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Chapter 53.

Corporations.

Chapter cited in Seven Star Grange No. 73 v. Ferguson, 98 Me. 176, 56 A. 648; Crawford Elec. Co. v. Knox County Power Co., 110 Me. 285, 86 A. 119; Maine Unemployment Compensation Comm. v. Maine Savings Bank, 136 Me. 136, 3 A. (2d) 897; Bourque-Lanigan Post No. 5 v. Carey, 148 Me. 114, 90 A. (2d) 710.

General Provisions.

Sec. 1. Application.—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. (R. S. c. 49, § 1.)

Cross references.—Sec. 50, § 3, re telephone, telegraph, electric and gas companies; c. 59, § 28, re savings banks; c. 60, § 26, re insurance companies.

Special laws for particular corporations govern when inconsistent with this chapter. — The general rights, duties, obligations and liabilities of corporations are prescribed and defined by this chapter. But there are various kinds of corporations and for different purposes and objects, as for banking, insuring, etc. In the statutes relating to the corporations created for special purposes are found special prohibitions and limitations applicable to each different kind of corporation. The provisions applicable to all corporations, and those to the different corporations for special purposes, are to be construed together. By this section, the general provisions apply to all corporations, except when modified by prohibitions and limitations specially applicable to some of the different varieties of corporations. It is obvious that there was no conflict intended between the general and the special legislation. While the general law, as enacted in this chapter, is to be deemed binding as long as it remains without modification, its applicability must obviously cease when there are other and variant provisions enacted for the different kinds of corporations. In other words, the special laws for a particular species of corporations, when variant from the general law, must be regarded as paramount and withdrawing the kind of corporation to which it applies from the operation of the general law, which would control were it not for this modification. Lovegrove v. Hunt, 58 Me. 9.

§§ 103-118 inconsistent with provisions of c. 59.—See note immediately preceding § 103.

Applied in Came v. Brigham, 39 Me. 35.

Quoted in Craughwell v. Mausam River Trust Co., 113 Me. 531, 95 A. 221; Greaves v. Houlton Water Co., 143 Me. 207, 59 A. (2d) 217.

Cited in Woodsum v. Portland R. R., 144 Me. 74, 65 A. (2d) 17.

Sec. 2. Acts of incorporation altered or repealed.—Acts of incorporation passed since March 17, 1831 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. (R. S. c. 49, § 2.)

Object of section. — The object of the reservation provided for in this section is to prevent a grant of corporate rights and privileges in a form which will preclude legislative interference with their exercise, if the public interest should at any time require such interference. State v. Maine Central R. R., 66 Me. 488.

Legislature reserves power to revoke any privilege granted.—If an act of incorporation contains no express limitation, the legislature by this section reserves full power to revoke any privilege therein granted. State v. Boheimer, 96 Me. 257, 52 A. 643.

By this section, the charters under which a corporation operates are subject to repeal by the legislature. The franchises which it holds are not perpetual and irrevocable. It may be that it is extremely unlikely that the legislature would repeal the charters, without providing for compensation in some way. The probabilities are fairly open to consideration. But the legal condition exists. Kennebec Water District v. Waterville, 97 Me. 185, 54 A. 6.

Right to amend, etc., same as if incorporated in charter.—Charters granted subsequent to the enactment of this section must be understood as standing just as they would if the reservation of the power to amend, alter or repeal the same had been incorporated into each charter. State v. Maine Central R. R., 66 Me. 488.

Persons presumed to contract with reference to power reserved by this section. —All persons dealing with corporations are bound to know the provisions of this section and are presumed to contract with reference thereto. Bowker v. Hill, 60 Me. 172.

The power reserved to the state by this section authorizes any change in the contract as it originally existed, or as subsequently modified, or its entire revocation. The original incorporators, or subsequent stockholders, take their interests with knowledge of the existence of this power and of the possibility of its exercise at any time in the discretion of the legislature. State v. Maine Central R. R., 66 Me. 488.

All special acts of incorporation are subject to the provisions of this section. And all parties are presumed to act with a full knowledge of its terms and their legal effect. State v. Maine Central R. R., 66 Me. 488.

And exercise of power not act impairing obligation of contract.—When there is a law of the state reserving to the legislature the power to alter, amend or withdraw any privilege granted by a corporate charter, this reservation qualifies the grant; and a subsequent exercise of the reserved power is not within the prohibition of the federal constitution, as an act impairing the obligation of contracts. State v. Maine Central R. R., 66 Me. 488.

Limitation must be shown by unmistakable language.—The "express limitation" provision, negativing or restricting the right reserved to the legislature by this section must be shown by unmistakable language, not by implication or forced construction of the words used. State v. Maine Central R. R., 66 Me. 488.

Section applies to all acts of incorporation, whether general or special.—Corporations created by a general act of incorporation are as much within the reasons which induced the enactment of this section as corporations created by a special act. It is equally desirable that the state should reserve its general power of modifying or repealing charters in one case as the other. This reservation is found in the act relating to "corporations," and must apply to all acts of incorporation whether general or special, in which "an express limitation or provision to the contrary" shall not have been inserted. State v. Maine Central R. R., 66 Me. 488.

And to act of consolidation.—An act is none the less an act of incorporation within the meaning of this section because it is an act of consolidation. State v. Maine Central R. R., 66 Me. 488.

Section applicable to corporation organized under c. 46, § 38.—See note to c. 46, § 38.

Power to repeal tax exemption.—It was formerly held that, where the charter of a corporation states for what taxes the corporation shall be liable and exempts the corporation from all other taxation, as to taxation the charter contains "an express limitation", within the meaning of this section, and the legislature has no power to impose an additional tax on the corporation. See State v. Dexter & Newport R.

R., 69 Me. 44. However it has recently been held that the power to repeal a tax exemption contained in a corporation's charter is retained by the legislature under this section. See Greaves v. Houlton Water Co., 143 Me. 207, 59 A. (2d) 217.

Applied in Milo Elec. Light & Power Co. v. Sebec Dam Co., 109 Me. 427, 84 A. 941; Roberts v. Portland Water District, 124 Me. 63, 126 A. 162.

Stated in State v. Old Tavern Farm, 133 Me. 468, 180 A. 473.

Cited in Penobscot Boom Corp. v. Lamson, 16 Me. 224; Opinion of the Justices, 97 Me. 590, 55 A. 828; Woodsum v. Portland R. R., 144 Me. 74, 65 A. (2d) 17.

Organization under Special Act.

Sec. 3. First meeting.—The 1st 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, 7 days before the meeting. (R. S. c. 49, § 3.)

Sec. 4. Capital stock; record of owners.—The capital of corporations incorporated by special act of the legislature shall be fixed and divided into shares; and the names of the owners and the number of shares owned by each shall be entered of record at the 1st meeting. The capital may be subsequently increased as provided in section 75 by adding to the number of shares. (R. S. c. 49, § 4.)

Sec. 5. Certificate of organization.—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 having par value and the number of shares without par value, the names and residences of the owners, the name of the county where it is located, 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 office of the secretary of state, the stockholders of said corporation, their successors and assigns shall be a corporation. (R. S. c. 49, § 5.)

See c. 10, § 22, sub-§ XXIX, re lapses in 2 years unless business commenced.

Sec. 6. Fees.—The certificate mentioned in the preceding section shall not be received and filed by the secretary of state except upon the payment to him for the use of the state of: $15 if the capital stock does not exceed $5,000; $25 if the capital stock exceeds $5,000 and does not exceed $10,000; $75 if the capital stock exceeds $10,000 and does not exceed $50,000; $125 if the capital stock exceeds $50,000 and does not exceed $100,000; $60 upon every $100,000 or fraction thereof in excess of $100,000 if the capital stock exceeds $100,000; also 1c per share and in no case less than $10 on all shares authorized without par value, provided that the provisions of this section shall not apply to corporations chartered for charitable and benevolent purposes. (R. S. c. 49, § 6.)

Sec. 7. Shall not carry on business until certificate filed.—No corporation created by special act of the legislature, municipal corporations excepted, shall carry on any business whatsoever before filing in the office of the secretary of state the certificate of organization provided by section 5. Whoever, whether

named in the act of the legislature or not, conducts and carries on any business whatsoever in the name of such corporation before said certificate is filed shall be personally and individually liable for all contracts and debts of said corporation contracted prior to the filing of said certificate. The provisions of this section shall apply to all individuals granted special rights and privileges by act of the legislature. (R. S. c. 49, § 7.)

Organization under General Law.

Cross References.—See c. 50, § 6, re physical connection between lines authorized by public utilities commission; c. 55, re credit unions.

Sec. 8. Purposes.—Three or more persons may associate themselves together by written articles of agreement for the purpose of forming a corporation with one or more classes of stock either with or without par value to carry on any lawful business anywhere, 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 ownership, maintenance or operation of a cemetery or cemeteries, the construction and operation of railroads or aiding the construction thereof and the business of savings banks, trust companies, loan and building associations or corporations intended to derive profit from the loan of money except as a reasonable incident to the transaction of other corporate business or where necessary to prevent corporate funds from being unproductive, and safe deposit companies, including the renting of safes in burglar-proof and fire-proof vaults; but corporations may also be formed hereunder to exercise the following corporate purposes in other states and jurisdictions, namely: the construction and operation of railroads or aiding in the construction thereof, telegraph and telephone companies and gas or electrical companies, and in all such cases, the articles of agreement and certificate of organization shall state that such business is to be carried on only in states and jurisdictions when and where permissible under the laws thereof, and such corporations heretofore organized for the transaction of such business in other states or jurisdictions, if otherwise legally organized and now existing, are declared to be corporations under the laws of this state.

Nothing herein shall be construed to prevent the organization of agricultural credit corporations organized to carry out the provisions of the federal farm loan act enacted by the 67th congress of the United States, chapter 252, and acts amendatory thereof and additional thereto and which become such corporations under the provisions of said federal farm loan act. Such agricultural credit corporations shall not be deemed banking corporations or institutions. (R. S. c. 49, § 8.)

Inclusion of specific types of business does not limit general scope of section. — The inclusion of specific types of business in this section does not limit the general scope of the preceding language. Hodges v. South Berwick Water Co., 139 Me. 40, 26 A. (2d) 645.

The provisions of this section apply to the organization of corporations "to carry on any lawful business anywhere." Hodges v. South Berwick Water Co., 139 Me. 40, 26 A. (2d) 645.

And water company may be organized under this section.—A corporation may be organized under this section to carry on as a public utility within the state of Maine the business of supplying water for the use of the public. Hodges v. South Berwick Water Co., 139 Me. 40, 26 A. (2d) 645.

The failure specifically to except water companies in the general exception clause of this section coupled with the omission to include water companies in the provision applicable to other public utilities authorized to do business without the state is very cogent evidence that water companies were assumed to be included within

the general provision authorizing the formation of corporations "to carry on any lawful business any where." Hodges v. South Berwick Water Co., 139 Me. 40, 26 A. (2d) 645.

Business excepted by this section may be incorporated by special act.—It is competent for the legislature to create by special act of the legislature a private corporation whose principal object shall be to engage in business intended to derive profit out of the loan of money, subject to such limitations relative to the amount of individual loans, or otherwise, as the legislature may prescribe, if the objects of the corporation cannot be attained under any existing general laws. Opinion of the Justices, 146 Me. 316, 319, 80 A. (2d) 866.

Applied in Knowlton Platform, etc., Co. v. Cook, 70 Me. 143; Palangio v. Wild River Lumber Co., 86 Me. 315, 29 A. 1087.

Sec. 9. First meeting; notice of waiver. — Their 1st 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 14 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 having par value, which shall not be less than $1,000 and divide it into shares, fix the number of shares having no par value and elect not less than 3 directors, a president, a clerk, treasurer and any other necessary officers, and may adopt a code of by-laws. (R. S. c. 49, § 9.)

Cited in Richmond Factory Ass'n v. Clarke, 61 Me. 351; Poor v. Willoughby, 64 Me. 379.

Sec. 10. Certificate of organization; fees.—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 having par value and the number of shares without par value, 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; said certificate shall be presented to the attorney general accompanied by a copy thereof or by a data sheet containing all of the information hereinbefore required; and after said certificate 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 60 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 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. The oath to said certificate may be made outside the state before a notary public or a commissioner appointed by the governor to take acknowledgments of deeds in other states, by any subscriber to said certificate who was actually present in the state at the meeting for the organization of the corporation. All certificates verified prior to the 4th day of July, 1915, outside the state before a notary public or such commissioner shall be deemed to comply with this section. Before said certificate is filed in the office of the secretary of state, such corporation shall pay to him for the use of the state: $10 for each $100,000 of the capital stock not over $2,000,000; $50 for each million dollars of the capital stock from $2,000,000 to and including $20,000,000; $20 for each million dollars of the capital stock over $20,000,000; also ½c per share and in no case less than $10 on all shares authorized without par value, not over 20,000 shares; ¼c per share on all shares authorized without par value from 20,000 shares to and in-

cluding 2,000,000 shares; and 1/5c per share on all shares authorized without par value over 2,000,000 shares. (R. S. c. 49, § 10.)

Cross references.—See c. 20, § 1, re fee of attorney general for approval of certificate of organization; c. 21, § 6, re fees of secretary of state; c. 50, § 3, re organization of telephone, telegraph, electric and gas companies; c. 50, § 7, re further contents of certificate by telephone and telegraph companies and by gas or electric companies.

Certification by attorney general essential to corporation.—Unless the certificate is certified by the attorney general as required by this section, persons associating themselves together do not become a corporation. Richmond Factory Ass'n v. Clarke, 61 Me. 351.

Cited in Poor v. Willoughby, 64 Me. 379.

Sec. 11. Composite certificate of organization. — The secretary of state shall prepare and furnish upon request therefor a certified composite certificate of organization which shall contain only such provisions as are in effect at the time of certification as a result of amendments to the original charter or certificate of organization or because of agreements of consolidation or merger. The secretary of state shall make in each case such reasonable charge therefor as he deems proper, in no case less than $10. Any such certified copy may be recorded in the registry of deeds in the county where the principal office of the corporation is located. (1951, c. 334, § 1.)

Sec. 12. Quasi-public corporations; fees. — No certificate of organization of any corporation for banking, insurance, construction and operation of railroads, or aiding in the construction thereof, the business of 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 railroad 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 for the use of the state of: $25 if the capital stock does not exceed $5,000; $50 if the capital stock exceeds $5,000 and does not exceed $10,000; $100 if the capital stock exceeds $10,000 and does not exceed $50,000; $200 if the capital stock exceeds $50,000 and does not exceed $100,000; $75 upon every $100,000 or fraction thereof in excess of $100,000, if the capital stock exceeds $100,000; also 1c per share and in no case less than $10 on all shares authorized without par value. (R. S. c. 49, § 11.)

Sec. 13. Certificates of organization filed prior to March 15, 1893. —Any corporation organized hereunder prior to the 15th day of March, 1893, 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 section 10. (R. S. c. 49, § 12.)

Sec. 14. When organization completed. — From the time of filing the copy of such certificate in the office of the secretary of state, the signer 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. (R. S. c. 49, § 13.)

Cross references.—See c. 10, § 22, sub-§ XXX, re lapses in 2 years unless business commenced; c. 50, § 3, re organization of telephone companies, etc.

By this section, no distinctions are to be made as to the origin of a corporation, whether it be by special act or it be incorporated by general law. If any are to be made, then the latter kind would not be "the same as if incorporated by a special act." But both kinds of corporations are placed upon a perfect equality as to "rights and powers" as well as to "duties, obligations and liabilities." Poor v. Willoughby, 64 Me. 379.

Quoted in Richmond Factory Ass'n v. Clarke, 61 Me. 351.

Sec. 15. Nonpar stock certificates. — In the case of certificates for

shares of stock issued under the provisions authorizing the issuance of stock without par value, it shall be unlawful to set forth any par value or value in dollars thereon, or to express any rate of dividend to which the shares represented thereby shall be entitled in terms of percentage of any par or other value. Every such certificate shall have plainly stated on its face the number of shares which it represents and each such share, except as to preferences, rights, limitations, privileges and restrictions lawfully granted or imposed with respect to any stock or class thereof, shall be deemed to be equal to every other share of the same class. Preferences, rights, limitations, privileges and restrictions authorized by the laws of this state may be stated in dollars and cents per share. (R. S. c. 49, § 14.)

Corporate Powers. Meetings.

Sec. 16. General powers.—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; hold and convey lands and other property; and make donations for the public welfare or for charitable, scientific or educational purposes. (R. S. c. 49, § 15. 1951, c. 4.)

Cross reference.—See c. 10, § 22, sub-§ XVII, re corporate seal.

The power to enact by-laws under the general corporation law is not an unlimited one. Searles v. Bar Harbor Banking & Trust Co., 128 Me. 34, 145 A. 391.

And by-law restricting alienation of stock not authorized.—This section and § 23 relate to such by-laws as may be essential for the general management of the corporation and cannot be construed as authorizing the imposing of any restrictions upon the alienation of its stock other than such as may be necessary to ensure the corporation having a record of its stockholders and to prevent fraud in the transfer of its stock. Searles v. Bar Harbor Banking & Trust Co., 128 Me. 34, 145 A. 391.

Necessity of observance of by-laws. — Where there is nothing in the provisions of the by-laws of a corporation inconsistent with the laws of the state or the charter of the corporation, their substantial observance is necessary. Dane v. Young, 61 Me. 160.

Applied in Woodman v. York & Cumberland R. R., 50 Me. 549.

Sec. 17. May do business out of state.—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. (R. S. c. 49, § 16.)

Sec. 18. May create 2 or more kinds of stock. — Every corporation may create 2 or more kinds of stock with such classes and 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. Restrictions and qualifications of voting power so imposed shall control in all cases where any vote or consent of stockholders is now or hereafter required by statute, unless such statute shall provide expressly to the contrary, and the provision of any statute requiring a specific vote of all, a majority or a fractional part of the stock issued or of the stock outstanding, or any similar provision, shall be construed as limited by any such restrictions and qualifications. (R. S. c. 49, § 17.)

This section, in authorizing the creation of two classes of stock, was not intended to authorize the creation of two kinds in respect to a freedom of alienation. Such statutes have a well-defended purpose in corporation law in authorizing classes of stock with differences as to preferences and voting power. Such legislative authority has not been construed or invoked to authorize the creation of different classes in respect to freedom or limitation of alienation. Searles v. Bar Harbor Banking & Trust Co., 128 Me. 34, 145 A. 391.

Sec. 19. Issue of stock for property and services.—Any corporation

may purchase mines, manufactories 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 fully 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. (R. S. c. 49, § 18.)

This section does not apply to a case where the corporation whose stock was purchased was not a producer of "materials or other property necessary for its (the purchaser's) business." Duryea v. Elkhorn Coal & Coke Corp., 123 Me. 482, 124 A. 206.

And a mere holding company has no business for which within the meaning of this section "materials or other property" are necessary. Duryea v. Elkhorn Coal & Coke Corp., 123 Me. 482, 124 A. 206.

Section does not authorize selfdealing.— This section contemplates two independent contracting parties, the one buying and the other selling, each looking out for his own interests. It does not contemplate one party dealing with himself and acting in two capacities. It means also the honest and bona fide judgment of the directors. Mason v. Carrothers, 105 Me. 392, 74 A. 1030.

Sec. 20. Issue of nonpar stock consideration; division into capital and surplus.—Corporations may issue and dispose of their authorized shares having no par value for such consideration as may be prescribed in the certificate of organization or in the certificate of amendment, or if no consideration is so prescribed, then for such consideration as may be fixed by the stockholders at a meeting duly called and held for the purpose or by the board of directors when acting under general or special authority granted by the stockholders. Any and all shares issued for the consideration prescribed or fixed in accordance with the provisions of this section shall be fully paid and nonassessable. The stockholders at a meeting duly called and held for the purpose or the board of directors when acting under any general or special authority granted by the stockholders may determine at the time of the issue thereof what part of the consideration received for issued shares without par value shall be capital and what part of said consideration shall be paid-in surplus available for dividends and other corporate purposes. (R. S. c. 49, § 19.)

Sec. 21. Preferred stock retired.—Corporations formed pursuant to the provisions of this chapter may provide that preferred stock, both with and without par value, may be called in and retired in such manner and at such price as may be provided in the provision describing the preference of such stock; provided, however, that no preferred stock shall thus be called in or retired if thereby the property and assets of the corporation shall be reduced below the amount of its outstanding debts and liabilities. (R. S. c. 49, § 20.)

Sec. 22. May hold shares of other corporations. — 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. (R. S. c. 49, § 21.)

Sec. 23. Power to make and alter by-laws.—The power to make and alter by-laws shall be in the stockholders but any corporation may, in the certificate of organization or in any amendment thereto or by a provision of the by-laws, confer that power upon the directors. By-laws made by the directors

under power so conferred may be altered or repealed by the directors or stockholders. 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; the date as of which stockholders shall be entitled to vote at any meeting or to receive dividends or rights and whether or not stock transfer books shall be closed; by whom any and all officers, except president and directors, shall be elected; by whom vacancies in the board of directors or other offices may be filled; the tenure of the several offices; 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 $20. (R. S. c. 49, § 22.)

By-law restricting alienation of stock not authorized.—See note to § 16.

Stockholders determine quorum.—What should constitute a quorum for the transaction of business at their meetings, is a question which the stockholders have a right to determine under this section. Ellsworth Woolen Mfg. Co. v. Faunce, 79 Me. 440, 10 A. 250, overruled on another point in Castner v. Twitchell-Champlin Co., 91 Me. 524, 40 A. 558.

Cited in Kennebec & Portland R. R. v. Kendall, 31 Me. 470; Searles v. Bar Harbor Banking & Trust Co., 128 Me. 34, 145 A. 391.

Sec. 24. Right of indemnification.—The certificate of incorporation of a corporation or other certificate filed pursuant to law or the by-laws of a corporation or a resolution in a specific case or an amendment to any of the foregoing, adopted by the vote of the holders of record of a majority of the outstanding shares at the time entitled to vote for the election of directors, or in case of a non-stock corporation, by a vote of a majority of the members, may provide that each officer and each director of the corporation shall be indemnified by the corporation against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of his being or having been an officer or a director of the corporation, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of his duties as such officer or director; such right of indemnification shall not be deemed exclusive of any other rights to which he may be entitled under any by-law, agreement, vote of stockholders or otherwise. (R. S. c. 49, § 23.)

Sec. 25. Meetings by consent.—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. (R. S. c. 49, § 24.)

Sec. 26. Meetings called by justice of the peace.—When a meeting of any corporation cannot be otherwise called, 3 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 section 3. 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. (R. S. c. 49, § 25.)

Cited in Williams College v. Mallett, 12 Me. 398.

Sec. 27. Presiding officer at meeting called by justice of the peace.—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. (R. S. c. 49, § 26.)

Sec. 28. Proxies; general powers of attorney.—Shareholders may be represented by proxies granted not more than 1 year 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 anyone by the charter or by-laws. Proxies shall be signed by the persons granting them but need not be under seal. (R. S. c. 49, § 27. 1945, c. 57. 1949, c. 2.)

Sec. 29. Representation of pledge stock.—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. (R. S. c. 49, § 28.)

Sec. 30. Officers holding over; election after annual meeting; objections.—When a corporation fails to hold its annual meeting on the day appointed or fails to elect officers at such meeting, 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 6 months after such election, written objections thereto; and their acts shall be considered legal until others are chosen and qualified in their stead. (R. S. c. 49, § 29.)

Quoted in part in Machias Hotel Co. v. Fisher, 56 Me. 321.

Sec. 31. New election if objections filed.—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. (R. S. c. 49, § 30.)

Officers and Their Duties.

Sec. 32. Officers of corporation; qualifications of directors; treasurer to give bond; clerk sworn; directors divided into classes; may hold meetings without this state.—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 3 directors, one of whom shall be by them elected president. Directors must be and remain stockholders, except that a member of another corporation, who 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; nothing herein shall prohibit corporations from providing by their by-laws for the division of their directors into classes and their election for a longer term than 1 year. After the certificate of organization required by law is filed in the office of the secretary of state, directors of all corporations not charged with the performance of any public duty within the state may hold meetings without the state and there transact business and perform all corporate acts not expressly required by statute to be performed within the state. Directors of such corpora-

tions may act through committees whose powers shall be defined in the by-laws. (R. S. c. 49, § 31.)

See c. 91, § 40, re town officers.

Sec. 33. Appointment of directors by court; proceedings. — If any corporation organized under the general laws of the state shall fail to elect directors within 6 months after the time provided in its by-laws for the annual meeting, the supreme judicial court and the superior court shall have jurisdiction in equity, upon application by any 1 or more of its stockholders holding at least 50% of the capital stock issued, to appoint a board of directors for such corporation not exceeding in membership the number authorized by the by-laws. The 6-month period shall be computed from the date of the 1st annual meeting at which such failure to elect occurs and not from the date of a subsequent annual meeting or meetings at which such failure is continued. Such appointments may be made from among the stockholders or otherwise as the court may see fit. The application shall be made by petition filed in the county where such corporation is located and shall be brought in behalf of all stockholders desiring to be joined therein; such notice shall be given to the corporation and its stockholders as the court may direct. Such appointees of the court shall have the same rights, powers and duties and the same tenure of office as directors duly elected by the stockholders at the annual meeting held at the time prescribed therefor in the by-laws, next prior to the date of the court's appointment, would have had. (R. S. c. 49, § 32. 1947, c. 57.)

Sec. 34. Clerk's office, books, etc.; records and list of stockholders open to inspection and produced in court.—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 records of all stockholders' meetings; and such corporations shall file with said clerk, at least once a year on the date set for holding the annual meeting of stockholders, as also at each special meeting of stockholders, a record showing a true and complete list of all stockholders, their residences and the amount of stock held by each; and such record 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 list of stockholders 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 stockbook is kept giving the names, residences and amount of stock of each stockholder. (R. S. c. 49, § 33.)

I. In General.
II. Right to Inspect and Make Copies.
III. Enforcement of Rights by Mandamus.
A. In General.
B. Evidence and Burden of Proof.

I. IN GENERAL.

Section applicable to resident and non-resident corporations.—Every reason that can be urged for the first part of the section regarding the right to examine the books of a non-resident corporation is equally cogent with respect to the books of a resident corporation. The language is clear and the meaning plain. Bryer v. Wyman, 118 Me. 378, 108 A. 331.

And only last sentence differentiates between the two.—The language of the last sentence of this section is so clear as not to admit of interpretation. It is also equally clear that this provision was made solely for the purpose of differentiating between non-resident and resident corporations. The non-resident is required to keep books at some fixed place showing "a complete list of all stockholders." The only exemption of the resident corporation, is that the "provision as to the list of stockholders"

shall not apply, as it already has a fixed place where all its books are kept. Bryer v. Wyman, 118 Me. 378, 108 A. 331.

Clerk resident within jurisdiction satisfies section.—The requirement of this section is met, even in the case of a business corporation, if the clerk is resident within the jurisdiction. Camp Emoh Associates v. Lyman, 132 Me. 67, 166 A. 59.

Common-law right in addition to one given by this section.—In addition to the statutory right given by this section, which applies only to the records of corporate meetings and to the list of stockholders, a stockholder has a right at common law to examine the books, records and papers of a corporation, when the inspection is sought at proper times and for a proper purpose, which it is held must relate to his interest as a stockholder. Holdsworth v. Goodall-Sanford, Inc., 143 Me. 56, 55 A. (2d) 130.

Applied in Day v. Booth, 122 Me. 91, 118 A. 899.

II. RIGHT TO INSPECT AND MAKE COPIES.

Stockholder's right of inspection is absolute without regard to motive. — The common law gave to stockholders the right to examine the books, records and papers of the corporation, when the inspection was sought at proper times and for proper purposes. And it is generally held at common law that the purpose must relate to the interest of the stockholder as such. This section is affirmatory of the common law and more. It adds to the common-law rights, it removes some of the common-law limitations. In other words, the right of inspection of corporate records and of the list of stockholders by a stockholder given by this section is absolute and unlimited. The section does not make the purpose material, and the court cannot. Where the right is guaranteed by statute, the great weight of authority is to the effect that the motive or purpose of seeking to exercise it is not the proper subject of judicial inquiry. White v. Manter, 109 Me. 408, 84 A. 890; Withington v. Bradley, 111 Me. 384, 89 A. 201; Knox v. Coburn, 117 Me. 409, 104 A. 789; Shea v. Sweetser, 119 Me. 400, 111 A. 579.

Under this section, access to the records and stock book is conditional only upon being a party interested. A stockholder is such an interested party and, therefore, has the absolute right to such inspection without regard to his motive or purpose. Withington v. Bradley, 111 Me. 384, 89 A. 201.

When the right is conferred by statute in absolute terms as in this section, the purpose or motive in making the demand for an inspection is not material, and the stockholder cannot be required to state his reasons therefor. White v. Manter, 109 Me. 408, 84 A. 890.

The stockholder's right to inspect is unlimited. The purpose he seeks to promote is not confined to his interest in the corporation as a stockholder. White v. Manter, 109 Me. 408, 84 A. 890.

The stockholder's right under this section is absolute and, provided his purpose in seeking the examination is not vexatious or unlawful, will be enforced by a writ of mandamus even though his motive in applying for the writ may in no way relate to his interest as a stockholder. Holdsworth v. Goodall-Sanford, Inc., 143 Me. 56, 55 A. (2d) 130.

Right to make copies is restricted to such as concerns stockholder's interest.—While the right of stockholders to inspect the records of the corporation and the list of stockholders is unlimited, the right "to take copies and minutes therefrom" is limited to such parts "as concern their interests." It has been frequently held that the right to make copies and minutes is at common law necessarily incidental to the right to inspect. However this may be, this section is restrictive. The stockholder has no statutory right to make copies or minutes of more than concerns his interests. White v. Manter, 109 Me. 408, 84 A. 890; Withington v. Bradley, 111 Me. 384, 89 A. 201.

The right to take copies and minutes therefrom, is limited to such parts as concern the interest of the stockholder making the application. Knox v. Coburn, 117 Me. 409, 104 A. 789.

But motive in taking copies immaterial. —Where the taking of copies is requested, this section imposes two conditions, first that the applicant shall be a party interested and second, that he shall take copies of such parts only as concern his interests. Where these conditions are met, the motive or purpose of the petitioner does not affect his statutory right. The restraint imposed by the section is a restraint upon the parts to be taken and not upon the use that may be made of them. Withington v. Bradley, 111 Me. 384, 89 A. 201.

And list of stockholders does concern his interest.—Ownership of stock, per se, renders information as to who are the co-owners a matter of vital interest. A stockholder is one of many engaged in a joint enterprise and the opportunity to communicate with his associates, may be of prime necessity. The conduct of the corporation, its policies, plans and methods concern all

stockholders and, unless they can reach one another so as to obtain concert of action, they may be powerless to prevent injury or disaster. If those in control can prevent the stockholder from obtaining such a list they may thereby perpetuate themselves in power and continue disastrous policies. To say that a stockholder may inspect the list but shall not make copies is to effectually checkmate his right because in the ordinary corporation, with stockholders numerous and widely scattered, inspection alone would serve no practical purpose. Withington v. Bradley, 111 Me. 384, 89 A. 201.

And such list may be copied without regard to motive. — A list of stockholders concerns a stockholder's interest, and he has a right to take a copy of the list irrespective of his motive or purpose. Knox v. Coburn, 117 Me. 409, 104 A. 789.

III. ENFORCEMENT OF RIGHT BY MANDAMUS.

A. In General.

Enforcement of right by mandamus not compulsory. — It is not compulsory upon the court in all cases to enforce the stockholder's right of inspection by granting a writ of mandamus. From its inception mandamus has been a discretionary writ, not a writ of right, and the remedy, extraordinary in its nature, has been somewhat sparingly employed. The character of this writ and the discretion to be exercised by the court in issuing it seem not to have been taken away nor abridged by this section. A state of facts might be presented where the purpose of the petitioner was so obviously vexatious, improper or unlawful, that the court might feel compelled to exercise its discretion in the interests of law and justice and decline to issue the writ. Withington v. Bradley, 111 Me. 384, 89 A. 201; Eaton v. Manter, 114 Me. 259, 95 A. 948; Knox v. Coburn, 117 Me. 409, 104 A. 789.

This section provides that the records and stock list 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. This makes absolute and unqualified the right which at common law was conditional. The statutory right of inspection of corporate records and of the list of stockholders by a stockholder is absolute and unlimited. The statute does not make the purpose material and the court cannot. But all of this relates to the right and not to the remedy. From the earliest times the writ of mandamus has been held to be a prerogative or discretionary writ and not a writ of right. The writ of mandamus is not a writ of right. It is issuable at the discretion of the court and when equity requires it. Shea v. Sweetser, 119 Me. 400, 111 A. 579.

In determining a petitioner's right to a writ of mandamus enforcing the right given by this section, the court must clearly differentiate between the existence of the right and the authorization of the method of enforcing it. Conceding a right to inspect the books and records, given by common law and by this section, it is not compulsory upon the court in all cases to enforce the right by mandamus, which is a discretionary writ, and not a writ of right. The statutory right, while absolute in terms, is subject to the implied limitation that it shall not be exercised from idle curiosity, or for a merely vexatious or an unlawful purpose. Eaton v. Manter, 114 Me. 259, 95 A. 948.

As court's discretionary power not abridged by this section.—The discretionary power of the court as regards the issuance of a writ of mandamus has not by this section been taken away or abridged. Shea v. Sweetser, 119 Me. 400, 111 A. 579.

And court may deny writ if purpose of stockholder is improper. — The court has the right to exercise its discretion and to refuse the writ if it considers that the proposed use by the petitioner of his status as a stockholder is an improper one. Eaton v. Manter, 114 Me. 259, 95 A. 948.

Such as where purpose is vexatious, etc. —The petitioner is not entitled to a writ requiring an inspection if the purpose is vexatious, unlawful or for the gratification of idle curiosity. He is not so entitled if his purpose is to abuse the writ rather than use it. Shea v. Sweetser, 119 Me. 400, 111 A. 579.

Or where nominal stockholder's purpose is advertising.—The court will protect the interests of the smallest stockholder, but it will not exercise its extraordinary power at the mere behest of one who acquires a nominal stock interest for the sole purpose of advertising other goods or stocks. Shea v. Sweetser, 119 Me. 400, 111 A. 579.

Or supplying lists to brokers, etc. — A writ of mandamus to enforce the right of inspection given by this section should be denied where the petitioner owns only a single share, and that single share was acquired by him solely for the purpose of enabling him to examine the records and stockbook of said corporation and take copies therefrom of the list of stockholders in order that he might sell the same to brokers and others dealing in the stock of

corporations, and to enable him otherwise to give information of the names and holdings of said corporation to persons not stockholders of or in any manner interested in said corporation. Eaton v. Manter, 114 Me. 259, 95 A. 948.

But the fact that a stockholder is a competitor in business is not a sufficient reason for denying the right. And so, when the purpose is to enable the stockholder to enforce a claim against the corporation itself. White v. Manter, 109 Me. 408, 84 A. 890.

A stockholder may invoke the aid of the court to enforce his rights under this section without proof or allegation that his interests as stockholder require an examination of corporate records, and notwithstanding that his interests may be adverse, or his purposes hostile to the corporation. Shea v. Sweetser, 119 Me. 400, 111 A. 579.

No exceptions to granting or refusing writ absent abuse of discretion. — The granting of the peremptory writ of mandamus to compel an inspection under this section is not of right, but a discretionary power and exceptions do not lie to its issuance or refusal, unless it is a clear abuse of discretion. Pratt v. Dunham, 127 Me. 1, 140 A. 606.

B. Evidence and Burden of Proof.

The petitioner is not required to allege and prove his purpose in wanting an inspection. White v. Manter, 109 Me. 408, 84 A. 890.

And burden on officer or corporation to show improper motive.—It will not be presumed that the motive of the stockholder is an improper one and, if the motive or purpose is charged to be otherwise, the burden is upon the officer refusing the request or on the corporation to establish it. Knox v. Coburn, 117 Me. 409, 104 A. 789; Chas. A. Day & Co. v. Booth, 123 Me. 443, 123 A. 557.

But petitioner must show that he is person interested.—Where the petitioner has failed to show that it is a person interested within the meaning of this section, entitled to inspect the records and stock books of the respondent, a peremptory writ of mandamus will be denied. Chas. A. Day & Co. v. Booth, 123 Me. 443, 123 A. 557. See Pratt v. Dunham, 127 Me. 1, 140 A. 606, wherein it was held that the evidence was sufficient to show a person interested within the meaning of this section.

And mere colorable stockholding not sufficient to show interest.—Proof of the possession of one or more shares of stock standing in the name of the petitioner seems to have been regarded as sufficient to establish the petitioner's interest. Undoubtedly such stockholding is sufficient evidence upon that point until the contrary appears. But where it is shown that such stockholding is only colorable, or solely for the purpose of maintaining proceedings to force the corporation to allow an inspection of its records, the petitioner cannot be said to be a person interested, entitled as of right to inspect the records and stock book of the corporation, and to take copies and minutes therefrom. Chas. A. Day & Co. v. Booth, 123 Me. 443, 123 A. 557.

Where the petitioner is the owner of only one share of stock in the corporation and such share was acquired for the sole purpose of laying a foundation to demand a list of stockholders in the corporation, he is not an interested person within the meaning of this section. Chas. A. Day & Co. v. Booth, 123 Me. 443, 123 A. 557.

Sec. 35. Preventing use of records and books.—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. (R. S. c. 49, § 34.)

Sec. 36. Certificate of election of clerk; attested copy evidence.—Whenever there is a change in the office of clerk of a corporation, the clerk shall, within 20 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. (R. S. c. 49, § 35.)

Sec. 37. Resignation of clerk.—The clerk of any corporation may resign his office as clerk by filing his resignation with the register of deeds in the county where the certificate of his election was filed; if no such certificate of election was filed, then his resignation may be filed with the register of deeds in the county where such certificate of election ought, according to law, to have been

filed; said resignation shall take effect from and after the time of the receipt of the same by such register of deeds. (R. S. c. 49, § 36.)

Sec. 38. Neglect to publish statement.—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 $500 to the prosecutor, to be recovered by action of debt or action on the case. (R. S. c. 49, § 37.)

Cross references.—See c. 59, §§ 34, 68, re savings banks; c. 60, §§ 61, 86, re insurance companies.

Declaration in action under this section held correct.—See Blake v. Russell, 77 Me. 492, 1 A. 200.

Sec. 39. Dividends; limitation on payment.—Dividends of profit may be made by the directors, but the capital 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 punished by a fine of not more than $2,000 and by imprisonment for less than 1 year; and all sums received for such dividends may be recovered by any creditor of the corporation in an action on the case. (R. S. c. 49, § 38.)

Cross reference.—See § 102, re books to be produced on trial.

Cited in Wentworth v. Chapman, 141 Me. 35, 38 A. (2d) 563.

Sec. 40. Unclaimed corporation dividends.—Whenever dividends have been declared and set aside by a corporation and the stockholders entitled thereto cannot be located and said dividends have remained unpaid for a period of 5 years from the time said dividend was declared, then said corporation may pay the dividend to the treasurer of state to be held by him for said stockholder in the same manner and under the same conditions as in the case of dissolution. (1947, c. 136.)

Annual Returns.

Sec. 41. Contents; filed.—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 the provisions of the first 19 sections of chapter 54, and such corporations as are liable to a franchise tax other than the tax provided for in section 106 of chapter 16, and such corporations as have been or may hereafter be excused from filing annual returns under the provisions of section 45 so long as their franchises remain unused shall, on or before the 1st day of June, annually, make a return to the secretary of state, 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. (R. S. c. 49, § 39. 1949, c. 349, § 87.)

Stated in Johnson v. Johnson Bros., 108 Me. 272, 80 A. 741.

Sec. 42. Deposit in post office sufficient; neglect or refusal.—A deposit of the return required in the preceding section in a post office, postage paid, properly directed, is a compliance therewith. For the neglect or refusal of its officer to make such return, the corporation forfeits $500, to be recovered in an action of debt, to be prosecuted in the name of the state by the attorney general. (R. S. c. 49, § 40.)

Allegations held insufficient to support recovery under this section. — See State v. Androscoggin R. R., 76 Me. 411.

Sec. 43. Action of debt to collect penalty.—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 1st 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 2 terms; and for the state, such other costs as are legally taxable in actions at law. Such action may be brought in any county. (R. S. c. 49, § 41.)

Sec. 44. Discontinuance of action.—If within 30 days from the commencement of an action under section 43 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. (R. S. c. 49, § 42.)

Sec. 45. When excused from filing returns.—The attorney general, upon application by any corporation and satisfactory proof that it has ceased to transact business and that it is not indebted to the state on account of franchise taxes, shall file a certificate of the fact with the secretary of state and shall give a duplicate certificate to the corporation; and thereupon such corporation shall be excused from filing annual returns with the secretary of state. (R. S. c. 49, § 43.)

Assessments and Proceedings on Sale of Stock.

Sec. 46. Assessments; sale of shares for neglect to pay.—Assessments, not exceeding the amount originally limited for a share, may be made on all shares, subscribed and not paid for, to be paid to the treasurer, in such installments and at such times as are ordered. If a stockholder neglects to pay such assessments on his share for 30 days, the treasurer may sell at public auction a sufficient number of them to pay the same with incidental charges. (R. S. c. 49, § 44.)

Sec. 47. Sale of stock.—The treasurer, before the sale, shall give notice of the time and place thereof, of the number of shares on which the assessment is due and of the amount due on each share, in a newspaper printed in the town, if any, if not, in the county where the office of the clerk of such corporation is established, otherwise in the state paper, 3 weeks successively; and such notice shall likewise be given in 1 other leading newspaper printed in the state; the notice in said papers shall, in all cases, be printed on the financial pages of said papers. Written or printed notice as aforesaid shall also be given to each stockkholder of record in the corporation, at his last known address at least 10 days before the sale. At said sale the treasurer of the corporation shall announce the market price of the stock to be sold, or if the stock has no market price, the treasurer shall make a statement of the financial condition of the company, showing what the stock is worth. If no bids are received at said sale for said stock, the treasurer of the corporation shall bid in said stock in behalf of the corporation, to be again sold by the corporation as the directors may vote; provided, however, that no rights of creditors of the corporation shall be thereby affected and such stock, so long as held by the corporation, shall have no voting power. The treasurer's certificate of the sale of such shares, recorded as other transfers, passes the title to the purchaser. (R. S. c. 49, § 45.)

Transfer of Shares of Stock Issued Prior to July 9, 1943.

Sec. 48. Transfer of shares of stock issued prior to July 9, 1943.—When the capital of a corporation is divided into shares, the certificates thereof issued prior to July 9, 1943 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. (R. S. c. 49, § 46.)

Cross references.—See c. 46, § 28, re steam railroads; c. 133, § 4, re penalty for issuing false certificates or pledging genuine certificates without authority.

Quoted in Dennett v. Acme Mfg. Co., 106 Me. 476, 76 A. 922; State v. First Nat. Bank of Boston, 130 Me. 123, 154 A. 103, reversed in First Nat. Bank of Boston v. Maine, 284 U. S. 312, 52 S. Ct. 174, 76 L. Ed. 313.

Cited in Fiske v. Carr, 20 Me. 301; Skowhegan Bank v. Cutler, 49 Me. 315; Eaton v. New England Tel. Co., 68 Me. 63.

Sec. 49. Transfer prior to July 9, 1943; status before record.—No transfer prior to July 9, 1943 shall affect 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 or a new certificate is issued to the person to whom it has been so transferred. (R. S. c. 49, § 47.)

Quoted in Dennett v. Acme Mfg. Co., 106 Me. 476, 76 A. 922; State v. First Nat. Bank of Boston, 130 Me. 123, 154 A. 103, reversed in First Nat. Bank of Boston v. Maine, 284 U. S. 312, 52 S. Ct. 174, 76 L. Ed. 313.

Sec. 50. Issuance of certificates of shares.—Certificates of shares with the seal of the corporation affixed shall be issued to those entitled to them by transfer or otherwise, signed by such officer or officers as the by-laws shall prescribe, but where any such certificate is signed by a transfer agent or transfer clerk and by a registrar, the signatures of any such officer or officers and the seal of the corporation upon such certificate may be facsimiles, engraved or printed. (R. S. c. 49, § 48.)

Cross reference.—See c. 133, § 4, re penalty for issuing false and pledging genuine certificates of stock without authority.

Duty to issue certificates.—By the express provisions of this section, the duty to issue new certificates of shares to those entitled to them by transfer or otherwise is plainly enjoined upon the corporate officers. Dennett v. Acme Mfg. Co., 106 Me. 476, 76 A. 922.

The importance and necessity of the prompt issuance of new certificates of shares to the vendees of old ones is made manifest by the provisions of § 49. Without such new certificate, or recorded transfer, the owner of shares has no legal right to demand from the corporation any dividends declared upon his shares, or to be recognized by the corporation as a holder of its stock with the rights and privileges incident thereto. In view of these statutory provisions and requirements it cannot be doubted that it is the plain, legal duty of the officers to issue a new certificate of shares to a petitioner entitled to the same. Dennett v. Acme Mfg. Co., 106 Me. 476, 76 A. 922.

Enforceable by mandamus. — Where a transferee's right to a new certificate of shares is clearly established and unquestioned, under this section, it is the plain duty of the corporate officers to issue such certificate to him, and mandamus is a permissible and necessary remedy for the transferee to compel performance of this duty. Dennett v. Acme Mfg. Co., 106 Me. 476, 76 A. 922.

As stockholders not provided adequate remedy otherwise.—A bona fide share owner in a private corporation existing under state statutes, who is wrongfully denied his statutory right to have a certificate of his shares issued to him by the corporation under this section is not afforded an adequate remedy—a remedy commensurate with his special and peculiar rights and necessities under all the circumstances—by an action at law against the corporation for the value of his shares, or by

equitable proceedings for specific performance. And such remedies should not constitute a bar to relief by mandamus to compel such issue where the petitioner's right is unquestioned, and where neither the corporation not its officers have, or pretend to have, any reason or excuse for their refusal. Dennett v. Acme Mfg. Co., 106 Me. 476, 76 A. 922.

Former provision of section.—For consideration of a former provision of this section prohibiting corporate officers from signing certificates without knowledge of the apparent title of the person to whom they were issued, see Dennett v. Acme Mfg. Co., 106 Me. 476, 76 A. 922.

Quoted in State v. First Nat. Bank of Boston, 130 Me. 123, 154 A. 103, reversed in First Nat. Bank of Boston v. Maine, 284 U. S. 312, 52 S. Ct. 174, 76 L. Ed. 313.

Transfer of Shares of Stock Issued on or after July 9, 1943.

Sec. 51. Title to certificates and shares transferred.—Title to a certificate and to the shares represented thereby can be transferred only:

I. By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

II. By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person. (1945, c. 293, § 9)

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent. (R. S. c. 49, § 49. 1945, c. 293, § 9.)

Sec. 52. Powers of those lacking full legal capacity and of fiduciaries not enlarged.—Nothing in sections 51 to 72, inclusive, shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator or other fiduciary to make a valid indorsement, assignment or power of attorney. (R. S. c. 49, § 50.)

Sec. 53. Corporation not forbidden to treat registered holder as owner.—Nothing in sections 51 to 72, inclusive, shall be construed as forbidding a corporation:

I. To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, or

II. To hold liable for calls and assessments a person registered on its books as the owner of shares. (R. S. c. 49, § 51.)

Sec. 54. Title derived from certificate extinguishes title derived from a separate document.—The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document. (R. S. c. 49, § 52.)

Sec. 55. Certificate delivered.—The delivery of a certificate to transfer

title in accordance with the provisions of section 51 is effectual, except as provided in section 57, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title. (R. S. c. 49, § 53.)

Sec. 56. Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity or lack of consideration or authority.—The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in section 57, though the indorser or transferor:

I. Was induced by fraud, duress or mistake to make the indorsement or delivery; or

II. Has revoked the delivery of the certificate or the authority given by the indorsement or delivery of the certificate; or

III. Has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate; or

IV. Has received no consideration. (R. S. c. 49, § 54.)

Sec. 57. Rescission of transfer.—Unless the certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or the injured person has elected to waive the injury or has been guilty of laches in endeavoring to enforce his rights, the possession of a certificate may be reclaimed and the transfer thereof rescinded:

I. If the indorsement or delivery of the certificate:

A. Was procured by fraud or duress, or

B. Was made under such mistake as to make the indorsement or delivery inequitable; or

II. If the delivery of the certificate was made:

A. Without authority from the owner, or

B. After the owner's death or legal incapacity. (R. S. c. 49, § 55.)

Sec. 58. Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession.—Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby. (R. S. c. 49, § 56.)

Sec. 59. Delivery of unindorsed certificate imposes obligation to indorse.—The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. (R. S. c. 49, § 57.)

Sec. 60. Ineffectual attempt to transfer amounts to a promise to transfer.—An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be de-

termined by the law governing the formation and performance of contracts. (R. S. c. 49, § 58.)

Sec. 61. Warranties on sale of certificate.—A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants:

I. That the certificate is genuine,

II. That he has a legal right to transfer it, and

III. That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim. (R. S. c. 49, § 59.)

Sec. 62. No warranty implied from accepting payment of a debt.—A mortgagee, pledgee or other holder for security of a certificate, who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate or the value of the shares represented thereby. (R. S. c. 49, § 60.)

Sec. 63. No attachment or levy upon shares unless certificate surrendered or transfer enjoined.—No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it. (R. S. c. 49, § 61.)

Sec. 64. Creditor's remedies to each certificate.—A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. (R. S. c. 49, § 62.)

Sec. 65. No lien or restriction unless indicated on certificate.—There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any by-laws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate. (R. S. c. 49, § 63.)

Sec. 66. Alteration of certificate does not divest title to shares.—The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby. (R. S. c. 49, § 64.)

Sec. 67. Lost or destroyed certificate.—Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication and in any other way which the court may direct to all persons interested, and upon satisfactory proof of such loss or destruction, and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any

liability or expense which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issue of a new certificate under an order of the court as provided in this section shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate. (R. S. c. 49, § 65.)

Sec. 68. Rule for cases not provided for by §§ 51-72.—In any case not provided for by sections 51 to 72, inclusive, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause, shall govern. (R. S. c. 49, § 66.)

Sec. 69. Definition of indorsement.—A certificate is indorsed when an assignment or a power of attorney to sell, assign or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered. (R. S. c. 49, § 67.)

Sec. 70. Definition of person appearing to be the owner of certificate.—The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect. (R. S. c. 49, § 68.)

Sec. 71. Definitions; name of §§ 51-72.—In sections 51 to 72, inclusive, unless the context or subject matter otherwise requires:

"Certificate" means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with said sections.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership or 2 or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" means a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with the provisions of sections 51 to 72, inclusive.

"State" includes state, territory, district and insular possession of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

A thing is done "in good faith" when it is in fact done honestly, whether it be done negligently or not.

Sections 51 to 72, inclusive, may be cited as the "Uniform Stock Transfer Act." (R. S. c. 49, § 69.)

Sec. 72. Sections 51-72 do not apply to certificates issued prior to July 9, 1943; interpretation shall give effect to purpose of uniformity. —The provisions of sections 51 to 72, inclusive, apply only to certificates issued on or after July 9, 1943, and shall be so interpreted and construed as to effectuate the general purpose to make uniform the law of those states which enact them. (R. S. c. 49, § 70.)

Registration or Transfer of Securities to or by Fiduciaries.

Sec. 73. Registration or transfer of securities to or by fiduciaries or their nominees.—If a fiduciary or the nominee of a fiduciary in whose name are registered or are to be registered any shares of stock, bonds or other securities of any corporation, public or private, or company or other association, or of any trust, applies for the registration or transfer of the same, such corporation or company or other association, or any of the managers of the trust, or its or their transfer agent, is not bound to inquire whether the fiduciary or nominee is committing a breach of his obligation as fiduciary or nominee in making such registration or transfer, or to see to the performance of the fiduciary obligation, and is liable for such registration or transfer only where such registration or transfer is made with actual knowledge that such fiduciary or nominee is committing a breach of trust in requesting such registration or transfer, or with knowledge of such facts that its or their participation in such registration or transfer amounts to bad faith. (1947, c. 59.)

Sec. 74. Fiduciary; definition.—The term "fiduciary" as used in section 73 includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, nominee or any other person acting in a fiduciary capacity for any person, trust or estate. (1947, c. 59.)

Changes in Charter or Certificate of Organization.

Sec. 75. Increase in capital stock; change of purposes or number of directors; fees; changes in certificate of organization. — The stockholders of any corporation may, at any meeting, the call for which shall give notice of the proposed action, by a vote representing a majority of the voting power, except as herein otherwise provided, increase or decrease its authorized capital stock, change the number or par value of its shares or their classifications, change shares with par value into an equal or different number of shares without par value or shares without par value into an equal or different number either with or without par value, change the number of its directors and, if not specially chartered, change its purposes by altering, abridging or enlarging the same or make any other change or alteration in its certificate of organization as originally filed or subsequently amended that may be desired, provided such change or alteration is not otherwise specifically provided for and would be proper to insert in an original certificate of organization; and the corporation shall file a certificate setting forth such changes with the secretary of state, who shall duly record the same within 20 days thereafter, and thereupon said changes shall take effect; provided that every certificate of change of purposes shall be submitted to the attorney general for examination and shall not be filed until it has been certified by him to be properly drawn and signed and to be conformable to the constitution and laws and that he is satisfied that such change of purposes is made in good faith and not for the purpose of avoiding payment of fees or taxes to the state.

Whenever issued shares having par value are changed into the same or a greater or less number of shares without par value, whether of the same or of a different class or classes of stock and whenever issued shares without par value

are changed into other shares without par value to a greater or lesser number, whether of the same or of a different class or classes, the amount of capital represented by the new shares in the aggregate shall be the same as the aggregate amount of capital represented by the shares so changed and the certificate setting forth any such changes, the filing fee for which shall be $5, shall set forth that the capital will not be reduced under or by reason of such amendment.

If any proposed change from one kind or class of stock to another kind or class would alter the preferences given to any one or more classes of stock by taking away any right or preference previously belonging thereto, then the holders of the stock of each class of stock so affected by the change shall be entitled to vote as a class upon such change, whether such class be otherwise entitled to vote or not; and the affirmative vote of 80% in interest of each such class of stock so affected by the change shall be necessary to the adoption thereof, in addition to the affirmative vote of a majority of every other class of stock entitled to vote thereon.

The corporation, except as herein otherwise provided, shall pay to the secretary of state for the use of the state for any increase in the amount of its authorized capital stock an amount, in no case less than $10, equal to the amount that a like corporation organized with such increased authorized capitalization would have to pay in excess of one organized with the old authorized capitalization. For every change of purposes, the corporation shall pay to the secretary of state for the use of the state the sum of $20 before he shall be authorized to receive any certificate of change of purposes.

Whenever the outstanding capital stock of any corporation is increased by an issue of additional shares having a right to vote, all stockholders having a right to vote at the time of the issue of any such shares shall enjoy a preemptive right at such time to subscribe thereto, unless such right shall be negatived by some statute applicable thereto, by the charter or by-laws of the corporation or by the provisions of a plan of reorganization of any corporation at any time reorganized under the provisions of the act of congress of July 1, 1898 entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States" or under the provisions of an act of congress of August 26, 1935 entitled "Public Utility Holding Company Act of 1935" as now or hereafter amended or supplemented.

Provisions of the charter or by-laws relating to preemptive rights may be adopted or amended at any time by the stockholders having a right to vote at any meeting, the call for which shall give notice of the proposed action, by 90% of the shares which are present or represented at the meeting. (R. S. c. 49, § 71.)

Sec. 76. Reduction of capital stock.—Any corporation may reduce its capital at any time by the written consent of stockholders of record representing a majority of the voting power on such a proposal or by resolution adopted by stockholders of record representing a majority of the voting power on such a proposal, at a meeting of the stockholders duly called, when notice shall have been given of such proposed action in the call therefor. A certificate stating the fact of such consent or the adoption of such resolution shall be made by the clerk of the corporation and filed with the secretary of state within 20 days after the date of such consent or the adoption of such resolution. Upon such filing the capital of the corporation shall thereby be so reduced. No such reduction shall be made in the capital of the corporation unless the assets of the corporation remaining after such reduction are sufficient to pay any debts, the payment of which shall not have been otherwise provided for, and said certificate shall so state.

Such reduction of the capital of the corporation may be effected:

I. By reducing the par value of shares of any class of stock having par value or the amount of capital represented by shares of stock having no par value, or

II. By retiring shares already owned by the corporation, or

III. By retiring or reducing pro rata the outstanding stock of any class, or

IV. By the exchange of stock having par value for stock having no par value, or

V. By the exchange by the holders of outstanding stock of any class of the stock of such class held by them for a decreased number of shares of stock of the same class or for the same or a different number of shares of stock of a different class of stock, or

VI. By the purchase of shares for retirement either pro rata from all holders of shares of that class of stock or by purchasing such shares from time to time in the open market or at private sale, in both cases at not exceeding such price or prices as may be fixed or approved by the stockholders entitled to vote upon the reduction of capital to be effected in that manner; provided, however, that nothing herein contained shall be construed as preventing a corporation from purchasing its own shares of stock when it may legally do so, upon authority of its board of directors.

If shares having a par value are retired, an amount not exceeding the aggregate par value of such shares may be charged against or paid out of the capital of the corporation in respect of such shares having par value and if shares having no par value are retired, an amount not exceeding that part of the capital of the corporation represented by such shares pursuant to the provisions of section 20 may be charged against or paid out of the capital of the corporation in respect of such shares having no par value.

Stock retired pursuant to the provisions of this section shall have the status of authorized but unissued stock and such authorized unissued stock may be reduced pursuant to the provisions of section 75 either simultaneously with or subsequently to the reduction of capital authorized hereunder.

This section shall not be taken as implying that the capital of any corporation could not have been so reduced under the law as it existed prior to July 3, 1931; and all reductions of capital which could be accomplished under this section, with respect to which a certificate or notice has been filed with the secretary of state prior to said date, are declared to have been valid. This section shall not be taken as implying that any written consent, vote or resolution of stockholders is required, or that any certificate pursuant to this section need be filed, in connection with any reduction of capital effected by the exercise by holders of convertible stock of any corporation of their right to convert such stock into another class of stock of said corporation, and nothing in this section contained shall be applicable to any reduction of capital so effected. (R. S. c. 49, § 72. 1951, c. 110.)

Sec. 77. Reorganizations and changes under the National Bankruptcy Act and Public Utility Holding Company Act.—

I. Any corporation now or hereafter organized under this chapter or existing under the laws of this state, a plan of reorganization of which, pursuant to the provisions of the act of congress of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States" as now or hereafter amended and supplemented, herein referred to as the National Bankruptcy Act, or a plan of reorganization or other plan for which, pursuant to the provisions of the act of congress of August 26, 1935, entitled "Public Utility Holding Company Act of 1935" as now or hereafter amended and supplemented, herein referred to as the Holding Company Act, has been or shall be confirmed, approved or enforced by the decree or order of a court of competent jurisdiction, shall have full power and authority to put into effect and carry out the plan and the decrees and orders of the court or judge relative thereto and may take any proceeding and do any act provided in the plan or directed by said decrees and orders without further action by its directors

or stockholders. Such power and authority may be exercised and such proceedings and acts may be taken as may be directed by such decrees or orders by the trustee or trustees of such corporation appointed in the proceedings, or a majority thereof, or if none be appointed and acting, by officers of the corporation or by a master or other representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the directors and stockholders of the corporation. (1945, c. 64)

II. Such corporation may, in the manner above provided, but without limiting the generality or effect of the foregoing, and always in accordance with the plan of reorganization or other plan so confirmed, approved or enforced, alter, amend or repeal its by-laws; change its name; constitute or reconstitute and classify or reclassify its board of directors and name, constitute and appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its certificate of organization and make any change in its capital or capital stock, including the cancellation, alteration or conversion in whole or in part of any or all classes of existing stock or of other securities, obligations or claims, with or without the substitution of a new class or classes of stock or the substitution of stock, bonds or other securities, obligations or claims, for any or all of such stock, securities, obligations or claims, whether or not such change would alter the preferences, priorities or rights given to any one or more classes of stock, securities, obligations or claims by modifying or eliminating any right, preference, priority, limitation, restriction or other term or provision previously pertaining thereto, or may make any amendment, change, alteration or provision authorized by this chapter; be dissolved, merge or consolidate, sell, lease or in any manner part with its franchises or property, or transfer all or part of its assets as permitted by this chapter; change the location of its principal office; authorize and fix the terms, manner, consideration and conditions of the issuance of bonds, debentures or other obligations, and the security if any therefor, whether or not the same be issued to retire stock or other securities or be convertible into stock of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for stock of any class. (1945, c. 64)

III. No stockholder of any such corporation shall have the right of appraisal and payment for his shares provided in this chapter in a proceeding to which this section is applicable, except as otherwise provided in such plan. (1945, c. 64)

IV. A certificate, executed as hereinafter provided, of any amendment, change or alteration, or of dissolution, or of any merger or consolidation, or of any other step made or taken by such corporation pursuant to the foregoing provisions, may be filed in the office of the secretary of state and a certified copy thereof recorded in the office of the register of deeds of the county in which the principal place of business is located; and shall thereupon become effective in accordance with its terms and the provisions hereof. Such certificate shall be made, executed and acknowledged, as may be directed by such decrees or orders, by the trustee or trustees appointed in the proceedings, or a majority thereof, or if none be appointed and acting, by officers of the corporation or by a master or other representative appointed by the court or judge, and shall certify that:

A. Provision for the making of such certificate is contained in the plan of reorganization or other plan or in a decree or order of the court or judge relative thereto; and that

B. The plan has been confirmed, approved or enforced as provided in the National Bankruptcy Act or in the Holding Company Act, as the case may be. (1945, c. 64)

V. As respects any corporation proceeding under a plan of reorganization pursuant to the provisions of the National Bankruptcy Act, the provisions of this section shall cease to apply to such corporation upon the entry of a final decree in the reorganization proceedings closing the case and discharging the trustee or trustees, if any. As respects any corporation proceeding under a plan of reorganization or other plan pursuant to the provisions of the Holding Company Act, a certificate of any amendment, change, alteration, dissolution, merger, consolidation or other step may be filed, as hereinbefore provided, at any time after the entry of a decree or order of a court of competent jurisdiction confirming, approving or enforcing such plan; and after such plan has been carried out and consummated hereunder in accordance with such decree or order and such decree or order has ceased to be subject to further appeal or review, the provisions of this section shall cease to apply to such corporation unless there shall subsequently be a further plan for such corporation. (1945, c. 64)

VI. On filing any certificate made or executed pursuant to the provisions of this section, there shall be paid to the secretary of state for the use of the state the same fees as are payable by corporations not in reorganization upon the filing of like certificates. (R. S. c. 49, § 73. 1945, c. 64.)

See c. 21, § 6, re fees payable to secretary of state by corporations.

Sec. 78. Change of name; certificate filed in registry of deeds.—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 relating to such change of name, 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; provided that whenever any corporation, required by law to make returns to any official or department of the state, shall change its name under the general laws of the state or under any special act of the legislature, such change shall not take effect and such new name shall not be used until said corporation shall have filed with said official or said department a certified copy of the vote of the corporation relative thereto. A certificate of the change of name of a corporation shall be filed by the clerk of the corporation in the registry of deeds of the county in which the corporation has its location, within 20 days after the proceedings of the meeting are returned to the office of the secretary of state. (R. S. c. 49, § 74.)

See c. 42, § 57, re filing of certificate of steam railroads; c. 54, § 7, re change of name of corporations without capitol stock; c. 54, § 8, re change of purposes of corporations without capital stock.

Sec. 79. Change of location; certificates filed in registries of deeds.—Any corporation organized under this chapter at a legal meeting of its stockholders, by a vote representing a majority of the stock issued and outstanding having voting power as provided by its by-laws, may 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 20 days after such change of location, the certificate required by section 36. (R. S. c. 49, § 75.)

Sec. 80. Certificate of every change filed with secretary of state.—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. (R. S. c. 49, § 76.)

Trusts Prohibited.

Sec. 81. Formation of trusts forbidden.—It shall be unlawful for any firm or incorporated company, or any number of firms or incorporated companies, or any unincorporated company or association of persons or stockholders, organized for the purpose of manufacturing, producing, refining or mining any article or product which enters into general use and consumption by the people, to form or organize any trust or to enter into any combination of firms, incorporated or unincorporated companies or association of stockholders, or to delegate to any one or more board or boards of trustees or directors the power to conduct and direct the business of the whole number of firms, corporations, companies or associations which may have formed or which may propose to form a trust, combination or association inconsistent with the provisions of this section and contrary to public policy. No association or corporation organized for the sole purpose of marketing fish, shellfish or any of the fish products or agricultural products of this state, the members of, or stockholders in which are actually engaged in the production of such products, or in the selling, canning or otherwise preserving of the same, shall be deemed to be a conspiracy or a combination or in restraint of trade or an attempt to lessen competition or to fix prices arbitrarily; nor shall the marketing contracts and agreements between such association or corporation and its members or stockholders be considered illegal as such or in unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose. (R. S. c. 49, § 77.)

See c. 137, § 43, re contracts in restraint of trade.

Sec. 82. Evidence of interest in any trust not to have legal recognition.—No certificate of stock or other evidence of interest in any trust, combination or association, as named in the preceding section, shall have legal recognition in any court in this state, and any deed of real estate given by any person, firm or corporation for the purpose of becoming interested in such trust, combination or association, or any mortgage given by the latter to the seller, as well as all certificates growing out of such transaction, shall be void. (R. S. c. 49, § 78.)

Sec. 83. Being connected with any trust. — Any firm, incorporated or unincorporated company, or association of persons or stockholders, who shall enter into or become interested in such trust, combination or association, shall be punished by a fine of not less than $5,000 nor more than $10,000. (R. S. c. 49, § 79.)

Rights of Minority Stockholders.

Purpose of minority stockholder's law. —Sections 84-95 are commonly known as the minority stockholder's act and are designed to protect the interests of minority stockholders in corporations when the majority votes to dispose of its franchises, entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of business. Fenderson v. Franklin Light & Power Co., 120 Me. 231, 113 A. 177.

Sec. 84. Corporation not to sell franchises or entire property without consent of stockholders.—

I. No corporation shall sell, lease, consolidate or in any manner part with its franchises or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation. All such sales, leases and consolidations, except as in this section hereinafter otherwise pro-

vided, shall be subject to the provisions of this and the 11 following sections and to the prior lien of stockholders as therein defined. This and the 11 following sections shall not apply to mortgages of corporate property, and provisions of these sections in respect of rights of minority and dissenting stockholders shall be inapplicable to railroad corporations so long as federal law requires approval by the interstate commerce commission of terms and conditions of sale, lease or other disposition of properties or consolidation or merger of corporations. (1953, c. 16)

II. To effect a consolidation under the provisions of the foregoing subsection and subject to the provisions of this and the 11 following sections, any 2 or more corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state may consolidate into a single corporation, which may be any one of said corporations or a new corporation organized under the laws of this state to be formed by means of such consolidation, by entering into an agreement duly authorized by a majority of the directors of the respective corporations and signed by the duly authorized officers and under the respective seals of said corporations, prescribing the terms and conditions of the consolidation, the mode of carrying the same into effect, whether or not the consolidated corporation shall be one of the constituent corporations or a new corporation created by such consolidation and stating in such altered form as the circumstances of the case may require such other facts as are necessary to be set out in the certificate of organization of corporations organized under this chapter and as are pertinent in the case of a consolidation, the manner of converting the capital stock of each of such consolidating corporations or, if the consolidated corporation is to be one of the constituent corporations and the outstanding shares of such surviving constituent corporation are not to be changed, the shares of each of the other constituent corporations, into the stock or obligations of such consolidated corporation together with such other provisions and details as shall be deemed necessary to perfect the consolidation. Said agreement shall be acknowledged by one of the executing officers of each of the consolidating corporations before an officer authorized by the laws of this state to take acknowledgments of deeds, to be the respective act, deed and agreement of each of said corporations.

III. Subject to provisions of by-laws with reference to closing stock books prior to stockholders' meetings, said consolidation agreement shall be submitted to the stockholders of record of each corporation at a meeting thereof called separately for the purpose of taking the same into consideration, and at said meeting a vote in person or by proxy shall be taken for the adoption or rejection of said agreement, and if the votes of stockholders of each corporation representing a majority of the voting power, on a proposal to consolidate said corporation with another, shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the clerk or secretary of each corporation and the agreement so signed, acknowledged, adopted and certified, 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 of this state, shall be recorded in the registry of deeds in the county where the said consolidated corporation is located, and within 60 days after the day of the meeting at which said consolidation agreement is adopted by the stockholders, 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 agreement, certified as aforesaid, to be kept by the consolidated corporation, and shall record said copy. From the time of filing the copy of such agreement in the office of the secretary of state, said agreement shall be taken and deemed to be the agreement and act of consolidation of the said corporations and said original consolidation agreement or a certified copy

thereof shall be evidence of the existence of such consolidated corporation and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation.

IV. The notice herein provided for shall be given to all stockholders of record of all of the consolidating corporations, whether or not entitled to vote, but subject to any by-law provisions with reference to closing stock books prior to stockholders' meetings. If the holder of record of any share not entitled to vote in any constituent corporation selling, leasing, consolidating or otherwise disposing of its property as aforesaid shall, at or prior to the taking of the vote, dissent therefrom in writing and shall at such time, or within 1 month from the date of such vote, file his written dissent therefrom with the president, clerk or treasurer of such corporation, then such nonvoting shares of such stockholder shall be subject to and be entitled to all of the rights granted by the 11 following sections in like manner as if they had been voting shares.

V. Any one or more corporations organized or to be organized under the provisions of this chapter, or existing under the laws of this state, may consolidate with any corporation or corporations organized under the laws of any other state or states permitting such consolidation into a single corporation, which may be any one of said corporations or a new corporation formed by means of such consolidation organized under the laws of this state or those of the state of incorporation of any of the other constituent corporations as shall be specified in the agreement, by entering into an agreement prescribing the terms and conditions of the consolidation, the mode of carrying the same into effect, whether or not it shall be one of the constituent corporations or a new corporation created by such consolidation, the manner of converting the shares of each of such constituent corporations or, if the surviving corporation is to be one of the constituent corporations and outstanding shares of such surviving constituent corporation are not to be changed, the shares of each of the constituent corporations, into the shares of the corporation resulting from or surviving such consolidation, the state of incorporation of the resulting or surviving corporation and stating in such altered form as the circumstances of the case may require such other facts as are necessary to be set forth in certificates of organization or incorporation of the laws of the state governing the resulting or surviving corporation. Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws of the state under which it is formed, and in the case of a Maine corporation, in the manner hereinbefore provided. The agreement so authorized, adopted, signed and acknowledged shall be approved by the attorney general of this state and, if the resulting or surviving corporation is a Maine corporation, it shall be recorded and filed in accordance with the law governing the consolidation of domestic corporations but if it is a foreign corporation a copy thereof shall be filed in the office of said secretary of state. From the time of filing the copy of such agreement in the office of the secretary of state, said agreement shall thenceforth be taken and deemed to be the agreement and act of consolidation of said constituent corporation for all purposes of the laws of this state.

VI. If the corporation resulting or surviving such consolidation is to be governed by the laws of any state other than the laws of this state, it shall agree that it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent corporation of this state, including any amount determined pursuant to the provisions of sections 85 to 95, inclusive, and shall irrevocably appoint the secretary of state as its agent to accept service of process in an action for the enforcement of payment of any such obligation or any amount determined under the provisions of sections 85 to 95, inclusive, as aforesaid, and shall specify the address to which a copy

of such process shall be mailed by the secretary of state. Service of such process shall be made by personally delivering to and leaving with the secretary of state duplicate copies of such process, with a fee of $2. The secretary of state shall forthwith send by registered mail one of such copies to such resulting or surviving corporation address so specified, unless such resulting or surviving corporation shall thereafter have designated in writing to the secretary of state a different address for such purpose, in which case it shall be mailed to the last address so designated.

VII. When said agreement is so signed, acknowledged, adopted, recorded and filed, the separate existence of all of the constituent corporations or all of such constituent corporations except the one into which such constituent corporations shall have been consolidated shall cease; and the constituent corporations, whether consolidated into a new corporation or merged into one of such constituent corporations, as the case may be, shall become the consolidated corporation by the name provided in said agreement, possessing all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and being subject to all the liabilities, restrictions and duties of each of such corporations so consolidated and all and singular the rights, privileges, powers, franchises and immunities of each of said corporations and all property, real, personal and mixed, wheresoever located, and all debts due to any of said constituent corporations on whatever account, and all other things in action of or belonging to each of said corporations shall be vested in the consolidated corporation; and all property, rights, privileges, powers, franchises and immunities and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective constituent corporations and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in any of such constituent corporations, shall not revert or be in any way impaired by reason thereof, provided that all rights of creditors and all liens upon the property of any of said constituent corporations shall be preserved unimpaired, limited to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said consolidated corporation and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

VIII. If the location of the resulting or surviving corporation is not the same as that of the constituent corporation or corporations, or if the resulting or surviving corporation is a foreign corporation, then the clerk or secretary of the resulting or surviving corporation shall, within 60 days after such consolidation has become effective, file a certificate of the consolidation, setting forth the names and locations of the resulting or surviving and constituent corporations in the registry of deeds of each county in this state, other than that of the resulting or surviving corporation, where the constituent corporation may be located.

IX. "Consolidate" as used in this section shall be construed to include and authorize either a merger or consolidation or both. This shall not be taken to imply that heretofore a merger could not be accomplished under the provisions of this section. The provisions of sections 85 to 95, inclusive, shall be construed as applicable to domestic corporations only, and, notwithstanding any other provisions of this section, shall not apply to the consolidation or merger of one or more wholly-owned subsidiaries into its or their parent corporation, provided the latter survives such consolidation or merger and the amount of capital stock which the latter is authorized to issue is not changed thereby. "Wholly-owned subsidiary" as used in this section shall mean a corporation all the shares of which are beneficially owned by another corporation which is herein called the "parent corporation". (1953, c. 73)

X. The fee of the attorney general for approving the agreement under the provisions of this section shall be $20.

XI. The provisions of this section with reference to consolidation shall neither restrict nor enlarge the provisions of section 1 of chapter 50 and section 47 of chapter 44. (R. S. c. 49, § 80. 1953, cc. 16, 73.)

Cited in Fenderson v. Franklin Light & Power Co., 120 Me. 231, 113 A. 177; Johnson v. C. Brigham Co., 126 Me. 108, 136 A. 456.

Sec. 85. Remedy of dissenting stockholder.—If any stockholder in any corporation which shall vote to sell, lease, consolidate or in any manner part with its franchises or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, shall vote in the negative and shall file his written dissent therefrom with the president, clerk or treasurer of such corporation within 1 month from the day of such vote, the corporation in which he is a stockholder may, within 1 month after such dissent is so filed, enter a petition with the supreme judicial court or the superior court, sitting in equity in the county where it held its last annual meeting, in term time or in vacation, setting forth in substance the material facts of the transaction, the action of the corporation thereon, the names and residences of all dissenting stockholders whose dissents were so filed, making such dissenting stockholders parties thereto, and praying that the value of the shares of such dissenting stockholders may be determined and for other appropriate relief. (R. S. c. 49, § 81.)

The primal requisite of the statute is a vote with refused assent. Johnson v. C. Brigham Co., 126 Me. 108, 136 A. 456.

And stockholder must have recorded a dissenting vote.—The remedy of this section rests wholly upon the statute, and is enforceable only on making evident that conditions precedent have been observed. First, it must be established that on the proposal to sell he who invokes relief voted in the negative. The minority stockholder, or his proxy, must have done the active, positive thing of recording a vote against selling. Johnson v. C. Brigham Co., 126 Me. 108, 136 A. 456.

A minority stockholder cannot be held to have voted in the negative merely because he did not vote in the affirmative. The fact that he was not present and did not vote, followed by the fact of his later dissent, is not equivalent to his having voted in the negative at the time that the other stockholders actually voted in the affirmative. Johnson v. C. Brigham Co., 126 Me. 108, 136 A. 456.

Cited in Fenderson v. Franklin Light & Power Co., 120 Me. 231, 113 A. 177; Woodsum v. Portland R. R., 144 Me. 74, 65 A. (2d) 17.

Sec. 86. If corporation fails to enter petition, dissenting stockholder may enter and prosecute the same.—If any such corporation shall fail to enter such petition as aforesaid, any stockholder dissenting as aforesaid may within 1 month thereafter enter such petition and prosecute the same, making such corporation party defendant. In either case the court shall fix the time of hearing and shall order notice thereof to all parties interested, by publication in some newspaper or newspapers at least 2 weeks successively and such personal service as is required upon bills in equity. (R. S. c. 49, § 82.)

It is the sale and not the vote to sell which gives the minority dissenting stockholder the right to have his stock appraised. If a corporation by majority vote should decide to sell and subsequently for good reason rescind that vote it cannot be reasonably held that the legislature intended such vote to give minority dissenting stockholders the benefits conferred by this section. A fortiori, when the vote to sell proves to be a nullity and incapable of execution, the dissenting minority stockholder's rights cannot be held to have accrued under this section. Fenderson v. Franklin Light & Power Co., 120 Me. 231, 113 A. 177.

Applied in Fenderson v. Franklin Light & Power Co., 121 Me. 213, 113 A. 177.

Stated in Johnson v. C. Brigham Co., 126 Me. 108, 136 A. 456.

Sec. 87. Court to determine value of shares and secure rights of stockholders; corporation to deposit amount of award in some bank; shares to become property of corporation.—The court, or any justice thereof in term time or in vacation, shall hear the parties and determine as soon as practicable the value of the stock of such dissenting stockholders; and shall make and enforce all such orders and decrees as may be necessary to secure to such stockholders all their rights. Such corporation shall, notwithstanding any appeal as hereinafter authorized, forthwith deposit the amount so awarded in some bank or trust company designated by the court, to be by it held until final judgment and paid to the parties as thereafterwards ordered by the court directing such deposit. Upon such deposit and upon compliance with final judgment as hereinafter provided, the shares of such stockholders shall become the property of such corporation, and the court may make and enforce such orders as may be necessary to secure its title thereto. (R. S. c. 49, § 83.)

On petition and hearing, it is for the court to fix a valuation on the minority stock, and give judgment. When the judgment is satisfied, the stock passes to the corporation, and the stockholder retires. Johnson v. C. Brigham Co., 126 Me. 108, 136 A. 456.

Applied in Fenderson v. Franklin Light & Power Co., 120 Me. 231, 113 A. 177.

Sec. 88. Either party may appeal to the law court; appellant to have lien on property of corporation.—Within 30 days after filing the decree determining such values as aforesaid, either party may enter an appeal therefrom to the law court as in the case of ordinary bills in equity. If a stockholder is an appellant, he shall have a lien upon all the property of the corporation until 30 days after judgment on appeal for the amount of his award. Such lien shall have precedence over any mortgages or leases made after any vote of sale, lease or consolidation. All such liens may be released upon filing with the court a bond in such amount and with such sureties as the court may approve. Two or more stockholders may join in the same appeal. (R. S. c. 49, § 84. 1951, c. 170.)

Cited in Fenderson v. Franklin Light & Power Co., 120 Me. 231, 113 A. 177.

Sec. 89. If dissent is not filed, stockholder deemed to have assented; guardian appointed for incapacitated stockholder.—Any stockholder failing to file his dissent as required in section 85 shall be deemed to have assented to such vote. If it appears that any stockholder is legally incapacitated from giving such assent or waiver, the court shall appoint suitable guardians or representatives for such persons, and the case shall then be heard and determined as if such stockholders had filed their dissent as required by section 85. Provided, however, that if the proceedings authorized are not had, then as against any stockholder who is a minor or otherwise legally incapacitated and who has no guardian, the period of 1 month in which to file the written dissents aforesaid shall not begin to run until the removal of the incapacity by the appointment of a guardian or otherwise and actual notice of the vote of sale, lease or consolidation. (R. S. c. 49, § 85.)

Dissent must be confirmed in writing.—Under this section, notwithstanding that he voted differently, the minority stockholder will be bound by the majority decision, unless he confirms his preference by writing. Johnson v. C. Brigham Co., 126 Me. 108, 136 A. 456.

Sec. 90. Stockholders to deposit in court certificates of shares; transfers subject to final decree.—Every stockholder appearing in answer to, or filing any petition, by himself, guardian or other legal representative shall, simultaneously therewith or within such time as the court may allow, deposit in court his certificate of shares duly indorsed to the corporation of which he is a shareholder, or some other sufficient transfer thereof, which shall there remain

subject to the order of the court. All attachments and transfers of such shares shall be subject to the final decrees in such proceeding; and any such attaching creditor or transferee shall be allowed to become a party to the proceedings to protect his interests; and if such person, so claiming under such transfer or attachment, omits or fails to intervene in such proceedings, his omission as a party shall not bar or impair the proceedings. (R. S. c. 49, § 86.)

Sec. 91. If corporation fails to pay amount decreed, rights of stockholder; lien of dissenting stockholder.—If none of the corporations interested in such petition shall pay or deposit the amount as herein ascertained and decreed with interest thereon, within such time as the court shall order, any stockholder entitled to such amount may at his option take judgment and execution therefor, with interest and costs, against such corporation or withdraw his stock aforesaid; and after such withdrawal or if said execution is returned unsatisfied within 30 days after judgment, the owner of such shares shall retain all the rights of a dissenting stockholder as though no proceedings had taken place. All stockholders entitled to a remedy hereunder shall have a lien upon the property of the corporations in which they are stockholders which shall take precedence of all mortgages or leases of any kind made after any vote of sale, lease or consolidation. Such liens may be released as provided in section 88. (R. S. c. 49, § 87.)

Sec. 92. Court may hear and determine petitions; make orders for enforcement of rights of all parties.—The supreme judicial court, or the superior court or any justice thereof may in term time or vacation hear and determine said petitions and make all orders for giving notice to nonresident parties, and taking action with reference to them for the enforcement of the rights of any party to the proceedings, for the consolidation of two or more petitions, for the payment of interest on the adjudged value of the shares, for the payment of dividends pending the proceedings, for interest upon the deposit aforesaid, for the distribution of costs between the parties and for enforcing its orders and decrees as are consistent with the principles of equity practice and as the convenient and speedy settlement of the controversy may require. (R. S. c. 49, § 88.)

Sec. 93. If petition fails for any matter of form, new petition filed.—If any petition shall fail for any matter of form, any party interested therein may file a new petition within 2 months thereafter. No petition shall be abated by the death of any party, but may thereupon be summarily revived by suggestion and amendment. (R. S. c. 49, § 89.)

Sec. 94. Exceptions.—The proceedings authorized shall not apply to nor affect any special act relating to the rights of minority stockholders in any particular corporations enacted before the 4th day of April, 1891 nor any mortgage legally made. (R. S. c. 49, § 90.)

Sec. 95. Proceedings for valuing stock under the laws of other states bar to any under this chapter.—If either of the corporations interested has consolidated its stock with corporations created by any other state or states, or the stock therein is held by virtue of concurrent legislation of one or more states and proceedings have been commenced for valuing the stock and paying the value thereof in any state having jurisdiction, such proceedings shall, while pending, be a bar to any under this chapter; but if such proceedings in any other state shall fail for any reason not touching the merits, a petition may be filed as herein provided within 2 months thereafter. (R. S. c. 49, § 91.)

Corporate Contracts and Liabilities.

Sec. 96. Contracts.—Corporations are bound by parol contracts made by

an agent authorized by vote or by their by-laws. Contracts may be implied from corporate acts or from the acts of the general agent. (R. S. c. 49, § 92.)

Cross reference.—See c. 60, § 241, re authority to exchange reciprocal contracts of indemnity.

Under this section, authority in the agent of a corporation may be inferred from the conduct of its officers or from their knowledge and neglect to make objection, as well as in the case of individuals. McKenzie v. Webber Hospital Ass'n, 106 Me. 385, 76 A. 704.

Applied in York v. Mathis, 103 Me. 67, 68 A. 746.

Sec. 97. Provisions of law relating to foreclosure of railroad mortgages given to trustees, applicable to mortgages of all corporations so given.—The provisions of sections 36 to 58, inclusive, of chapter 46 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 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 36 of said chapter 46, 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. (R. S. c. 49, § 93.)

Cited in Clifford v. Androscoggin & Kennebec R. R., 119 Me. 577, 112 A. 669.

Sec. 98. Property and franchise taken for debts.—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. (R. S. c. 49, § 94.)

Cross references.—See c. 118, § 17, re levy on franchise; c. 171, § 31, re levy on real estate.

History of section.—See Poor v. Chapin, 97 Me. 295, 54 A. 753.

Corporate lands liable to attachment same as land owned by individual.—By the repeal of the former limitations upon the right of attachment and seizure and sale on execution of lands of corporations, and the enactment of this section couched in such broad language, it is evident that the legislature intended to subject corporate lands to the same liability to attachment on mesne process, as those owned by natural persons. This intention is so manifest that the court is not authorized to import into the language of this section any of the conditions or limitations contained in previous statutes. Poor v. Chapin, 97 Me. 295, 54 A. 753.

Stated in Benson v. Smith, 42 Me. 414; Vermeule v. York Water Co., 112 Me. 437, 92 A. 513.

Sec. 99. Names of directors, clerk and schedule of property furnished to an officer.—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. Any officer of a judgment debtor corporation may be cited to disclose the affairs of the corporation in the same manner as provided for the disclosure of other judgment debtors. (R. S. c. 49, § 95.)

See § 101, re penalty.

Sec. 100. Officer, having an execution, may elect to take debts due to corporation; proceedings.—An officer having an execution against 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 setoff by the debtor. (R. S. c. 49, § 96.)

See § 101, re penalty.

Sec. 101. Refusing to comply with §§ 99 and 100. — Any officer or other person who unnecessarily neglects or refuses to comply with the provisions of the 2 preceding sections forfeits not exceeding 4 times the amount due on such execution and may be imprisoned for less than 1 year. (R. S. c. 49, § 97.)

Sec. 102. Books produced on trial; refusal.—When a suit or prosecution is pending for a violation of the provisions of section 39 or either of the 3 preceding sections, the clerk or person having custody of the books of the corporation shall, upon reasonable written notice, produce them on trial; and for neglect or refusal to do so, he is liable to the same fine or imprisonment as the party on trial would be. (R. S. c. 49, § 98.)

Dissolution of Corporations.

Purpose of §§ 103-118.—The act of 1905 (§§ 103-118) was clearly intended for the liquidation of business interests when they can no longer continue in the ordinary course. The scheme of the act was to accomplish this end. Its purpose could not have been more plainly stated. Van Oss v. Premier Petroleum Co., 113 Me. 180, 93 A. 72.

The purpose of this statute (§§ 103-118) is to protect the interests of creditors and stockholders by winding up corporations. Craughwell v. Mousam River Trust Co., 113 Me. 531, 95 A. 221.

Sections do not govern all corporations.—It was not the intention of the legislature by the use of the words "any corporation" in the law of 1905 (§§ 103-118), to include all corporations of all classes. Craughwell v. Mousam River Trust Co., 113 Me. 531, 95 A. 221.

Sections inconsistent with provisions of chapter 59 and not applicable to corporations governed thereby.—Savings banks, loan and building associations and trust companies form a particular class of corporations. The statutory provisions for their organization, regulation, dissolution and winding up are found in chapter 59. And those provisions which authorize sequestration and winding up at the suit of the bank commissioner only, are inconsistent with the provisions of the law of 1905 (§§ 103-118) which authorizes such action at the suit of a creditor or stockholder. Therefore it must be held that these sections are not applicable to trust companies, and that a bill for the appointment of receivers and the winding up of such a company, brought by stockholders under these sections cannot be maintained. Craughwell v. Mousam River Trust Co., 113 Me. 531, 95 A. 221.

History of §§ 103-118.—See Craughwell v. Mousam River Trust Co., 113 Me. 531, 95 A. 221.

Sec. 103. Existence after charter expires.—Corporations, whose charters expire or are otherwise terminated, have a corporate existence for 3 years thereafter to prosecute and defend suits; to settle and close their concerns; to dispose of their property; and to divide their capitals. (R. S. c. 49, § 99.)

Corporate life extended for three years only.—Where a corporation's charter has expired its only corporate existence is by virtue of this section which continues its life three years and no more. Maine Shore Line R. R. v. Maine Central R. R., 92 Me. 476, 43 A. 113.

And action pending at expiration of three years abates.—Where a corporation's charter expires and action is instituted within three years, but still pending at the expiration of the three years, the plaintiff has no corporate existence and can neither recover judgment nor suffer one against itself. Its action has abated, and there is no one who can revive it. It must be dismissed. Maine Shore Line R. R. v. Maine Central R. R., 92 Me. 476, 43 A. 113.

Section inapplicable where receivers appointed.—Upon the dissolution of a corporation and the appointment of receivers to distribute its funds, the provisions of this section extending the existence of a corporation for three years after the termination of its charter are inapplicable and the corporation is thereafter incapacitated to sue or be sued in a court of law, otherwise than to promote the object confided

to the receiver. Stewart v. Stewart Drug Co., 117 Me. 84, 102 A. 823. See note to § 105, re object confided to receiver.

This section must be regarded as a provision restricted to the case of a dissolved corporation administering and winding up its own affairs and as granting the necessary powers to enable it to do so. When, however, a receiver is appointed under § 105, the winding up of the corporation is entrusted wholly to him and this section becomes inapplicable. Carter, Carter & Meigs Co. v. Stewart Drug Co., 115 Me. 289, 98 A. 809.

Stated in Cobb v. Camden Savings Bank, 106 Me. 178, 76 A. 667.

Sec. 104. Injunction against continuing business. — Whenever any corporation shall become insolvent or be in imminent danger of insolvency, or whenever through fraud, neglect or gross mismanagement of its affairs or through attachment, litigation or otherwise, its estate and effects are in danger of being wasted or lost, or whenever it has ceased to do business or its charter has expired or been forfeited, upon application of any creditor or stockholder by bill in equity filed in the supreme judicial court or the superior court in the county in which it has an established place of business or in which it held its last stockholders' meeting, upon which bill such notice shall be given as may be ordered by any justice of either of such courts, in term time or vacation, either of such courts may, if it finds that sufficient cause exists, issue an injunction, both temporary and permanent, restraining said corporation, its officers and agents from receiving any moneys, paying any debts, selling or transferring any assets of the corporation or exercising any of its privileges or franchises until further order; and may at any time make a decree dissolving said corporation. (R. S. c. 49, § 100.)

History of section.—See Craughwell v. Mousam River Trust Co., 113 Me. 531, 95 A. 221.

Section intended to operate upon insolvent corporations.—It is obvious that this section was intended to operate upon those corporations that had arrived at that state of financial decay which the law defines as "insolvent." Moody v. Port Clyde Development Co., 102 Me. 365, 66 A. 967.

This section may apply to living corporations as well as to those whose charters have expired. Craughwell v. Mousam River Trust Co., 113 Me. 531, 95 A. 221.

Powers conferred by original organization to be considered in applying section.—In the true interpretation and application of this section, resort must be had to a careful consideration of the powers conferred by, and the acts lawfully to be done under, the original organization of the corporation. Van Oss v. Premier Petroleum Co., 113 Me. 180, 93 A. 72.

Section supplies remedy to stockholder when corporation ceases to do business.—A corporation having sold all its property, it has apparently "ceased to do business." And the stockholders' remedy is compelling it to be wound up under this section rather than by seeking dividends out of net earnings, which no longer exist. Spear v. Rockland-Rockport Lime Co., 113 Me. 285, 93 A. 754.

When the entire assets of a corporation have been reduced to less than ten per cent of the preferred stock, and the entire corporate plant has been sold, the proper remedy is not dividends, but dissolution. Spear v. Rockland-Rockport Lime Co., 113 Me. 285, 93 A. 754.

When concern ceases to do business.—A going concern, a corporation, partnership or joint stock company, ceases to do business within the meaning of this section when it sells all its property, plant, assets of all kinds, including cash, and the buyer takes possession. Van Oss v. Premier Petroleum Co., 113 Me. 180, 93 A. 72.

"Ceased to do business" are words in common use, and are to be construed in their natural significance. Van Oss v. Premier Petroleum Co., 113 Me. 180, 93 A. 72.

A declared intention to sell and liquidate is a controlling factor in determining whether a corporation has ceased to do business. Van Oss v. Premier Petroleum Co., 113 Me. 180, 93 A. 72.

Applied in Moody v. Port Clyde Development Co., 102 Me. 365, 66 A. 967; Murphy v. Utah Mining, etc., Co., 114 Me. 184, 95 A. 887; Carter, Carter & Meigs Co. v. Stewart Drug Co., 115 Me. 289, 98 A. 809; Stewart v. Stewart Drug Co., 117 Me. 84, 102 A. 823; Belfast Savings Bank v. Sanford & Cape Porpoise Ry., 120 Me. 108, 113 A. 14.

Cited in Chalmers v. Littlefield, 103 Me. 271, 69 A. 100; Pride v. Pride Lumber Co., 109 Me. 452, 84 A. 989.

Sec. 105. Receivers; attachments dissolved; distribution of assets; priorities.—At the time of ordering any such injunction or at any time afterwards during its continuance, such court may also appoint one or more receivers to wind up the affairs of the company, who shall be duly sworn, and give bond in such sum and upon such conditions as such court shall determine and shall at all times be subject to the direction and control of the court, which may at any time remove said receiver and appoint another in his place. All attachments, made within 4 months before the filing of any such bill in equity wherein a receiver is so appointed, shall thereupon be dissolved. The distribution of the assets of any insolvent corporation shall be subject to the same priorities of indebtedness as specified in the National Bankruptcy Act of 1898 and amendments thereof. (R. S. c. 49, § 101.)

Cross reference.—See c. 59, § 90, re organization of trust companies.

Appointment of receivers left to discretion of court.—Where express power is given by statute (§ 104), if sufficient cause exists, to issue an injunction both temporary and permanent, having found sufficient cause to issue an injunction, the court is authorized by this section to appoint at the same time, or at any time afterwards during the continuance of the injunction, one or more receivers to wind up the affairs of the corporation. The power to so appoint is limited only by the continuance of the injunction. The reason for such appointment is found in the reason and necessity for the injunction, and the exercise of the power to appoint in this or similar cases must be left to the sound discretion of the sitting justice in setting in motion the equity powers of the court to accomplish that which he deems in equity and good conscience the rights of the parties require. Van Oss v. Premier Petroleum Co., 113 Me. 180, 93 A. 72; Belfast Savings Bank v. Sanford & Cape Porpoise Ry., 120 Me. 108, 113 A. 14.

The object confided to the receivers is declared by this section to be "to wind up the affairs of the company," that is, among other things, to pay the debts of the corporation, in full when the funds are sufficient, and when not, ratably to those creditors who prove their debts and the balance to distribute among the stockholders according to interest. (§ 110). Stewart v. Stewart Drug Co., 117 Me. 84, 102 A. 823.

The first provision of this section which authorizes the receiver to wind up the affairs of the company, confers upon him as an officer of the court authority to take possession of the estate of the corporation, collect all of its debts and distribute all of its assets, thereby obliging the creditors to either accept the dividend in full and discharge their claim, or lose it. As a natural corollary of the first proviso, and having the form and analogy of the bankruptcy law, the second proviso follows, which vacates all attachments made within thirty days. Moody v. Port Clyde Development Co., 102 Me. 365, 66 A. 967.

Provisions of § 103 inapplicable when corporation dissolved and receivers appointed.—See note to § 103.

Applied in Murphy v. Utah Mining, etc., Co., 114 Me. 184, 95 A. 887; Carter, Carter & Meigs Co. v. Stewart Drug Co., 115 Me. 289, 98 A. 809.

Sec. 106. Authority of receiver; to report to court.—Such receiver shall have power to institute or defend suits at law or in equity in his own name as receiver, to demand, collect and receive all property and assets of said corporation, to sell, transfer or otherwise convert the same into cash and to conduct and carry on the business of said corporation, as ordered by the court, if it appears for the best interests of all concerned. He shall report to the court at least as often as every 6 months a statement of all the assets and liabilities of said corporation, and from time to time shall distribute the assets of said corporation as provided in section 110. (R. S. c. 49, § 102.)

In statutory proceedings for the sequestration and winding up of corporate estates and the distribution of their proceeds, the title of the receiver relates back, either to the filing of the bill, or the issuing of process by the court, or to the service of process, and from that time on the property is considered to have been in the custody and protection of the court for the purpose of being administered according to the statute. And the property is sequestrated as of that time. And the reason for this rule is obvious. If it were otherwise the entire purpose of the statute might be frustrated. That purpose is a ratable distribution of the corporate funds, after pay-

ment of priorities, among the creditors. If after the bill is filed and before the receiver is appointed, the property is not within the protection of the court, creditors may create new liens by attachment, may levy executions, and thus may entirely dissipate the fund, before the arm of the court can reach it. Cobb v. Camden Savings Bank, 106 Me. 178, 76 A. 667.

Section 110 adopted as part of this section.—The allusion in this section to § 110 has the effect of adopting it as a part of this section, mutatis mutandis. Moody v. Port Clyde Development Co., 102 Me. 365, 66 A. 967.

Corporation cannot take action in suit pending at time of dissolution.—Where a receiver has been appointed for a corporation and the corporation dissolved upon a bill in equity, such corporation can take no action regarding a suit at law pending when such bill was filed, after the entry of the decree of dissolution. Whether in such case at law the receiver shall appear or not, and what action he shall take upon appearance, if ordered, must be determined by the equity court in which the bill is pending. Carter, Carter & Meigs Co. v. Stewart Drug Co., 115 Me. 289, 98 A. 809.

But receiver can continue suit instituted by corporation.—An action commenced by a corporation does not abate upon the appointment of a receiver, but may be continued for the benefit of the latter, and his name should be substituted by an order obtained on summary application. Rundlett Co. v. Morrison, 120 Me. 439, 115 A. 247.

No special authority is expressly given a receiver by this section to preserve and enforce the rights of creditors, as separate and distinct from the rights of the corporation. Folsom v. Smith, 113 Me. 83, 92 A. 1003.

The general scope of the receiver's powers are marked out and limited, by this section. It was the legislative intent that a receiver should succeed to the rights of the corporation, and not specifically to the rights of the creditors, except as the enforcement of the corporate rights may enure to the benefit of creditors. Folsom v. Smith, 113 Me. 83, 92 A. 1003.

Receiver cannot sue where corporation's rights not involved.—Under this section, a receiver may sue at law or in equity, whenever the corporation itself might have sued, but not where the interests of the corporation itself are not involved. Folsom v. Smith, 113 Me. 83, 92 A. 1003.

Cited in Stewart v. Stewart Drug Co., 117 Me. 84, 102 A. 823.

Sec. 107. Presentation of claims.—Whenever a receiver is appointed as above, the court shall limit a time, not less than 4 months, of which decree notice shall be given, within which all claims against said corporation shall be presented, and make such order for the manner of hearing and proving the same as may be just and proper. (R. S. c. 49, § 103.)

Former provision of section.—This section formerly included a provision forever barring claims not presented within the time prescribed by the section. It was held that this provision rendered the section and other sections of chapter 85 of the laws of 1905 an insolvent law and, to this extent, its operation was suspended by the federal bankruptcy act. See Moody v. Port Clyde Development Co., 102 Me. 365, 66 A. 967.

Stated in Maybury v. Spinney-Maybury Co., 122 Me. 422, 120 A. 611.

Cited in Stewart v. Stewart Drug Co., 117 Me. 84, 102 A. 823.

Sec. 108. Sale of property and franchises; receiver may accept claims in payment.—Said court may in its discretion, in lieu of decreeing the dissolution of such corporation, order the receiver to sell its property and franchises; and the purchaser thereof shall succeed to all the rights and privileges of such corporation and may reorganize the same under the direction of said court. At any sale of such property at public auction, the court may, in its discretion, authorize the receiver to accept in payment, duly allowed claims against such corporation, at a proper valuation. (R. S. c. 49, § 104.)

Reorganization must be under direction of court.—The sale by the receiver of the property and franchises and the organization of a new corporation to hold the same under this section is under the direction of the court. In re Damariscotta-Newcastle Water Co., 126 Me. 141, 136 A. 721.

The acquisition of the franchises and property, the organization of the corporation, fixing the amount of capital stock, the division of it into shares, and the determination of the proper amount to be issued to the purchasers and incorporators as representing the property and franchises thus

acquired are a part of the reorganization and must be done under the direction of and with the approval of the court. In re Damariscotta-Newcastle Water Co., 126 Me. 141, 136 A. 721.

Property may be transferred directly to new corporation.—Under this section, the purchaser may reorganize the corporation under the direction of the court. This means that the purchaser or purchasers with the necessary associates may organize themselves into a corporation taking over the property and franchises of the old. That the property was transferred direct to the new corporation instead of the purchaser makes no difference. In re Damariscotta-Newcastle Water Co., 126 Me. 141, 136 A. 721.

Cited in Stewart v. Stewart Drug Co., 117 Me. 84, 102 A. 823.

Sec. 109. Jurisdiction in equity.—The court shall have jurisdiction in equity of all proceedings hereunder and may make such orders and decrees as equity may require. (R. S. c. 49, § 105.)

Quoted in Van Oss v. Premier Petroleum Co., 113 Me. 180, 93 A. 72.

Stated in Cobb v. Camden Savings Bank, 106 Me. 178, 76 A. 667; Maybury v. Spinney-Maybury Co., 122 Me. 422, 120 A. 611.

Cited in Stewart v. Stewart Drug Co., 117 Me. 84, 102 A. 823; Belfast Savings Bank v. Sanford & Cape Porpoise Ry., 120 Me. 108, 113 A. 14.

Sec. 110. Distribution of assets.—The debts of the corporation shall be paid in full when the funds are sufficient; when not, ratably to those creditors who prove their debts as the law provides or as the court directs. Any balance remaining shall be distributed among the stockholders or their legal representatives in proportion to their interests. (R. S. c. 49, § 106.)

Under this section, all claims, whether in judgment or not, are to be paid ratably. Bowker v. Hill, 60 Me. 172.

But priority of claims is preserved.—This section contemplates that in winding up a corporation, the existing rights of priority of all creditors are to be preserved. To be sure, creditors who have proved their claims are to be paid ratably out of the funds, but the funds out of which they are to be paid are those remaining after payment of secured claims, claims having priority by reason of mortgage, attachments or otherwise. Cobb v. Camden Savings Bank, 106 Me. 178, 76 A. 667.

This section clearly applies to the settlement of an insolvent estate. Moody v. Port Clyde Development Co., 102 Me. 365, 66 A. 967.

Quoted in Maybury v. Spinney-Maybury Co., 122 Me. 422, 120 A. 611.

Stated in Craughwell v. Mousam River Trust Co., 113 Me. 531, 95 A. 221; Stewart v. Stewart Drug Co., 117 Me. 84, 102 A. 823.

Cited in Titcomb v. Kennebunk Mut. Fire Ins. Co., 79 Me. 315, 9 A. 732; Carter, Carter & Meigs Co. v. Stewart Drug Co., 115 Me. 289, 98 A. 809.

Sec. 111. Bill in equity against corporations for dissolution; if no liabilities, dissolution had without trustees.—Except where otherwise provided by statute, whenever at any meeting of its stockholders, legally called therefor, such stockholders vote to dissolve such corporation, a bill in equity against the same for dissolution thereof may be filed by any officer, stockholder or creditor in the supreme judicial court or the superior court in the county in which it has an established place of business or in which it held its last stockholders' meeting; upon said bill, notice shall be given by the clerk of courts to the attorney general and such notice shall be given to others as may be ordered by any justice of either of said courts, in term time or vacation, and upon proof thereof, such proceedings may be had according to the usual course of suits in equity that said corporation shall be dissolved and terminated. Upon proof that there are no existing liabilities against said corporation and no existing assets thereof requiring distribution among the stockholders, said court may dissolve said corporation without the appointment of trustees or receivers. (R. S. c. 49, § 107.)

A prior attachment is not dissolved by the filing of a bill in equity under this section. Cobb v. Camden Savings Bank, 106 Me. 178, 76 A. 667.

But the right to enforce them in the usual way is suspended. See note to § 112.

Dissolution order may be set aside for fraud.—An order of dissolution of a cor-

poration granted under this section and obtained by fraud or deceit may be set aside. Elston v. Elston & Co., 131 Me. 149, 159 A. 731.

Applied in Bisbee v. Mt. Battie Mfg. Co., 107 Me. 185, 78 A. 778; Maybury v. Spinney-Maybury Co., 122 Me. 422, 120 A. 611.

Cited in Titcomb v. Kennebunk Mut. Fire Ins. Co., 79 Me. 315, 9 A. 732; Nutter v. Saco Savings Bank, 109 Me. 124, 82 A. 1012.

Right to enforce attachment lien in usual way suspended.—While attachment liens are not destroyed by proceedings under this section and § 111 the right to enforce them in the usual way is suspended, and lien creditors must apply to the court in the sequestration proceedings to have their priority of right determined and enforced, either out of the property itself, or out of the proceeds thereof, as may be adjudged. Cobb v. Camden Savings Bank, 106 Me. 178, 76 A. 667.

The rights of priority of creditors, existing at the time a bill is filed, are not destroyed by statutory proceedings for winding up a corporation and sequestrating its assets under this section and § 111. The statutory lien by previous attachment is preserved. The enforcement of it, however, in the usual way is suspended. Lien creditors must apply to the court, which will give effect to liens which existed when the property passed into the custody of the law. Bisbee v. Mt. Battie Mfg. Co., 107 Me. 185, 78 A. 778.

And execution sale after bill filed is invalid.—After a bill in equity for dissolution is filed under § 111 and notice is ordered and served, but before the appointment of receivers or trustees under this section, a creditor with notice, having a preexisting valid attachment, may not lawfully levy his execution upon the real estate of the corporation and sell it and such a sale will be illegal and void. Cobb v. Camden Savings Bank, 106 Me. 178, 76 A. 667.

Sec. 112. Jurisdiction of court; court may superintend collection and distribution of assets; fees; disposal of assets.—Said courts have jurisdiction in said cause to appoint receivers, issue injunctions and pass interlocutory decrees and orders according to the usual course of proceedings in equity; and shall, moreover, upon dissolving said corporation or upon terminating its charter, appoint one or more trustees, who shall have all the powers conferred upon similar trustees by the provisions of sections 103, 110 and 124 or by any other law of the state, with such special powers as may be given them by said court; but, notwithstanding the appointment of such trustees, said court may superintend the collection and distribution of the assets of said corporation and may retain said bill for that purpose.

The court may from time to time allow the trustee or trustees such fees and expenses as it may deem sufficient, said fees and expenses to be paid from the assets in the hands of the trustee or trustees then held for distribution to the stockholders. Subsequent distribution to stockholders shall be reduced proportionately. Whenever the stockholders are unknown, or fail or refuse to accept their distribution or their whereabouts cannot be ascertained by reasonable diligence, said trustee or trustees may file a petition with the court setting forth the names of the stockholders, their last known addresses and the number of shares held by said stockholders. The court may thereupon order the trustee or trustees, after payment of all their expenses and fees, to pay over the funds in their hands distributable to said stockholders to the treasurer of state, together with a statement giving the names of such stockholders, the number of shares held thereby, the amount due each, the same to be held in trust for a period of 20 years for payment to the person or persons establishing a legal right thereto. Any claimant to said funds shall make application within said 20-year period to any justice of the supreme judicial court or the superior court who, if satisfied as to the claimant's legal right to the fund, shall issue an order under the seal of the court directing the treasurer of state to pay said fund to the claimant and said fund shall be paid as directed. At the end of said 20-year period, any funds remaining in the state treasury shall escheat to the state. (R. S. c. 49, § 108. 1951, c. 368.)

In contemplation of law the property of a corporation is custodia legis, at least from the time of the service of the bill under which the receivers are appointed. This being so, the property is not subject to seizure and sale on execution afterwards,

and such a sale without leave of court first obtained, is wholly void. Bisbee v. Mt. Battie Mfg. Co., 107 Me. 185, 78 A. 778.

But distribution should be made according to the status of the liens at the time the bill was filed, without regard to what is done or not done afterwards. When the law takes the property into its own possession, and prevents the lienors from pursuing statutory methods of enforcement, at least without leave of court, equity requires a holding that the liens are from the time impressed upon the fund, and that rights of priority are not lost by mere inaction, by mere failure to pursue useless methods of enforcement. Bisbee v. Mt. Battie Mfg. Co., 107 Me. 185, 78 A. 778.

Sec. 113. No relief from liability.—Nothing in the 2 preceding sections relieves any officer, shareholder or other person from any liability except as provided therein. (R. S. c. 49, § 109.)

Sec. 114. Capital not divided until debts paid. — Corporations not created for literary, benevolent or banking purposes shall not so divide any of their corporate property as to reduce their stock below its par value until all debts are paid and then only for the purpose of closing their concerns. (R. S. c. 49, § 110.)

By-law allowing withdrawal of capital violative of this section.—A by-law of a corporation which would allow the withdrawal of the whole capital by the members on demand or notice, when it was, in fact, insolvent, would be in direct contravention of the spirit and letter of this section. The grossest frauds might thus be perpetrated under such a rule. It would allow the incorporators, when they discovered an impending insolvency, to divide the property, by notice, and leave the creditors remediless. Driscoll v. Lewiston Equitable Co-operative Society, 59 Me. 474.

Sec. 115. Judgment creditor may file bill in equity in certain cases. —When such a corporation has unlawfully made a division of any of its property, or has property which cannot be attached or is not by law attachable, any judgment creditor may file a bill in equity in the supreme judicial court or the superior court, setting forth the facts and the names of such persons as are alleged to have possession of any of such property or choses in action, either before or after division; names of defendants may be struck out or added by leave of court; costs awarded at discretion and service made on the defendants named, as in other equity suits. They shall, in answer thereto, disclose on oath all facts within their knowledge relating to such property in their hands or received by a division among stockholders. When either of them has the custody of the records of the corporation, he shall produce them and make extracts therefrom and annex them to his answer, as the court directs. (R. S. c. 49, § 111.)

This section allows the remedy to a "judgment creditor." It means a judgment creditor who has first exhausted all legal remedy. Baxter v. Moses, 77 Me. 465, 1 A. 350.

A bill under this section should state that judgment has been obtained, and that execution has been issued, and that it has been returned by an officer without satisfaction. Baxter v. Moses, 77 Me. 465, 1 A. 350.

Sec. 116. Proceedings, trial and decree in the suit.—The court shall determine, with or without a jury, whether the allegations in the bill are sustained, and it may decree that any such property shall be paid to such creditor in satisfaction of his judgment and cause such decree to be enforced as in other chancery cases. Any question arising may, at the election of either party, be submitted to the decision of a jury under the direction of the court. (R. S. c. 49, § 112.)

Sec. 117. Decree of dissolution filed with secretary of state. — A copy of every decree or judgment dissolving a corporation or forfeiting its charter shall be forthwith filed by the clerk of the court in the office of the secretary of state and there recorded. (R. S. c. 49, § 113.)

Sec. 118. On dissolution, estate vests in shareholders.—When a corporation is dissolved, its real and personal estate is vested in the persons who were at the time shareholders, as tenants in common according to their interests. (R. S. c. 49, § 114.)

By the common law, upon the civil death of a corporation, its real estate reverts to the grantor and his heirs, and the debts due to and from the corporation are extinguished. But by this section the property belonging to a corporation on its final dissolution vests in its stockholders or members, as tenants in common. Stevens v. Hill, 29 Me. 133.

Stated in Franklin Bank v. Cooper, 36 Me. 179.

Cited in Titcomb v. Kennebunk Mut. Fire Ins. Co., 79 Me. 315, 9 A. 732; Clifford v. Androscoggin & Kennebec R. R., 121 Me. 15, 115 A. 511.

Liability of Stockholders.

Sec. 119. Personal representatives not liable.—Persons holding stock as executors, administrators, guardians or trustees shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such trust funds would be if he were respectively living and competent to act and hold the stock in his own name. (R. S. c. 49, § 115.)

Cited in Flynn v. American Banking & Trust Co., 104 Me. 141, 69 A. 771.

Sec. 120. Pledgee of stock not liable as a stockholder.—A pledgee for value, holding a certificate of stock of a corporation for security merely, shall not, while he so holds such stock, be subject to any of the liabilities of a stockholder, unless he appears on the books of the corporation as the absolute owner of such stock. (R. S. c. 49, § 116.)

Sec. 121. Stockholders not liable beyond amount of stock; exception.—No stockholder in any corporation, except in banks, trust companies and when otherwise provided by the act of incorporation, shall be liable for the debts or of claims against such corporation beyond any amounts withdrawn or not paid in, as provided in the 2 following sections; but neither this section nor the 4 following sections affect past or future liabilities of any officer of any corporation. (R. S. c. 49, § 117.)

Cross reference.—See c. 59, § 126, re liability of stockholders in trust companies.

Stockholder may extend liability beyond limit set by section.—This section does not preclude stockholders from subscribing to a valid agreement to pay the debts of the corporation beyond the limit prescribed by this section. See Haskell v. Oak, 75 Me. 519.

Quoted in Poor v. Willoughby, 64 Me. 379.

Sec. 122. Capital stock subscribed is for security of creditors; payment of subscription bona fide.—The capital stock subscribed for any corporation is declared to be and stands for the security of all creditors thereof, and no payment upon any subscription to or agreement for the capital stock of any corporation shall be deemed a payment within the purview of this chapter, unless bona fide made in cash or in some other matter or thing at a bona fide and fair valuation thereof. (R. S. c. 49, § 118.)

The payment of stock in anything but money will not be regarded as a payment except to the extent of the true value of the property or thing received in lieu of money. Libby v. Tobey, 82 Me. 397, 19 A. 904.

Section applicable only to stockholder taking from corporation. — Equity treats the capital stock of a corporation as a fund for the security of creditors. If the stock is not fully paid to par value, and there is a failure of assets of the corporation to pay its creditors, the stockholder may be compelled to make payment upon his stock to its par, if so much is necessary to pay the

debts. This liability may be enforced by the corporation, or by the creditors, but it applies only to parties taking the stock directly from the corporation; a purchaser in the market for less than par value is not liable. Maine Trust & Banking Co. v. Southern Loan & Trust Co., 92 Me. 444, 43 A. 24. See note to § 124.

What constitutes "agreement for."—The acceptance and payment of a per cent of the stock allotted to a subscriber must be considered as "an agreement for" those shares within the meaning and intention of this section. McAvity v. Lincoln Pulp & Paper Co., 82 Me. 504, 20 A. 82.

Stockholder's liability to creditors may be greater than that to corporation.—The provisions of this section that no payment or agreement for shares of the capital stock shall be deemed a payment as against creditors, unless bona fide made in cash, or in some other matter or thing, at a bona fide and fair value thereof, enables the creditors of the corporation to go behind even the honest opinion of the directors of the corporation and to question the actual sufficiency of the consideration paid for the shares taken. By virtue of §§ 123 and 124, persons appointed to close up the affairs of a corporation may maintain an action at law against a shareholder for that purpose, and to recover any deficit in the actual sufficiency of the consideration. The shareholder thus may be liable to pay to a creditor of the corporation, or to the persons appointed to close up the affairs of the corporation, a greater sum, not exceeding the par value of his shares, than he was liable to pay to the corporation itself. Gillin v. Sawyer, 93 Me. 151, 44 A. 677.

Applied in Grindle v. Stone, 78 Me. 176, 3 A. 183.

Quoted in Poor v. Willoughby, 64 Me. 379.

Sec. 123. Withdrawal of capital stock, void as against judgment creditor, receivers or trustees.—No dividend declared by any corporation from its capital stock or in violation of law, no withdrawal of any portion of such stock, directly or indirectly, no cancellation or surrender of any stock and no transfer thereof in any form to the corporation which issued it is valid as against any person who has a lawful and bona fide judgment against said corporation, based upon any claim in tort or contract or for any penalty, or as against any receivers, trustees or other persons appointed to close up the affairs of an insolvent corporation. (R. S. c. 49, § 119.)

Applied in Grindle v. Stone, 78 Me. 176, 3 A. 183; In re Brockway Mfg. Co., 89 Me. 121, 35 A. 1021; Gillin v. Sawyer, 93 Me. 151, 44 A. 677; Damon v. Webber, 111 Me. 473, 89 A. 734.

Stated in Poor v. Willoughby, 64 Me. 379.

Cited in Libby v. Tobey, 82 Me. 397, 19 A. 904.

Sec. 124. Proceedings by action on the case or bill in equity; stockholder not liable unless debt was contracted during ownership of stock, nor for mortgage debt.—Any person having such judgment or any such trustees, receivers or other persons appointed to close up the affairs of an insolvent corporation may, within 2 years after their right of action herein given accrues, commence an action on the case or bill in equity, without demand or other previous formalities, against any persons, if a bill in equity, jointly or severally, otherwise severally, who have subscribed for or agreed to take stock in said corporation and have not paid for the same; or who have received dividends declared from the capital stock or in violation of law; or who have withdrawn any portion of the capital stock, or canceled and surrendered any of their stock and received any valuable consideration therefor from the corporation, except its own stock or obligation therefor; or who have transferred any of their stock to the corporation as collateral security or otherwise and received any valuable consideration therefor as aforesaid; and in such action they may recover the amount of the capital stock so remaining unpaid or withdrawn, not exceeding the amounts of said judgments or the deficiency of the assets of such insolvent corporation. No stockholder is liable for the debts of the corporation not contracted during his ownership of such unpaid stock, nor for any mortgage debt of said corporation; and no action for the recovery of the amounts hereinbefore mentioned shall be maintained against a stockholder unless proceedings to obtain judgment against

the corporation are commenced during the ownership of such stock or within 1 year after its transfer by such stockholder is recorded on the corporation books. (R. S. c. 49, § 120.)

I. In General.
II. Necessity for Judicial Action Before Proceeding against Stockholder.
III. Exemption from Debts Secured by Mortgage.
IV. Pleading and Practice.
A. Presumptions and Burden of Proof.
B. Statute of Limitations.

I. IN GENERAL.

This section is in the first instance a protection to the creditors of a corporation. The limitation provided is for the protection of the defendant, or debtor. Damon v. Webber, 111 Me. 473, 89 A. 734.

The liability of a stockholder under this section is not pro rata, but is absolute. As soon as the fact and amount of the deficiency of assets are ascertained in the court, there is a right of action against any delinquent stockholder. That other delinquent stockholders are not also sued is immaterial under this section. Gillin v. Sawyer, 93 Me. 151, 44 A. 677.

Section extends subscriber's liability to creditor of corporation.—A subscriber to stock is liable for the par value of the same to the corporation as assets, and by force of this section, to its judgment creditors. Barron v. Burrill, 86 Me. 72, 29 A. 938.

But remedy not extended beyond express provisions.—It is not the province of the court to extend the remedy beyond the express provisions of positive enactment, especially since this section is to be construed strictly. Libby v. Tobey, 82 Me. 397, 19 A. 904.

The individual liability of members for the debt of a corporation is a departure from the established rules of law, and is founded solely upon grounds of public policy, depending entirely upon express provisions of statute law. The defendant, if chargeable at all, is chargeable upon a statute liability, as having subscribed for or agreed to take stock in the corporation, and not having paid for the same. Such liability is to be construed strictly and not extended beyond the limits to which it is plainly carried by the provisions of this section. Libby v. Tobey, 82 Me. 397, 19 A. 904.

Section provides remedy for two different parties.—It is undoubtedly the intention of this section to provide a remedy against the delinquent stockholder by two different parties toward whom he stands in entirely different relations: (1) By an individual creditor of the corporation who has an unsatisfied judgment against the corporation in his own name and for his own personal benefit; (2) By a trustee, receiver or other person appointed to close up the affairs of an insolvent corporation. Appleton v. Turnbull, 84 Me. 72, 24 A. 592.

A stockholder cannot be held liable under this section upon shares which he purchased in the market. They were not shares he had "subscribed for or agreed to take" within the meaning of the section. A fair inference to be drawn from the language of the section is that of a transaction or contract with the corporation in accepting, subscribing for or agreeing to take stock, and not one between individuals in the purchase of stock in open market. Libby v. Tobey, 82 Me. 397, 19 A. 904.

Subscribers are the only ones to make payment up to par, as to debts contracted while he was owner, under this section. Maine Trust & Banking Co. v. Southern Loan & Trust Co., 92 Me. 444, 43 A. 24.

The date when the plaintiffs' debt was contracted by the corporation is immaterial in a proceeding under this section where it appears that the defendants' ownership of stock was prior thereto and continued until after suit was brought against the corporation and within one year before the defendant had transferred his stock. Barron v. Burrill, 86 Me. 66, 29 A. 939.

History of section.—See Libby v. Tobey, 82 Me. 397, 19 A. 904; Appleton v. Turnbull, 84 Me. 72, 24 A. 592.

Quoted in Poor v. Willoughby, 64 Me. 379.

Cited in Cummings v. Maxwell, 45 Me. 190; Folsom v. Smith, 113 Me. 83, 92 A. 1003.

II. NECESSITY FOR JUDICIAL ACTION BEFORE PROCEEDING AGAINST STOCKHOLDER.

Receivers and trustees must have deficiency of corporation's assets judicially determined.—By the express terms of this section the liability is limited to the deficiency of the assets of the insolvent corporation. As the individual creditor must first have the fact and amount of his unpaid debt, that is, the fact and amount of

the default of the corporation to him, judicially ascertained and adjudicated before he can move against the stockholder, so receivers, trustees, etc., must first have the fact and amount of the deficiency of the assets, that is the fact and amount of the default of the corporation to all its creditors, judicially ascertained and declared before they can move against stockholders. In either case there is no right of action against the stockholder until the corporation makes default, and the amount of the default is judicially established. Gillin v. Sawyer, 93 Me. 151, 44 A. 677.

There is no right of action against the stockholder until the corporation makes default, and the amount of the default is judicially established. Damon v. Webber, 111 Me. 473, 89 A. 734.

How deficiency of corporation determined.—The question of the amount of the deficiency of the assets, which is one measure of the secondary liability of the stockholder, cannot be litigated anew and perhaps with a different result in the case of each stockholder. That amount must be the same as to all delinquent stockholders. The only difference in the amount of their several liabilities is in the amount unpaid on their stock. It follows that the fact and amount of the deficiency of the assets of the corporation must be determined finally in and by the court of insolvency before any action at law is begun against the stockholder on his secondary liability. This determination can be made only upon the settlement and approval of an account by the assignees showing a complete administration of the assets by their reduction to cash, and showing the net amount available for the payment of claims. If, at that date, claims have been proved and allowed in excess of that amount, the fact and amount of the corporation's default, as to those creditors at least, are then ipso facto judicially ascertained and declared. It is at the date of that decree of approval by the insolvency court that the right of action against the stockholder upon his secondary liability to such creditors accrues, and the two years' limitation upon the right of action begins to run in his favor. Gillin v. Sawyer, 93 Me. 151, 44 A. 677.

Stockholder's liability to creditor dependent on existence of judgment against corporation.—The stockholder's liability to creditors is not a direct primary liability like that to the corporation upon subscribing for its shares. The creditor of the corporation cannot at once upon the maturity of his debt proceed against the delinquent stockholder. He must obtain a judgment against the corporation, and only in case the judgment remains unpaid can he maintain an action at law or in equity against the stockholder for his individual claim, and then only for the amount remaining unpaid on the judgment. The stockholder cannot be considered delinquent or in default until the creditor has recovered and holds such an unpaid judgment. The right of action against him then first accrues. Gillin v. Sawyer, 93 Me. 151, 44 A. 677.

The right of action described in this section is created solely by statute in favor of a particular class of persons against another particular class of persons, and upon a particular class of facts. Not all creditors of the corporation are given the right of action, but only judgment creditors. It is clear, therefore, that in the declaration, the plaintiff must be described as a judgment creditor. Hight v. Quinn, 86 Me. 491, 29 A. 1111.

The creditor's right to a judgment against the corporation is essential to his enforcement of his rights against the stockholders under this section. Miller v. Waldoborough Packing Co., 88 Me. 605, 34 A. 527.

The creditor of the corporation cannot at once upon the maturity of his debt proceed against the delinquent stockholder. He must obtain a judgment against the corporation. The stockholder cannot be considered delinquent or in default until the creditor has recovered and holds an unpaid judgment. Damon v. Webber, 111 Me. 473, 89 A. 734.

But action on judgment not essential as foundation for action under this section.—All that is required by the plaintiff to lay the foundation for an action under this section is a seasonable recovery of the kind of judgment mentioned in § 123. It is not necessary for him to take out an execution on that judgment and take any action thereon. And the fact that he did so and caused a seizure and sale thereon of the personal property of the corporation in part satisfaction thereof, cannot prejudice the plaintiff. Grindle v. Stone, 78 Me. 176, 3 A. 183.

Under this section, a creditor's right of action depends upon the possession of a lawful and bona fide judgment against the corporation. When a Maine creditor holds such a judgment he may proceed against the stockholder without taking out an execution, and so may the holder of a foreign judgment. Damon v. Webber, 111 Me. 473, 89 A. 734.

III. EXEMPTION FROM DEBTS SECURED BY MORTGAGE.

Stockholders not liable for debt secured by mortgage.—Not all judgment creditors of the corporation are given a right of action by this section. The class of creditors who may sue is still further limited by confining the right of action to those judgment creditors whose debts are not secured by a mortgage. It is clear that the declaration should show that the plaintiff is also within this last limited class, by the allegation that his debt is not a mortgage debt. The declaration should exclude whomsoever the section excludes. Hight v. Quinn, 86 Me. 491, 29 A. 1111.

But exemption applies only to mortgage given by corporation.—Where the plaintiffs in an action under this section sold to the corporation real estate upon which was a mortgage given by the plaintiffs to secure their note, and, as a part payment of the consideration of the conveyance to it, the corporation agreed to pay the mortgage note, holding the plaintiffs indemnified against the same, this was not a mortgage debt of the corporation within the meaning of the section. The liability of the corporation is upon a contract with the plaintiffs to pay that debt. The corporation owed the plaintiffs a sum of money equal to that debt, and agreed to pay them by paying such debt. Paying the debt would pay the plaintiffs. Not paying it, the corporation owed the plaintiffs the amount. The policy of this section is only to exempt stockholders in a corporation from liability on a debt which the corporation itself has secured by mortgage; the presumption being that in such case the creditor has security enough, at all events, security he is satisfied with. Barron v. Paine, 83 Me. 312, 22 A. 218. See Barron v. Burrill, 86 Me. 72, 29 A. 938.

And such exemption not applicable to liability imposed by charter.—This general statute applies to corporations subsequently chartered, unless the charter contains provisions inconsistent therewith. But this section is dealing with unpaid stock only. It applies to the subscriber for stock, and limits the liability to him. The purchaser of stock in the market is not affected. The exemption of mortgage debts cannot be eliminated from the subject matter of the section, and made to do duty as an independent statute to relieve all stockholders, when disaster overtakes the corporation, from another and different liability imposed by the corporation's charter. Maine Trust & Banking Co. v. Southern Loan & Trust Co., 92 Me. 444, 43 A. 24.

IV. PLEADING AND PRACTICE.

A. Presumptions and Burden of Proof.

What creditor's evidence must show.—In a suit by a creditor against a stockholder under this section, the plaintiff must by evidence bring his case within the provisions of the section by showing:

1. That he has a lawful and bona fide judgment against the corporation "based upon a claim in tort or contract, or for any penalty," (§ 123) recovered within two years next prior to the commencement of his action;

2. That the defendant subscribed for or agreed to take stock in the corporation and has not paid for the same as payment is defined in § 122;

3. That the cause of action upon which his judgment against the corporation is founded was contracted during the defendant's ownership of such unpaid stock; and

4. That his proceedings to obtain his judgment against the corporation were commenced during the defendant's ownership of such unpaid stock, or within one year after its transfer was recorded on the corporation books.

With proof of such facts the action may be maintained "without demand or other previous formalities." Grindle v. Stone, 78 Me. 176, 3 A. 183; Libby v. Tobey, 82 Me. 397, 19 A. 904.

In this section the same sentence which limits the class of creditors who can be plaintiffs, also limits the class of stockholders who can be made defendants, to those who were stockholders at the time of the contraction of the debt. The plaintiff must allege and prove that the defendant was an owner of unpaid stock at the time of contracting the debt, and cannot leave it to the defendant to plead and prove that he was not. Hight v. Quinn, 86 Me. 491, 29 A. 1111.

Ownership of stock may be proved by payments therefor.—Upon a creditor's bill against a shareholder of a corporation to enforce payment of unpaid stock, ownership of stock may be proved by payments therefor although no written subscription is produced. Barron v. Burrill, 86 Me. 66, 29 A. 939.

And acceptance and part payment for stock renders purchaser liable for unpaid balance.—The acceptance and payment of a per cent of the stock allotted to stockholders must be considered "an agreement for" those shares (see note to § 122), and consequently those who accepted and paid

the per cent named would be chargeable for the balance unpaid as having "subscribed for or agreed to take stock in said corporation" within the meaning of this section. Appleton v. Turnbull, 84 Me. 72, 24 A. 592.

An actual taking of shares is equivalent to a subscription or an agreement to take. Either comes within the meaning of this section. Barron v. Burrill, 86 Me. 72, 29 A. 938.

Ownership shown by certificate of organization presumed to continue.—In an action against a stockholder under this section, his stock ownership shown by the certificate of organization is presumed to continue until the contrary is shown. Grindle v. Stone, 78 Me. 176, 3 A. 183.

Where the defendants in an action under this section were original stockholders, commencing their ownership with the inception of the corporation, and it does not appear that they have ever conveyed, ownership is presumed to continue. Barron v. Paine, 83 Me. 312, 22 A. 218.

Where no transfer of the shares appears to have been made, a stockholder's ownership of the same may be presumed to continue. Barron v. Burrill, 86 Me. 72, 29 A. 938.

B. Statute of Limitations.

Limitation begins to run when corporation's default judicially determined.—The two-year limitation on the right of action against the stockholder does not begin to run in favor of the stockholder until the corporation's default has been judicially established. Gillin v. Sawyer, 93 Me. 151, 44 A. 677.

The creditor's right to relief depends upon the existence of his judgment. The defendant's liability exists by virtue of this section, and it follows that when such liability begins, the statute of limitation commences to run in his favor. Damon v. Webber, 111 Me. 473, 89 A. 734.

This section clearly supports the conclusion that the right of action accrues when it becomes the duty of the defendant to pay. He is under no obligation to pay until the amount necessary for him to pay was ascertained. Until an unconditional liability to pay is fastened on the debtor, no action can be maintained against him, and the limitation does not run in his favor. Damon v. Webber, 111 Me. 473, 89 A. 734.

And begins on date judgment rendered.—The limitation begins to run against a judgment from the date of its rendition or of its entry, provided it is then final and suable, and is not stayed or superseded for any cause, and in computing the period of limitations the day on which judgment was entered is to be excluded. Damon v. Webber, 111 Me. 473, 89 A. 734.

Whether foreign or domestic.—A creditor having a foreign judgment against a corporation has full control of such judgment and knowledge of its date. The defendant has no such control or knowledge, his liability attaches at the date of the foreign judgment, whether he has knowledge of that judgment or not, and the two-year limitation established by this section begins to run when the foreign judgment is rendered. Damon v. Webber, 111 Me. 473, 89 A. 734.

Sec. 125. Evidence in defense. — A defendant in such suit may prove that he has already in good faith paid, by himself or through another person who has assumed his stock or subscription, to any person holding a bona fide judgment, or to any such trustee or receiver, or other person authorized to receive it, or to the corporation itself, the whole or any part of any amounts for which he would be liable under the provisions of this chapter; or that he has already in good faith and without collusion been sued for and is still in peril of being compelled to pay such amounts in whole or in part to some other person, in which latter case the suit may be continued to await, on payment of defendant's costs from term to term; or he may prove that the amounts illegally received by him from said corporation were received more than 2 years before the claim arose on which such judgment was obtained, or if the suit is by trustees, receivers or other such person, more than 2 years before the commencement of the legal proceeding by virtue of which such corporation passed into the hands of trustees or receivers; or he may prove the invalidity of such judgment in any particular which could avail the corporation on a writ of error or that said judgment was not bona fide; or he may prove that he has bona fide claims in contract or tort, several or joint with other persons against said corporation, absolute or contingent, or which could be availed of by setoff in court or on execution for the whole or any part of the amounts for which he would

be liable under the provisions of this chapter; or in case his stock was transferred to such corporation as collateral security or as payment, he may either prove that the same was so transferred in good faith as security or payment for or of, an anterior liability incurred without any concurrent agreement for the transfer of such stock and for which the corporation was unable to obtain other sufficient security or payment, or in such case he may prove that whatever sum was received thereon, has been in whole or part repaid to such corporation; and proof of any of such matters is a full or partial defense for such defendant. (R. S. c. 49, § 121.)

Section applies to suit brought by either judgment creditor or person closing affairs of corporation.—In the construction of this section, the term "such suit" undoubtedly must be held to apply to any action or bill in equity brought by a person having a judgment against a corporation or by any trustee, receiver or other person appointed to close up the affairs of an insolvent corporation. To hold that it applies only to a suit brought by a person having a judgment against a corporation, and that it has no application where suit is brought by trustees, receivers or other persons appointed to close up the affairs of an insolvent corporation, would violate the plain provisions of a statute whose terms are so free from ambiguity or uncertainty as to require no passing comment in reference to the general rules applicable to their interpretation. Appleton v. Turnbull, 84 Me. 72, 24 A. 592.

And provides defense against both classes of plaintiffs.—This section allows a defendant to prove that he has bona fide claims in contract or tort, several, or joint with other persons, against the corporation, absolute or contingent, or which could be availed of by setoff in court or on execution, for the whole or any part of the amounts for which he would be liable under this chapter. The language "for the whole or any part of the amounts for which he would be liable under this chapter" is strongly indicative of the intention of the legislature not to limit the defense to suits brought by one class of plaintiffs only. It is not for the amounts for which he would be liable under this chapter to a plaintiff having an unsatisfied judgment against the corporation only, but for the whole or any part of the amounts for which he would be liable under this chapter, including all classes of plaintiffs to whom any liability on his part is created by these statutory provisions. Appleton v. Turnbull, 84 Me. 72, 24 A. 592.

Defendant may prove claims not available by setoff under ordinary rules of law.—By the provisions of this section, a defendant may prove not only claims which could be availed of by setoff in any court, or on execution—and in the latter case the equitable right of setoff is very broad—but also other claims which could not be set off under the ordinary rules of law. Appleton v. Turnbull, 84 Me. 72, 24 A. 592.

Proof of claims in insolvency proceedings no bar to proving them as defense under this section.—The fact that claims of a stockholder against the corporation have merely been proved in insolvency proceedings, nothing ever having been received by way of dividends, or otherwise, on the same, cannot operate to debar the stockholder from submitting them in proof in an action under § 124, as "bona fide claims in contract" held by him against the corporation. The right to prove these claims in defense is given expressly by this section. Appleton v. Turnbull, 84 Me. 72, 24 A. 592.

Payment for stock is full defense.—If the defendant has paid for his stock, he can show it as a defense, and it will be a full defense under this section. Grindle v. Stone, 78 Me. 176, 3 A. 183.

History of section.—See Appleton v. Turnbull, 84 Me. 72, 24 A. 592.

Applied in Morgan v. Howland, 89 Me. 484, 36 A. 990.

Sec. 126. Stockholders, paying for corporation, may recover contribution.—When members of a corporation are liable for its debts, or for any acts of its officers or members, or to contribute for money paid on account of such debts or acts, the amount due may be recovered of such corporation by an action at law or a bill in equity; and the court may make all necessary orders and decrees. (R. S. c. 49, § 122.)

Cited in Sampson v. Bowdoinham Steam Mill Corp., 36 Me. 78.

Foreign Corporations.

Sec. 127. Foreign corporations, before doing business in the state to appoint an attorney; power of attorney and copy of vote filed; service of process.—Every corporation established under laws other than those of this state, for any lawful purpose, other than as a bank, savings bank, trust company, surety company, safe deposit company, insurance company or public service company, which has a usual place of business in this state or which is engaged in business in this state permanently or temporarily, without a usual place of business therein, and which is doing an intrastate business in this state, shall before doing business in this state, in writing appoint an individual who is a resident of the state or a corporation which is authorized to do business and to act as such attorney in the state, and which individual or corporation has an office or place of business therein, to be its true and lawful attorney upon whom all lawful processes in any action or proceedings against it may be served; and in such writing, which shall set forth the address, including street and number, if any, of the office or place of business of said attorney in the state, shall agree that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on it, and that the authority shall continue in force so long as any liability remains outstanding against it in this state. The power of attorney and a copy of the vote authorizing its execution, duly certified and authenticated, shall be filed in the office of the secretary of state and copies certified by him shall be sufficient evidence thereof. Service of such process shall be made by leaving a copy of the process in the hands or in the office of the said attorney, and such service shall be sufficient service upon the corporation. Such appointment shall continue in force until revoked by an instrument in writing, designating in like manner some other attorney upon whom process may be served, which instrument shall be filed in the manner provided herein for the original appointment.

Any individual or corporation who has been designated by a foreign corporation as its attorney may file with the secretary of state an instrument in writing that he or it is unwilling or unable to continue to act as such attorney of such foreign corporation. At the expiration of 30 days after the filing of such instrument with the secretary of state, the appointment of such individual or corporation as such attorney shall terminate. Upon the filing of such instrument, the secretary of state forthwith shall give written notice by mail to such foreign corporation of the filing of such instrument and the effect thereof, which notice shall be addressed to such foreign corporation at its principal office as shown by the records of his office and such foreign corporation shall within 30 days thereafter designate some other person or corporation as its attorney as herein provided. (R. S. c. 49, § 123. 1949, c. 5.)

Section not applicable to foreign insurance company.—This section provides for the appointment by a foreign corporation of an agent upon whom process may be served, whose appointment shall continue in force until revoked by an instrument in writing designating some other person to act in such capacity. This provision does not, however, apply to a foreign insurance company. Ouellette v. New York Ins. Co., 133 Me. 149, 174 A. 462.

Requirements of section burden on interstate commerce.—See note to § 128.

Stated in Dominion Fertilizer Co. v. White, 115 Me. 1, 96 A. 1069; Royster Guano Co. v. Cole, 115 Me. 387, 99 A. 33.

Cited in Leonard Advertising Co. v. Flagg, 128 Me. 433, 148 A. 561.

Sec. 128. Copy of charter or certificate filed before transacting business; officers and directors subject to penalties; validity of contracts not affected.—Every such foreign corporation, before transacting business in this state, shall file with the secretary of state a copy of its charter or certificate of incorporation, certified under the seal of the state or country in which such corporation is incorporated by the secretary of state thereof or by the officer having charge of the original record therein. Such foreign corporations shall

also file a certificate in such form as the secretary of state may require, setting forth:

I. The name of the corporation;

II. The location of its principal office;

III. The names and addresses of its president, treasurer, clerk or secretary, and of the members of its board of directors;

IV. The date of the annual meeting of its stockholders;

V. The amount of its capital stock, authorized and issued, the number and par value of its shares and the amount paid in thereon to its treasurer.

Said certificates shall be subscribed and sworn to by its president, treasurer or clerk. The officers and directors of such corporation shall be subject to the same penalties and liabilities for false and fraudulent statements and returns as officers and directors of a domestic corporation. Every officer of such a corporation which fails to comply with the requirements of this section and of sections 127 and 131, and every agent thereof who transacts business as such in this state shall, for such failure, be liable to a fine of not more than $500. Such failure shall not affect the validity of any contract with such corporation, but no action shall be maintained or recovery had in any of the courts of this state by any such foreign corporation so long as it fails to comply with the requirements of said sections.

Such foreign corporation may file a restated or composite charter or certificate of incorporation, certified under the seal of the state or country in which such corporation is incorporated by the secretary of state thereof or by the officer having charge of the original record therein, in lieu of a copy of the original charter or certificate of incorporation. (R. S. c. 49, § 124. 1951, c. 334, § 2.)

Section construed strictly.—Though it is not technically a penal statute, this section virtually penalizes a foreign corporation for noncompliance with its provisions. The courts generally have shown a marked tendency to construe such statutes with considerable strictness, and not to extend their meaning beyond what is fairly expressed. Dominion Fertilizer Co. v. White, 115 Me. 1, 96 A. 1069.

Noncompliance with section bars action on contract.—By this section, a foreign corporation doing business in this state is required to file certain statements concerning its organization and financial resources. In the course of its business it makes contracts. Those contracts are valid, whether the section is complied with or not. But the statute says that "no action shall be maintained, or remedy had by the corporation so long as the corporation fails to comply." That was intended to mean that no action on such a contract can be maintained, or remedy had for the breach of it, until there is a compliance with this section. Dominion Fertilizer Co. v. White, 115 Me. 1, 96 A. 1069.

Unless contract arose directly out of interstate commerce.—The requirements of this section and § 127 are materially and directly burdensome to interstate commerce, and therefore repugnant to the commerce clause of the Federal Constitution. It follows, therefore, that a corporation's failure to comply with those requirements does not preclude its recovery in an action to enforce its contractual rights directly arising out of and connected with interstate commerce. Royster Guano Co. v. Cole, 115 Me. 387, 99 A. 33.

But not action ex delicto.—This section is not made applicable to actions ex delicto, as well as to actions of contract. It should not be extended beyond a fair interpretation of its language. It is true that in this section there is the phrase, "no action shall be maintained or recovery had in any of the courts of this state by any such foreign corporation so long as it fails to comply with the requirements of said sections." But this phrase is a part only of the sentence. The sentence as a whole is, "such failure [to comply with the statute] shall not affect the validity of any contract with such corporation, but no action shall be maintained or recovery had," and so forth. The context shows quite clearly that the legislative thought, the legislative intent, was concerned with corporate contracts, and with remedies on such contracts. Dominion Fertilizer Co. v. White, 115 Me. 1, 96 A. 1069.

There is no intention that this section should apply to remedies for wrongs com-

mitted against the property in this state of a delinquent foreign corporation. It has a right to maintain an action for the wrong, irrespective of this section. Dominion Fertilizer Co. v. White, 115 Me. 1, 96 A. 1069.

Noncompliance with section must be pleaded.—The fact that a plaintiff foreign corporation has not complied with this section and § 127 imposing conditions precedent to its right to maintain an action in the state is a matter for abatement and must be so pleaded. It is not necessary that plaintiff should declare that it has complied with the statute in question. Leonard Advertising Co. v. Flagg, 128 Me. 433, 148 A. 561.

Sec. 129. Secretary of state may refuse to file papers or accept appointment as attorney.—The secretary of state shall refuse to accept or file the charter, certificate or other papers of, or accept appointment as attorney for service for, any such corporation which does a business in this state, the transaction of which by domestic corporations is not then permitted by the laws of this state. (R. S. c. 49, § 125.)

Sec. 130. Corporation to file certificate of increase or decrease of capital stock.—Every such foreign corporation shall, within 30 days after the vote of such corporation authorizing an increase or a decrease of capital stock, file in the office of the secretary of state a copy of the certificate of the amount of such increase or decrease, certified under the seal of the state or country in which such corporation is incorporated by the secretary of state thereof or by the officer having charge of the original record therein. (R. S. c. 49, § 126.)

Sec. 131. Duty payable to state; notice of change in certificate or charter filed with secretary of state.—Every such foreign corporation shall annually, on or before the 1st day of March, pay to the secretary of state for the use of the state a license fee of $10. It shall also annually within 30 days after the date fixed for its annual meeting, or within 30 days after the final adjournment of said meeting but not more than 3 months after the date fixed for said meeting, prepare and file in the office of the secretary of state a certificate signed and sworn to by its president, treasurer or clerk showing the change or changes, if any, in the particulars included in the certificate required by section 128 made since the filing of said certificate or of the last annual report. If no changes have occurred, a certificate to that effect shall be sufficient. (R. S. c. 49, § 127.)

See § 132, re penalty.

Sec. 132. Violation of § 131; failure to pay license fee; revocation of license.—The secretary of state, upon the failure of any such foreign corporation to file the certificate required by section 131 within the calendar year or to pay the annual license fee, shall revoke the license of such corporation to do business in the state and shall forthwith notify such corporation of such revocation. (R. S. c. 49, § 128.)

Sec. 133. Liability of officers. — The officers of such foreign corporations shall be jointly and severally liable for all the debts and contracts of the corporation contracted or entered into while they are officers thereof, and if any statement or report required by the provisions of the 6 preceding sections, made by them, is false in any material representation and known to them to be false; but only the officers who sign such statement or report shall be so liable. (R. S. c. 49, § 129.)

Sec. 134. Service of process on foreign corporation, trustee in mortgage by domestic corporation.—In case of the mortgage of 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 commissioner, who shall immediately notify the corpora-

tion by mail. Service made in either of said methods shall be valid and binding upon the corporation in every respect. (R. S. c. 49, § 130.)

Sec. 135. Foreign companies may sue and be sued here, and property attached; effect of agents' acts.—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 nonresident individuals. The acts of their agents have the same effect as the acts of agents of foreign private persons, unless prohibited by law. (R. S. c. 49, § 131.)

Miscellaneous Provisions.

Sec. 136. Property of inhabitants of counties, towns, etc., taken for debts.—The property of the inhabitants of counties, towns, cities and other quasi-corporations may be taken to pay any debt due from the body politic of which they are members. All sums so paid, with interest and costs, may be recovered of such body politic. (R. S. c. 49, § 132.)

Cross references.—See c. 41, § 115, re notes and bonds of community school districts; c. 118, §§ 30-32, re executions and warrants of distress against towns.

Applied in Crafts v. Elliotsville, 47 Me. 141; Spencer v. Brighton, 49 Me. 326.

Quoted in Augusta v. Augusta Water District, 101 Me. 148, 63 A. 663.

Cited in Lawrence v. Richards, 111 Me. 95, 88 A. 92.

Sec. 137. Issue of bonds payable by installments.—Any county, city, town or water district, or corporation organized under the laws of this state, having occasion to issue bonds, may make them payable in installments of uniform or increasing amounts extending over a period not exceeding 50 years. Provisions shall be made for the payment of not less than 1% of the whole issue each year and, in case the time of payment extends over a period of 50 years, the installments shall cover the whole issue. In case the time of payment extends over a period of less than 50 years, a portion of the issue greater than the regular installment may be made payable at the end of the period. Limitations upon the time for which bonds may be issued are modified in accordance herewith; provided, however, that this section shall not be construed to prevent any county, city, town or water district, or municipal, private or other corporation organized under the laws of this state from issuing bonds and making them payable in the same manner as it might do, if this section were not enacted; and no bonds issued prior to the 3rd day of July, 1909, if valid in other respects, shall be deemed invalid on account of any failure to comply with the provisions of this section. (R. S. c. 49, § 133.)

Sec. 138. Wasting assets corporations. — Subject to any restrictions contained in its certificate of organization, the directors of any corporation engaged in the exploitation of wasting assets may determine the net profits derived from the exploitation of such wasting assets without taking into consideration the depletion of such assets resulting from lapse of time or from necessary consumption of such assets incidental to their exploitation. (R. S. c. 49, § 134.)