of notice." It is not to be understood by this provision that the legislature meant that a sale without notice of any kind whatever would be valid. But, since this same section established both the place of sale and the time of sale, even to the hour, it is the legislative meaning that the statute itself is notice to all persons, residents or nonresidents. Every taxpayer is held to know that if he does not pay the taxes assessed upon his real estate, it will be sold by the collector for nonpayment of the tax, at the time and place fixed by statute. Roberts v. Moulton, 106 Me. 174, 76 A. 283.

Sale must be at place designated in section.—If the requirement that the tax sale shall be held at the place where the last preceding annual town meeting was held is not complied with, the sale is void. Lowden v. Graham, 136 Me. 341, 9 A. (2d) 659.

Failure of clerk to record copy of notice and clerk's certificate fatal to validity of deed.—This section requires the tax collectors to lodge with the town clerk a copy of the notice with his certificate thereon that he has given notice of the intended sale as required by law. Such copy and certificate shall be recorded by the clerk and the record so made shall be open to the inspection of all persons interested. The clerk's failure to record the copy and the certificate must be held fatal to the validity of the tax collector's deed. Van Woudenberg v. Valentine, 136 Me. 209, 7 A. (2d) 623. See note to § 170.

A record by the town clerk of the tax collector's copy of his newspaper notice of

the contemplated sale, and of his certificate, is, by this section, essential to make the tax sale valid. Van Woudenberg v. Valentine, 136 Me. 209, 7 A. (2d) 623.

And mere indorsement on copy of notice is not sufficient.—Indorsement upon the copy of the notice and the collector's certificate of "received and recorded" is of no legal efficacy. That, in and of itself, does not make a record "open to the inspection of all persons interested." Van Woudenberg v. Valentine, 136 Me. 209, 7 A. (2d) 623.

Applied in Bussey v. Leavitt, 12 Me. 378; Shimmin v. Inman, 26 Me. 228; Flint v. Sawyer, 30 Me. 226; Payson v. Hall, 30 Me. 319; Usher v. Taft, 33 Me. 199; Lovejoy v. Lunt, 48 Me. 377; Whitmore v. Learned, 70 Me. 276; Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

Cited in Oldtown v. Blake, 74 Me. 280; United Copper Min. & Smelting Co. v. Franks, 85 Me. 321, 27 A. 185; Maddocks v. Stevens, 89 Me. 336, 36 A. 398; Tozier v. Woodworth, 135 Me. 46, 188 A. 771.

Sec. 156. Notice for posting; form.—The notice for posting or the advertisement, as the case may be, of the collector required by section 155 shall be in substance as follows:

Unpaid taxes on lands situated in the town of , in the county of , for the year . The name of the town was formerly , (to be stated in the case of change of name, as mentioned in the preceding section.) The following list of taxes on real estate of resident (or nonresident, as the case may be,) owners in the town of , for the year , committed to me for collection for said town, on the day of , remain unpaid; and notice is hereby given that if said taxes, interest and charges are not previously paid, so much of the real estate taxed as is sufficient to pay the amount due therefor, including interest and charges, will be sold at public auction at , in said town, on the first Monday of February, 19 , at nine o'clock A. M. (Here follows the list, a short description of each parcel taken from the inventory, to be inserted in an additional column.)

C. D. .....
Collector of taxes of the town of .

(R. S. c. 81, § 141.)

Sec. 157. Owners or occupants to have written notice of time and place of sale.—After the land is so advertised and at least 10 days before the day of sale, the collector shall notify the owner, if resident, or the occupant thereof if any, of the time and place of sale by delivering to him in person, or by registered mail with receipt demanded or leaving at his last and usual place of abode, a written notice signed by him, stating the time and place of sale and the amount of taxes due. In case of nonresident owners of real estate, such notice shall be sent by mail to the last and usual address, if known to the collector, at least 10 days before the day of sale. If such tax is paid before the time of sale, the amount to be paid for such advertisement and notice shall not exceed $1, in addition to the sum paid the printer if any. (R. S. c. 81, § 142.)

The requirements of this section are absolute. There is no saving clause as the one in § 155. Roberts v. Moulton, 106 Me. 174, 76 A. 283.

And unauthorized notice renders sale invalid.—The legislature, by this section, has made notice of a specific kind to nonresidents a prerequisite to a legal sale. If the collector does not give that notice, but attempts to give another kind of notice, which has been provided for another class of assessed persons, such unauthorized notice is no notice. It is no better than if no notice at all is given, and, in such a case, since the collector has failed to comply with the statute requirement in the section for notice, the sale must be held invalid. Roberts v. Moulton, 106 Me. 174, 76 A. 283.

Collector must give notice of both time and place.—This section requires that, upon an intended sale of real estate, the collector should notify the owner or occupant of the time and place of sale. It is not sufficient if the collector gave such notice of the time of sale, but did not give a notice of the place. Lovejoy v. Lunt, 48 Me. 377.

It should appear to whom the collector gave the ten days' written notice of the time and place of sale and the amount of tax due, as the owner or occupant of the

premises. His recital that he gave it at least ten days before the sale to a person who was the owner or occupant is not sufficient evidence of the fact. Ladd v. Dickey, 84 Me. 190, 24 A. 813.

Applied in Wiggin v. Temple, 73 Me. 380.

Stated in part in Clark v. Gray, 113 Me. 443, 94 A. 881.

Sec. 158. Proceedings at sale; adjournment; apportionment of costs.—When no person appears to discharge the taxes duly assessed on any such real estate of resident or nonresident owners, with costs of advertising, on or before the time of sale, the collector shall proceed to sell at public auction to the highest bidder so much of such real estate or interest as is necessary to pay the tax due, in the case of each person assessed, with $3 for advertising and selling it, the sum paid to the printer, 25¢ for each copy required to be lodged with the town clerk, 25¢ for the return required to be made to the town clerk and 67¢ for the deed thereof and certificate of acknowledgment. If the bidding is for less than the whole, it shall be for a fractional part of the estate, and the bidder who will pay the sum due for the least fractional part shall be the purchaser. If more than 1 right, lot or parcel of land assessed to the same person is so advertised and sold, said charge of $3, the 25¢ for each copy lodged with the town clerk and the 25¢ for the return made to the town clerk shall be divided equally among the several rights, lots or parcels advertised and sold at any one time; and in addition, the sum paid to the printer shall be divided equally among the nonresident rights, lots or parcels so advertised and sold; and the collector shall receive in addition, 50¢ on each parcel of real estate so advertised and sold, when more than 1 parcel is advertised and sold. The collector may, if necessary to complete the sales, adjourn the auction from day to day. (R. S. c. 81, § 143. 1945, c. 94, § 1.)

Collector authorized to receive payment in cash only.—A collector is authorized to receive payment for land sold to collect the taxes assessed upon it in cash only, and he becomes accountable to the town for cash. If by any arrangement between him and the purchaser payment is made otherwise, that is a matter with which the town has no connection, and for which it is not responsible. Packard v. New Limerick, 34 Me. 266.

A collector cannot faithfully and legally perform his duties who is both seller and purchaser. Payson v. Hall, 30 Me. 319.

A collector of taxes cannot consistently with a faithful and legal discharge of his official duties become the agent of a purchaser, whose interest it is to acquire the whole estate or as much of it as possible, by payment of the taxes and costs, and whose agent, to be faithful, must have the same interests, while a faithful discharge of official duty would require him to sell as little as possible of the estate to obtain such payment. His official duties and those of his private agency would come into direct conflict. The performance of one duty is inconsistent with the faithful performance of the other. A sale made under such circumstances presented in this case cannot be considered as made by a collector of taxes in compliance with the requisitions of the law. Payson v. Hall, 30 Me. 319.

The collector is required to sell to the highest bidder. Payson v. Hall, 30 Me. 319.

The collector, by this section, is authorized to deed only to the highest bidder. And he only can acquire a title to the land by such a sale; for a sale not in conformity to the provisions of this section cannot give a title. Keene v. Houghton, 19 Me. 368.

Who is the person who would bid the highest price for the land by taking the least quantity. Keene v. Houghton, 19 Me. 368; Lovejoy v. Lunt, 48 Me. 377; French v. Patterson, 61 Me. 203; Brookings v. Woodin, 74 Me. 222.

The collector has authority to sell only so much land as is necessary to pay the tax, interest and charges. French v. Patterson, 61 Me. 203.

The tax collector in making the sale shall sell the smallest fractional part of the property taxed necessary for the purpose. Warren v. Norwood, 138 Me. 180, 24 A. (2d) 229.

Where the deed purports to convey the whole of the real estate on which the tax was assessed, and the collector has stated that it was necessary to sell a part only, such a sale is illegal and conveys no title to the purchaser. Allen v. Morse, 72 Me. 502.

And if entire lot is sold it must appear to have been necessary.—If in the deed it appears that the whole lot was sold, it

should also appear that it was necessary to sell the whole to pay the tax for which the land was sold. If the necessity of the sale of the whole is nowhere shown, the deed is void on its face. Brookings v. Woodin, 74 Me. 222.

It is not enough that the land was sold to the highest bidder. It must appear that it was necessary to sell the whole to pay the tax and charges, and that no person would pay the same for a less quantity of land. A deed which does not show this is void on its face. Briggs v. Johnson, 71 Me. 235.

In order to authorize the sale of the whole, it must distinctly appear of record that the sale of the whole was required to pay the tax, interest and charges. Whitmore v. Learned, 70 Me. 276.

It may be "necessary" to sell the whole tract, but this necessity should appear in the return. It is not sufficient to state simply that the whole tract was sold to the highest bidder. Lovejoy v. Lunt, 48 Me 377; French v. Patterson, 61 Me. 203.

And it must appear that collector tried to sell fractional part.—It should appear that the collector exposed for sale and sought offers for a fractional part of the premises sufficient to pay the tax and legal charges, and that he could obtain no bid therefor. It is not sufficient for him to say that it was necessary to sell the whole amount so assessed and advertised, no person offering to pay the tax and legal charges for a smaller fractional part of the real estate. It must appear that he tried to obtain an offer for the payment of the tax and legal charges for a fractional part of the premises without success. Ladd v. Dickey, 84 Me. 190, 24 A. 813; Milliken v. Houghton, 97 Me. 447, 54 A. 1075.

It is fatal error if there is an omission to show that there was an offer to sell such fractional part as might be necessary to pay the tax and charges. Wiggin v. Temple, 73 Me. 380.

Separate and distinct portion cannot be sold to pay taxes on whole.—To sell a separate and distinct portion of a farm to pay the taxes assessed upon the whole of it would be as illegal as to sell the whole when it is only necessary to sell a part. The only legal course is to sell an undivided fraction of the whole; as, for instance, one fourth, one third, one half, or three-tenths, four-tenths, seven-tenths, etc. That is what is meant by the statute which authorizes the collector to sell "so much of such real estate, or interest, as is necessary to pay the tax," etc. Allen v. Morse, 72 Me. 502.

Town not responsible for validity of title.—The risk respecting the title and proceedings rests upon the collector and purchaser. When the purchaser acquires a good title, he is compensated for his risk by being allowed at the rate of 8% for the use of his money (see § 163), if the lands are redeemed, and if they are not, by becoming the owner of the lands, usually, for a small part of their value. When the title does not prove to be good, he may be subjected to a loss of the amount paid for it. The town assumes no part of the risk, and does not become responsible for the goodness of the title conveyed to the purchaser, who must rely upon the covenants contained in the deed of the collector. The lands sold, not being the property of the town, it can derive no benefit from a failure of the title of the purchaser. If required to compensate the purchaser for his loss of title, it would lose the amount of the taxes assessed upon the lands, and the risk respecting the title would be shifted from the purchaser, who had been paid for assuming it, to the town, which might be subjected to numerous suits, and be unable to know the actual condition of its financial concerns. Packard v. New Limerick, 34 Me. 266.

Further claim on land extinguished by sale for sufficient amount to pay tax.—When a collector of taxes makes a sale of lands assessed in a town for a sufficient amount to pay the taxes and expenses, and receives that amount from the purchaser, all further claim upon the lands or the owner of them for those taxes is extinguished, whether the title conveyed to the purchaser is or is not a legal one. The town can only claim payment from its collector to whom the taxes have been committed for collection. Its connection with the sale and its proceedings ceases. It cannot be permitted to collect those taxes again upon the ground that its collector was not legally chosen or qualified. Packard v. New Limerick, 34 Me. 266.

Applied in Brown v. Veazie, 25 Me. 359; Barker v. Hesseltine, 27 Me. 354; Matthews v. Light, 32 Me. 305; Loomis v. Pingree, 43 Me. 299; Greene v. Lunt, 58 Me. 518.

Cited in Treat v. Smith, 68 Me. 394; Old Town v. Robbins, 134 Me. 285, 186 A. 663.

Sec. 159. Mortgagees of lands sold for taxes notified of sale by purchaser; if not notified, have right of redemption for 3 months after receiving actual notice. — When real estate is so sold for taxes, the collector

shall, within 30 days after the day of sale, lodge with the treasurer of his town a certificate under oath designating the quantity of land sold, the names of the owners of each parcel and the names of the purchasers; what part of the amount of each was tax and what was cost and charges; also a deed of each parcel sold running to the purchasers. The treasurer shall not at that time deliver the deeds to the grantees, but put them on file in his office to be delivered at the expiration of 2 years from the day of sale, and the treasurer shall after the expiration of 2 years deliver said deed to the grantee or his heirs, provided the owner, the mortgagee or any person in possession or other person legally taxable therefor does not within such time redeem the estate from such sale by payment or tender of the taxes, all the charges and interest on the whole at the rate of 8% a year from the date of sale to the time of redemption and costs as above provided, with 67¢ for the deed and certificate of acknowledgment and all sums paid for internal revenue stamps affixed to such deed.

If there is an undischarged mortgage or mortgages duly recorded on the estate so sold for taxes, the purchaser at such sale shall notify the holder of record of each of such mortgages within 60 days from the date of said sale, by sending a notice in writing by registered letter addressed to the record holder of such mortgage or mortgages at the residence of such holder as given in the registry of deeds in the county where said real estate is situated, stating that he has purchased the estate at a tax sale on such date and request the mortgagee to redeem the same. If such notice is not given and the real estate is sold for taxes and the deed delivered, the holder of record of any mortgage, which mortgage was on record in the registry of deeds at the time of said sale, may redeem the land so sold at any time within 3 months after receiving actual notice of such sale by the payment or tender of the amounts, interest and costs as above specified and the registry fee for recording and discharging the deed, if the deed has been recorded, and the deed shall be discharged by the grantee therein or the owner under the tax deed at the time of redemption, in manner provided for the discharge of mortgages of real estate.

If any owner of real estate which is assessed to any former owner who was not the owner on April 1st of the taxable year as assessed, or to owners unknown, does not have actual notice of the sale of his real estate for taxes within said 2 years, he may, at any time within 3 months after he has had actual notice, redeem the land so sold from such sale although the deed may have been recorded, by payment or tender of the amounts, interest and costs as above specified and the registry fee for recording and discharging the deed, in case the deed has been recorded, and the deed shall be discharged by the grantee therein, or the owner under the tax deed at the time of redemption, in manner provided for the discharge of mortgages on real estate.

If the real estate is redeemed before the deed is delivered, the treasurer shall give the owner, mortgagee or party to whom the land is assessed or other person legally taxable therefor a certificate thereof, cancel the deed, and pay to the grantee on demand the amount so received from him. If the amounts, interest and costs above specified are not paid to the treasurer within the time as above specified, he shall deliver to the grantee his deed upon the payment of the fees aforesaid for the deed and acknowledgment and 30¢ more for receiving and paying out the proceeds of the sale, but all tax deeds of land upon which there is an undischarged mortgage duly recorded shall carry no title except subject to such mortgage, unless the purchaser at such tax sale gives to the record holder of the mortgage notice as above provided. For the fidelity of the treasurer in discharging his duties herein required, the town is responsible and has a remedy on his bond in case of default. (R. S. c. 81, § 144.)

Cited in Old Town v. Robbins, 134 Me. 285, 186 A. 663.

Sec. 160. Stamps affixed to deed part of costs.—All sums paid by any collector of taxes or treasurer for internal revenue stamps to be affixed to any

deed of real estate or interest therein, sold for non-payment of a tax, shall be deemed a part of the costs and charges for making such sale. (R. S. c. 81, § 145.)

Sec. 161. All taxes paid by purchaser at sale refunded on redemption.—The person interested in the estate, by the purchase at the sale, may pay any tax assessed thereon before or after that so advertised and for which the estate remains liable, and on filing with the treasurer the receipt of the officer to whom it was paid, the amount so paid shall be added to that for which the estate was liable and shall be paid by the owner redeeming the estate, with interest at the same rate as on the other sums. (R. S. c. 81, § 146.)

Sec. 162. Collector to make return of sale to town clerk.—The collector making any sale of real estate for nonpayment of taxes shall within 30 days after such sale make a return, with a particular statement of his doings in making such sale, to the clerk of his town who shall receive and file it; and said return shall be evidence of the facts therein set forth in all cases where such collector is not personally interested. The collector's return to the town clerk shall be in substance as follows:

Pursuant to law, I caused the taxes assessed on the real estate of nonresident owners described herein, situated in the town of for the year , to be advertised according to law by advertising in the three weeks successively, the first publication being on the day of , and at least six weeks before the day of sale; and caused the taxes assessed on the real estate of resident owners described herein, situated in the town of for the year , to be advertised according to law by posting notice as required by law, at the following places, six weeks before the day of sale, being public and conspicuous places in said town. I also, at least ten days before the day of sale, gave to each resident owner of said lands, or the occupant thereof if any, in hand, or forwarded to him by registered mail with receipt demanded, or left at his last and usual place of abode, and sent by mail to the last and usual address of each nonresident owner of said lands, whose address was known to me, written notice of the time and place of said sale, in the manner provided by law; and afterwards on the first Monday of February, 19 , at nine o'clock, A. M., being the time and place of sale, I proceeded to sell, according to the tenor of the advertisement, the estates upon which the taxes so assessed remained unpaid; and in the schedules following is set forth each parcel of the estate so offered for sale, the amount of taxes and the name of the purchaser; and I have made and executed deeds of the several parcels to the several persons entitled thereto, and placed them on file in the town treasurer's office, to be disposed of as the law requires.

SCHEDULE NO. 1.

NONRESIDENT OWNERS

Name of owner.	Description of property.	Amount of tax, interest and charges.	Quantity sold.	Name of purchaser.

SCHEDULE NO. 2.

RESIDENT OWNERS

Name of owner.	Description of property.	Amount of tax, interest and charges.	Quantity sold.	Name of purchaser.

In witness of all of which I have hereunto subscribed my name, this day of , 19 .

C. D. .....
Collector of taxes of the town of .

(R. S. c. 81, § 147. 1945, c. 94, § 2.)

Purpose of return.—One of the principal objects of returns of tax sales is that persons who are interested in the realty may be apprised of their situation. The return is the legal source from which the owner must ascertain what portion of his land, if any, has been sold for taxes, and .... to learn what he is required to redeem. Burgess v. Robinson, 95 Me. 120, 49 A. 606; Old Town v. Robbins, 134 Me. 285, 186 A. 663.

A purpose of returns of tax sales is to facilitate redemption. Old Town v. Robbins, 134 Me. 285, 186 A. 663.

The commands of this section are positive and direct; there is no limitation or modification attached to them. Old Town v. Robbins, 134 Me. 285, 186 A. 663.

And proof of failure to make return overcomes prima facie evidence of deed.—See note to § 170.

Return must comply with statutory requirements.—The making of the return is important to the landowner if his right to redeem is to depend upon or be ascertained by it, and then the failure to make it would be fatal. If made, it should be filed or recorded in proper time, and should conform in its recitals and certifications to the statutory requirements. Old Town v. Robbins, 134 Me. 285, 186 A. 663.

And curative provision of § 155 not applicable to collector's duty under this section.—There is no provision in this section to relieve the collector from the duty of making the return to the clerk in accordance with the strict requirements of this section. And the curative provision of § 155 obviously has no reference to the formal return of his doings which the collector is required by this section to make to the town clerk within thirty days after the sale. Burgess v. Robinson, 95 Me. 120, 49 A. 606.

Return must be dated and signed by collector.—The section recites the form which the collector, in making his return, must, in substance, follow. This form is indicative that, to be complete, the return must be dated and signed by the tax collector. Old Town v. Robbins, 134 Me. 285, 186 A. 663.

And failure to sign and date not cured by amendment.—Amendment cannot alter the fact that no return of the sales, under signature of the collector and dated, was ever made and filed. That which is made and filed without the signature and date is simply a sheet of paper on which are certain words and figures. It is not entitled to record. Old Town v. Robbins, 134 Me. 285, 186 A. 663.

If, in forfeiture proceedings, a return of the sale of real estate for an ordinary assessment of taxes is amendable, the return must first have existence. Without the signature of the collector, there is no return. Old Town v. Robbins, 134 Me. 285, 186 A. 663.

Omission of description is fatal to validity of sale.—An omission to describe the land in the return must be deemed fatal to the validity of the sale and of the title which the collector sought to pass by his deed. Burgess v. Robinson, 95 Me. 120, 49 A. 606.

And mere designation of street is insufficient.—A mere designation of the street or road upon which the property is situated is manifestly insufficient to render its identification certain and plain, and it utterly fails to accomplish the purpose for which such a return to the town clerk is required. Burgess v. Robinson, 95 Me. 120, 49 A. 606.

Description in return held insufficient.—See Ladd v. Dickey, 84 Me. 190, 24 A. 813.

Former provision of section.—For a consideration of this section when the record and return were not required on the sale of improved lands of proprietors residing within the state, see Wescott v. McDonald, 22 Me. 402.

Applied in Shimmin v. Inman, 26 Me. 228; Andrews v. Senter, 32 Me. 394.

Cited in Lovejoy v. Lunt, 48 Me. 377.

Sec. 163. Proprietors may redeem within 2 years; money received by treasurer, as property of purchaser.—Any person to whom the right by law belongs may, at any time within 2 years from the day of sale, redeem any real estate or interest of proprietors sold for taxes on paying into the town treasury for the purchaser the full amount so certified to be due, both taxes and costs, including the sum allowed for the deeds and stamps, with interest on the whole at the rate of 8% a year from the date of the sale, which shall be received and held by said treasurer as the property of the purchaser aforesaid; and the treasurer shall pay it to said purchaser, his heirs or assigns on demand; and if not paid when demanded, the purchaser may recover it in any court of competent jurisdiction, with costs and interest at the rate of 8%, after such demand. The sureties of the treasurer shall pay the same on failure of said treasurer. In de-

fault of payment by either, the town or plantation shall pay the same with costs and interest as aforesaid. (R. S. c. 81, § 148.)

The privilege of redemption is conferred by and does not exist independently of statute. Van Woudenberg v. Valentine, 136 Me. 209, 7 A. (2d) 623.

The right of redemption is a substantial one. Old Town v. Robbins, 134 Me. 285, 186 A. 663.

And the purchaser at a tax sale has no title until the expiration of the time for redemption. The deed is to be executed but not delivered immediately; it is to be put in the treasurer's office, and there remain two years, subject meanwhile, on redemption from the sale, to cancellation. Old Town v. Robbins, 134 Me. 285, 186 A. 663.

Tax sales are subject to defeasance by redemption of the property under this section within two years. Van Woudenberg v. Valentine, 136 Me. 209, 7 A. (2d) 623.

Right of redemption need not be exercised unless sale in accordance with law.— Redemption cuts off the purchaser's rights, and makes the original title absolute. This right of redemption need not be exercised unless it can be shown that the steps leading up to the sale have been taken in strict accordance with law. The doctrine of caveat emptor applies to such sales in its fullest force. Old Town v. Robbins, 134 Me. 285, 186 A. 663.

Cited in Roberts v. Moulton, 106 Me. 174, 76 A. 283.

Sec. 164. Deed delivered to purchaser if not redeemed.—If no person having legal authority to do so redeems the same within the time aforesaid by paying the full amount required by the provisions of sections 66 to 170, inclusive, said treasurer shall deliver to the purchaser the deeds so lodged with him by the collector; and if he willfully refuses to deliver such deed to said purchaser, on demand, after said 2 years and forfeiture of the land as aforesaid, he forfeits to said purchaser the full value of the property so to be conveyed, to be recovered in an action of debt, with costs and interest as in other cases; the sureties of said treasurer shall make good the payment here required in default of payment by the principal; and on the failure of both, the town is liable. (R. S. c. 81, § 149.)

Sec. 165. When nonresident may commence suit.—Any nonresident owner of real estate sold under the provisions of section 158, having paid the taxes, costs, charges and interest as aforesaid may, at any time within 1 year after making such payment, commence a suit against the town to recover the amount paid, and if on trial it appears that the money raised was for an unlawful purpose, he shall have judgment for the amount so paid. If not commenced within the year, the claim shall be forever barred. The suit may be in the superior court and the plaintiff recovering judgment therein shall have full costs, although the amount of damages is less than $20. (R. S. c. 81, § 150.)

Purpose of section.—The manifest intent of this section is to allow a party, who is taxed as a nonresident, to test the legality of the tax by paying it, and then suing the town to recover it back. Rogers v. Greenbush, 58 Me. 390.

This section, allowing an action to recover back such payment, was inserted with the manifest design of allowing a party who disputed the legality of the tax or of the proceedings to test those questions by an action to recover the amount paid, without risking the loss of his title to the real estate. Rogers v. Greenbush, 58 Me. 390.

Cited in Boothbay v. Race, 68 Me. 351.

Sec. 166. Treasurer's receipt evidence of redemption.—The treasurer's receipt or certificate of payment of a sufficient sum to redeem any lands taxed as aforesaid shall be legal evidence of such payment and redemption. (R. S. c. 81, § 151.)

Additional Provisions.

Sec. 167. Estate bid off for town.—The municipal officers may employ one of their own number or some other person to attend the sale for taxes of any real estate in which their town is interested, and bid therefor a sum sufficient to

pay the amount due and charges in behalf of the town, and the deed shall be made to it. (R. S. c. 81, § 152.)

Applied in Morrill v. Lovett, 95 Me. 165, 49 A. 666.

Sec. 168. Purchaser to pay for land within 20 days after sale, or sale void.—If the purchaser of land sold for taxes under the provisions of section 158 fails to pay the collector within 20 days after the sale the amount bid by him, the sale be void and the city or town in which such sale was made shall be deemed to be the purchaser of the land so sold, the same as if purchased by someone in behalf of the city or town under the provisions of the preceding section. If a city or town becomes a purchaser under the provisions of this section, the deed to it shall set forth the fact that a sale was duly made, the amount bid for the land included in said deed and that the purchaser failed to pay the amount bid within 20 days after the sale; and the said deed shall confer upon said city or town the same rights and duties as if it had been the purchaser under the provisions of section 167. (R. S. c. 81, § 153.)

Sec. 169. Owner may redeem; amount received paid to person entitled.—In all cases where real estate has been sold for state, county or town taxes, the owner may within the time allowed by law pay the sums necessary to redeem the same into the treasury of the state, county or town to which the tax is to be paid, and such payment seasonably made shall redeem the estate. The treasurer shall pay the amount so received by him to the person entitled thereto according to the records and documents in his office. The provisions of this section shall not apply to taxes assessed on real estate in the unorganized territory. (R. S. c. 81, § 154. 1945, c. 41, § 37.)

Sec. 170. In actions to test validity of sale of real estate for taxes, collector's or treasurer's deed, prima facie evidence.—In the trial of any action at law or in equity involving the validity of any sale of real estate for nonpayment of taxes, it shall be sufficient for the party claiming under it, in the 1st instance, to produce in evidence the collector's or treasurer's deed, duly executed and recorded, which shall be prima facie evidence of his title, and if the other party claims and offers evidence to show that such sale was invalid and ineffectual to convey the title, the party claiming under it shall have judgment in his favor so far as relates to said tax title, if he then produces the assessment, signed by the assessors, and their warrant to the collector, and proves that such collector or treasurer complied with the requirements of law in selling such real estate; and in all such actions involving the validity of sales made after the 26th day of April, 1895, the collector's return to the town clerk shall be prima facie evidence of all facts therein set forth. (R. S. c. 81, § 155. 1945, c. 94, § 3.)

History of section.—See Wiggin v. Temple, 73 Me. 380.

A prima facie case for a tax title, claimed under a tax deed, can be made out by production of the deed itself, and proof of the assessment, the commitment, and compliance with the statutory requirements of advertising and sale. Vigue v. Chapman, 138 Me. 206, 24 A. (2d) 241.

Competent for legislature to enact this section.—It was competent for the legislature, by a general law, to prescribe that, so far as the transfer of the land was in question, proof of the due execution of the collector's deed, and of certain other of the previous steps required by law, should to that extent conclusively justify the inference that every thing had been done necessary to give the purchaser a title. It is founded upon the confidence reposed by law in officers who are charged with the performance of public duties. Bussey v. Leavitt, 12 Me. 378.

Section applicable to sales prior and subsequent to its enactment.—This section may furnish a rule of evidence for subsequent proceedings in court, to establish titles to real estate dependent upon sales for nonpayment of taxes; and it does not impair the obligation of contracts or disturb vested rights, when applied to cases involving the validity of prior sales. The

legislature had the power, and the right to prescribe the evidence to be received, and the effect of the evidence, in proceedings in the courts. They may prescribe and change remedies, and such regulations would not necessarily affect the obligation of contracts. It has been well said that there is no such thing as a vested right to a particular remedy. There can be no such thing as a vested right in one to compel another to pursue a particular remedy, or to take a given line to defense, in any case. Freeman v. Thayer, 33 Me. 76. See note to Me. Const., Art. 1, § 11.

There is no authority in this section or in the policy upon which it is founded to exclude from its operation lands sold subsequent to its enactment upon taxes assessed previous to its enactment. Bussey v. Leavitt, 12 Me. 378.

And it applies to any trial of description named.—The provisions of this section are general and intended, by express terms, to apply to any trial, of the description named, in law or equity, that might transpire. Freeman v. Thayer, 33 Me. 76.

But not to action for breach of covenant against incumbrances.—The statutes creating a presumption in favor of the validity of tax sales upon the production of the collector's deed do not apply to actions for breach of a covenant against incumbrances. Such an action is not to recover the land. It does not assert or deny a tax title. It does not involve the validity of a tax sale. Maddocks v. Stevens, 89 Me. 336, 36 A. 398.

And recitals in deed not evidence of legal assessment so as to constitute breach of covenant.—A collector of taxes is not the authorized tribunal to determine the validity of an assessment, or whether a tax has been so assessed as to constitute a lien upon the land. His recitals in his deed as collector are not evidence of the existence of a tax lawfully assessed so as to constitute a breach of covenant against incumbrances. Maddocks v. Stevens, 89 Me. 336, 36 A. 398.

Section not applicable to litigation over titles dependent on lien certificates.—Legislative action adopted to regulate procedure in litigation relative to tax deeds does not apply with equal force to litigation over tax titles which depend on tax lien certificates. The recitals in a tax deed unless made so by statute are not evidence of the facts recited. Vigue v. Chapman, 138 Me. 206, 24 A. (2d) 241.

Party claiming title must produce deed duly executed and recorded. — It is not enough for a party to say he has a tax title to enable him to take advantage of this section. He must produce a deed duly executed and recorded before he can invoke the adverse application of this stringent statute against his opponent. Bunn v. Snell, 74 Me. 22.

This section requires a collector's or treasurer's deed duly executed and recorded. A party relying on the section must bring himself within its provisions. One having a deed not "duly executed," cannot claim its favorable presumptions. One having a deed not duly "recorded," is not one entitled to the same statutory rights as one having a deed duly recorded. The record of a deed and its execution are equally and alike required, and if not existent, the party thus deficient is without the section. Dunn v. Snell, 74 Me. 22.

And section not applicable to deed illegal on its face.—A deed which shows upon its face that the sale was illegal is not sufficient for the purposes mentioned in this section. It could never have been the intention of the legislature to make a deed which, upon its very face, shows the sale to have been illegal evidence of title for any purpose. Such a deed does not prove, it disproves, the holder's title, and shows that he is not entitled to prevail. It cannot be necessary for the adverse party to produce evidence to defeat the holder's title, when, by his own showing, he has no title. Allen v. Morse, 72 Me. 502.

And the party is required to produce the collector's deed, not the deed of a person assuming without right to act in that capacity. The taxpayer is entitled to have his interests protected in the sale of his property by the obligations imposed by the official oath. Payson v. Hall, 30 Me. 319.

Party claiming title must prove collector complied with law.—In order to sustain the tax title, it is necessary for the party claiming to prove that the collector "complied with the requirements of law in selling such real estate." Lovejoy v. Lunt, 48 Me. 377.

To make out a title in the purchaser, something more is required than the production of the collector's deed, though in proper form. In such cases great strictness is necessary; and it must appear that the provisions of the law preparatory to, and authorizing such sales have been previously complied with. Matthews v. Light, 32 Me. 305.

Proof that no return made overcomes prima facie case. — Where the fact is proved that no return of the sales as re-

quired by § 162 was made, the prima facie showing of the tax deed, standing alone, is overcome. Old Town v. Robbins, 134 Me. 285, 186 A. 663.

And section does not cure clerk's failure to record collector's copy of notice and certificate.—The legislature by this section did not assume to treat a failure of the town clerk to record the collector's copy of the notice and certificate as in nowise affecting the integrity of a sale. That the section was not purposed to have such office is patent on reading its concluding words: ".... and in all such actions involving the validity of sales made after the 26th day of April, 1895, the collector's return to the town clerk shall be prima facie evidence of all facts therein set forth." Van Woudenberg v. Valentine, 136 Me. 209, 7 A. (2d) 623. See § 155 and note.

Former provision of section. — For a consideration of a former provision of this section that "no person shall be entitled to commence, maintain, or defend any action or suit at law or equity, on any ground involving the validity of any such sale, until the amount of all taxes, charges and interest, as aforesaid, shall have been paid or tendered by the party contesting the validity of the sale, or by some person under whom he claims," see Stetson v. Day, 51 Me. 434; Williamsburg v. Lord, 51 Me. 599; Orono v. Veazie, 57 Me. 517; Rogers v. Greenbush, 58 Me. 390; Rogers v. Greenbush, 58 Me. 395; Dunn v. Snell, 74 Me. 22; Crowell v. Utley, 74 Me. 49; Bennett v. Davis, 90 Me. 102, 37 A. 864.

Applied in Shimmin v. Inman, 26 Me. 228; Smith v. Bodfish, 27 Me. 289; Coombs v. Warren, 34 Me. 89; French v. Patterson, 61 Me. 203; Rackliff v. Look, 69 Me. 516; Briggs v. Johnson, 71 Me. 235.

Cited in Boothbay v. Race, 68 Me. 351; Treat v. Smith, 68 Me. 394; Whitmore v. Learned, 70 Me. 276; Belfast Sav. Bank v. Kennebec Land & Lumber Co., 73 Me. 404; Bowler v. Brown, 84 Me. 376, 24 A. 879; United Copper Min. & Smelting Co. v. Franks, 85 Me. 321, 27 A. 185.

Forest Lands.

Sec. 171. Policy. — It is declared to be the public policy of the state, by which all officials of the state and of its municipal subdivisions are to be guided in the performance of their official duties, to encourage by the maintenance of adequate incentive the operation of all forest lands on a sustained yield basis by their owners, and to establish and maintain uniformity in methods of assessment for purposes of taxation according to the productivity of the land, giving due weight in the determination of assessed value to location and public facilities as factors contributing to advantage in operation. (1953, c. 111.)

Sec. 172. Assessment.—An assessment of forest land for purposes of taxation shall be held to be in excess of just value by any court of competent jurisdiction, upon proof by the owner that the tax burden imposed by the assessment creates an incentive to abandon the land, or to strip the land or otherwise to operate contrary to the public policy declared in section 171. In proof of his contention, the owner shall show that by reason of the burden of the tax he is unable by efficient operation of the forest land on a sustained yield basis to obtain an adequate annual net return commensurate with the risk involved.

For the purposes of this section forest land shall be held to include any single tract of land exceeding 25 acres in area under 1 ownership which is devoted to the growing of trees for the purpose of cutting for commercial use. (1953, c. 111.)