

MAINE STATE LEGISLATURE

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Chapter 57.

Parishes and Religious Societies. Ministerial and School Lands and Funds.

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Sections 50-64. Ministerial and School Lands, and Funds Therefrom.

Parishes and Religious Societies.

Sec. 1. Meeting to form parish.—Any persons of lawful age, desirous of becoming an incorporated parish or religious society, may apply to a justice of the peace, who shall issue his warrant to one of them, directing him to notify the other applicants to meet at some proper place expressed in such warrant; and he shall give notice of such meeting 7 days at least before holding the same, by posting a notification thereof on the outer door of the meetinghouse or place of public worship of such society, if any, otherwise at such place as the justice appoints. (R. S. c. 53, § 1.)

This section can have no relation to any parishes except poll parishes. Cited in *Nason v. First Bangor Christian Church*, 66 Me. 100. *Osgood v. Bradley*, 7 Me. 411.

Sec. 2. Organization; name.—Persons assembled under the provisions of section 1 may choose a clerk and other needful parish officers, and shall thereupon be a corporation, bear the name which they assume and have all the powers of parishes and religious societies. (R. S. c. 53, § 2.)

Cited in *Casco Bank v. Mussey*, 19 Me. 20; *Nason v. First Bangor Christian Church*, 66 Me. 100.

Sec. 3. May hold property and pass by-laws.—Every parish may take by gift or purchase any real or personal estate, until the clear annual income thereof amounts to \$3,000; convey the same and establish by-laws not repugnant to law. (R. S. c. 53, § 3.)

Stated in *Osgood v. Bradley*, 7 Me. 411.

Cited in *Nason v. First Bangor Christian Church*, 66 Me. 100.

Sec. 4. Meetings. — The annual or other meetings of an incorporated parish may be called by its assessors or clerk to be held at the time when, and place in the town where, they are usually held. The members of such parish shall be notified of such meeting as prescribed in section 1 or in the manner agreed on by its vote; and at such meeting, they may choose a clerk who shall be sworn, 2 or more assessors, a collector, treasurer, standing committee and all other needful officers. The assessors shall manage the prudential concerns of the parish, when no other persons are appointed for that purpose, and shall be sworn. (R. S. c. 53, § 4.)

Quoted in part in *Osgood v. Bradley*, 7 Me. 411. Cited in *Nason v. First Bangor Christian Church*, 66 Me. 100.

Sec. 5. Powers of moderator. — The moderator of any meeting shall preserve order, manage the business and administer the oath to the clerk and assessors. (R. S. c. 53, § 5.)

Cited in *Nason v. First Bangor Christian Church*, 66 Me. 100.

Sec. 6. Meetings called on request of members.—When 5 members of any parish in writing request the assessors to call a meeting, or to insert any particular article in the warrant therefor, they shall do so. (R. S. c. 53, § 6.)

Sec. 7. Meetings called, if assessors refuse.—If the assessors unreasonably refuse, any justice of the peace on like application may issue his warrant to one of the applicants, who shall notify such meeting as prescribed in section 1 or as agreed on by parish vote. (R. S. c. 53, § 7.)

Sec. 8. When no meeting for 3 years.—When there has been no meeting of an incorporated parish or society for 3 years, a meeting may be called as provided in section 44. (R. S. c. 53, § 8.)

Sec. 9. Authority to raise money.—Every parish, at a legal meeting, may raise money for the support of the public ministry of religion, for building, repairing or removing houses of public worship and for other necessary parish charges. (R. S. c. 53, § 9.)

Stated in *Osgood v. Bradley*, 7 Me. 411.

Cited in *Dall v. Kimball*, 6 Me. 171;
Ford v. Clough, 8 Me. 334.

Sec. 10. Assessment on pews.—When a house of public worship belongs to a parish, or it and the fee of the land on which it stands is vested in trustees for the use of a parish, such parish may assess any money raised as aforesaid, wholly or partly, on the pews or seats, whether owned by members of such parish or religious society or not; and the owners may be present and vote in raising such money. (R. S. c. 53, § 10.)

Sec. 11. Payment by sale of pews.—When taxes on pews and seats remain unpaid for 6 months after their assessment, the treasurer shall sell them at auction, first posting notice thereof at the principal outer door of such house of worship, 3 weeks before the time of sale, stating the numbers, if any, of the pews or seats and the amount of tax on each; and shall execute and deliver a deed thereof to the purchaser, and pay to the owner the overplus, after deducting the amount of tax and incidental charges. (R. S. c. 53, § 11.)

Sec. 12. Pew owner may give notice not to occupy; rights of pew owner thereafter.—Whenever a parish or church raises its current expenses by assessment on its pews, any pew owner therein who shall not occupy his pew, either by himself or family, or rent the same, may give a written notice to the clerk of the parish or church, or to the parish committee or assessors, of his intention not to occupy said pew for 1 year following the next annual meeting of said parish or church, in which case said pew owner shall not be liable for any tax assessed on said pew during said year, neither shall he act and vote at said annual meeting unless he retains a pew for the occupancy of himself and family, and the parish or church may let said pew during said year and appropriate the rent to the current expenses of the parish or church, and said parish or church shall not sell said pew for taxes assessed during that year. (R. S. c. 53, § 12.)

Sec. 13. Parishes may procure insurance; loss.—A parish in the actual occupancy of a church, meetinghouse or other building used for religious purposes may insure it against loss by fire; and in case of such loss, the company insuring it shall not deny the occupancy of the parish, its legal existence or its right to maintain an action on the policy. The money so recovered shall be held by the parish in trust for repairing or restoring the building, and shall be so applied. (R. S. c. 53, § 13.)

Sec. 14. Admission to a parish.—A person of either sex, of lawful age, may become a member of a parish or religious society by vote thereof at a legal meeting. (R. S. c. 53, § 14.)

Sec. 15. Persons deemed members; dissolution of membership. — Any person described in section 14 residing in a local parish holding funds derived from this state or Massachusetts shall be deemed a member of it until he dissolves the connection; such person having resided in such parish 1 year, after he has arrived at majority, without either giving written notice to its clerk of his consent to be a member thereof, or paying a tax or subscription according to the mode that said parish has adopted to raise money, shall be deemed to have thereby dissolved his connection therewith; and said connection shall remain dissolved, and said person shall not be taxable until he renews the connection by giving written notice to its clerk of his consent to be a member of said parish; any person residing in a local parish may become a member of such parish not deriving funds from the state, by giving written notice to its clerk of his intention to do so within 1 year after he is of age or removes thereto. (R. S. c. 53, § 15.)

No affirmative act of membership necessary.—When a man moves into a town from some other town, or being resident in a town arrives at full age, he at once becomes a member of the corporation without its consent, or any other act on his part; and is subject to all the liabilities and entitled to all the privileges of a member. *Lord v. Chamberlain*, 2 Me. 67.

Unless one belongs to a poll-parish, he is a member of the territorial parish.—Unless a man belongs to a poll-parish, by its charter, or by his own election and act afterwards, he continues to be a member of the territorial parish within the limits of which he resides. *Lord v. Chamberlain*, 2 Me. 67.

But one does not have to belong to any parish.—It was considered desirable and

proper to permit a person to withdraw himself from one parish, and dissolve his pecuniary connection with it, and still not be obliged to join any other society, or contribute anything towards the expense of maintaining public worship anywhere. *Osgood v. Bradley*, 7 Me. 411.

If a poll-parish is formed within the limits of a territorial parish, a man living within those limits, or removing within them from another place, does not thereby become connected with such poll-parish, without being included in the act of incorporation by name, or doing some act expressive of his intention to become a member of the poll-parish, and not belong to the territorial parish. *Lord v. Chamberlain*, 2 Me. 67.

Sec. 16. No person compelled to belong to a parish; withdrawal.—No person described in section 15 shall be a member of a parish or religious society without his consent; and any person may dissolve his connection therewith by leaving with its clerk a certificate of his intention to do so; and all his liability for future expenses shall thereby cease; but he may be taxed for money previously raised, except in case of removal from a local parish. (R. S. c. 53, § 16.)

Purpose of section.—By this section, it is plainly indicated as the design and policy of the legislature, that the continuance of a member with the parish or society to which he belongs, or has attached himself, shall be purely voluntary. And when any member shall choose to withdraw himself from such society or parish, the mode of doing so is pointed out. It is not

directly stated that he shall no longer be regarded as a member; but this is plainly implied by his withdrawing himself, which is provided for and sanctioned by the statute. Thereupon he is to be no longer liable for future expenses. *Fernald v. Lewis*, 6 Me. 264.

Stated in *Jones v. Cary*, 6 Me. 448.

Sec. 17. Qualification to vote at parish meetings. — No person described in section 15 shall vote in meetings of any territorial parish who is not the owner or occupant of a pew in its house of worship or a contributor to its support. (R. S. c. 53, § 17.)

Sec. 18. Territorial parishes continued.—No territorial parish is dissolved; and when one or more parishes are set off from a town, or incorporated therein, as aforesaid, the remainder is the first parish. (R. S. c. 53, § 18.)

History of section.—See *Richardson v. Brown*, 6 Me. 355.

Sec. 19. Officers of churches are corporations for certain purposes; organization and powers. — The church wardens of Episcopal churches, the stewards or trustees of the Methodist Episcopal church and the deacons of all other Protestant churches are so far corporations as to take, in succession, all grants and gifts of real and personal estate made to their churches or to them and their successors; and if the ministers, elders or vestrymen are joined with them in such grants or gifts, the 2 classes of officers shall be corporations for that purpose. For the purpose of organizing any such corporation, one or more members of said corporation may call a meeting thereof by a notice posted upon the outer door of the meetinghouse or place of public worship of their parish or society at least 7 days before the time of holding such meeting; or, if there is no such meetinghouse or place of public worship, by a notice posted in 2 public and conspicuous places in the town wherein said parish or society is located. At such meeting the corporation may organize, adopt a corporate name and elect such officers as its by-laws shall prescribe. Said corporations shall have the powers granted to parishes by section 3 and may make such contracts in relation to such estate, its improvement or disposal, as they may be authorized under the rules of their church, or instructed by the church or society for which they hold such estate in trust, to make, which contracts may be enforced by or against them, as in other cases; provided, however, that no disposal of such estate shall be made, inconsistent with the terms of the grant by which it is held. Trustees of the local Methodist Episcopal churches are created a corporation with all the rights and privileges of corporations, subject to the restrictions contained in the book of discipline of the Methodist Episcopal church. (R. S. c. 53, § 19.)

Purpose of section.—The object of this section is to prevent property belonging to the church, but held by the trustees, from descending, at the decease of the latter, to their heirs, and save the trouble and expense of causing new trustees to be appointed by the courts, and conveyances made to the new trustees. This the law effects by clothing the persons holding the office of trustees for the time being, though frequently changing by death, removal or otherwise, with the character of perpetuity and unbroken continuance, which is the peculiar attribute of a corporation. *Bailey v. Methodist Episcopal Church*, 71 Me. 472.

This section recognizes the organization and existence of churches as aggregate bodies, distinct from parishes or religious societies, and expressly declares the church wardens of episcopal churches, the stewards or trustees of the Methodist Episcopal Church, and the deacons of all other protestant churches to be so far corporations as to take in succession all grants and donations of real and personal estate, made either to their churches or to them and their successors. *Nason v. First Bangor Christian Church*, 66 Me. 100.

Such a corporation as created by this

section has no authority to create a debt for the erection of a meeting house. Any contract made by such a corporation for materials which entered into the construction of a meeting house is ultra vires and cannot be enforced against it. *Bailey v. Methodist Episcopal Church*, 71 Me. 472.

No conveyance from incumbent to successor is necessary.—No conveyance is necessary to transmit the property, when once vested, from the incumbent to his successor, whenever and however the change of trustees may occur, those going out ceasing to hold while those coming in becoming forthwith invested, so that in contemplation of law, the title always remains in the trustees for the time being. *Bailey v. Methodist Episcopal Church*, 71 Me. 472.

If grantee of land not in existence, rights of possession remain in grantor.—If lands are granted for pious uses to a person or corporation not in existence the right to the possession and custody of the lands remains in the grantor, until the person or corporation intended shall come into existence. *Shapleigh v. Pillsbury*, 1 Me. 271.

Applied in *Anderson v. Brock*, 3 Me. 243; *Sewall v. Cargill*, 15 Me. 414; *Bates v. Schillinger*, 128 Me. 14, 145 A. 395.

Sec. 20. Ministers and officers of religious societies, their powers. —The ministers of a parish or religious society and the deacons, elders, trustees, stewards and other presiding officers of a religious society or church, having by its usages no settled minister, may take, in succession, any estate granted

to the minister and his successors, or for the use of the ministry or poor of the church; and may prosecute and defend all suits respecting it; but they shall not so take, while the clear annual income of prior grants is \$3,000. (R. S. c. 53, § 20.)

Minister must be recognized by town.—Without the express concurrence or assent of a town, or parish, in its corporate capacity, no person can become its minister. And no minister not thus recognized can hold lands reserved for the first settled minister in the town. *Bisbee v. Evans*, 4 Me. 374.

Minister is seized of freehold and may bring trespass action.—The minister of a parish settled for life, or for a term of years, is seized of an estate of freehold upon condition in the ministerial land, and is answerable for waste. Therefore he has his remedy by an action of trespass against

a stranger for any injury done to the freehold. *Cargill v. Sewall*, 19 Me. 288.

And may prosecute it to final judgment even after ministerial relation dissolved.—The right of action being vested in the minister personally, an action commenced by him before, may be prosecuted to final judgment after the ministerial relation has been dissolved. *Cargill v. Sewall*, 19 Me. 288.

Applied in *Parsonsfeld v. Dalton*, 5 Me. 217; *Cox v. Walker*, 26 Me. 504.

Stated in *Nason v. First Bangor Christian Church*, 66 Me. 100.

Sec. 21. Power to convey lands.—No conveyance of an estate as set forth in section 20 by a minister shall be valid longer than he is in the ministry; or by such deacons or other officers, longer than they are in office, if made by them without consent of the church or by church wardens without the consent of the vestry. (R. S. c. 53, § 21.)

Cited in *Nason v. First Bangor Christian Church*, 66 Me. 100.

Sec. 22. Parish records open to inspection.—The records of a parish shall be open to the inspection of its members and to clerks of other parishes; and each clerk shall furnish attested copies thereof, on request, for a reasonable compensation. (R. S. c. 53, § 22.)

Sec. 23. Trustees to hold grants as corporations. — The trustees of each monthly meeting of the Religious Society of Friends (or Quakers) are so far corporations as to take and hold, in succession, all grants and gifts of real, personal or mixed estate made to said meetings or to them, for the use of their monthly meetings, the preparative meetings constituting them or the poor thereof; also to take and hold as aforesaid, all grants and gifts of real, personal and mixed estate made to said monthly meetings or the trustees thereof for the use of quarterly meetings of said Religious Society of Friends (or Quakers) for their use or the use of the poor thereof. Said trustees shall hold, manage and convey all such estate according to the terms and conditions on which it was granted or given. They may sue in their names as such trustees for any right, title or interest to which said meetings or their trustees are entitled.

Provided, however, that the annual income therefrom, to any one meeting, for the uses specified shall not exceed \$5,000. These powers may be enlarged, restrained or repealed by the legislature. (R. S. c. 53, § 23.)

Independent Local Churches.

Sec. 24. Churches incorporated. — Any independent local church now existing, or that may hereafter be organized in the state, may be incorporated according to the provisions of this and the 7 following sections. (R. S. c. 53, § 24.)

Sec. 25. Notice of the meeting. — When 3 or more members of such church who are voters according to section 26 shall apply in writing to any justice of the peace in the county for the purpose of incorporating said church, said justice shall issue his warrant addressed to one of said applicants, stating the

time, place and purposes of the meeting and directing him to notify the members of said church by posting a certified copy of said warrant in a conspicuous place near the main entrance to the usual place of meeting of such church and in one other public and conspicuous place in the same town, for 7 days, at least, prior to said meeting. (R. S. c. 53, § 25.)

Sec. 26. Qualification of voters; manner of organizing into a body corporate.—The resident members of such church 21 years of age and upward shall be voters at such meeting and in all meetings of the corporation. Such voters, assembled at the time and place notified, shall elect a moderator to preside over said meeting. They shall then, by ballot, proceed to vote upon the question whether the church will become incorporated hereunder. If $\frac{2}{3}$ of the ballots cast shall be in favor of the church becoming incorporated, it shall thereupon become a body corporate with all the powers, rights and duties incident to corporations, with the right to take by gift, purchase, devise or bequest such personal and real property as may be useful for carrying on its local work, and may dispose of the same at pleasure, have perpetual succession, a corporate seal and change the same at pleasure. (R. S. c. 53, § 26.)

Sec. 27. Election of officers.—The resident members shall, by ballot, elect a clerk, treasurer, a business committee of not less than 3 nor more than 7 members who are voters and such other officers as they may deem necessary. (R. S. c. 53, § 27.)

Sec. 28. Certificate filed in office of secretary of state; change of name.—The clerk, treasurer and a majority of the business committee of every independent local church incorporated under the foregoing provisions shall prepare a certificate in form approved by the attorney general setting forth the name of such church, the town or city where located and the number and names of its business committee, and shall sign and make oath to it and shall file the same in the office of the secretary of state; the secretary of state shall keep a list of the same in a book prepared for that purpose showing the name, location and date of organization of such church corporation. The name of any incorporated church may be changed by vote in a legal meeting and notice thereof shall be given to the secretary of state with the same effect as prescribed by statute for changing the name of corporations. (R. S. c. 53, § 28.)

See c. 53, § 78, re change of name of corporations.

Sec. 29. Duties of officers prescribed by by-laws; notice of meetings.—An independent local church by its by-laws may prescribe the duties of the several officers and the manner of executing the same. When no provision is made by any vote or by-law of the church for calling meetings, they shall be called by the business committee by posting notices of the time, place and purposes of said meeting, in the same manner and for the same time as is prescribed in section 25. Meetings shall also, in the same manner, be called by said committee, upon the written request of at least 6 members of the church qualified to vote. (R. S. c. 53, § 29.)

Sec. 30. Persons contributing to support of church may participate in meetings.—An independent local church may by its by-laws extend to all persons not members of the church who are 21 years of age and upward and who regularly contribute toward the expenses of the church, the right to attend and participate in the annual and special meetings of the church when action is to be taken relative to the use and appropriation of funds toward which they have contributed or toward which they have pledged contributions, and meetings called for the purpose of obtaining or dismissing a pastor. (R. S. c. 53, § 30.)

Sec. 31. Persons holding property in trust may convey same to

church.—The deacons of such church or any other person or persons holding real or personal estate in trust for the use of such church may convey such property to such incorporated church, and said church shall hold the same subject to the uses and trust under which it was held by such deacons and other person or persons. (R. S. c. 53, § 31.)

Sec. 32. Parish authorized to convey property to church. — Any parish or religious society connected with the church, which becomes incorporated under the provisions hereof, may at a meeting duly warned and called for such purpose by a 2/3 vote authorize 1 or more persons in its name and behalf to convey to such church any real or personal estate which it may hold for the use of such church, and such church shall thereafter hold such property to the same uses and trusts as when held by such parish or society. (R. S. c. 53, § 32.)

Protection of Property Dedicated to Pious Uses.

Sec. 33. Property dedicated to pious uses, having no legal custodians and becoming wasted, sold by order of court.—Where any property in the state, dedicated and ordained for pious uses, has no proper or legal custodian, so that it is becoming wasted and the utility thereof is lost, upon the application of any person or patriotic or religious society interested in having such property preserved and applied to the uses for which it was originally intended, or for some public or patriotic purpose, the attorney general shall file a bill in equity, in the nature of an information, against such property and all persons interested therein, praying for the appointment of trustees to care for such property and for the proper application and disposal thereof, and the court may order such notice as seems proper, and may appoint receivers or trustees therefor, and upon final decree, may order the care, custody, sale, application or disposal of such property as will best serve the purposes for which it was originally intended, or some public or patriotic purpose. The court may convey or transfer such property to any religious or patriotic body, to be held and applied for the purposes of such trust as the court may declare; and it shall have power to treat, care for and dispose of the same in furtherance of such pious, public or patriotic uses as may seem best suited to the case and situation. (R. S. c. 53, § 33.)

If grantee of land not in existence, rights of possession remain in grantor.—If lands are granted for pious uses to a person or corporation not in existence the right to the possession and custody of the lands remains in the grantor, until the person or corporation intended shall come into existence. *Shapleigh v. Pilsbury*, 1 Me. 271.

Dedication in pais does not transfer title.—A dedication in pais of land to pious uses does not transfer the title, the fee, but only the use as an easement. While the holder of the legal title may be re-

strained from hindering or interfering with that use of the land for which it was so dedicated, the land itself cannot be taken from him except by eminent domain or other due process of law. *Hamlin v. Property in Webster*, 106 Me. 132, 76 A. 163.

While there is an owner of the fee in existence, land dedicated in pais to pious uses is not within the scope of this section. *Hamlin v. Property in Webster*, 106 Me. 132, 76 A. 163.

Applied in *Hamlin v. Baptist Meeting House*, 103 Me. 343, 69 A. 315.

Sec. 34. Transfer of certain trust funds. — Any corporation, trustees, unincorporated body or association, including a society, lodge, club or banks by whom funds or property are now held or to whom they have been or shall hereafter be entrusted by will, or by whom they have been or shall hereafter be acquired by purchase, gift or otherwise, for any religious, moral, educational, fraternal or benevolent purpose, or deposit for care of cemetery yards or lots, may transfer, convey and deliver to any other corporate body or trustees existing for the same or similar purposes, such funds or property as is now or shall hereafter come into their or its possession or shall have been given to it or them to

be administered in the manner and for the purposes provided by the donor, or as originally intended at the time of such purchase or acquisition.

Provided, however, that no transfer of such funds or conveyance of any other kind of property shall be made without the approval of a justice of a superior court or the judge of probate for the county in which the donor resides or resided at the time of his decease, if the property was acquired by gift or under any trust agreement or testamentary provision. (R. S. c. 53, § 34.)

Meetinghouses.

Sec. 35. Parish may become owner of pews; proceedings.—When it is deemed expedient by any organized parish or incorporated church to become the owner of the pews in any meetinghouse used by it as a place of regular worship, a meeting of the owners and occupants thereof may be called, as provided in section 6, and a majority of such pew owners and occupants may vote to convey the pews by them owned or occupied to such parish or incorporated church. If the owners or occupants of any of the pews in such meetinghouse are unknown to the assessors they shall give notice, additional to that provided herein, by publishing the call for such meeting in some newspaper published in the county where such meetinghouse is located at least 7 days before the time appointed for such meeting. (R. S. c. 53, § 35.)

Sec. 36. Owner of pew dissenting, proceedings.—Any owner or occupant of a pew in such meetinghouse who expresses his dissent from such vote in writing to the clerk of the parish or incorporated church within 1 month from the time of holding such meeting shall have his pew appraised, as provided in section 39, and the appraised value shall be tendered to him in satisfaction of his claim for compensation and he shall then deliver a deed of such pew to the parish or incorporated church. If such dissent is not so expressed such pew shall be forever forfeited to the parish or incorporated church. (R. S. c. 53, § 36.)

Sec. 37. Incorporation for meetinghouse.—Any persons, for the purpose of erecting a meetinghouse, or the majority in interest of the owners of a meetinghouse, not a parish, may incorporate themselves as parishes may; and choose all officers and do all other acts that a parish may lawfully do. (R. S. c. 53, § 37.)

Quoted in *Union Meeting House v. Rowell*, 66 Me. 400.

Cited in *Baptist Meeting House v. Webb*, 66 Me. 398.

Sec. 38. Owners may repair or dispose of meetinghouses; warrant for calling meeting.—A majority of the pew owners or proprietors of a meetinghouse, present at a legal meeting called for that purpose, may repair, remodel or sell and convey their house or the land used with it, or remove or rebuild it. Any meeting relating thereto may be called as provided in section 41, or by publishing the warrant in a newspaper printed in the county, at least 14 days before the meeting. (R. S. c. 53, § 38.)

Sec. 39. Appraisal; proceeds of sale; pews; taxes raised; agents to make sale.— Before such alteration or sale is made, an appraisal of the relative value of the pews shall be made by 3 discreet persons, under oath, to be elected by ballot at a legal meeting of said owners or proprietors. If a sale of said house and land is made, it may be private or public, as such meeting determines, and the proceeds shall be applied to pay the expenses of said sale and the debts and just claims against the property; and the balance shall be paid to the pew owners or proprietors in proportion to their interests by the appraisal. If the meetinghouse is altered or rebuilt, the appraisers, after the work is completed, shall assign pews to the former pew holders to conform as nearly as practicable to those previously held by them; and the other pews may be sold to defray the

expenses of the repairs and alterations or be otherwise disposed of as the proprietors or pew owners determine. They may choose officers, raise and assess taxes on the pews, collect them for making such repairs and alterations, do all things that a parish may do, and appoint some suitable agent or agents to make such sale and conveyance or repairs and alterations, and a treasurer or trustees to receive and distribute the proceeds of sale in manner aforesaid. (R. S. c. 53, § 39.)

Sec. 40. Proprietors dissenting, entitled to appraised value of their interest; limitation and forfeiture.—When it is decided to repair, remodel or rebuild a meetinghouse, any owner or proprietor dissenting from the action of the majority and declining to take an interest in the house as altered may demand and receive of such majority the appraised value of his interest after deducting his proportion of debts against the property, to be recovered in an action for money had and received; which shall not be commenced until 30 days after such demand, nor after the lapse of a year after notice is posted for 3 successive weeks on the meetinghouse door and some other conspicuous place in its precinct, stating the persons to whom the money is to be paid, the amount payable to each and the time limited for payment. If said sums are not demanded within said time, they are forfeited to the majority for parish uses. The provisions of this section do not apply to any case where the repairs decided upon are only such as are necessary to keep such meetinghouse in a tenantable condition. (R. S. c. 53, § 40.)

Sec. 41. Owners of meetinghouses and pews therein may incorporate.—The owners of a meetinghouse or building for public worship and the pew owners may be incorporated, when any 3 or more of them apply therefor to a justice of the peace, who shall issue his warrant to one of them, stating the time, place and purpose of the meeting, and directing him to notify said owners by posting a certified copy of it for 14 days on the principal outer door of such building and in 1 or more public places in the same town. (R. S. c. 53, § 41.)

The interests of the parish and of the pew-holders are different and distinct. The pew-holder may own his pew and thereby have an easement in the house, but he in no way can be regarded as own-

ing the house in which his pew is. *First Baptist Society v. Grant*, 59 Me. 245.

Cited in *Mayberry v. Mead*, 80 Me. 27, 12 A. 635.

Sec. 42. Proceedings.—When assembled as provided for in section 41, the owners of the building and pew owners may choose a moderator and clerk, who shall perform the usual duties of such officers; and thereupon said owners shall be a corporation and be known by such name as they adopt, and they may agree on the mode of calling future meetings. (R. S. c. 53, § 42.)

Cited in *Mayberry v. Mead*, 80 Me. 27, 12 A. 635.

Sec. 43. Corporate rights and powers.—Any meetinghouse corporation, by a major vote of its members, may use and control the meetinghouse or building for public worship partly or wholly owned by them, as they please; but nothing in this and the 2 preceding sections shall affect the rights of owners of houses of worship, built by different religious denominations. (R. S. c. 53, § 43.)

Meeting must be called for express purpose of vote.—By this section, the corporation, by a majority vote of its members, may control the meetinghouse, etc. It must be done at a meeting of the corporation duly called therefor. It cannot be done at a meeting called by the justice of the peace, on an application to him there-

for, for the purpose of organizing the corporation. The meeting so called is not a meeting of the corporation, but one called before there was a corporation. *Mayberry v. Mead*, 80 Me. 27, 12 A. 635.

Quoted in part in *First Baptist Society v. Grant*, 59 Me. 245.

Sec. 44. Meetings of owners of meetinghouses. — When there has been no meeting of the incorporated pew owners, or proprietors or owners of a meetinghouse or building for public worship for 3 years, a meeting may be called on application of 3 or more members thereof to a justice of the peace, who shall issue his warrant to one of them stating the time, place and purposes of the meeting, directing him to notify such meeting by posting a certified copy of said warrant, 3 weeks before the time of meeting, on the principal outer door of such building, and in 1 or more public places in the same town and publishing it in a newspaper published in the county, if any, otherwise in an adjoining county or in the state paper. (R. S. c. 53, § 44.)

Sec. 45. Division of time between different denominations.—When a house of public worship is owned by persons of different denominations and when an organized society, or its members, own 5 pews therein, 1 or more of the minority owning not less than 5 pews may apply to a justice of the peace to obtain a division of the time of occupying the house; and he shall call a meeting of the owners by posting a notice in a public place in or about the house, 30 days at least before the meeting, stating the time, place and object thereof. (R. S. c. 53, § 45.)

Two conditions must co-exist before there can be any legal action under the provisions of this and the following sections: (1) there must be a house of public worship owned by persons of different denominations; (2) in such house, so owned, an organized society or its members must own at least five pews. *First Baptist Society v. Grant*, 59 Me. 245.

It is only to a case of ownership of pews in a house owned "by persons of dif-

ferent denominations" that this section applies. It does not apply where the title is in the corporation, for when one has been organized in pursuance of the previous sections of this chapter, "such corporation by a major vote of its members may use and control the meetinghouse or building for public worship, partly or wholly owned by them, as they please," etc. (§ 43). *First Baptist Society v. Grant*, 59 Me. 245.

Sec. 46. Mode of proceeding.—At a meeting called under the provisions of section 45, the owners, who are not applicants, or if they refuse or neglect, the justice who called the meeting may designate another justice, and the 2 may appoint a 3rd disinterested person, not an inhabitant of the town in which the house is located, or belonging to the denomination of either party interested; and the 3 shall be a board, before which the owners may exhibit the amount that they own in the house; the minority, owning at least 5 pews, shall have their part allotted to them, as nearly as may be, in proportion to the amount that they own in the house; and the board shall designate which weeks in each year the minority, if they please, may occupy the house; if they do not, the majority may occupy it. (R. S. c. 53, § 46.)

Cited in *First Baptist Society v. Grant*, 59 Me. 245.

Sec. 47. Proportion of minority appraised.—The board shall appraise the value of the minority's proportion of the house, make a record of their proceedings, and within 10 days cause it to be transcribed into the records of such town. (R. S. c. 53, § 47.)

Cited in *First Baptist Society v. Grant*, 59 Me. 245.

Sec. 48. Expenses.—All their reasonable expenses shall be paid by the persons who requested the division; but the above provisions shall not affect any agreement now in force as to the mode of occupying such house. (R. S. c. 53, § 48.)

Sec. 49. Minority may occupy their proportion of time, unless majority will purchase.—The minority may occupy the house for their allotted

time, unless the majority purchase their interest by paying the minority the sum at which it was appraised by the board; but if the minority decline so to sell, they shall not avail themselves of the provisions of the 4 preceding sections. (R. S. c. 53, § 49.)

See c. 168, § 38, re pews and rights in houses of public worship are real estate; deeds of same, where recorded.

Ministerial and School Lands, and Funds Therefrom.

Sec. 50. Fee in ministerial lands.—Where lands have been granted or reserved for the use of the ministry or first settled minister, or for the use of schools, in any town, and the fee in these lands has not vested in some particular parish therein, or in some individual, it shall vest in the inhabitants of such town and not in any particular parish therein for such uses. (R. S. c. 53, § 50.)

Cross reference.—See c. 36, §§ 48-60, re lands reserved for public uses.

History of section.—See Union Parish Society v. Upton, 74 Me. 545.

Applied in Sewall v. Cargill, 15 Me. 414.

Quoted in part in Millinocket v. Mullen, 108 Me. 29, 78 A. 1120.

Cited in State v. Mullen, 97 Me. 331, 54 A. 841.

Sec. 51. Selectmen, town clerk and treasurer, to be trustees.—The municipal officers, town clerk and treasurer of each town where no other trustees are lawfully appointed for that purpose shall be a corporation and trustees of such ministerial and school funds, with the usual powers granted to similar corporations. (R. S. c. 53, § 51.)

Actions involving title brought in the name of inhabitants of the town.—There is no provision in this chapter that actions involving the title to such lands are not to be brought in the name of the inhabitants of the town in whom the fee is vested. It

would seem that such actions must necessarily be so brought. Millinocket v. Mullen, 108 Me. 29, 78 A. 1120.

Stated in Tainter v. Winter, 53 Me. 348; Abbott v. Chase, 75 Me. 83.

Sec. 52. Trustees to choose officers annually.—The corporation shall annually elect a president, clerk and treasurer; the treasurer shall give bond with sureties sufficient in the opinion of the trustees for the faithful discharge of his duty; and the clerk shall be sworn. (R. S. c. 53, § 52.)

Stated in Tainter v. Winter, 53 Me. 348; Millinocket v. Mullen, 108 Me. 29, 78

A. 1120.

Cited in Abbott v. Chase, 75 Me. 83.

Sec. 53. Powers.—The corporation may sell and convey all such ministerial and school lands belonging to and lying in their town; and the treasurer's deed thereof, executed by order of the trustees, shall pass the estate. (R. S. c. 53, § 53.)

An unauthorized conveyance by the treasurer is unenforceable and cannot be ratified by the board of trustees except in accordance with this chapter. Argyle v. Dwinel, 29 Me. 29.

Conveyances by de facto officers are valid as to third persons.—When certain individuals have been the acting municipal officers, town clerk and treasurer in a certain town, and also the acting trustees, clerk and treasurer of the ministerial and school fund in the town, their acts in those capacities in the disposition of the ministerial and school lands in that town, so far

as the rights of the public and third parties interested therein are concerned, will be as valid as if they were officers de jure as well as de facto. A deed duly executed by such acting treasurer of such acting trustees, will convey whatever title there is vested in the inhabitants of that town to the parcel therein described. Abbott v. Chase, 75 Me. 83.

Stated in Millinocket v. Mullen, 108 Me. 29, 78 A. 1120.

Cited in Union Parish Society v. Upton, 74 Me. 545.

Sec. 54. Investment of funds.—As soon as may be the corporation shall

invest the proceeds of sale in the manner provided in section 120 of chapter 91. (R. S. c. 53, § 54.)

Stated in *Millinocket v. Mullen*, 108 Me. 29, 78 A. 1120.

Sec. 55. Trustees may hold estate for use of the ministry and schools.—The corporation may, by gift, grant or otherwise, take and hold for the use of the ministry in their towns, real and personal estate, the annual income of which does not exceed \$1,000; and for the use of schools may take and hold estate, the annual income of which does not exceed the sum which their town is bound to raise for the same use. (R. S. c. 53, § 55.)

Stated in *Millinocket v. Mullen*, 108 Me. 29, 78 A. 1120.

Sec. 56. Income of fund applied to support of schools.—The income of the fund, arising from the sale of lands under the provisions of section 53, and from the rents and profits of real and personal estate held under the provisions of section 55, shall be annually applied to the support of public schools in the town, and expended like other school moneys. (R. S. c. 53, § 56.)

Purpose of section.—It seems clear from this and preceding sections that the legislative purpose was to place the ministerial and school funds, arising from the sale or otherwise of these lands, the fee in which was thus vested in the inhabitants of the town, in the control and management of

an agency or instrumentality that should be perpetual and yet be entirely separate from the inhabitants of the town, either as individuals or as a municipality. *Millinocket v. Mullen*, 108 Me. 29, 78 A. 1120.

Cited in *State v. Mullen*, 97 Me. 331, 54 A. 841.

Sec. 57. Transfer of funds by trustees.—The trustees of any ministerial or school fund in this state, incorporated by the legislature of Massachusetts may, by the consent of the town for whose use the fund was established, transfer it to the municipal officers, clerk and treasurer thereof, who are made trustees of the same; and the income shall be annually applied and expended as provided in the preceding section. (R. S. c. 53, § 57.)

Sec. 58. Administration of ministerial and school funds. — The ministerial and school funds now held in trust by any town or by a corporation existing under the provisions of section 51 may be turned over to the treasurer of state to be administered in accordance with the terms and provisions of such trust and which shall be invested by him in the same manner as provided for investments in securities enumerated in subsections I to IX, inclusive, of section 42 of chapter 59; such town or corporation thereupon shall be relieved of any further duties or liabilities for such funds, provided such town, acting under an appropriate article in the warrant at any annual town meeting, shall vote to cause such funds to be entrusted to the treasurer of state as aforesaid. (R. S. c. 53, § 58.)

Sec. 59. Trustees to account annually. — At each annual meeting of their town, the trustees shall exhibit an account of their proceedings and a statement of the funds, receipts and expenditures and of the application thereof to said uses. (R. S. c. 53, § 59.)

Sec. 60. If lands are vested in a parish, the assessors, clerk and treasurer to be trustees.—When ministerial lands are vested in a parish, the assessors, clerk and treasurer, where no other trustees are appointed for that purpose, shall be a corporation and trustees of such ministerial fund with like powers and under like liabilities as the municipal officers, town clerk and treasurer; pay the annual income of such lands and of the proceeds of their sale according to the terms of the grants and reservations by which they were so vested; and at each annual meeting for choice of parish officers, exhibit an account of their proceedings and a statement of funds, receipts and expenditures. (R. S. c. 53, § 60.)

Sec. 61. First meeting of trustees.—The first meeting in any year of the trustees constituted by sections 51 and 60 may be called by 7 days' personal notice of the time and place thereof, given by one of them to all the others. (R. S. c. 53, § 61.)

Sec. 62. Public reserved lots, located by superior court.—When in the grant of any townships or parts of townships certain portions are reserved for public uses, and such portions have not been located in severalty prior to the incorporation of the same into a town, the superior court in the county where the land lies, on application of the assessors of the town, may appoint 3 disinterested persons of the county and issue to them its warrant under seal of the court, requiring them, as soon as may be, to locate such reserved portion according to the terms of the grant, and if the use or purpose of the reservation is prescribed in the grant, they shall set off and locate the lots accordingly, designating the use or purpose for which each lot is so reserved and located. The committee, before acting under such warrant, shall be sworn to the faithful discharge of the duty assigned them and a certificate thereof shall be indorsed on the warrant. (R. S. c. 53, § 62.)

Sec. 63. Notice of appointment and meeting.—The members of the committee shall give notice of their appointment and of the time and place of their meeting to execute the same, by publishing the same in some newspaper in the state to be designated by the court, and by posting written notifications in 2 or more public places in the same town, at least 30 days before making such location. (R. S. c. 53, § 63.)

Sec. 64. Return of doings of committee.—The members of the committee shall make return of said warrant and their doings thereon, to the next superior court in the county, after having completed the service; which, being accepted by the court and recorded in the registry of deeds in the county of registry district where the land is situated, within 6 months, shall be a legal assignment and location of such reserved proportions, for the uses designated; and thereafter the lands so set off and located shall be under the care and oversight of the trustees of the ministerial and school funds of the town, with all the powers and subject to the duties prescribed in this chapter, including the power to sell and convey the same. (R. S. c. 53, § 64.)