

MAINE STATE LEGISLATURE

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REPORT
OF
THE COMMISSIONER
ON THE
REVISION AND CONSOLIDATION
OF THE
PUBLIC LAWS
OF THE
STATE OF MAINE,
UNDER
Resolve of March 21, 1901.

AUGUSTA
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To the Honorable Legislature:

In obedience to the resolve, approved March 21, 1901, your commissioner respectfully submits this report and the accompanying draft of the fifth revision of the Public Laws of the State.

During the nine sessions of the legislature held since the last revision, thirteen hundred and eighty Public Laws have been enacted; of these, seven relate to the militia, and thirty-two being of a special or temporary nature, or of limited application, have not been incorporated in the draft, and will be found to be excepted in the repealing act. The balance, numbering thirteen hundred and forty-one, have been carefully examined by your commissioner, and such as appear to be in force have been incorporated in the appropriate sections of the new draft. By a system of cards the effect of subsequent legislation upon each enactment has been noted, and the cards, when arranged, have served the purpose of the reference tables appended to the last revision. The commissioner has also examined the Private and Special Laws, and Resolves passed since the last revision, and such as appear to be of a public or general nature have been incorporated in the draft.

The general principles upon which the work has been conducted were defined by the resolve. The commissioner was directed to preserve "unchanged the order and arrangement of the present revised code." This clearly expressed declaration of the legislative will has been recognized and adhered to, except in a few instances, where additional legislation has rendered a transfer from one chapter to another advisable. These instances have been noted in the appropriate places in the text and may be readily detected by the marginal references. In no case has such change been made unless the advantage derived therefrom was clear. In other cases where the change might be thought too radical, the views of the commissioner have been expressed in the suggestions appended hereto, for the consideration of the legislature. The repeal of chapter one hundred twelve reduced the number of chapters to one hundred and forty-three; the new legislation has been incorporated under the appropriate subjects of the remaining chapters. His study of the statute law of the State has, however, convinced the commissioner that a division into additional chapters is advisable and will facilitate the use of the revision. He has, therefore, suggested such changes as seem to him desirable, making specific recommendations in order to lighten the labors of the committee to which this report may be referred. It will be found that these recommendations, if adopted, will not change the arrangement of the statutes, adopted in the revision of 1857, with which the legal profession and the public have become familiar; they are suggested in order to avoid the inconvenience arising from chapters of excessive length, and to restore that logical arrangement which the growth of legislation has impaired.

The revision of 1883 contained a chapter devoted to fees and costs. It was found that provisions for the compensation by fees of certain public officers, notably, registers of deeds and town clerks, were scattered through other chapters of the statutes; an effort has been made to collect these provisions into the appropriate sections of chapter one hundred fifteen. The commissioner has thought it advisable to also include in that chapter the fees of the treasurer of state, the attorney general,

the bank examiner and the insurance commissioner. No good reason is perceived why fees payable to the secretary of state should alone be included. If this arrangement is not satisfactory, the former arrangement may readily be restored. These changes have been indicated by printing the sentences in question in italics and by using a marginal reference to section twenty of chapter one hundred fifteen.

In this connection the commissioner submits for the consideration of the legislature, that it may be well to include in chapter one hundred and thirteen, the various duties payable to the State by corporations at the time of their organization. These duties are imposed by sections four, five and twenty-eight of chapter forty-six and by section three of chapter forty-eight. It is thought that if they are incorporated in the same chapter with other duties payable to the State, such arrangement will be an improvement. The commissioner is aware, however, that the advantages of having all provisions relating to the organization of corporations in the same chapter may outweigh the satisfaction derived from the more logical arrangement.

In accordance with the resolve, the head notes of chapters have been entirely omitted. These notes were of unnecessary length and of little value for purposes of consultation. The commissioner is inclined to think that a condensed form of headings for the longer chapters will be useful and will not unnecessarily increase the size of the printed volume. Such a form of heading adapted to chapter five is as follows:

- Sections 1-11. The Land Agent and his duties.
- 12-27. Lands reserved for public uses.
- 28-40. The sale of lands for settlement.
- 41-45. Permits to cut and haul timber.
- 46-51. Sale of timber lands.
- 52-69. The Forest Commissioner.

The commissioner was directed to suggest, "with proper distinguishing marks, such contradictions, omissions, repetitions and imperfections as appear in the present Revised Statutes and in subsequent laws, and the mode in which the same may be best reconciled, supplied, amended and corrected." Wherever it has been considered feasible to make such suggestions in the text, the words which in the opinion of the commissioner should be omitted, have been printed in italics, and those which should be supplied are enclosed in brackets. In other cases the suggestions are embodied in notes incorporated in appropriate places in the draft, or in the suggestions appended hereto. In all cases the commissioner has suggested the specific language of the change which he considers desirable. He has studiously endeavored to avoid all appearance of legislation.

No specific provision was made in relation to obsolete sections, except such as have been superseded by later enactments. A close examination of the statutes will disclose many sections which have become entirely obsolete by reason of industrial development, the growth of the law and changes in the business relations of the people of the State, and which have been suffered to remain after the reason for their enactment has ceased to exist. A revision will be imperfect which does not eliminate from the statutes all such useless provisions. The commissioner has, therefore, considered it to be a part of his duty to call the attention of the legislature to such sections as, upon investigation, seem to him useless and to recommend that they be eliminated in this revision. These recommendations have in most cases been put in the form of notes; in some cases where his investigations were not completed before the manuscript went to the printer, they will be found in the appended suggestions.

Attention is called to the unnecessary repetition in the statutes, of the constitutional requirement that persons elected, appointed or commissioned to any office under this State shall be sworn. Const. of Me., Art. IX, § 1. In this respect a lack of uniformity exists as will be seen by comparing

c. 2, §§ 42 and 54 relating to the secretary of state and the treasurer of state and c. 5, § 1 relating to the land agent. The commissioner recommends that all such statutory provisions be omitted.

Upon the abolishment of capital punishment in 1887, the legislature substituted for the word "capital" the phrase "formerly capital and now punishable by imprisonment at hard labor for life." P. L. 1887, c. 133. This phrase is unsatisfactory and, in the opinion of the commissioner, not suitable for use in the revision. It places in the same category with murder in the first degree, all crimes which have been punishable with death at any time since 1820, (see Laws 1821, chapters III, IV, VI) and criminal procedure is modified accordingly. The following passages are affected by the legislation referred to:

- c. 77 § 60. Duties of the attorney general.
- c. 82 § 87. Impaneling a jury.
- c. 102 § 11. Writs of error.
- c. 121 § 1. Penalty for perjury.
- c. 121 § 14. Escape of prisoner.
- c. 133 § 9. Bail.
- § 12. Impaneling a jury.
- § 13. Court held by one justice.
- § 14. Assignment of counsel.
- § 21. Juror's oath.
- § 24. Postponement of trial.
- c. 137 § 1. Application for pardon.

The commissioner thinks that a person on trial for any offense absolutely punishable by imprisonment for life, should have all the advantages of procedure given to persons indicted for murder. He has therefore recommended the use of the phrase "offenses punishable by imprisonment for life," meaning treason, murder, arson as defined in the first sentence of section one, chapter one hundred eighteen, and in section two of that chapter, and the offense of voluntarily suffering the escape of a prisoner convicted of such crime, c. 121, § 14. To make this construction certain, the commissioner also recommends the amendment of those sections, permitting a sentence for life or for any term of years; c. 117, §§ 5, 15, 16, 18; c. 118, §§ 1, 3, 7; c. 121, § 1; c. 125, § 14; c. 134, § 2; c. 139, § 38. This amendment will reduce the number of cases in which appeals may be taken to the law court under section twenty-seven, chapter one hundred thirty-three; but it is believed that the effectiveness of the criminal law will not thereby be impaired and that the power to sentence to imprisonment for any term of years will afford ample opportunity for the exercise of the discretion of the court according to the demands of justice in each case.

The marginal notes have been examined and whenever necessary, have been rewritten. The citations found in the Maine Reports beginning with volume seventy-five and ending with volume ninety-five have been added. In the last revision the practice of citing the page containing the actual reference was adopted; no provision was made for a change in this respect and accordingly the same practice has been followed. Where the reference is found only in the head note of the case, the page on which the case begins is given. The commissioner has added such citations, collected in his own professional practice, as seemed to him of general usefulness. The citations to the constitution of the United States and to the constitution and statutes of the State found in the reports of decisions of the Supreme Court of the United States published since the last revision have also been added.

Particular attention has been paid to increasing the number of marginal cross references and to formulating the notes found at the ends of the chapters or under the appropriate sub-titles. It is hoped that by means of these cross references and notes all provisions on any subject may readily be found.

Uniformity of spelling seemed to the commissioner very desirable. He has therefore followed the authority of the Standard Dictionary.

No part of the work has received more careful attention than the index. After considerable study of the subject the commissioner was convinced that a radical change in the system of indexing heretofore used was desirable. He has borne constantly in mind the fact that the statutes are to be consulted by the public as well as by members of the legal profession, and that an index to be useful should contain references under all headings which would naturally suggest themselves to the mind of any person using it. A system of short lines, repeated under different headings, has been adopted. The longer titles have been broken up into sub-titles and these sub-titles repeated as leading titles. Cross referencing has been avoided as far as possible and in place thereof it has been the endeavor of the commissioner to repeat the references under all appropriate headings. This system will admit of two columns to the page, thus avoiding any substantial increase in the number of pages, notwithstanding the increase in the number of titles. References will be found under both abstract and concrete headings. In use the leading catch words are to be read in connection with each line, as in the case of index-digests with which the legal profession is familiar. The alphabetical arrangement has been adhered to, and it is hoped that every reference will be found under all headings to which any person using the statutes will be likely to refer. The last legislature saw fit to require the preparation of an index by the commissioner; this was perhaps wise as the prompt publication of an index to the revision ought thus to be insured; but it must be remembered that any index and particularly one constructed upon the plan adopted, should be thoroughly verified after the statutes have been put in final form. This may readily be done by means of the cards upon which it has been prepared.

The commissioner has had the assistance of the late Nathan W. Harris, Esq., of the Androscoggin Bar, who has prepared the citations from the Maine Reports, and of Reuel W. Smith, Esq., a graduate of the Harvard Law School and a member of the Androscoggin Bar, who has prepared the citations from the United States Supreme Court Reports and has indexed chapters thirty and forty and assisted upon the chapters relating to probate and criminal law and other chapters. He wishes to acknowledge the value of the assistance so received. He also gratefully acknowledges the uniform kindness and courtesy of the state officials and of the members of the bar in answering his inquiries and in offering suggestions, the fruit of actual experience in administering and construing the law.

The close analysis of each section necessitated by making the index has disclosed some errors and the attention of the commissioner has been kindly called to others; these with additions to the notes and marginal references, suggested by the commissioner, have been tabulated and affixed to this report.

AUBURN, December 15, 1902.

Respectfully submitted,

JOHN A. MORRILL.

APPENDIX.

The following suggestions are respectfully submitted for the consideration of the legislature. When not otherwise stated, they express the views of the commissioner, as the result of his study of the public laws of the State, incident to the work of revision, and are submitted in further compliance with the direction of the legislature that he suggest "such contradictions, omissions, repetitions and imperfections as appear in the present Revised Statutes and in subsequent laws, and the mode in which the same may be best reconciled, supplied, amended and corrected."

Chap 2. This chapter should be divided, making the first eighty sections, one chapter, and arranging a new chapter under the title, "The State Library. The Publication and Distribution of Public Documents." The prominence which the work of the librarian of the state library has attained, warrants this recognition of his department.

TABLES OF CHANGES IN THE LAWS.

Every practicing lawyer realizes the labor involved in accurately noting in his copy of the Revised Statutes, the changes made in the laws at each session of the legislature. If tables, cumulative in principle, can be arranged, and printed in the official edition of the laws of each session, this labor will be unnecessary. Such tables have been printed in the official editions of the Massachusetts session laws, for some years past. The commissioner submits the following draft of a section authorizing the preparation of such tables:

"The secretary of state shall, after final adjournment of each regular session of the legislature, cause tables to be prepared showing what general statutes have been affected by subsequent legislation, in such manner as to furnish ready reference to all changes in such statutes. The tables so prepared shall be printed in the official editions of the laws hereafter published by the State. The compensation for the services herein provided for shall be fixed by the governor and council."

Sec. 73. Strict compliance with this section is thought to be impossible, and from information obtained, the commission regards it as obsolete.

*Sec. 74. Attention is called to this section and to section one hundred fifty-seven of chapter six, relating to the same subject. The procedure required by these sections is thought to be unnecessarily complicated. No objection is perceived to an amendment authorizing the treasurer of state to transmit the warrants direct to the assessors of each town, as in case of warrants issued by county commissioners for county taxes. See c. 6, § 160.

Chap. 3, Sec. 12. The attention of the commissioner has been frequently called to the practice of electing the same person to the offices of town treasurer and collector. In many cases he has been called upon to advise the municipal officers of towns, who, upon assuming office, have found the finances of their town in bad condition by reason of the inefficiency of the collector, and upon inquiry, he has learned that the offices of treasurer and collector have been held by the same person, and that the embarrassment of the town was largely due to that fact; it is clear that summary process against a delinquent collector cannot be enforced when such collector is also treasurer. It is thought that these offices are clearly incompatible. The commissioner therefore recommends that § 12 be amended by adding thereto: "nor shall a collector be eligible to or hold

the office of treasurer until he has completed his duties under his warrant and had a final settlement with the town." It is believed that such an amendment will result in the more efficient performance of their duties by collectors of taxes and afford towns more effectual remedies against delinquent collectors. Such an amendment will necessarily repeal section 261 of chapter six.

Sec. 15. Attention is called to the inconsistency between this section and sections 206, 211 and 233, of chapter six.

By P. L. 1897, c. 280, incorporated in section fourteen, all officers not required to be chosen by ballot are, if not elected by the town, to be appointed by the selectmen. The collector of taxes is such an officer. It would seem therefore that in case of a vacancy in his office, it should be filled by appointment by the selectmen. Section 15 may be amended, so that the last seven lines will read, "If after the choice or appointment of any officer not required to be chosen by ballot, there is a vacancy in any such office, the municipal officers may fill such vacancy," etc.; the provisions in the sections of c. 6, above referred to, providing for an appointment by the assessors, may then be omitted. The commissioner is indebted to C. B. Donworth, Esq., of Machias for suggesting this change as to section 206. Charles A. Bailey, Esq., of Bangor, has kindly called the attention of the commissioner to the incongruity existing between sections 211 and 233, in case of the death of a collector. It is hoped that the foregoing suggestion will obviate the difficulty of construing the last mentioned sections. If the power of appointment is restricted to the selectmen, it is thought that there will be much less chance of error by town officers and the administration of the law be simplified. Section 206 is also inconsistent with the last sentence of section 12 of chapter three.

Sec. 64. The usefulness of this section is not apparent; town officers will probably fail to observe its requirements.

Sec. 95. The commissioner calls attention to the language of this section as it appears in the revision of 1883.

By P. L. 1883, c. 239, § 1, the words "and determine to allow the same" were stricken out; but were restored in the revised statutes.

Chap. 4. This chapter may well be divided, and the first forty-nine sections arranged in a separate chapter under the title, "The Qualification and Registration of Voters."

Sec. 155. This section should be condensed so as to read: "Whoever votes in any caucus called by a committee of a party of which he is not a member, shall be punished by a fine of not less than five, nor more than fifty dollars."

Sec. 179 to 183. These sections are in most part simply declaratory of the provisions of section four of article two of the constitution and in the opinion of the commissioner may with propriety be omitted. In case of such omission section 178 should be amended in the last line by substituting in place of the words "at all elections of those officers," the words, "on the day designated by law for the election of those officers," and by adding to said section, "in the manner authorized by, and in conformity with section four of article two of the constitution as amended. The names of the voters shall be entered on the poll-lists by counties, and the returns of said elections, with the poll-lists, shall be delivered into the office of the secretary of state on or before the Thursday next before the first Wednesday of December in each year when a presidential election occurs."

The last sentence of section 184 is also unnecessary and that section may be consolidated with section 185.

Chap. 5, Sec. 9. The provision of this section as to the time for deposit of plans and field notes is thought to be inconsistent with section 6. The two sections may be harmonized by substituting "three months," for "sixty days."

Chap. 6. This chapter of two hundred and ninety-nine sections, should, in the opinion of the commissioner, be divided. He recommends that a chapter be arranged comprising sections 43 to 127, both inclusive, consisting of eighty-five sections, under the title "The Board of State Assessors and The Assessment of Excise Taxes;" that another chapter embracing sections 1 to 42, both inclusive, and sections 128 to 195, both inclusive, consisting of 110 sections, be arranged under the title "The Assessment of Taxes," and that a third chapter consisting of 104 sections, embracing sections 196 to 299, both inclusive, be arranged under the title "The Collection of Taxes."

Sec. 6. Hon. George Pottle of the board of state assessors suggests the advisability of incorporating in paragraph one of this section the principle decided in *Camden vs. Village Corporation*, 77 Me., 530. This may be done by adding the following clause: "and the property of any public municipal corporation of this State, appropriated to public uses."

Sec. 21. The commissioner suggests that it may be well to make provision that shares of stock in any corporation, in which a trust company may invest its capital, shall not be taxed to the company so investing. Such is the law as to insurance and other companies required by law to make such investments (c. 6, § 21) and such is thought to be the law as to trust companies, independent of statutory enactment.

See *Gardiner C. & W. Factory Co. vs. Gardiner*, 5 Me., 133.

Augusta Bank vs. Augusta, 36 Me., 255.

Augusta Savings Bank vs. Augusta, 56 Me., 176.

To thus make provision by statute, amend c. 6, § 21, by inserting after the word "public," in the third line, the words, "or when any trust company incorporated by the laws of this state, so invests its capital or any part thereof."

If the above amendment is made, section one hundred of chapter six, should be amended by inserting after the word "banks" in the first line, the words "and treasurers of trust and banking companies;" and the section as amended may well be transferred, to follow section twenty-three.

Sec. 28. Reference to the original act, 1843, c. 36, suggests a doubt whether upon a close construction of this section, shares in *all* manufacturing, mining and smelting corporations are exempt from taxation.

The original act seems to refer only to those corporations whose lands, buildings and other property are made personal by the acts of incorporation. No mention is made of corporations organized under general law and no provision had then been made for such method of organization. See P. L. 1862, c. 152.

Sec. 73. Hon. Oramandal Smith suggests that the word "seven," in the second line of this section should read "eight," thus including section sixty-five; otherwise the implication may be, that street railroad corporations and associations are not subject to the latter section.

The commissioner recommends the amendment.

Sec. 95. This section should be consolidated with section 90, and the rate and basis of assessment made the same. The commissioner is informed that this section was overlooked when the act of 1897 (c. 274) was passed.

Sec. 97, 109. Public policy would seem to require that investments in the bonds of the State of Maine should be treated as favorably as investments in bonds of the United States.

The commissioner therefore suggests that the value of bonds and other interest bearing obligations of the State of Maine be included in the deductions made under above sections.

Sec. 97. The commissioner does not perceive any substantial reason for discriminating in favor of New Hampshire mortgages. He is well aware that this provision operates in favor of institutions located near

the state line; but if the principle of discrimination in favor of domestic investments is sound, there can be no logical reason for including New Hampshire mortgages; it would be just as reasonable, to include all New Hampshire investments.

Sec. 111. The commissioner suggests that this section should be amended by inserting the word "religious" before the word "educational" in the ninth line.

Sec. 163. The commissioner thinks that the provisions of this section ought not to be applied to non-resident owners. The hardship of such application is apparent. He therefore suggests that the word "person" in the first line, should be changed to the word "resident," or the phrase "resident owner." In his opinion non-residents should not be barred of their right to make application to the assessors or to the county commissioners, for an abatement of their taxes, by failure to offer the list required by this section. *Winnisimmet Co. vs. Chelsea*, 6 Cush. 477, 482. *Hicks vs. Westport*, 130 Mass. 478, 480.

Reference is made to the provisions of section 170, relating to applications to the Supreme Judicial Court for the abatement of taxes. It is thought that the two methods of obtaining abatements should, in this respect, be in harmony.

Sec. 178. The compensation of selectmen and assessors, fixed at one dollar and fifty cents a day, is manifestly inadequate.

It should be at least two dollars a day in all towns; see c. 53, § 23; the commissioner suggests that it may be advisable to grade the compensation according to the number of inhabitants, dividing towns into perhaps three classes.

Sec. 262. Discount on taxes for prompt payment.

Although the substance of this section has been a part of the law of the State since 1821, the commissioner thinks that under present conditions the practice is radically wrong and that the section should be repealed.

In connection however with such repeal, he would substitute for §§ 196 and 197 a single section of the following tenor:

"Towns, at their annual meetings, may determine when the lists named in section one hundred seventy-three shall be committed. All taxes not paid within three (?) months after the date of the original commitment shall bear interest at the rate of six per cent a year from the date of such commitment, and all taxes not paid within one year after the date of the original commitment shall bear interest at the rate of one per cent a month from the date of such commitment. Such interest shall constitute a part of the tax and all remedies for the collection of taxes shall apply thereto. A copy of this section, with a notice of the date of commitment, shall be posted by the treasurer in two or more public places in his town within seven days after such commitment."

It is well known that the practice under this section is not uniform in the different towns and cities of the State. Some municipalities allow no discount whatever for prompt payment, while others allow varying rates as high as five per cent. It is manifest that the effect of such discounts is to increase the amount of tax paid by those who are unable to take advantage of the discount and that the tax levy is increased by the total amount of such discounts. If it were not for the fact that the practice has existed since the organization of the State, doubt might well be raised whether it is in harmony with the provisions of the State constitution that all taxes shall be apportioned and assessed equally.

That such discounts amount to no trifling figure will be apparent from the following examples: In the appropriation resolve of the city of Auburn for the year 1901 carrying \$158,196, \$6,000 was for discounts on taxes, and in the same city for the year 1902, in the appropriation resolve carrying \$159,046, an item of \$5,700 appears. In the appropriation resolve of the city of Lewiston for the year 1900, carrying \$288,488, an item of \$6,200 appears for discount on taxes. In the same city for

the year 1901, the appropriation resolve, carrying \$302,057, contains an item of \$6,500 for discount on taxes, and for the year 1902, in the same city, the appropriation resolve of \$271,957, carries an item for the same purpose, of the same amount.

The system of discounts for prompt payment of taxes has been aptly characterized as granting "a bonus to tax payers for the performance of a duty."

Chap. 8, Sec. 13. The commissioner is informed that this section is disregarded and that the copies therein referred to, have not been received at the office of the secretary of state for many years. The section seems to be a useless requirement.

Sec. 16. Upon inquiry the commissioner has been unable to learn the present application of section sixteen. It was originally enacted in the laws of 1821, c. 82, § 9, as a part of the law for the payment by the State of the charges for the support of convicts in jail, unable to support themselves; in the original section, specific reference is made to the preceding section, (1821, c. 82, § 8.) In the revision of 1841, section nine was transferred to c. 12, relating to the duties of county treasurers, becoming section twenty-five of that chapter, and section eight was retained in c. 152, relating to fines and costs in criminal cases, being section sixteen of that chapter.

In the revision of 1871, these sections became section seventeen of chapter eight, and section ten of chapter one hundred sixteen, respectively.

The latter section was repealed by P. L. 1872, c. 50, and the former seems to have been inadvertently retained in R. S. 1883, c. 8, section 17.

Under the present law for the payment by the respective counties "of all the costs and expenses attending the administration of criminal justice therein" (See R. S. 1883, c. 116, § 16, and c. 136, § 1,) section sixteen is obsolete and should be omitted.

Chap. 11. The clauses printed in Roman type and enclosed in brackets, found in sections twelve, thirteen, eighteen, thirty-two, thirty-seven, paragraph six, seventy-four and one hundred twenty-one are suggestions made to the commissioner by the state superintendent of public schools. The commissioner recommends the adoption of these amendments. The suggestion contained in the note to section forty-eight is from the same source and for the purpose of removing a doubt as to the construction of the first line of section forty-eight. Since the printing of the draft of the statutes the commissioner has been informed that a case involving the construction of this section is now before the Supreme Judicial Court. The commissioner also suggests that the words "state superintendent of public schools" should be substituted for the phrase "state educational department," in the eighth line of section seventy-four.

The commissioner doubts the wisdom of the provision of section sixty-nine in its present form and also the wisdom of the provisions found in section fifty-six of chapter twelve. If such funds are to be transferred under any circumstances, they should in his opinion be transferred to the town; and the superintending school committee, with perhaps the addition of the treasurer, may be made trustees to manage the fund. The town will then be held responsible for the security of the investments. (See c. 3, sec. 81.) Otherwise the fund might become depleted through unfortunate investments.

Sec. 26. This section is found in P. L. 1893, c. 162. That statute however, made no provision for changing the ages of children included in the enumeration of scholars, nor in the provision for the distribution of school money. There is no reason for longer continuing the age of four years as the minimum age of children to be included in the enumeration of scholars, or in the distribution of school funds. The commissioner therefore recommends that:

Sec. 35, relating to the enumeration of children,
 Sec. 36, relating to the returns of state superintendent,
 Sec. 37, relating to the annual statement,
 Sec. 92, relating to scholars in unincorporated townships,
 Sec. 101, relating to the duties of state superintendent,
 Sec. 120, relating to the distribution of school money,
 be made uniform with section twenty-six by substituting the word "five" for the word "four" where it occurs in these sections, relating to the ages of children.

Sec. 33. This section should be amended by inserting after the word "committee" in the fifth line the words: "and may fill any vacancy in said office occurring during the year, for the balance of the unexpired term."

Sec. 34, Par. 3, 85 and 105. These sections should be harmonized. Amend the first by inserting after the first clause the following: "No such certificate shall be valid for more than one year without the approval of the superintending school committee annually indorsed thereon." Omit the words: "or the state superintendent" in the fifth line.

Amend the second section by inserting after the word "town" in the second line the words: "or from the state superintendent of public schools," and omit the last clause.

Amend the third section by inserting after the word "examination" in the third line, the words "and certification."

Sec. 35. In place of the last sentence the commissioner prefers the following phraseology, which is thought to accord with the general practice:

"Under his direction, the assessors of every town shall in April, annually, make and return to the superintending school committee a certified list of the names and ages of all persons in their town between the ages of five and twenty-one years, corrected on the first day of said month, leaving out of said enumeration all persons coming from other places to attend any college or academy, or to labor in any factory, or at any manufacturing or other business."

Sec. 79 and 80. The commissioner sees no objection to consolidating these sections in the following language: "Every educational institution receiving state aid, and the officers and teachers of every academy receiving money from the state, under the six preceding sections, shall annually, on or before the first day of January, report to the state superintendent of public schools the total and average attendance, an itemized account of all the moneys received and expended during the preceding year, the number of instructors, number and length of terms, with attendance for each, and answer such other questions as he shall require, and shall make such further report to him as he may from time to time require. Such reports shall be published in the annual report of the state superintendent of public schools. Every such educational institution failing to comply with the above requirements shall forfeit whatever aid or assistance it would otherwise receive from the state. Wherever in sections seventy-three to seventy-nine, inclusive, the word 'academy' occurs, it shall be construed to include 'seminary or institute.'"

Chap. 14, Sec. 86. By this section the State of Maine Cattle Commission is obliged to report to the Governor; by c. 58, section 7, which is a later enactment, the commissioner of agriculture is to combine in his report a report of the State of Maine Cattle Commission, and to enable him to do so, the commission is to furnish him with all necessary data. The two provisions are not necessarily inconsistent, so that the later repeals the earlier, but one or the other seems unnecessary.

Chap. 15, Sec. 6 and 7. It would seem advisable to modify the requirements of these sections, as to fencing. Many grounds are not

fenced but their boundaries are substantially marked, and an amendment in accord with such custom would seem to be proper.

Chap. 18, Sec. 16. In the case *Hall vs. County Commissioners*, 62 Me., 327, decided in 1873, the first sentence of this section was aptly characterized as "blindly comprehensive." The phraseology criticized was, however, retained in the last revision. If the legislature thinks best to change the sentence to accord with that decision, the following phraseology is suggested: "The municipal officers of a town may, on petition therefor, personally or by agency, lay out, alter or widen town ways, and private ways for any inhabitant or for owners of cultivated land therein, if such inhabitant occupies, or such owner has cultivated land in the town which such private way will connect with a town way or highway. See 51 Me., 570; 62 Me., 327.

Vacating of Plats. So far as the commissioner has been able to learn, no provision exists in this State, for vacating plats of land. It is within the common experience of members of the legal profession that owners of land frequently lay out the same into lots, with streets delineated upon the plan, and record the plan in the registry of deeds; and in some cases sell a few lots with reference to the plan. Under the decisions of the Supreme Judicial Court, it is thought that every purchaser of a lot, under such circumstances, acquires some interest in all the streets delineated upon the plan, notwithstanding the use thereof may be of little or no value to him. Changes in the growth of the localities where such land is situated and other causes, often render it desirable that such incipient dedication of the streets delineated on such plans be vacated, and the owners of the fee have the right to dispose of the land embraced within the limits of such streets. The exercise of such a right as affecting the owners of lots already sold, can only be a matter of damage, and yet there seems to be no authority for a binding adjudication vacating such plats or any part of the same. Such proceedings are common in other states. The commissioner has therefore drafted the following section upon this subject, which may be inserted after section eighteen:

"Where land has been plotted and a plan thereof made, whether recorded or not, showing the proposed location of streets thereon, and lots have been sold by reference to said plan, the municipal officers of the town or city where such land is situated, may on petition of owners of the fee in such of said proposed streets as are named in the petition, vacate in whole or in part the proposed location of any or all such streets as have not been accepted and located as public ways. The proceedings shall be the same as in case of the location of town ways. All damages thereby occasioned shall be paid by the petitioners, and parties aggrieved by the estimate of damages may have them determined in the manner provided respecting damages caused by the location of town ways and with the same right of appeal."

Sec. 32-36. These provisions for assessments upon abutters are of doubtful utility on account of the proceedings on appeal.

The commissioner suggests that the procedure in relation to the assessment upon abutters of the expense of building sewers, is preferable.

Sec. 68. Joseph Williamson, Jr., Esq., of Augusta suggests that an inconsistency exists between this section and section twenty. He says: "Section twenty provides that a person aggrieved may petition the Supreme Judicial Court within sixty days from the establishment, alteration or discontinuance of the way. This time limit is impractical, as the original petition under section sixty-eight may be filed within one year. There is no other time limit fixed. It seems to me there should be some definite time after assessment of damages by municipal officers in which complaint may be filed. Also there should be a provision that if municipal officers neglect for thirty days, (or for some definite period) to assess damages, the matter may be taken to the court."

Sec. 76. The words "highway surveyors" in the seventh line of this section should be omitted. P. H. Stubbs, Esq., of Strong suggests that this section should be amended in the eighth line by inserting the words "or an appointed substitute of either of them." He says "this would avoid the question raised in *Chase vs. Surry*, 88 Me., 468, but not settled in that decision and frequently coming up. Without this amendment it is often impracticable to prove the twenty-four hours actual notice to the selectmen or road commissioner, who rarely go over the roads but have all the supervision of work attended to by substitutes who are assigned to certain sections of the highways."

Chap. 22, Sec. 29. If chapter twenty-three, relating to pounds, is repealed in accordance with the suggestions of the commissioner contained in the note thereto, the reference to impounding beasts in this section should be omitted.

Chap. 24, Sec. 2. Thomas W. Vose, Esq., of Bangor suggests that this section be amended by adding: "and when application is made by a wife or minor child of a person able to labor and provide for them and who, in the judgment of the overseers, after notice, neglects or refuses so to do without reasonable cause, such person assumes all the disabilities of a pauper and is liable to the provisions of this chapter as if such application is made by himself."

Chap. 26, Sec. 6. The commissioner suggests that the office of fire wards is practically obsolete. The duties formerly performed by fire wards are now generally performed by officers of duly organized fire departments in the various municipalities.

Sec. 20-23. The commissioner recommends that these sections be transferred to chapter thirty-nine, to precede section twenty-six of that chapter.

Chap. 27, Sec. 39. The commissioner recommends the omission of the words: "for each offer to take an order, and for each order taken, and for each sale so made;" they render the section obscure. It may be well to substitute the words: "for each offense." The attention of the commissioner was called to this section by John H. Hill, Esq., of Portland.

Chap. 37. This chapter, of a single section, may properly be made section one of chapter thirty-nine.

Chap. 39, Sec. 7-22 and 32-33. The commissioner is informed that inspectors of pot and pearl ashes, and of nails, and provers of fire arms have not been appointed for many years. It is thought that above sections are obsolete and may be omitted from this revision.

Sec. 10. A doubt arises whether this provision for search and seizure without a warrant is in accordance with the constitutional requirement; Art. 1, § 5.

Instead of the words "or without a warrant" insert the words: "a lawful warrant therefor."

Chap. 46, Sec. 18. W. H. White, Esq., of Lewiston raises the doubt whether the second clause of this section does not require returns from all corporations holding taxable property in the State, including manufacturing corporations and corporations mentioned in section twenty-nine of chapter six. In this respect the section stands unchanged since the last revision.

The commissioner does not think such construction tenable: he regards the words "holding property liable to be taxed," as restrictive and qualifying the preceding words, "all corporations."

Perhaps the clause may be made clearer by inserting after the word "taxed" in the sixth line, the words "to the owner of shares in the capital stock."

Sec. 28. By organizing with a low capitalization and taking advantage of this section, certain corporations organized under the general law, may escape the payment of a portion of the fees required by section five. To prevent this possible evasion of the statutes, the commissioner suggests the amendment of section twenty-eight by adding:

"Provided that the amount payable to the State upon any such increase of capital stock when added to the amount paid upon organization and upon any prior increase of capital stock, shall not be less than the amount which would have been payable upon organization, if the capital stock had originally been fixed at the total amount authorized by such increase."

REARRANGEMENT OF CHAPTERS 46 AND 48.

In accordance with the statement contained in the note at the bottom of page 417, the commissioner suggests the following rearrangement of chapter forty-six and the first twenty-four sections of chapter forty-eight.

CHAPTER 46.

CORPORATIONS.

Application.
R.S., c. 46, § 1.
See c. 47, §§ 1,
91; c. 49, § 1.
39 Me., 37.
58 Me., 20.

Acts of incor-
poration may
be altered or
repealed.
R.S., c. 46, § 23.
See c. 1, § 6,
¶ xxvii.

Corporations
chartered by
special stat-
ute, shall pre-
pare a certifi-
cate to be re-
corded.
1891, c. 140, § 1.

—when to be
a corpora-
tion.

Duties to be
paid by cor-
porations
chartered by
special stat-
ute.
1891, c. 140, § 2.
1893, c. 185, § 1.

Duties upon
filing certi-
ficates for
banking, in-
surance, rail-
roads, sav-
ings banks,
trust, safe
deposit, tele-
graph, tele-
phone, elec-
tric or gas
light, street
railway and
water com-
panies.
1891, c. 140, § 3.
1893, c. 185, § 2.

SEC. 1. This chapter applies to all corporations organized by special acts of the legislature or under the general laws of the State, except so far as it is inconsistent with such special acts or with public statutes, concerning particular classes of corporations.

SEC. 2. Acts of incorporation, passed since March seventeen, eighteen hundred and thirty-one, may be amended, altered, or repealed by the legislature, as if express provision therefor were made in them, unless they contain an express limitation; but this section shall not deprive the courts of any power which they have at common law over a corporation or its officers. (a)

SEC. 3. Before commencing business, the president, treasurer, and a majority of the directors of any corporation chartered by special act of the legislature, shall prepare a certificate setting forth the date of approval of its charter, the name and purposes of the corporation, the amount of capital stock, the amount already paid in, the par value of the shares, the names and residences of the owners, the name of the county where it is located, and the number and names of the directors, and (the name and residence of the clerk, and) shall sign and make oath to it. Such certificate shall be recorded in the registry of deeds in the county where its principal office is to be located, in a book kept for that purpose, and a copy thereof, certified by such register, shall be filed in the office of the secretary of state, who shall enter the date of filing thereon and on the original certificate to be kept by the corporation, and shall record said copy in a book kept for that purpose. From the time of filing such certificate in the secretary of state's office, the stockholders of said corporation, their successors and assigns, shall be a corporation.

SEC. 4. The certificate mentioned in the preceding section shall not be received and filed by the secretary of state except upon the payment to him of the sum of fifteen dollars, if the capital stock does not exceed five thousand dollars; twenty-five dollars if the capital stock exceeds five thousand dollars and does not exceed ten thousand dollars; seventy-five dollars if the capital stock exceeds ten thousand dollars and does not exceed fifty thousand dollars; one hundred and twenty-five dollars if the capital stock exceeds fifty thousand dollars and does not exceed one hundred thousand dollars; sixty dollars upon every one hundred thousand dollars or fraction thereof in excess of one hundred thousand dollars, if the capital stock exceeds one hundred thousand dollars, which sum is to be paid by the secretary of state to the treasurer of state for the use of the state, *provided*, that the provisions of this section shall not apply to corporations chartered for charitable and benevolent purposes.

SEC. 5. No certificate of organization of any corporation for banking, insurance, construction and operation of railroads, or aiding in the construction thereof, the business of *savings banks*, trust companies, or corporations intended to derive a profit from the loan or use of money, safe deposit companies, renting of safes and burglar and fire proof vaults, telegraph and telephone companies, electric or gas light companies, street railway companies, water companies, or any corporation authorized to exercise the right of eminent domain, shall be received and filed by the secretary of state except upon payment to him of twenty-five dollars, if the capital stock does not exceed five thousand dollars; fifty dollars if the

(a) 16 Me., 231; 23 Me., 319; 60 Me., 174; 63 Me., 274; 66 Me., 504, 508; 69 Me., 49.

capital stock exceeds five thousand dollars and does not exceed ten thousand dollars; one hundred dollars if the capital stock exceeds ten thousand dollars and does not exceed fifty thousand dollars; two hundred dollars if the capital stock exceeds fifty thousand dollars, and does not exceed one hundred thousand dollars; seventy-five dollars upon every one hundred thousand dollars or fraction thereof in excess of one hundred thousand dollars, if the capital stock exceeds one hundred thousand dollars, which sum is to be paid by the secretary of state to the treasurer of state for the use of the State.

ORGANIZATION OF CORPORATIONS UNDER GENERAL LAW.

SEC. 6. Three or more persons may associate themselves together by written articles of agreement, for the purpose of forming a corporation to carry on any lawful business, including corporations for manufacturing, mechanical, mining or quarrying business and also corporations whose purpose is the carriage of passengers or freight, or both, upon the high seas, or from port or ports in this state to a foreign port or ports, or to a port or ports in other states, or the carriage of freight or passengers, or both, upon any waters where such corporations may navigate; and excepting corporations for banking, insurance, the construction and operation of railroads or aiding in the construction thereof, and the business of savings banks, trust companies or corporations intended to derive profit from the loan or use of money, and safe deposit companies, including the renting of safes in burglar-proof and fire-proof vaults.

SEC. 7. Their first meeting shall be called by one or more of the signers of said articles, by giving notice thereof, stating the time, place and purposes of the meeting to each signer, in writing, or by publishing it in some newspaper printed in the county, at least fourteen days prior to the time appointed therefor. If all of the signers of said articles shall in writing waive notice and fix a time and place of such meeting, no notice or publication shall be necessary. At such meeting they may organize into a corporation, adopt a corporate name, define the purposes of the corporation, fix the amount of the capital stock, which shall not be less than one thousand dollars, divide it into shares and elect a *president*, not less than three directors, a clerk, treasurer, and any other necessary officers, and may adopt a code of by-laws.

(The commissioner suggests the advisability of leaving the election of president to the board of directors in harmony with section 19.)

SEC. 8. Before commencing business, the president, treasurer, and majority of the directors shall prepare a certificate setting forth the name and purposes of the corporation, the amount of capital stock, the amount already paid in, the par value of the shares, the names and residences of the owners, the name of the county where it is located, and the number and names of the directors, and the name and residence of the clerk, and shall sign and make oath to it; and after it has been examined by the attorney general, and been by him certified to be properly drawn and signed and to be conformable to the constitution and laws, it shall be recorded in the registry of deeds in the county where said corporation is located, in a book kept for that purpose, and within sixty days after the day of the meeting at which such corporation is organized, a copy thereof certified by such register shall be filed in the secretary of state's office, who shall enter the date of filing thereon, and on the original certificate to be kept by the corporation, and shall record said copy in a book kept for that purpose. *Such corporation shall pay the attorney general and secretary of state five dollars each for their services, in advance.* Before said certificate is filed in the office of the secretary of state, when the amount of capital stock does not exceed ten thousand dollars, such corporation shall also pay to the treasurer of state for the use of the State the sum of ten dollars; when the amount of the capital stock exceeds ten thousand dollars

How three or more persons may organize themselves into a corporation for certain enumerated purposes.
R.S., c. 48, § 16.
86 Me., 316.

—other corporations excepted.

First meeting.
R.S., c. 48, § 17.
1901, c. 229, § 8.
61 Me., 356.
64 Me., 381.
70 Me., 146.

—notice may be waived.
1901, c. 229, § 9.

—amount of capital stock, and of officers.

Certificate prepared, officers to be examined by attorney general, and recorded in registry of deeds and secretary of state's office.
R.S., c. 48, § 18.
1897, c. 225.
61 Me., 356.
64 Me., 381.
70 Me., 146.

—fees of attorney general and secretary of state.
See c. 115, § 20.

—duties to be paid to the state.

and does not exceed five hundred thousand dollars, it shall pay to the treasurer of state for the use of the State, the sum of fifty dollars; when the amount of the capital stock exceeds five hundred thousand dollars, it shall pay to the treasurer of state for the use of the State ten dollars for each one hundred thousand dollars of the capital stock; and the treasurer's receipt for said sum shall be filed with the secretary of state as a condition precedent, before he shall be authorized to receive said certificate for filing.

SEC. 9. Any corporation organized hereunder before March fifteen, eighteen hundred and ninety-three, which caused the certificate to be recorded in the registry of deeds of the county in which such corporation is described in said certificate to be located, shall be deemed to have complied with the requirements of the preceding section.

SEC. 10. From the time of filing (the copy of) such certificate in the secretary of state's office, the signers of said articles and their successors and assigns shall be a corporation, the same as if incorporated by a special act, with all the rights and powers, and subject to all the duties, obligations and liabilities provided by this chapter. (a)

Certificate
filed in regis-
try of deeds
where
corporation is
located,
deemed com-
pliance.
R.S., c. 212, § 3.
Upon filing
certificate or-
ganization
complete.
R.S., c. 48, § 19.
See c. 1, § 6;
§ xxviii.

MEETINGS.

SEC. 11. Their first meeting (of any corporation chartered by special act of the legislature) unless otherwise provided, shall be called by a notice signed by some person named in the act of incorporation, setting forth the time, place, and purpose of the meeting, a copy of which shall be delivered to each member, or published in a newspaper in the county, if any, otherwise in the state paper, seven days before the meeting; but the organization of all existing corporations made in accordance with (any provision of) this chapter are *equally* valid. (b)

SEC. 12. When a meeting (of any corporation) cannot be otherwise called, three members of the corporation may make written application to a justice of the peace where it is established, if local, or if not, where it is desired to hold the meeting, who may issue his warrant to either of such members, directing him to call a meeting by giving the notice required in the preceding section. When the law requires a notice to be published in some newspaper, or posted in some public place, the justice shall designate in his warrant the newspaper or place.

SEC. 13. When a meeting is called by a justice of the peace, he, or the person to whom his warrant was directed, may call the meeting to order and preside therein, until a clerk is chosen and qualified, if there is no officer present whose duty it is to preside. The person presiding is not responsible for an error in judgment in receiving or rejecting the vote of a person claiming to be a member.

SEC. 14. When a corporation fails to hold its annual meeting on the day appointed, the officers of the preceding year continue in the exercise of their duties, and their acts are legal, until other officers are chosen and qualified in their stead. When, upon due notice given, officers are regularly elected on any other day than that of the annual meeting, they shall hold their offices and perform their duties as if chosen on that day, unless a majority of the corporate members file with the clerk, within six months after such election, written objections thereto, and their acts shall be considered legal, until others are chosen and qualified in their stead.

SEC. 15. When such a notice is filed, the clerk shall call a meeting of the corporation, at such time and place as he appoints, and give the notice required for an annual meeting, stating in it the fact that objections have been filed, and the purpose of the meeting; and officers elected at such meeting shall hold their offices, and their acts shall be considered legal, until other officers are chosen and qualified in their stead.

First meeting,
how called;
organization
valid, if made
under any
provision of
this chapter.
R.S., c. 46, § 3.
R.S., c. 48, § 3.

Any meeting
may be called
by a justice,
if no other le-
gal mode.
R.S., c. 46, § 4.
12 Me., 400.

Why may pre-
side at such
meeting.
R.S., c. 46, § 7.
—person pre-
siding not re-
sponsible for
error.

Officers hold
over; when
officers
elected on an-
other day,
acts of, legal.
R.S., c. 46, § 8.
30 Me., 550.
56 Me., 323.

—proviso.

Objections to
election on
on another
day.
R.S., c. 46, § 9.

(a) 61 Me., 356; 64 Me., 381; 70 Me., 146.

(b) 27 Me., 519; 38 Me., 345; 72 Me., 296.

SEC. 16. When all the members of a corporation are present in person or by proxy at a meeting and sign a written consent on the record thereof, such meeting is legal.

SEC. 17. Shareholders may be represented by proxies granted not more than thirty days before the meeting which shall be named therein; they are not valid after a final adjournment thereof. They may be represented by a general power of attorney, produced at the meeting, until it is revoked. Shares hypothecated to the corporation shall not be represented. No person can give, by right of representation, a greater number of votes than is allowed to any one by the charter or by-laws.

SEC. 18. After the owner of stock in a corporation has transferred, mortgaged or in any way pledged the same to another for security merely, and it so appears in such transfer, mortgage or pledge, and on the books of the corporation, such owner continues to have the right to vote upon such stock at all meetings of the stockholders until his right of redemption ceases.

Meeting, when legal by consent.
R.S., c. 46, § 5.
1901, c. 229, § 17.
Proxies and powers of attorney, and rights under them.
R.S., c. 46, § 13.

Representation of pledged stock.
R.S., c. 46, § 14.

OFFICERS AND THEIR DUTIES.

SEC. 19. *Manufacturing* corporations shall have a president, directors, clerk, treasurer, and any other desirable officers. Such officers shall be chosen annually, and shall continue in office until others are chosen and qualified in their stead. There shall not be less than three directors, one of whom shall be by them elected president. Directors must be and remain stockholders, except that a member of another corporation, which owns stock and has a right to vote thereon, may be a director. The treasurer shall give bond for the faithful discharge of his duties, in such sum, and with such sureties, as are required. The clerk shall be sworn, and shall record all votes of the corporation in a book kept for that purpose. (a)

Officers of corporation.
R.S., c. 48, §§ 1, 2.

—directors must be stockholders.
1893, c. 180.
—treasurer to give bond.

—clerk to be sworn.
See c. 3, § 25.

SEC. 20. All corporations, existing by virtue of the laws of this state, shall have a clerk who is a resident of this state, and shall keep, at some fixed place within the state, a clerk's office where shall be kept their records and a book showing a true and complete list of all stockholders, their residences and the amount of stock held by each; and such book, or a duly proved copy thereof, shall be competent evidence in any court of this state to prove who are stockholders in such corporation and the amount of stock held by each stockholder. Such records and stock book shall be open at all reasonable hours to the inspection of persons interested, who may take copies and minutes therefrom of such parts as concern their interests, and have them produced in court on trial of an action in which they are interested. The above provisions as to list of stockholders shall not apply to any corporation doing business in this state and having a treasurer's office at some fixed place in the state where a stock book is kept giving the names, residences and amount of stock of each stockholder.

Clerk's office, books, etc., where kept.
R.S., c. 46, § 10.
1889, c. 263, § 1.
See c. 2, § 100.

—records and stock book open to inspection and to be produced in court.

—provisions do not apply to certain corporations.

SEC. 21. Any officer or member of a corporation, who prevents access to and use of the records and books as provided in the preceding section, is liable for all damages occasioned thereby, in an action on the case.

Preventing use of records and books, punished.
R.S., c. 46, § 19.
Certificate of election of clerk.
R.S., c. 46, § 11.
1897, c. 243.

SEC. 22. Whenever there is a change in the office of clerk of a corporation, *he* (the clerk) shall, within twenty days after the acceptance of the office file a certificate of his election in the registry of deeds in the (county or) district where the corporation is located, or where it has a place of business or a general agent; and an attested copy of such certificate shall be sufficient evidence that he is clerk, for service of process upon the corporation, until another certificate has been filed.

—an attested copy evidence.

SEC. 23. The clerk of any corporation may resign his office as clerk by filing his resignation with the register of deeds in the county where *such corporation was organized*; (the certificate of his election was filed; if no such certificate of election was filed, then his resignation may be filed with

Clerk of any corporation, may resign at any time.
1895, c. 67, § 3.

the register of deeds in the county where such certificate of election, ought according to law to have been filed;) said resignation *to* (shall) take effect from and after the time of the receipt of the same by such register of deeds.

Officers to ascertain residence of stockholders.
R.S., c. 46, § 30.
1901, c. 208.
65 Me., 379.
82 Me., 189.

—no dividends unless residence is on books.

—when statement and stock to be returned.
See c. 6, § 100.

See c. 6, § 14, ¶ III.

SEC. 24. Cashiers of banks, treasurers of trust and banking and safe deposit companies, and clerks or treasurers of other corporations shall ascertain the residence of all stockholders in either; and no dividend shall be paid to any stockholder, whose residence, for the time being, is not entered on the books thereof; and the cashiers of banks, and clerks or treasurers of all corporations holding property liable to be taxed, shall, by the eighth day of April annually, return under oath, to the assessors of each town, in which any of its stockholders reside, the names of such stockholders, the amount of stock owned by them on the first day of such April, and the amount of stock paid into such corporations, and also the value of the real estate, vaults and safe deposit plant, owned by any bank, or trust and banking, or safe deposit company, or other corporation, which is taxed as other real estate is taxed in the town in which it is located (and the value of machinery employed in any branch of manufacture, and goods manufactured or unmanufactured, assessed to the corporation in the town or place where they are situated or employed,) and the amount for which such real estate, vaults, safe deposit plant, machinery and goods were valued by the assessors of such municipality for the year previous, and such return shall contain in the body thereof, or by note annexed thereto, an abstract of section thirty-five of chapter six; and said cashiers of banks, treasurers of trust and banking, and safe deposit companies, and clerks or treasurers of such other corporations shall make like returns to the assessors of the town where such bank, company or other corporation is located or transacts its ordinary business, of all the stock in such bank, company or other corporation not returned to the assessors of other towns in the State.

Cashiers to return list of stockholders to secretary of state.
R.S., c. 46, § 31.
1901, c. 229, § 16.
76 Me., 412.

Corporations shall annually file returns with secretary of state.
1901, c. 229, § 1.

—contents of returns.

SEC. 25. Such cashiers shall, between the first day of November and the eighth day of December, annually, make return to the secretary of state of the names of all stockholders, their residences, the amount of stock owned by each and the whole amount of stock paid in on said first day of November. The secretary shall lay the same before the legislature within the first thirty days of the session.

SEC. 26. Every corporation incorporated under the laws of this state, excepting religious, charitable, educational and benevolent corporations, and excepting such corporations as may be organized under chapter fifty-five, and such corporations as are liable to a franchise tax *under some other law of the State* (other than the tax provided for in section sixty of chapter six,) and such corporations as have been or may hereafter be excused from filing annual returns under the provisions of section thirty-one of this chapter, so long as their franchises remain unused, shall on or before the first day of June, annually, *file in the office of* (make a return to) the secretary of state, *a return* signed by its president or treasurer, verified under oath, containing the names of its directors, president, treasurer and clerk, with the residence of each, the location of its principal office in this state, and the amount of its authorized capital stock; and for this purpose the secretary of state shall furnish blanks in proper form and safely keep in his office all such returns.

Deposit of return in post-office, sufficient.
R.S., c. 46, § 32.
—penalty for neglect.
76 Me., 411.

Secretary of state to notify attorney general of neglect of corpo-

SEC. 27. A deposit of the return required in the three preceding sections in a postoffice, postage paid, properly directed, is a compliance therewith. For the neglect or refusal of its officer to make such return, the corporation forfeits five hundred dollars, to be recovered in an action of debt, to be prosecuted in the name of the State by the attorney general.

SEC. 28. Whenever any corporation or its officers neglect to make to the secretary of state any return required by law, the secretary of state shall forthwith notify the attorney general, who shall proceed at once, by action of debt in the name of the State, to enforce the penalties therefor, and

shall make itemized return thereof in his annual report. The secretary of state, on or before the first day of July, annually, shall furnish the attorney general with a statement showing which of said corporations, if any, have failed to comply with the preceding section, with such other memoranda from his office as will aid the attorney general in obtaining service upon such delinquent corporation. In addition to said penalties, the following costs shall be recovered in behalf of the State against said corporation, to wit: for the attorney general, for the writ, an attorney fee, and travel and attendance at court not exceeding two terms; and for the State, such other costs as are legally taxable in actions at law. Such action may be brought in any county.

SEC. 29. If within thirty days from the commencement of *the* (an) action under section twenty-seven such corporation makes to the secretary of state the returns required by law, he shall forthwith notify the attorney general, who shall discontinue such suit upon payment of the costs already accrued.

SEC. 30. If any officer of a corporation, charged by law with the duty of making and causing to be published any statement in regard to such corporation, neglects to do so, such officer, in addition to penalties already provided, forfeits five hundred dollars to the prosecutor, to be recovered by action of debt, or action on the case.

SEC. 31. The attorney general, upon application by any corporation, and satisfactory proof that it has ceased to transact business, shall file a certificate of the fact with the secretary of state, and *on payment of a reasonable compensation for his services*, shall give a duplicate certificate to the corporation; and thereupon such corporation shall be excused from filing annual returns with the secretary of state.

SEC. 32. Dividends of profit may be made by the directors, but the capital or the debts due shall not thereby be reduced, until all debts due from the corporation are paid. Any officer or member, who votes or aids to make a dividend in violation hereof shall be fined not exceeding two thousand dollars, and imprisoned less than one year; and all sums received for such dividends may be recovered by any creditor of the corporation in an action on the case.

CAPITAL STOCK AND TRANSFER OF SHARES.

SEC. 33. The capital (of *manufacturing* corporations incorporated by special act of the legislature) shall be fixed within the limits of the charter and divided into shares; and the names of owners, and the number of shares owned by each, shall be entered of record at its first meeting. The capital may be subsequently increased to the amount allowed by its charter, by adding to the number of shares.

SEC. 34. When the capital of a corporation is divided into shares, and certificates thereof are issued, they may be transferred by indorsement and delivery. The delivery of a certificate of stock of a corporation to a bona fide purchaser or pledgee for value, together with a written transfer of the same or a written power of attorney to sell, assign and transfer the same, signed by the owner of the certificate, shall be a sufficient delivery to transfer the title against all parties. Certificates of shares with the seal of the corporation affixed, shall be issued to those entitled to them by transfer or otherwise, signed by the president or vice-president, and *attested* by the cashier, clerk or treasurer. Neither shall sign blanks and leave them for use by the other, nor sign them without knowledge of the apparent title of the person to whom they are issued. In case of the absence or disability of either of said officers, the signature of a majority of the directors in his stead is sufficient.

SEC. 35. No transfer shall effect the right of the corporation to pay any dividend due upon the stock, or to treat the holder of record as the holder in fact, until such transfer is recorded upon the books of the corporation

rations to make returns. R.S., c. 46, § 33. 1901, c. 229, § 2.

—costs in behalf of state.

Suits may be discontinued. R.S., c. 46, § 34.

Penalty for neglect to publish statement. R.S., c. 46, § 35. Sec. 47, §§ 124, 172. c. 49, §§ 36, 96. 77 Me., 493.

Corporations ceasing to do business, may be excused from filing annual returns. R.S., c. 46, § 36. 1901, c. 229, § 19. See c. 115, § 20. Dividends may be made; but not to reduce capital or debts due. R. S., c. 48, § 8. See §§ 77, 96, 101.

—penalty.

Capital fixed and divided.

—names of owners and their shares, to be entered of record. R. S., c. 48, § 4.

Transfer of shares, how made. R.S., c. 46, § 12. R. S., c. 48, § 5. 1893, c. 200.

—what shall constitute a sufficient delivery. 1897, c. 293, § 1. See c. 51, § 78; c. 120, § 10.

20 Me., 305. 49 Me., 317. 68 Me., 68.

Transfer shall not effect holder of record until

recorded.
1897, c. 293, § 3.

May change
par value of
shares.
1901, c. 229, § 12.

See § 45.

Assessments
may be made
and shares
sold, for neg-
lect to pay.
R. S., c. 48, § 6.

Notice of sale,
how given;
title, how
transferred to
purchaser.
R. S., c. 48, § 7.

Certain corpo-
rations may
increase capi-
tal and
change num-
ber of direc-
tors.
R. S., c. 48, § 20.
1901, c. 229, § 18.

—secretary of
state to be no-
tified.

—duties.

Reduction of
capital stock.
1895, c. 67.

—rights of
creditors not
prejudiced.

When capital
of company is
impaired,
stock may be
reduced.
R. S., c. 46, § 15.

or a new certificate is issued to the person to whom it has been so transferred.

SEC. 36. *Every* (any) corporation organized under this chapter may change the par value of its shares at a meeting of the stockholders called for the purpose by a vote representing a majority of the stock issued, and a certificate thereof signed by the president or clerk shall be filed in the office of the secretary of state in the same manner as provided by law for changes in charter or certificate of organization.

SEC. 37. Assessments, not exceeding the amount originally limited for a share, may be made on all *the* shares, (subscribed and not paid for) to be paid to the treasurer, in such instalments and at such times as are ordered. If a stockholder neglects to pay such assessments on his shares for thirty days, the treasurer may sell at public auction a sufficient number of them to pay the same with incidental charges.

SEC. 38. The treasurer, before the sale, shall give notice of the time and place thereof, and of the amount due on each share, in a newspaper printed in the town, if any, if not, in the county where the *manufactory* (office of the clerk of such corporation) is established, otherwise in the state paper, three weeks successively; and the treasurer's certificate of the sale of such shares, recorded as other transfers, passes the title to the purchaser.

SEC. 39. If the stockholders of any corporation created by special charter and not charged with the performance of any public duty, or organized under the general laws of the state, find that the amount of its capital stock is insufficient for the purposes for which said corporation is organized, or that the number of directors is inconvenient for the transaction of its business, the stockholders may by a vote representing a majority of the stock issued, increase the amount of its capital stock to any amount, and may change the number of *their* directors in like manner, and the corporation shall file a certificate thereof with the secretary of state within ten days thereafter, and thereupon said vote shall take effect. When the capital stock is increased from ten thousand dollars or less to not exceeding five hundred thousand dollars, the corporation shall pay to the treasurer of state for the use of the State the sum of forty dollars. When the capital stock is increased to any amount exceeding five hundred thousand dollars, it shall pay to the treasurer of state for the use of the State the sum of ten dollars for each one hundred thousand dollars of such increase, and the treasurer's receipt for the same shall be filed with the secretary of state before he shall be authorized to receive any certificate of any increase of capital stock.

SEC. 40. If the stockholders of any corporation organized under this chapter shall desire to decrease the amount of its capital stock, the stockholders, at a meeting duly called for the purpose, or at any annual meeting, when notice shall have been given of such proposed action in the call therefor, may by a vote representing a majority of all the stock issued, decrease the amount of its capital stock to any amount desired, and the corporation shall give notice of such change to the secretary of state within ten days thereafter. And each stockholder shall, within three months after such meeting, surrender such a proportion of his stock as the amount of decrease shall bear to the amount of the capital stock before the decrease, so that each stockholder shall have the same proportion of the whole capital stock of the company as before the decrease. This section shall not affect or prejudice in any way the rights of creditors of such corporation existing at the time when the reduction of its capital stock authorized hereunder shall be consummated.

SEC. 41. Whenever the assets of a corporation have been so diminished by losses or depreciation of property, that its capital is impaired, such corporation, at any meeting of the stockholders legally called therefor, with the consent of not less than two-thirds in amount of all its outstanding

stock, expressed at such meeting or at any adjournment thereof, may reduce such stock to the extent of such impairment, and thereupon the par value of all shares issued or to be issued shall be reduced proportionally.

—par value of shares reduced proportionally.

SEC. 42. Within thirty days after such reduction any stockholder who has not agreed thereto, may file a bill in equity in any county in which said corporation has an established place of business, or in which it held its last stockholders' meeting, for a revision of its proceedings in making said reduction, upon which bill such proceedings may be annulled or modified, so that such reduction shall not exceed the actual impairment of capital. The action of the court, or, if no bill is filed as aforesaid, the action of the corporation, as provided in the preceding section, shall be conclusive upon all parties, whether stockholders or creditors, and such reduction shall not create any personal liability of any stockholder or officer thereof.

Remedy for any stockholder who has not agreed thereto.
R.S., c. 46, § 16.

—proceedings may be annulled or modified.

—proceedings conclusive.

SEC. 43. The clerk of said corporation shall file with the secretary of state a certified copy of such proceedings, within thirty days after they are taken, or forfeit one thousand dollars, to be recovered by action of debt in favor of any existing or future creditor of such corporation first suing therefor in any court or county in which a transitory action between the same parties can be brought.

Copy of proceedings filed with secretary of state.
R.S., c. 46, § 17.
—penalty for failure, how recovered.

SEC. 44. Simultaneously with or after such reduction of its stock, such corporation may from time to time authorize the issue of new shares, of the reduced par value, until the gross capital equals the gross capital authorized by its charter or articles of association before such reduction was made, although the new shares should increase the whole issue beyond the number authorized by such charter or articles.

Corporation may authorize issue of new shares of stock.
R.S., c. 46, § 18.

SEC. 45. Whenever a corporation shall make a change in its charter or certificate of organization, in any manner, for the more convenient transaction of its business, it shall forward a notice of such change to the secretary of state, who shall record the same in a book kept for that purpose, and for making such record the corporation shall pay the secretary of state for his services, five dollars, in advance; said fee shall not be within the provisions of section forty-five of chapter two.

Notice of change in charter, to secretary of state.
1885, c. 361.

—record of fees.
See c. 115, § 20.

CORPORATE POWERS.

SEC. 46. Corporations may sue and be sued, plead and be impleaded, in their corporate name; have a common seal alterable at pleasure; elect all necessary officers; prescribe their duties and fix their compensation; make by-laws consistent with the laws of the state and their charters; and hold and convey lands and other property. (a)

General powers of corporations.
R.S., c. 46, § 2.
See c. 1, § 6, ¶ xvi.

SEC. 47. Corporations may (among other provisions,) determine by their by-laws, the manner of calling and conducting meetings; the number of members that constitute a quorum; the number of votes to be given by shareholders; (by whom any or all officers, except president and directors, shall be elected;) the tenure of the several officers; the mode of voting by proxy; and of selling shares for neglect to pay assessments; and may enforce such by-laws by penalties not exceeding twenty dollars. A corporation, at a legal meeting of its stockholders, may vote to change its name and adopt a new one; and when the proceedings of such meeting, certified by the clerk thereof, are returned to the office of the secretary of state to be recorded by him, the name shall be deemed changed; and the corporation, under its new name, has the same rights, powers, and privileges, and is subject to the same duties, obligations and liabilities as before, and may sue and be sued by its new name; but no action brought against it by its former name, shall be defeated on that account, but on motion of either party, the new name may be substituted therefor in the action.

By-laws, what they may determine.
R. S., c. 46, § 6.
31 Me., 476, 576.
79 Me., 443.

—name may be changed and effect thereof.
68 Me., 84.

(a) 16 Me., 229; 17 Me., 442; 20 Me., 46; 23 Me., 41; 29 Me., 126; 43 Me., 182; 50 Me., 550; 56 Me., 420; 58 Me., 20; 61 Me., 167; 68 Me., 43.

Corporations may do business out of the state.
1901, c. 229, § 10.

SEC. 48. Any corporation of this state may conduct business in other states, territories, or possessions of the United States, or in foreign countries, and have one or more officers out of the state, and may hold, purchase, mortgage and convey real estate and personal property out of this state.

May create two kinds of stock.
1901, c. 229, § 11.

SEC. 49. Every corporation *of this state shall have power to* (may) create two or more kinds of stock with such classes, with such designations, preferences and voting powers, or restrictions or qualifications thereof, as shall be fixed and determined in the by-laws, or by vote of the stockholders at a meeting duly called for the purpose.

Stock may be issued for property and stock of other corporations, or for services, and shall not be liable for further payment thereon.
1901, c. 229, § 13.
See § 95.

SEC. 50. Any corporation *of this state* may purchase mines, manufacturing and other property necessary for its business, and the stock of any company or companies owning, mining, manufacturing or producing materials or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and may likewise issue stock for services rendered to such corporation and the stock so issued shall be full paid stock and not liable to any further call or payment thereon; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased, or services rendered, shall be conclusive.

May hold shares of other corporations, and exercise rights of ownership.
1901, c. 229, § 14.

SEC. 51. Any corporation organized under this chapter (and any corporation organized for manufacturing, mechanical, mining or quarrying business, under special act of the legislature) may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by any other corporation or corporations of this or any other state, territory or country, and while owners of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

(No reason is perceived for making a distinction between manufacturing corporations organized under this chapter, and those incorporated by special act of the legislature. See chap. 53, sec. 3.)

May change location from one county to another.
1893, c. 182.

SEC. 52. Any corporation organized under this chapter (may) at a legal meeting of its stockholders, *may* by a vote representing a majority of the stock issued, change its location from one county to another in the state, and the corporation shall file, by its clerk or other officer, in the registry of deeds in each of said counties, within twenty days after such change of location, the certificate required by section twenty-two.

TRUSTS PROHIBITED.

(This subtitle will comprise three sections, numbered fifty-three to fifty-five inclusive, as printed in c. 48, §§ 22 to 24 inclusive of this report.)

RIGHTS OF MINORITY STOCKHOLDERS.

(This subtitle will comprise twelve sections, numbered fifty-six to sixty-seven inclusive, as printed in c. 46, §§ 39 to 50 inclusive of this report.)

CORPORATE CONTRACTS AND LIABILITIES.

Contracts.
R.S., c. 46, § 21.

SEC. 68. Corporations are bound by parol contracts made by an agent authorized by vote or by its by-laws. Contracts may be implied from corporate acts, or from the acts of the general agent. (a)

Provisions of law relating to foreclosure of railroad mortgages

SEC. 69. The provisions of chapter fifty-one, sections one hundred eighteen to one hundred thirty-nine inclusive, shall apply to and include all mortgages of franchises, lands or other hereditaments, or of all of them, heretofore or hereafter given by any corporation to trustees :

(a) 7 Me., 120; 24 Me., 38, 502; 26 Me., 435; 29 Me., 126.

to secure scrip or bonds of said corporation; and the holder of said scrip or bonds shall have the benefit of all said provisions, whether the said mortgages have been or may be foreclosed in the manner provided by section one hundred eighteen of said chapter, or in any other legal manner, and to the extent of and with reference to the property covered by the mortgage; the new corporation, when organized, shall have the rights and privileges of the original corporation.

SEC. 70. In case of the mortgage of *the* franchises, lands or other hereditaments by any domestic corporation to a foreign corporation as trustee, service of process may be made on any authorized agent of such foreign corporation in the state; or if no such agent can be found, such service may be made upon the bank examiner, who shall immediately notify the corporation by mail. Service made in either of said methods shall be valid and binding upon the corporation in every respect.

SEC. 71. The property of any corporation, and the franchise of one having a right to receive a toll established by the State, with its privileges and immunities, are liable to attachment on mesne process and levy on execution for debts of the corporation, in the manner prescribed by law.

SEC. 72. When an officer, having an execution against a corporation not created for purposes of education or religion, certifies thereon that he is unable to find personal property of the corporation, the creditor may cause so much of its real estate to be seized and sold at public auction, in the town where it lies, in the manner provided for the sale of real estate of banks, and subject to the same right of redemption, as is necessary to satisfy such execution and incidental charges.

SEC. 73. Real estate, or any interest therein, of any corporation not created for supplying cities or towns with water, *nor* (or) for educational, religious, street lighting, telegraph, telephone, or any public purposes, may be seized and sold on execution at public auction, either as real estate of banks, or as rights of redeeming real estate mortgaged, are taken on execution and sold, without the execution creditor first exhausting his remedy against the personal property of such corporation, and subject to the same right of redemption as is provided in either case. Seizure and sale by either of the methods provided in this section, pass to the purchaser all the right, title and interest that the execution debtor has in such real estate at the time of such seizure, or had at the time of the attachment thereof on the original writ, subject to the debtor's right of redemption. This section does not repeal any other modes of levy of execution, or seizure and sale of corporation real estate on execution.

SEC. 74. Every agent or person having charge of corporate property, shall, on request, furnish to any officer having a writ or execution against the corporation for service, the names of the directors and clerk, and a schedule of all property, including debts known by him to belong to the corporation.

SEC. 75. An officer, having an execution against *such* a (manufacturing) corporation and unable to find property liable to seizure, or the creditor, may elect to satisfy it, in whole or in part, by a debt due to the corporation not exceeding the amount due to the creditor, and the person having custody of the evidence of such debt shall deliver it to such officer with a written transfer thereof to him for the use of the creditor, which shall constitute an assignment thereof, and the creditor, in the name of the corporation, may sue for and collect it, subject to any equitable set-off by the debtor.

SEC. 76. Any officer or other person, who unnecessarily neglects or refuses to comply with the two preceding sections, forfeits not exceeding four times the amount due on such execution, and may be imprisoned less than one year.

SEC. 77. When a suit or prosecution is pending for a violation of section thirty-two or either of the three preceding sections, the clerk or person having custody of the books of the corporation, shall, upon reason-

given to trustees, applicable to mortgages of all corporations so given. 1887, c. 85.

Service of process on foreign corporation, trustee in mortgage by domestic corporation. 1897, c. 200. See c. 115, § 20.

Property and franchises may be taken for debt. R.S., c. 46, § 20. See c. 84, § 17.

Officer having an execution may sell real estate in certain cases. R.S., c. 46, § 50. Sec. 76, §§ 43-45.

Real estate of certain corporations, may be taken on execution and sold, without first exhausting remedy against personal property. 1899, c. 115. Sec. 76, §§ 32-38. §§ 43-45.

(See note to c. 46, § 56, of this report.)

Names of directors' clerk and schedule of property, to be furnished to an officer. R.S., c. 48, § 9. Officer, having an execution, may elect to take debts due to corporation. R.S., c. 48, § 10. —proceedings.

Penalty for refusing to comply with sections 74 and 75. R.S., c. 48, § 11. Books to be produced on trial. R.S., c. 48, § 12.

—refusal
punished.

able written notice, produce them on trial; and for neglect or refusal so to do, he is liable to the same fine or imprisonment as the party on trial would be.

Foreign com-
panies may
sue and be
sued here, and
property at-
tached.
R.S., c. 46, § 22.
—effect of
agents' acts.

SEC. 78. Corporations existing by the laws of another state or of a foreign jurisdiction, may sue or be sued by their corporate name in this state; and if they have property in this state it may be attached and appraised and set off on execution, as the property of non-resident individuals. The acts of their agents have the same effect as the acts of agents of foreign private persons, unless prohibited by law. (a)

DISSOLUTION OF CORPORATIONS.

(This subtitle will comprise six sections numbered seventy-nine to eighty-four inclusive, as printed in c. 46, §§ 58 to 64 inclusive, of this report.)

LIABILITIES OF STOCKHOLDERS.

(This subtitle will include the last twenty sections of c. 46, of this report, or the last thirteen sections, if §§ 65 to 71 inclusive are omitted, as suggested in the note to § 65.)

CHAP. 48. It has been suggested to the commissioner that corporations organized under chapter forty-eight, should receive an official certificate of organization similar to the certificates issued to railroad companies and insurance companies. The commissioner has therefore prepared the following draft of a section to be inserted after section three of this chapter.

"Upon receiving said certificate and filing the copy thereof, the secretary of state shall issue to such corporation a certificate in the following form:

"STATE OF MAINE.

Be it known that whereas" (here insert the names of the subscribers of the articles of association) "have associated themselves together by written articles of agreement for the purpose of forming a corporation under the name of" (here insert the name of the corporation) "for the purpose of" (here insert the purpose of the corporation as stated in the certificate of organization) "and have complied with the statutes of the State in such cases made and provided. Now therefore I," (here insert the name of the secretary) "secretary of the State of Maine, hereby certify that said" (names of subscribers) "their associates and successors, are legally organized and established as an existing corporation under the name of" (here insert name of corporation) "with the powers, rights and privileges, and subject to the limitations, duties and restrictions which by law appertain thereto.

Witness my official signature hereunto subscribed, and the seal of the State of Maine hereunto affixed this day of , A. D. 19 ."

The secretary of state shall sign the same and shall cause the seal of the State to be thereto affixed, and such certificate shall be conclusive evidence of the organization and establishment of such corporation at the date thereof. The secretary shall also cause a record of such certificate to be made, and the certified copy of such record may with like effect as the original certificate be given in evidence to prove the existence of such corporation."

CHAP. 49. This chapter may appropriately be divided.

The first one hundred twenty-seven sections should constitute one chapter.

The last thirty-eight sections may be arranged in another chapter under title, "Assessment Insurance. Fraternal Beneficiary Associations."

(a) 17 Me., 36; 29 Me., 467; 55 Me., 294.

SEC. 15. The commissioner recommends that this section be re-drafted so as to read: "No company shall directly or indirectly, be concerned in buying or selling any goods, wares, merchandise, or commodities."

CHAP. 51. The arrangement of this chapter is unsatisfactory. It may well be divided; the first one hundred eighty sections included in one chapter, and the remaining sections in another chapter relating to street railroads. If no division of the chapter is made the following sections may be consolidated; sections five and one hundred eighty-six; sections eleven and one hundred ninety-two; sections one hundred forty-four and one hundred ninety-seven.

The commissioner is inclined to think that a still better arrangement of the chapter may be made by dividing it into three parts. The first, under the title "The Organization and Construction of Steam Railroads," consisting of seventy-nine sections, arranged in the following order: sections 1-39, omitting section 9; sections 67 and 68, following section 27; sections 170-176; sections 141-157; section 83, to follow section 141; sections 40-53. The second, under the title "The Management and Operation of Steam Railroads," consisting of ninety-seven sections, arranged in the following order: sections 61-66; sections 109-111; sections 162-169, omitting section 163; section 59, following section 162; sections 69-76; sections 54-57; sections 77-82; sections 112-140; section 88; sections 158-161; sections 84-108 (88 out); sections 177-180. The third, under the title "Street Railroads," consisting of the remaining sections of the chapter beginning with section one hundred eighty-one. The commissioner has prepared copy for such rearrangement and the same is at the service of the legislature.

SEC. 9, 61. These sections may be consolidated in the following language: "Any railroad corporation may establish and collect for its sole benefit, fares, tolls and charges, upon all passengers and property conveyed and transported on its railroad, at such rates as may be determined by the directors thereof, and shall have a lien on its freight therefor; and may from time to time by its directors regulate the use of its road; *provided* that such rates of fares, tolls and charges, and regulations are at all times subject to alteration by the legislature, or by such officers or persons as the legislature may appoint for the purpose, anything in the charter of such corporation to the contrary notwithstanding; and *provided further* that, upon what shall, at any time, be deemed by the railroad commissioner a sufficient complaint, by interested and responsible parties, that the tolls are unreasonably high, said commissioners may revise and establish them, after due notice and hearing, for a time not exceeding one year. But the commissioners, before directing said hearing, shall give opportunity to the company complained of, to reply to the charge."

SEC. 59. If section fifty-eight is omitted in accordance with the recommendation of the commissioner, this section may be transferred to follow section one hundred sixty-two.

SEC. 88. This section may properly be transferred, to precede section one hundred fifty-eight and be made applicable to street railroads.

SEC. 89. Insert "motorman" after word "brakeman" in the second line, to make this section applicable to street railroads. See section one hundred ninety-five.

SEC. 181. The legislature has adopted in the official certificate the phrase "street railway," as distinguished from the phrase "street railroad," but the use of the term is not uniform as will be seen by an examination of the last twenty-six sections of this chapter. The commissioner is of the opinion that the usage should be uniform; if the first phrase is to be adopted, he recommends the correction of the sections above noted. Personally he prefers the use of the word "railroad" as applicable both to steam railroads and street railroads. There is no essential difference in the meaning of the words. The word "railway" is more commonly

used in England and the word "railroad" in this country. See Standard Dictionary, "Railroad." He has prepared memoranda showing the sections in which the phraseology should be corrected, to promote uniformity, by the use of either term, as the committee on revision may determine.

CHAP. 53, SEC. 22. Matthew Laughlin, Esq., of the Penobscot Bar, suggests to the commissioner that a doubt may arise as to the obligation of street railroad companies to comply with this section. The commissioner is inclined to think that section one hundred ninety-nine of chapter fifty-one makes clear the obligation, but to remove any doubt, suggests the following form for the first sentence of this section:

"Whoever desires to cut, disconnect or remove any wires or poles erected and maintained under the last ten sections of this chapter, in order to lawfully move a building," etc.

CHAP. 55, SEC. 11. Prof. William MacDonald of Brown University, late of Bowdoin College, suggests that the term "incorporated village" in this section should doubtless be "village corporation." He says: "The incorporated village, such as is found in New York and elsewhere is a political organization unknown to the laws of Maine, the Maine village corporation being, of course, properly only a financial municipal corporation. This is, I believe, the only place in the statutes where the term 'incorporated village' occurs, and although the sense is clear, the terminology seems not the proper one."

CHAP. 58, SEC. 24. Amend by inserting after word "county" in the second line, the words, "and local."

CHAP. 60, SEC. 10. Questions frequently arise in cases of divorce granted to the husband for the fault of the wife as to his rights in her real estate, held in her own right under chapter sixty-one. Section ten, excepting the last sentence, was originally enacted prior to the passage of the acts enlarging the rights of married women. See R. S. 1841, c. 89, sec. 18, and the marginal references thereto. The last sentence of section ten was introduced in the revision of 1857. See R. S. 1857, c. 60, sec. 7. The commissioner suggests for the consideration of the legislature, the following legislation:

"When a divorce is decreed to the husband for the fault of the wife, he shall be entitled to one third, in common and undivided of all her real estate, except wild lands, which shall descend to him as if she were dead; and the court may allow him so much of her personal estate as seems reasonable. In all cases the right, title and interest of the libellee in the real estate of the libellant shall be barred by the decree."

CHAP. 61, SEC. 1. George H. Smith, Esq., of Presque Isle suggests that the second clause of this section is in conflict with the first rule of section one of chapter seventy-five: that, as the law now stands, a married woman cannot convey her real estate without the joinder or assent of her husband and thereby bar his rights therein, in event of her prior death. The commissioner suggests that the two sections, if in conflict, may be reconciled by adding after the word "husband" at the end of the second clause of section one of chapter sixty-one the following words: "but such conveyance without the assent or joinder of the husband, shall not bar his right and interest by descent in the estate so conveyed."

CHAP. 64, SEC. 16. The commissioner suggests the amendment of this section by adding: "The provisions of section ten of this chapter apply to such proceedings, or the court may, upon issuing letters testamentary, require such bond, with or without sureties, as may have been required by the court before which such will was originally proved and allowed."

Such an amendment will permit non-resident executors to qualify in the manner prescribed by the law of the testator's domicile, and yet not deprive the court of this state of the authority to require bonds in the usual form when deemed necessary.

SEC. 24. The commissioner suggests for the consideration of the legislature the advisability of repealing all of this section after the word "right" in the third line, and adding "neither is her authority thereby extinguished." See P. L. 1895, c. 41, repealing R. S., c. 67, § 20.

SEC. 34. The commissioner suggests that in the cases mentioned in this section, special administration on the estate may well be committed to the public administrator. Contests frequently arise over the appointment of a special administrator, but if in each county there is one experienced officer to whom administration in such cases shall be committed, the commissioner believes that the result will be beneficial.

In place of the words "appoint a special administrator," insert "may commit special administration thereon to the public administrator"; and omit the words "other special administrators" in the fourteenth line and insert "if administration were committed to him under the preceding provisions hereof."

In section thirty-six in place of the word "special" in last line, insert "public."

In section thirty-seven, omit the words "special administrator" and insert "public administrator to whom special administration is committed."

In section thirty-eight, omit the words "appointing a special" and insert "committing special administration to the public."

SEC. 62. In addition to the allowances in this section it seems reasonable that executors and administrators may be permitted by the probate court to provide for the perpetual care of burial lots. Such legislation exists in Massachusetts. (1897, chap. 321.) The commissioner suggests to the legislature the advisability of enacting the following section:

"Executors and administrators may pay to cemetery corporations or to cities or towns having burial places therein, a reasonable sum of money for the perpetual care of the lot in which the body of their testate or intestate is buried, and the monuments thereon. The probate court shall determine, after notice to all parties in interest, to whom the same shall be paid and the amount thereof, and such sum shall be allowed in final accounts of such executors and administrators."

CHAP. 67, SEC. 5. Hon. J. H. Thompson, judge of probate for the county of Franklin, calls the attention of the commissioner to the confusion existing as to the law for the appointment of guardians for persons committed to the insane hospitals, by reason of the different provisions of this section and of section twenty-nine of chapter one hundred forty-two of this draft. An examination of the history of these two sections shows that section five is the older enactment, being found in chapter one hundred ten of the revision of 1841, sections eight and nine. The provision as to married women originated in P. L., 1858, chapter twenty-nine, and was incorporated into the present section five, in the revision of 1871. Section twenty-nine of chapter one hundred forty-two of this draft was, originally, P. L., 1847, chapter thirty-three, section thirteen, and was incorporated into the revision of 1857 as section twenty-three of chapter one hundred forty-three. An examination of section five of chapter sixty-seven of the revision of 1871 will disclose that in the side note, chapter one hundred forty-three, section twenty-three of the previous revision is referred to. It seems probable that the commissioners who made the revision of 1871 attempted to consolidate the two provisions into section five, notwithstanding the provision of 1847 is also found in the revision of 1871, chapter one hundred forty-three, section twenty-five; but for some reason both sections were retained by the legislature.

Hon. George A. Wilson, late judge of probate for the county of Oxford, in his work on "Maine Probate Law," at page 121 refers to the uncertainty existing by reason of these two sections. The commissioner, however, is not inclined to agree with him in all that he says. The two sections are not exactly alike, as the legislature left them in the revisions of 1871 and 1883, although it is difficult to perceive any good reason for making any distinction. The differences noted are two; first: section five seems to apply to persons certified by the municipal officers to have been committed to the insane hospital by the persons certifying, not by their predecessors, while section twenty-seven may relate to a certificate of commitment to the hospital made by any board of municipal officers of the town where the insane person resides; second: guardians appointed under section twenty-seven seem to have less authority than those appointed under section five of chapter sixty-seven and to have more of the character of special guardians. The commissioner is of the opinion that the procedure will be very much simplified by the omission of section twenty-nine of chapter one hundred forty-two of this draft, and by a simple amendment of the first sentence of section five of chapter sixty-seven, so that the same in the new draft will read as follows: "Guardians may be appointed, on application as aforesaid, for persons certified by the municipal officers of any town to have been committed by them (or their predecessors) to either of the insane hospitals, and there remaining, upon proof of the facts, without personal notice to the parties."

SEC. 27. The attention of the commissioner has been called by Hon. Albert R. Savage to the desirability of further legislation for the protection of infants represented in court by next friend. The commissioner submits the following section for the consideration of the legislature:

"No settlement of any suit brought in behalf of an infant by next friend shall be valid unless approved by the court in which the action is pending, or to which the writ is returnable, or affirmed by an entry of judgment. The court may make all necessary orders for protecting the interests of the infant, and may require the guardian ad litem, or next friend, to give bond to truly account for all money received in behalf of the infant." See 41 Me., 460; 8 Cush., 505; 155 Mass., 108; 91 Me., 360.

CHAP. 73, SEC. 20. It is thought that deeds executed out of the state should be acknowledged before an officer having an official seal. The omission of the words "justice of the peace, magistrate" in fifth line is therefore recommended; and the insertion of the words "clerk of a court of record having a seal" in place thereof. Also add, "The seal of such court, or the official seal of such notary shall be affixed to the certificate of acknowledgment."

CHAP. 75, SEC. 13. The attention of the commissioner has been called to cases where an estate is supposed to be solvent until after the time limited for waiving the provisions of the will has elapsed, and is then found to be insolvent. In such cases the widow's rights should be more fully protected. He submits for the consideration of the legislature the following section:

"When such election is not made within six months after probate of a will, and the estate is thereafter rendered insolvent, and commissioners are appointed by the judge of probate, such election may be made at any time within six months after the appointment of such commissioners. Such election shall not affect any title to real estate theretofore acquired from the executor or administrator with the will annexed, but the widow or widower may recover from such executor or administrator, if not paid within thirty days after demand therefor in writing, one third of any sums received from real estate sold before such waiver was filed."

CHAP. 76, SEC. 32-46. In accordance with the resolve authorizing this revision, the commissioner has retained the arrangement of the sections relating to the sales of real estate on execution as they are found in the last revision. It is thought however that these sections may, with advantage, be consolidated. Different provisions for notice in relation to sales of real estate render procedure more complex and increase the chances of error. No objection is perceived to consolidating sections thirty-two, forty-two and forty-three, so far as the latter relates to the sale of land, in substantially the following language: "Real estate attachable and all rights and interests therein, including the right to cut timber and grass, as described in chapter eighty-one, rights of redeeming real estate mortgaged, rights to a conveyance of it by bond or contract, interests by virtue of possession and improvement of lands as described in chapter one hundred and four, and estates for a term of years, may be taken on execution and sold, and the officer shall account to the debtor for any surplus proceeds of the sale, to be appropriated as provided in section twenty-two, of chapter eighty-four. Such seizure and sale pass to the purchaser, all the right, title and interest that the execution debtor has in such real estate at the time of such seizure, or had at the time of the attachment thereof on the original writ, subject to the debtor's right of redemption. This section does not repeal any other modes of levy of execution, provided in this chapter."

Sections forty-three and forty-four may with propriety be transferred to follow section thirty-eight, and section forty-three amended to read as follows: "The titles of banks or *manufacturing* corporations, as mortgagees of land, may be taken on execution and sold as real estate and interests therein, are taken and sold. The officer may by deed convey the same, and a debt secured by such mortgage and remaining unpaid will pass with the mortgagee's title to the purchaser, who may recover the premises or debt in his own name. In such action, a copy of the mortgage, attested by the register of deeds, is prima facie evidence of such deed, and of the contracts secured by it, as remaining due at the time of trial. The cashier of the bank or clerk of the corporation, on reasonable request of the officer, shall furnish him with a certified copy of such contract, and of all payments made thereon."

Section thirty-nine should be amended in the first line so as to read: "Real estate, and rights and interests therein, and mortgages and debts so sold, may be redeemed within one year, as land levied on by appraisalment may be; and the rights and remedies of the parties are the same for this purpose, as those of mortgagor and mortgagee." Section forty-five may then be omitted.

Section forty-six may be amended so as to read: "The franchises of railroads may be sold on execution as provided in section twenty-one of chapter eighty-four, and the officer may convey the same by deed, which shall be recorded in the registry of deeds of each county in which any part of such railroad lies; and the debtor has the same right of redemption from such sale as from sales of real estate under section thirty-two."

These amendments will provide one manner of notice applicable to sales of all real estate and another, applicable to sales of railroad franchises.

CHAP. 78, SEC. 5. This section, in the opinion of the commissioner, should be incorporated in chapter four, as a part of the election law. It may properly follow section one hundred eight. Similar provisions relating to the canvass of votes for presidential electors may be found in chapter four, section one hundred sixty-nine.

CHAP. 79, SEC. 23. Hon. Albert R. Savage calls the attention of the commissioner to an apparent oversight in drafting this section. Upon a strict construction, it may be held that a member of the bar of another

state, removing to this state and taking up his residence here, cannot be admitted to the general practice of law, without examination. This may be remedied by inserting in place of the words "the applicant" in the fifth line, the words: "any applicant, residing within or without the state."

The commissioner also suggests the further amendment of this section by inserting after the word "state" in the preceding amendment, the clause "who has been a member of the bar of another state, in good standing and in active practice, for at least three years," and the substitution of the word "such" for the word "any" before the word "state" in the seventh line.

CHAP. 81, SEC. 64, PAR. 5. The commissioner recommends the amendment of the fourth clause of this paragraph, at the top of page 716, so as to read: "all potatoes and other provisions raised or bought, and necessary for himself and family."

SEC. 79. It is thought that this section may well apply to attachments of real estate. To that end insert the words "or real estate is attached" after the word "taken" in the second line.

CHAP. 82, SEC. 50. As the law relating to the rights of married women to prosecute and defend civil suits now stands, can any circumstances arise where this section will be useful to prevent injustice?

CHAP. 87, SEC. 13. To avoid any uncertainty the commissioner recommends an amendment of this section in the next to the last line by inserting the words: "in the same manner and" after the word "sureties."

CHAP. 88, SEC. 1. Charles Peabody, Esq., of Millbridge suggests that estates in coparcenary are obsolete in this state and that reference to them may with propriety be omitted from the statutes.

It is stated in 4 Kent Com. star page 367, that "the technical distinction between coparcenary and estates in common, may be considered as essentially extinguished in the United States." See also Washburn on Real Property, Vol. 1, p. 651, 4th edition.

CHAP. 89, SEC. 14. It is thought that some record in the registry of deeds of the proceedings by which the levy is rendered void, may be desirable. To this end, this section may be amended by adding, "and a copy of the final judgment in review duly certified by the clerk of courts in the county where such judgment is rendered, shall within thirty days from the rendition thereof, be recorded in the registry of deeds where such levy is recorded." The above will provide for a record showing that the levy is void.

A similar amendment to chapter 102, section five, may be considered desirable.

Chap. 90, Sec. 37. A doubt arises as to the construction of this section when applied to unknown respondents, or to respondents whose names are unknown. Amend the last sentence so as to read:

"Personal service by copy of the petition and order of notice shall be made upon all known respondents residing in the State fourteen days before the return day; and upon all other respondents service may be made by" etc.

Chap. 91, Sec. 1. It is thought that the publicity of mortgages of personal property will be increased and the opportunities for fraud and concealment be correspondingly diminished, by limiting the time within which such mortgages shall be recorded. Amend by inserting after the word "recorded" in the third line, the words, "within thirty days from the date written therein;" and by inserting after the first sentence, "A record made

subsequently to the time limited shall be void and of no effect." See Revised Laws, Mass., c. 198, § 1.

If this amendment is adopted a similar amendment should be made to chapter 111, section five.

Sec. 28. The last clause of this section is a repetition of a portion of section sixty-one; no objection to its omission is perceived.

The provisions in sections forty-six and fifty-three, as to costs, are repeated in the general provisions of section sixty-four.

Sec. 59. This section should be amended by inserting after the word "sheltering" in the third line, the words, "and for necessary expenses incurred in the proper care of such animals and in payment of taxes assessed thereon." See *Allen vs. Ham*, 63 Me., 532.

The commissioner also calls attention to the case, *Lord vs. Collins*, 76 Me., 443, and suggests the desirability of an amendment to meet the hardships which may arise from that decision.

Chap. 97. George W. Gower, Esq., county attorney of Somerset county, suggests that an amendment to this chapter is desirable, providing that upon the refusal or neglect of a woman entitled to make a complaint, some other person may make and prosecute such complaint. He calls attention to the provisions of the R. L. Mass., c. 82, § 2.

If the legislature approves the suggestion, the following section may be added to the chapter.

"Sec. 12. If a woman who is entitled to make a complaint, refuses or neglects so to do when requested by an overseer of the poor of the place where she resides or has her settlement, or by either of her parents or by her guardian, the person so requesting may make and prosecute to judgment the complaint; and if, after making such complaint, the complainant refuses or neglects to prosecute the same, any of said persons may upon motion be permitted to prosecute the case to final judgment. In case of judgment against the respondent, the bond for performance of the order of the court required by section seven, shall run to the person so prosecuting, who, after payment of the costs of prosecution, shall appropriate to the support of the child the money recovered of the respondent. If the respondent prevails, the court may, on his motion, enter judgment for costs against the person prosecuting and issue execution thereon."

Chap. 104. Charles Peabody, Esq. of Millbridge, suggests to the commissioner that the use of the terms "plaintiff" and "defendant," instead of "demandant" and "tenant," will be an improvement and tend to avoid confusion in this chapter.

Chap. 114. The compensation of the members of the various examining boards should be uniform and should be paid from the state treasury, irrespective of the amount received from applicants. The following amendment to chapter 114 is therefore suggested:

"The members of the boards of registration in medicine, dentistry, pharmacy, and of examiners of applicants for admission to the bar shall each receive, as compensation for their services, five dollars a day for the time actually spent, and their necessary expenses incurred in the discharge of their duties, to be certified by the clerks of the respective boards and audited by the governor and council. The secretary of each board may also be allowed extra compensation for books, stationery, postage and other necessary expenses actually incurred. All sums of money received from applicants for examination shall be accounted for and paid quarterly to the treasurer of state."

Sec. 12. The compensation of inspectors of prisons, and of the committee of the council to examine the state prison, (c. 139, § 51) may be included in this section.

Chap. 116, Sec. 5. It is thought that this section prohibits attaching the name of a candidate for the office of governor of the State to the flag of the United States when displayed during political campaigns. The last three lines may be amended so as to read as follows: "and duly appointed and accredited committees of political parties, may during the campaign preceding any election for president and vice-president of the United States or for governor of this State, attach the names of their respective candidates for said offices to the flag."

Chap. 122, Sec. 8. The meaning of the fourth line of this section is vague. Either the words "on, or" should be omitted, or the words, "such locomotive, car or train" should be inserted after the word "on."

Chap. 123, Sec. 20. An eminent member of the bar has suggested to the commissioner that this section should be omitted or amended. It is first found in the Laws of 1821, c. 8, § 1, and has been re-enacted with only slight changes. A similar statute is found in the Revised Laws of Mass., c. 212, § 28.

In contrast therewith the commissioner calls attention to chapter 82, section 105, which was first enacted in P. L. 1847, c. 34. Formerly a belief in a Supreme Being was a prerequisite to the admission of a witness to testify. *Smith vs. Coffin*, 18 Me., 157.

Chap. 126, Sec. 20. The commissioner thinks that this section is too restricted in its application, and the penalty inadequate; he suggests amending it by adding after the word "public" in the third line, the words: "or to any literary or educational institution, or any statue erected in any public park or square, or upon any grounds open to the public;" and by making the penalty a fine not exceeding fifty dollars, or imprisonment not exceeding three months.

Chap. 133, Sec. 9. This section is first found in Laws 1821, c. 59, § 44; R. S., 1841, c. 172, §§ 12, 13; R. S., 1857, c. 134, § 9.

Compare Const. of Me., Art. 1, § 10, which was originally Amendment 11, adopted pursuant to the Resolve of March 30, 1837.

Chap. 140. It is respectfully suggested that the establishment of work jails has rendered the first twenty-two sections of this chapter, so far as they relate to the establishment of county houses of correction, of no practical value. The commissioner is of the opinion that the provisions of chapter twenty-one, relating to work houses, and the provisions of chapter one hundred and forty, may be advantageously combined in one chapter. Specific provisions may then be made for the establishment by towns, of work houses and houses of correction, in connection with their almshouses; and work jails may be constituted county houses of correction until the establishment of such institutions, independent of jails. The provisions for the commitment to work houses and houses of correction may be retained substantially as they now exist and in addition thereto, provision may be advantageously made for the care of idle children growing up without education. See chapter eleven, sections forty-five to forty-seven. The commissioner understands that such a system, as to work houses and town houses of correction, is practically in operation in certain cities of the state and is of substantial value in dealing with juvenile offenders and other persons who ought not to be committed to jails. The commissioner will endeavor to put these suggestions in form for the consideration of the legislature.