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The General Personal Liabilities of Stockholders in Corporations

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THE GENERAL PERSONAL LIABILITIES OF STOCKHOLDERS
IN CORPORATIONS .

THESIS

Presented by

Lorenzo M. Cobb,

For the Degree of Bachelor of Laws .

(New York Law of Liability of Stockholders
Specially Considered) .

Cornell University ,---1896 .

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Chapter 1.

INTRODUCTION.

In considering the general personal liability of stockholders in a corporation, it will be well to first enquire, what persons or classes of persons are liable for its acts. A corporation aggregate, being a collection of individuals endowed with sovereign authority, with the faculty of suing and being sued, of holding and transmitting property, and of acting as one person with reference to those matters which are within the objects of its creation, Certain property and persons are always liable for its acts (See *Thomas v Dakin*, 22 Wend. 9-112). When a corporation incurs a liability which may be on contract or for a tort, or imposed by statute in the nature of a penalty, we have primarily the liability of a corporation for such acts, and its assets, including the capital stock, must be taken for such purpose; and secondarily, the trustees or directors have an additional liability for any fraudulent acts which are

committed by them, and for all ultra vires acts; and thirdly, the stockholders, in addition to the amount of the stock subscribed, by them, are personally made liable by statute for certain acts of the corporation. This liability differs according to the character of the corporation, and the statutes of the state where the company was organized. This third class of persons forms the subject of our investigation.

Sec. 2. BY SUBSCRIPTION. A person may acquire rights and liabilities in a corporation by subscribing for its stock, by purchasing stock from individuals and by receiving stock by way of gift, devise or pledge.

. The forms of contracts to take shares in the stock of a corporation may differ, as where the certificate issued by a corporation in the ordinary form of a certificate of stock but containing a promise on the part of the corporation to pay interest thereon until the happening of a specific event, constitutes the person to whom it is issued a stockholder and member of the company.

(See *McLaughlin v Detroit and Mill.R.R.Co.*, 8 Mich.100)

But in all cases the legal relations occasioned by the contract are similar, and a contract of this kind is a contract to subscribe funds (*Taylor on Corporations*, sec. 510; *Union Ice Company v Hoge*, 21 How. 35). To constitute a person a shareholder it is not necessary that a certificate of stock should have been issued to him. It is sufficient that stock has been apportioned to a person on the books of a corporation, although the subscription was made by an agent at the request of the person subscribing. The certificate or script is not a trans-

fer from the corporation, but merely evidence of an existing right (Burr v Wilcox, 22 N. Y. 551; Chester Glass Co. v Dewey, 16 Mass. 94) It is the settled law of the United States Supreme Court and of most of the states that a subscription for shares implies a promise of the subscriber to pay for them (Taylor on Corporations, Sec. 513; Upton v Tribilcock, 91 U. S. 45; Dayton v Borst, 31 N. Y. 433).

Sec. 3. A CONTRACT OF SUBSCRIPTION.

A contract of subscription is not always necessary to fix a person with the full liability of a stockholder to creditors of the corporation. The mere acceptance of shares of the stock by him will have this effect (Nulton v Clayton, 55 Ia. 425; Spear v Crawford, 14 Wend. 20) But if no certificate of stock has been issued to and accepted by the person sought to be charged, a written contract of subscription is ordinarily necessary to bind him as a shareholder (Pittsburg R. Co., v Clarke, 29 Pa. St. 146) A verbal promise to take and pay for shares will not be binding (Fanning v Ins. Co., 37 Ohio St. 339).

Sec. 4. PARTIAL AGREEMENT.

Sec. 4. PAROL AGREEMENTS.

All parol agreements and secret understandings between the subscriber and the agent of the corporation who procures the subscription in any way contrary to its terms, are void, and the subscription is enforceable as if no such agreements or understandings had existed (Pistagua Ferry Co. v Jones, 39 N.H. 491; Taylor, section 521, gives other numerous citations) A secret agreement made with a subscriber to the stock of a railroad corporation who subscribed with others, that he shall pay only a part of his subscription, is fraudulent as to the other subscribers, and void, and his subscription will be valid and binding for the whole amount thereof. (Galena & Southern Wis. R.R. Co., v Ennor, 116 Ill. 55)

Sec. 5. EXISTENCE OF THE CORPORATION.

If the corporation is in existence at the time when the subscription is made, then, unless the subscription takes the form of a proposal by the corporation and an acceptance by the subscriber, it must necessarily be regarded as a proposal by the subscriber to become a shareholder, so that in order to make a binding contract the proposal

must be accepted by the corporation(Thompson on Corporations,section 1177; Carlisle v Saginaw V R.Co. 27 Mich. 318; Parker v Northern Central R. Co., 33 Mich. 23)

Sec. 6. CONDITIONS IMPOSED.

If the contr act to subscribe is conditioned on the subscription of a certain amount,it may not be enforced until that amount is subscribed(Phila. & Westchester R R Co. v Hockman, 28 Pa. St. 318; Chase v Sycamore R. R. Co. 38 Ill. 215; Belfast & M. L. R. R. Co., v Coltrell, 66 Maine,185; Monadnock R. R. v Felt, 52 N. H. 379; Taylor on Corporations,section 518; Morris Canal Co. v Nathan, 2 Hall(N.Y.)239).

The New York Stock Corporation law provides in section 41,that at the time of such subscribing every subscriber,whose subscription is payable in money,shall pay to the directors ten per centum upon the amount subscribed in cash by him,and no subscription shall be received or taken without such payment. In general whatever conditions are imposed on the corporation by the subscription contract must be performed before the

contract can be enforced(Santa Cruze R. R. Co., v Schwartz, 53 Cal. 106; Thompson v Olever, 18 Iowa,417; Swartwont v Mich. Air Line R.R. Co.,24 Mich,389; Taylor,Sec.518)

Subscribers to the stock are liable upon their subscription if there is user by the corporation,and it is sufficient to show that a valid debt has been contracted before the capital stock was paid in either in cash or property to fix the statutory liability of a stockholder. (National Tube Works Co.,v Gilifillan, 124 N. Y. 302)

Sec. 7. UNPAID SUBSCRIPTIONS.

In all cases the stockholder is liable to make good in some form of proceeding for the benefit of creditors of the corporation,whatever remains unpaid on his shares at their par value according to the tenor of the contract of subscription entered into by him or his assignor.(Walker v Lewis, 49 Texas,123) Beyond this his liability does not extend except where it has been enlarged by constitutional or statutory provisions(Jackson v Meek, 87 Tenn. 69)

A shareholder indebted to an insolvent corporation for unpaid subscriptions cannot against his liability therefore set off a debt owing him from the

corporation, but a statute may permit such set off (Appleton v Turnbull 84 Maine, 72) He is first bound as a shareholder to pay whatever may be due on his share whereupon he will be entitled to participate in the assets of a corporation rateably with the other creditors (Sawyer v Hoge, 17 Wallace, 610; Lawrence v Nelson, 21 N. Y. 158; Bolton Carbon Co., v Mills, 78 Iowa, 410; Taylor, sec. 729)

Sec. 8. CAPITAL STOCK ISSUED UNPAID.

In New York, "The stockholders of every stock corporation shall jointly and severally be personally liable to its creditors to an amount equal to the amount of the stock held by them respectively, for every debt of the corporation, until the whole amount of its capital stock issued and outstanding at the time such debt ~~was~~ ~~contracted~~, was incurred, shall have been fully paid (Stock Corporation Law, section 54, Laws of 1892) It is the issued and outstanding stock that must be paid in and not the whole capital as formerly (Laws of 1848, cap. 40, section 10; Laws of 1875, Cap. 611, paragraph 37)

In Maryland the several stockholders of the corporation are individually liable until the whole amount

of its capital stock shall have been paid in, for any debts of the corporation contracted before that time (Morean's Digest, 216; 37 Md. 522; Thompson on Liab. Stockholders, sec. 38)

Sec. 9. Discharge of a Stockholder under Act of N. Y. Laws 1848, cap. 40.

Where the stock of a corporation has not been paid in, and in an action to enforce the individual liability of a stockholder, and the stockholder who was also president of a manufacturing corporation advanced to it money to pay its workmen, and paid out the same to them, it was held that he thereby became a creditor, and this was a defence to an action by another creditor of the corporation against him as stockholder, and that this was so even if defendant had been compelled to pay the claims in discharge of the liability imposed by said act upon the stockholders to pay laborers, etc., It seems that a stockholder is absolutely discharged from his liability to creditors under the above act by payment of an amount equal to his stock on legal compulsion, and probably by voluntary payment to any creditor for whose debt he is liable (Maltiez v Needig, 72 N. Y. 100)

Sec. 10. Certificate of Incorporation not properly filed under Laws N. Y. 1891, cap. 576.

Where the original capital of a corporation was \$12,000. and not fully paid in, nor a certificate filed, but on an increase of the capital a certificate was filed stating: "The whole of the said capital stock of \$12,000. has been sold and all but \$_____ paid in" but the increased capital stock was not in fact paid in in full and defendant who bought two shares of such increased stock was sued by the assignor of the creditor of the corporation, it was held that plaintiffs were not prejudiced by the claim of defendants that the purchase of stock was induced by fraud, and the defendant was liable on the notes issued by the corporation (Moosebrugger v Walsh, 89 Hun. 564)

By the laws of 1892, section 54 of the New York Stock Cor. Laws. the liability of stockholders in business corporations has been altered so that a stockholder can no longer be made liable for debts because the directors fail to file a prescribed certificate, or because the entire capital stock has not been paid in (See Alb. Law Journal, vol xlviii, p 267, Article by D.A. Jones).

In Rhode Island and New Hampshire the statute imposes a liability upon stockholders for a failure to pay in the entire capital stock and to file a certificate of the fact of payment(Public Statutes,R.I. 385-6; Pub. Stats. N. H. 1891,p.416).

In England, and in a large proportion of our states, one rule has been adopted, and the stockholder is held liable only to the extent of the unpaid stock held by him. In many places a special liability to laborers and employees is imposed, and there is a personal responsibility for participating in acts which impair the capital of the corporation, or where incorporators act as partners but the one general rule of liability is that each stockholder's obligation to see that the capital of the corporation is made good, ends when his own stock is full paid(In Eng. see Buckley's Companies Acts, 6th. Ed. 1891; in Maine, Dyer's Maine Corp. Laws, 1891, 73; in Mass. Tucker's Manual of Bus. Corp. 1888, 72; in Conn. Beach on Joint Stock Act, 1891, 44; in New Jersey, Corbin's N.J. Act, 1891, 3-4; in Pa. Freedley's Corp. Law. 1890, 37-115; in Dist. Columbia, Revised Statutes, 1873-4, 5-74; in Mich. 1 Howell's Anno. Stat., sec. 4017; in Ill. Root's Corp. Laws, 4th. Ed.

1890,20-21; in Minn. 11 Kelly's Stat,1891,p.703,sec.2455-2658; in Wis, Rev.Stat.,1878, 512; in Iowa,1 McClain's Anno. Code,404-7; in Missouri,State Const. Art. 12, sec. 9,1889; in Oregon,Const. Art 11, Hill's Anno. Laws,1892, 108; in Col. 1 Mills Anno. St. 1891, 627; in Maryland 1 Gen. Laws,1888,p.301,sec.64; in Ga.,Code,1882,sec.1676, subd.3; in Texas,1 Sayles Civil Stat. 221; in Ken.,Gen. Stat,1888,766; in Arkansas, Dig. of Stat.,1884,135,334; in Ala.,Const.,Art 14, Code,1886,vol.i,p.47)

Sec. 11. DE FACTO CORPORATIONS.

When a person has subscribed for shares in a de facto existing corporation,he cannot plead to a suit brought on his subscription that there are any irregularities in the organization of the corporation(Taylor,Sec. 537; Chubb v Upton's Assignees,95 N. Y. 665; Buffalo R R Co., v Cary,26 N. Y. 120)

Chapter II.

Sec 1. BY PURCHASE.

Stock may be acquired by purchase in open market or by private sale. To render such a transaction valid and binding on all parties, certain rules and regulations must be followed according to the statute laws of the state and the bye laws and regulations of the corporation.

The constitution or bye laws of the corporation may contain provisions regulating the transfer of shares. If these provisions are not observed, neither the shareholder nor his transferee may take advantage of the non-observance (Johnson v Underhill, 52 N. Y. 203; Quiner v Marblehead Social Ins. Co., 10 Mass. 476; Parrott v Byers, 40 Cal. 614; Taylor, sec. 589) Though on the one hand the corporation may refuse to recognize an irregular transfer, still in most cases of irregular transfers, liability may attach to the transferee (Upton v Burnham, 3 Biss., 431; Cheltenham R R Co., v Daniel, 2 Eng. R'y Ca. 728; Taylor, sec. 589)

In New York creditors may hold the registered stockholders liable even though they are not the real owners of the stock (Wakefield v Fargo, 90 N. Y. 213) A person becomes legally intitled to shares by having them transferred to him on the books of the corporation, a certificate being but evidence (Hawley v Upton, 102 U. S. 314; Agricultural Bank v Burn, 24 Me. 556; Taylor, sec. 587)

Sec. 2. STOCK REGISTERS.

Under statutes requiring stock registers to be kept, it is not necessary in order to constitute one a stockholder so as to hold him liable for the corporation's debts, that his name appears as such on the books (Evans v Bailey, 66 Cal. 112)

Sec. 3. TRANSFER OF SHARES NOT FULLY PAID UP.

The transferee (on the books of the corporation) of shares that are not fully paid up, is liable for calls made for the unpaid portion during his ownership (Webster v Upton, 91 U. S. 65; Hartford Co., v Boorman, 12 Conn. 530; Cowles v Cromwell, 25 Barb. 413) *Taylor sec 587,*

Chapter III.

Sec. 1. BY GIFT AND DEVISE.

A person may acquire shares in a corporation by gift, and where a gift is made in good faith and not for the purpose of divesting the transferror of liability in an insolvent corporation, and the proper entries are made on the books of the corporation, the transferror is relieved from liability, and the donee or transferee becomes the legal owner of the shares.

It is essential to the validity of a gift that it should be executed, and this can only be done by delivery, and where it is incapable of manual delivery, by delivery of the symbol which represents it, per Mr. Justice Matthews: "the instrument or document must be the evidence of a subsisting obligation and be delivered to the donee so as to vest him with an equitable title to the fund it represents, and to divest the donor of all present control and dominion over it (Basket v Hassul, 117 U. S. 602; Thompson, vol. ii, sec. 2391).

The doctrine that an intended gift of shares cannot be converted into an unintended trust, has been re-

peatedly affirmed (*Antrobus v Smith*, 12 Ves. 39; *Haertley v Nicholson*, 19 Eq. 233; *Beech v Keep*, 18 Beav. 285; *Baltimore Co., v Mali*, 65 Md. 93). But on the other hand a registration of the transfer on the books of the company is not essential to the validity of a gift of shares. A delivery of the certificate coupled with the execution of an express power of attorney to the donee to transfer the shares on the company's books, makes him substantially dominus of the shares, since he needs no further assistance from the donor and can compel registration by the company (*Milroy v Lord*, 4 DeGex Fisher & Jones, 264; *Stone v Hackitt*, 12 Gray, 227; *Cushman v Thayer Co.*, 76 N. Y. 365; *Ames Cases on Trusts*, p. 155). It has been decided in *Grymes v Hone*, 49 N. Y. 17, that a deed of transfer with an express power of attorney should be as effectual as a delivery of the certificates.

A delivery of the certificates as a gift, carries by necessary implication a power to transfer the shares on the company's books, and this implied power is as effectual as an express power to give the donee dominion over the shares whether the transaction be a gift *inter vivos* or not (*Allerton v Sang*, 10 Bosw. 362; *Ridden v Thrall*, 125 N. Y. 572; *contra--Matthews v Hoagland*, 91 N. J. Eq.; 21 Atl. Rep. 1054, as a *donatio mortis causa*, see *Walsh v*

Sexton, 55 Barb. 351).

If a donor, instead of taking an obligation in his own name in trust for the donee, takes it in the name of the donee, the gift is complete and irrevocable, notwithstanding the donee's ignorance of the transaction (Standing v Bowring, 31 Ch.D. 282; 27 Ch.D. 341; Smith v Bank of Washington, 5 S. & R. 318; Reid v Roberts, 85 Pa. 84)

Sec. 2. BY DEVISE.

Shares are Personal Property.

Contrary to early opinion, it is now generally agreed that shares of stock in a corporation are personal property whether they are declared to be such by statute or not, and whether the property of the corporation itself is real or personal (Drybutter v Martholomew, 2 P.Wms. 127; Townshend v Ash, 3 Atk. 336; Russell v Temple, 3 Dane Arbr. 108; Tregear v Etiwanda Water Co., 76 Cal. 537; Seward v Rising Sun, 79 Ind. 351; Thompson on Corps. sec. 1066). As the shares of all corporations are personal property, they pass on the death of the holder, not to his heir, but to the personal representative (Thompson on Corps. sec. 3317). Accordingly the devisee of shares in a corporation can

only acquire title to them after the settlement of the estate of the deceased, and provided they are not taken to pay his debts .

Chapter IV.

Sec. 1. BY PLEDGE.

A mere pledgee of shares who is not registered as owner and never receives dividends or exercises any of the rights of a shareholder, is not liable as a shareholder to creditors of the corporation (Anderson v Phila Warehouse Co., 111 U. S. 479; Henckle v Salem Mfg. Co., 39 O. St. 547; Taylor, sec. 741).

And thus it is held by the Federal Supreme Court that a pledgee of shares in the stock of a National Bank, who in good faith while the Bank is not in failing circumstances, takes the transfer in the name of an irresponsible person for the avowed purpose of avoiding liability as a shareholder, and who never exercises any rights of a shareholder or receives any dividends, incurs no liability as a shareholder to the creditors of the bank, the dividends being paid to the pledgee, the real owner (Anderson v Phila. Warehouse Co., 111 U.S. 479)

Sec. 2. PLEDGEE NOT LIABLE AS OWNER.

Unless the rule has been changed by statute, liability to pay calls and to respond in the event of in-

solvency, to creditors attach to the holder of the legal title only: the courts will not look beyond the registered shareholder, nor enquire under what equities he holds. A holding the stock of B as collateral security, if registered as the legal owner, is likewise held to the liabilities of a stockholder, and if he suffers a loss which B ought to have suffered, that is a matter between him and B (*Franklin v Neate*, 13 Mees & W. 481)

Sec. 3. MORTGAGEE NOT LIABLE FOR MORTGAGED SHARES.

Where A advanced money to B on the security of railway shares, they were transferred into the name of C to secure A, and subject thereto for B, and C dies insolvent. It was held that A was not liable at the suit of the company for the arrears of calls on the shares (*Newry v Moss*, 14 Beav. 64).

In the absence of circumstances creating an equitable estoppel, the rule is that if it is agreed between the company and the taker of the shares that he shall take and hold them only as collateral security for money advanced by him to the corporation, this does not make him liable as a shareholder to creditors of the company. They acquire no higher rights as against him

than the company had, and the law will not out of tenderness to them, create what was intended to be a security for him into a liability to them (Fisher v Seligman, 7 Missouri App. 383; Union Sav. Asso. v Seligman, 92 Mo. 635; Matthews v Albert, 24 Md. 537).

If the shares continue to stand on the corporate book in the name of the pledgor, he and not the pledgee will be liable to creditors, because he remains owner of them. (Hencle v Salem CO. 39 Ohio St. 547; Beecher v Wells Co., 1 McCrary (U.S.) 62; Thompson on Corps. sec. 3213)

Sec. 4. TRANSFERREE LIABLE.

It has been held in a case under the late bankrupt law, that a transferee of National Bank shares is liable to the creditors of the bank as a stockholder, if the shares stand in his name on the book of the bank at the time of its suspension, notwithstanding he took the transfer as security only, for a debt which has since been paid (Bowden v Farmers Bank, 1 Hughes, U.S. 807). The contrary has been held in New York where a person received a transfer of the stock of another as collateral security for a debt due by the latter, the transferee could not be held liable as a shareholder to a creditor in a direct

action given by statute to the creditor against the shareholder although his name appeared on the books of the company as sole owner (McMahon v Macy, 51 N. Y. 155-161; Thompson on Corpor^{ns}. sec. 2937).

But it is thoroughly established that one to whom stock has been transferred in pledge or as collateral security for money loaned, and who appears on the book of the corporation as the owner of the stock, is liable as a stockholder for the benefit of creditors (National Bank v Case, 99 U. S. 628; Simmons v Hill, 96 Mo. 679; Alder v Storm, 6 Hill, 624; Re Empire City Bank, 18 N. Y. 199; Taylor on Corps. sec. 741; Thompson on Corps. sec. 3213).

Sec. 5. PLEDGEE NOT ON BOOKS NOT LIABLE.

A pledgee of stock who has the old certificates cancelled and new certificates issued in his own name, is liable to creditors of the corporation as a stockholder (National Comm. Bank v McDonald, Ala, 9 So. 149). But a pledgee of shares of stock in a National Bank who does not appear by the books of the bank or otherwise to be the owner, is not liable for an assessment on the shares on the insolvency of the Bank under revised statutes U.S. sec. 5151, rendering shareholders liable for debts of the asso-

ciation to the extent of the par value of their stock
(Wells v Sarrabee, 36 F.866; Spelling on Corps. sec.791)

Sec. 6. REAL OWNER LIABLE.

If a person is the real owner of shares and as between himself and the apparent holder entitled to the profits thereof, it will not avail him as a defence against creditors that the shares did not stand in his name (Burr v Wilcox, 22 N. Y. 551; Stover v Flack, 30 N.Y. 64).

A person cannot escape the liability of a shareholder by taking his shares in the name of an infant (Roman v Fry, 5 J J. Marsh, Kentucky, 634; Coxe's ca. 4 DeGex, J. & S. 53; Taylor, sec. 743). And from these decisions it can but be said that any person who appears to be a shareholder, or any person who is actually entitled to the emoluments of shares in a corporation, is liable as a shareholder to the creditors (Taylor Sec. 743).

P A R T I I .

Chapter 1 .

INTRODUCTION.

The nature and extent of the stockholder's liability may be that given by the common law, by equity and by - legislation, and our recent statutes enacted by each state now primarily govern the liability of the stockholders in all corporations.

Sec. 2. NON-LIABILITY AT COMMON LAW.

The general rule of law is that the members of a corporation are not liable for its debts, or torts, except to make good the amount due to the corporation for their shares, unless made so by constitutional or statutory enactment, or unless they have assumed a larger liability by contract or by conduct (Shaw v Boilan, 16 Ind. 384; Coffin v Rich, 45 Mo. 507; Free Schools v Flint, 13 Met. 539; Gibbs v Davis, 27 Fla. 531; Thomas v Dakin, 22 Wend. 9; French v Teschenaker, 24 Cal. 518; Thompson on Liab.

Stockholders, sec. 4; Peck v Cooper, 8 Ill. App. 403; Toner v Fulkerson, 125 Ind. 224) It would perhaps be difficult to find a modern case in which the question whether the stockholder of a corporation is at common law liable to pay the debts of the concern, is distinctly adjudicated. But the rule is found to have been recognized in many cases: (Middleton v Bans, 5 Conn. 23)

At common law the stockholder was not individually liable for any debt of the corporation (Gibbs v Davis, 27 Fla. 531), but courts of equity took cognizance of suits by creditors to enforce unpaid subscriptions (Harmon v Paige, 62 Cal. 448; Spelling on Corps. sec. 9 00, -785)

Sec. 3. ANCIENT COMMON LAW.

The general rule of the ancient common law was that debts owing by or to a corporation became extinguished upon the event of its dissolution, and the stockholders were released from their liability to pay calls to the corporation in respect of the shares for which they had subscribed. (Mallory v Mallet, 6 Jones Eq. M. C. 345)

In Wint v Webb (3 Dev. N. C., 27) notwithstanding the following clause in its charter "the private property of the individual stockholders shall be liable for all the debts contracts and liabilities of the corporation

in proportion to the stock subscribed by each individually" it was held that a court of equity had no power after the dissolution of the corporation, At the suit of a creditor of the same to aid him in collecting his debt from the stockholders("the responsibility thus imposed upon the individual stockholder is a secondary one because it makes them liable for the debts of another person, to wit the corporation. The liability of the individual stockholders being thus secondary only for the debts of the company, it follows that when the corporation expires, and its debts became extinguished, their liability became extinguished also".

Sec. 4. PARTNERSHIP LIABILITY.

Where the business for which the corporation is formed is illegal or is prohibited by law or public policy, the coadventurers who organized the corporation are liable as partners on the contracts made in the name of the corporation. In *Empire Mills v Alston Grocery Co.*, (Tex.App. 12 L.R.A. 366) it was so held where a statute of that state (Tex), had been repealed and where certain persons desiring to carry on the business of merchandis-

ing in that state as a corporation, caused themselves to be incorporated under laws of Iowa and then established their business in Texas, the court held that their organization in Iowa was a fraud upon the laws of Texas, and no rule of comity would allow them to exist, contrary to the public policy of Texas.

Corporations formed for purposes of gambling and wagering upon the rise and fall of market products, are illegal and corporators are individually liable.
(McGrew v City Pro.Exch. 85 Tenn. 572)

Joint and Several Liability as Partners. It is a general principle that until a corporation is legally organized the coadventurers will be liable as partners for all debts contracted on behalf of the aggregate body, and where prior to the recording of the certificate of organization the subscribers to the capital stock accept the bid of one of their members (Inskeep) to erect a building for corporate purposes for \$10,000. or payable in capital stock, and this contract is sublet for \$6,700. cash to McMasters, who erected the building, it was held that the contract was not made by Inskeep on his own behalf, but on behalf of the subscribers to the stock of the Ice Co.

whereby they received \$10,000 in stock for the \$6,700 paid by them, and the contract made by Inskeep was the contract of all whom he represented and the real parties were bound by it and they were responsible for the materials used in the construction of the ice house. (J.N.McFall v McK. & Y. Ice Co., 123 Pa.St. 263.

And of course it is perfectly plain that persons who engage in business without taking any steps to incorporate themselves would be liable as partners though they have regarded themselves as 'stockholders' (Farnum v Hatch, 60 N. H. 294,) sec. 5

Sec. 5. LIABILITY OF A SOLE STOCKHOLDER.

It has been held in conformity with the principle that if all the stock passes into the hands of one person, so long as the corporate existence is maintained, his liability as a stockholder, and his immunity from liability are the same, as where there are many stockholders. As in Robertson v Conrey (5 La. Ann. 297), the stockholder of a bank who has received its assets, is bound for its debts to the extent of such assets (See Thompson on Corps. sec. 2946).

Sec. 6. CITIZENSHIP OF A CORPORATION.

The laws governing the liability of the stockholders are found in the statutes creating the corporation, the charter and bye laws of the corporation, and the laws of the state in which the corporation is created. The individual liability of the stockholders is not governed by the laws in whatever state he may happen to reside.

The state as well as the federal doctrine now is that a corporation has no individuality, except in its corporate capacity; that its local status is not dependent upon the citizenship of the individuals composing it, that an action by a corporation in its corporate name is conclusively presumed to be brought by the citizens of the state under whose laws the corporation was created. Educational Society v Varney (54 W.H.376); Thompson on Corps. sec, 7422.

Chapter II.

Sec. 1. STOCKHOLDERS LIABILITY IN EQUITY.

Equity courts have been greatly instrumental in bringing about the modern liability of stockholders. And in all cases where the plaintiff cannot receive a complete and adequate remedy at law, he may bring his suit in the equity courts. In all cases of trustee, fraud, and accounting, equity courts have exclusive jurisdiction.

Sec. 2. TRUSTEES NOT LIABLE BY STATUTE.

In New York, Massachusetts, Rhode Island, and by acts of Congress governing national banks, and in various states statutes have been passed providing that no person holding shares as executor, administrator, guardian, or trustee, shall be subject to any liabilities as a stockholder, but the trust property is liable. (Stectman v Evelett, 6 Met. 114; Mansur v Pratt, 101 Mass. 60; Sayles v Bates, 15 R.I. 342; Rev. Stat. U.S. sec. 5152) The New York statute provides that no person holding stock in any corporation as collateral security or as executor, administrator, guardian or trustee, unless he shall have volun-

tarily invested the trust funds in such stock, shall be personally subject to liability as a stockholder, but the person pledging such stock and the estate and funds in the hands of the executor, etc., shall be liable. (New York Stock Corp. Law, sec. 54), and it has been held in New York that where an executor of an estate invested any of the funds of the testator in shares without any authority to do so in the will, the shares are to be treated as belonging to the executor and not to the estate, and the executor's and not the estate, are responsible as shareholders (Diven v See, 36 N.Y. 302).

Sec. 3. TRUSTEES LIABLE.

Where shares have been taken by one person in the name of another to be held in trust for himself or where they are taken by nominee of the company to be held in trust for the company, the nominal holder or trustees in whose name the shares are registered is, in the event of a winding up, put on the list of contributories, and if he is injured by this he must seek indemnity of his cestui que trust. (Mitchell's Case, L.R. 9 Eq. 336; Chapman & Barker's case, L.R. 3 Eq. 361; Ex p. Oriental Com. Bank, L.R. 3 Ch. 391;

Stover v Flach, 30 N.Y.64: Thomp.on Corps.sec.3194)

Sec.4. FRAUD OF SHAREHOLDERS.

Individual absolute liability. Shareholders are personally liable for their own fraud or torts though committed under pretence of acting on behalf of the corporation (Medill v Collier, 16 O.St.599; Whitewell v Warner, 24 Vt.425; Thomp.on Corps.sec.2943; Spence v Iowa Valley Co., 36 Iowa, 407)

Sec. 5. DIVIDENDS.

A division of dividends at a time when the corporation was insolvent or in contemplation of insolvency would partake of the nature of a conveyance in fraud of creditors and a creditor's bill would lie to reach and subject them to execution (Bank of St.Mary v St.John, 25 La.566; Thomp on Corps.sec.2962).

Sec. 6. ISSUE OF NEW SHARES.

When the corporation increases its capital stock and distributes new shares among the stockholders, they become liable to creditors to full amount of stock as the corporation held out that such stock had been subscribed. (Handeley v Stutz, 139 U.S.417).

Sec. 7. FUNDS IMPROPERLY RECEIVED BY STOCKHOLDER.

When corporate funds are withdrawn to the injury of creditors, the creditor can recover such funds from the shareholders who have improperly received them (Bartlett v Drew, 51 N.Y. 587). For instance, the shareholders of an insolvent bank are not entitled to receive and divide among themselves any of its assets until its debts and liabilities are fully discharged (Wood v Dummer, 3 Mason 308; Hollister v Hollister Bank, 2 Keyes, (N.Y.) 245; Spear v Grant, 16 Mass. 15).

Sec. 8. LIABILITY OF MEMBERS OF A RELIGIOUS CORPORATION.

Where the members of a religious corporation had squandered in paying the expenses of litigation a fund in their possession, a court of equity in aid of a judgment creditor, decreed the individual members to make it good so far as necessary to satisfy the complainant's demand (Bigelow v The Cong. Soc. 11 Vt. 283).

Sec. 9. WATERED STOCK.

To issue shares as fully paid up for property known to the corporation and the shareholders receiving them to

be grossly below their par value, is a fraud on creditors for whose benefit the shareholder to whom the shares are issued may be compelled to make up the difference (Jackson v Fraer, 64 Iowa, 469; Freeman v Stone, 15 Phila. (Conn) 37; Osgood v King, 42 Iowa, 478; Taylor on Corps. Sec. 702). If however, shares are issued as fully paid up when in fact the corporation has never received the par value of them, creditors cannot compel a person ~~who~~ buys them in good faith, as full paid, pay the difference between their par value and the value of whatever property was given for them originally. Though possibly the creditors could hold the original subscriber who took the shares as fully paid up knowing them not to be so, liable for such difference or for the difference between what he gave and what he received for them. (Brant v Ehlen, 59 Md. 1; Phelan v Hazzard, 5 Dill. 45; Johnson v Lullman, 15 Mo. App. 55; R.R. Co v Howard, 7 Wall. 392; Boynton v Hathe, 47 N.Y. 225; Pell's Case, L.R. 5 Ch. 11; Eyermann v Karuchhaus, 4 ~~Moss~~ App. 455).

Sec. 10. WATERED STOCK.

A resolution by a corporation that upon the stockholder's paying in a portion of the par value of the stock, the capital shall be deemed to be fully paid, is

wholly ineffectual as against the creditors of the company(Clark v Bever,139 U.S.9; Cook on Corps.sec.42) Persons taking stock from the corporation for cash at forty cents on the dollar cannot avoid liability to the corporate creditors for the remaining sixty cents by setting up that unknown to them the stock had previously been issued to a contractor for work to be done,and that he appointed the corporation his agent to sell the stock at forty cents on the dollar. Their subscription was an original subscription and bound them(Bates v Great Western Tel. Co. 25 N.E.521(Ill'90)).

Sec. 11. BONUS STOCK.

In New York it has been held that in the absence of any statutory provision or provision of its charter,one to whom shares had been transferred by it gratuitously,does not make his liability to pay nominal face value of the shares as upon a subscription.--and an action is not maintainable by a creditor of the company to compel him to pay for such shares(Christensen v Eno,106 N.Y.97),but this decision has recently been modified by the following statute of the New York Stock Corporation Law,Sec.42: "No corporation shall issue either stock or bonds except for money,

labor done, or property actually received for the use and lawful purposes of such corporation. No stock shall be issued for less than its par value. No bonds shall be issued for less than the fair market value thereof".

Sec. 12. TRUST-FUND DOCTRINE IN RELATION TO WATERED STOCK.

According to the decisions of the federal courts, "it is a settled doctrine of the United States Supreme Court that the trust arising in favor of creditors by subscriptions to the stock of a corporation cannot be defeated by any simulated payment of such subscription, nor by any device short of an actual payment in good faith, and while any settlement or satisfaction of such subscription may be good as between the corporation and the stockholders, it is unavailing as against the claims of creditors" (Clark v Bever, 139 U.S. 96; Fogg v Blair, 139 U.S. 118; Hendley v Stutz, 139 U.S. 417; Taylor on Corps. secs. 702^a), and in Hendley v Stutz it was decided that only subsequent creditors could be presumed to have given credit to the company on the faith of an issue of stock and that consequently they alone would have a valid claim against those shareholders who had received 'bonus' stock or stock issued for less

than its par value.

BONUS STOCK, FRAUD DOCTRINE.

In connection with the Trust-Fund doctrine as laid down by the United States Supreme Court and the case of *Handley v Stutz*, the Supreme Court of Minn. in *Hospes v The Northwestern Mfg. Co.* 48 Minn. 17, held that where it is explicitly agreed between the corporation and the person to whom stock is issued that it shall be 'bonus' stock, no implied promise to pay for it can arise in favor of the corporation, and hence not in favor of any creditor of the corporation: the creditor's right can rest only on a fraud done him, no equity exists in favor of a creditor whose debt was contracted for the issue nor in favor of a subsequent creditor who knew of the agreement under which the 'bonus' stock was issued. m By putting the liability of the stockholder, not upon the trust fund doctrine but upon the ground of fraud, and applying the old and familiar rule of law on that subject to the peculiar nature of a corporation and the relation which its stockholders bear to it and the public, we have at once a rational and logical ground upon which to stand (Taylor, 702b)

Sec. 13. EFFECT OF 'WORDS',ASSESSMENTS NOT TO EXCEED \$10. ON A SHARE".

The corporation cannot issue its shares below par and conclude itself and its creditors from suing for the balance. As in the case of The Great Western Tel. Co. v Gray, 122 Ill. 630, where the contract of subscription stipulated that upon the payment of forty per centum of the par value of the shares, the number of shares severally subscribed by the undersigned shall be issued to them as full paid stock by the company and that the shares were to be \$25. at par value---assessment not to exceed \$10. on a share. In this case the defendant Gray, had paid only forty per cent or \$10. per share, and claimed that such payment relieved him from further liability. It was held that the words "assessments not to exceed \$10. on a share" do no limit the liability of defendant to \$10. a share. And that defendant's subscription is a clear and unqualified promise to take and pay the par value of the shares with which the company's promise to issue certificates for the shares as full paid stock when forty per cent shall be paid, and is not inconsistent with the agreement.

What is the plain meaning of a clause like "assessments not to exceed \$10. on a share" printed on a certificate? Clearly not that the stock shall be taken as fully paid when \$10. a share is paid in. If this were meant the proper way to express the idea would be to print across the certificate a clause like: "\$10/ paid on each share as called for shall be full payment for the share", and even then there might be some doubt whether \$10. would fully pay for the stock. The more likely meaning of the phrase is that while assessment after assessment may be made, until par value is paid in, none of the assessments shall exceed \$10. a share. If this clause could be taken to exonerate sharetakers from liability from more than \$10. per share the effect would be to reduce the capital stock of the corporation down to that sum per share, but such reduction of the capital stock of the company would be a fraud upon its creditors, ultra vires and void. (State v Timken, 48 N.J. L.R. 87; Zukel v Joel Opera House, 79 Ill. 334; Bank of Commerce' & App. 73 Pa. St. 59; Upton v Tribilcock, 91 U.S. 45; Am. Law Reg. 162) In State v Timken, the subscribers to the capital stock of

a telegraph company upon payment of \$8.33 per share, caused to be issued to themselves shares of full paid stock of the par value of \$25. Held--that in such case the presumption was that full paid stock was to be issued upon payment of \$8.33 per share which was illegal and to the enforcement of such illegality the court would not lend its aid by mandamus or otherwise.

Sec. 14. EFFECT OF WORDS: "NON-ASSESSABLE".

In Upton v Tribblecock, 91 U. S. 45, where the certificate had the word: "non-assessable", together with the amount "\$100." stamped across them, and the defendant had only paid twenty per cent of the par value, the court held, "the legal effect of this instrument was to make the remaining eighty per cent payable upon the demand of the company and the words "non-assessable", could not operate as a waiver of the obligation created by the acceptance and holding of a certificate, to pay the amount due upon his shares". At most the legal effect of the word: "Non-assessable" is a stipulation against liability to further taxation or assessment after the holder shall have paid the one hundred per cent.

And an acceptance and holding of a certificate imports a promise to pay for them (Brigham v Meade, 10 Allen, 245; Palmer v Laurence, 3 Sand (S.C.) 761). Representations by the agent of the company as to the non-assessment of the shares beyond a certain percentage of their value constitute no defence when he has himself failed to use due care to ascertain the truth or falsity of such representation (Hall v Selma R.R. Co. 6 Ala. 741; Gt. West. Tel. Co v Gray, 122 Ill. 630). In Minn. the doctrine is clearly and boldly announced that the issue of stock for cash at less than par is legal and that nothing more can be collected on such stock except by corporate creditors who have relied on the representations, that the capital stock is as stated or that it was paid in full (Hostes v Nor. Wes. Co. 50 N.W. Rep. 1117 'Minn.' 92').

Chapter III.

Sec. 1. STOCKHOLDER'S LIABILITY BY STATUTE.

Chief Justice Waite said: (in giving the opinion of the federal supreme court in *Perry v Little*, 101 U.S. 216) "The individual liability of stockholders in a corporation is always a creature of statute, It did not exist at common law, and the first thing to be determined in all such cases is therefore, what liability has been created, and we may determine the liability of stockholders by an examination of the charter or statutes under which the corporation was organized (*Bingham v Russian*, 5 Ala. 406; *Spell. on Corps.* sec. 903; *Thompson on Corps.* secs. 3046; *Taylor on Corps.* sec. 727). The stockholders liability imposed by statute may be an absolute individual liability, or a joint and several liability or that of a partnership liability, or what is practically a double liability. It may be a penal or contractual liability, or imposed for the purpose of taxation by the state, and also that of assessment and calls by the corporation.

Stockholders in a railroad corporation; liability to the United States on its bonds. The recent case of the U.S. v Stanford, decided March 2nd. 1896, reported in 16 U.S. Sup. Ct. Repr. 576, held that as not any of the Pacific Railway Acts under which the railway system was established from the Missouri River to the Pacific Ocean, imposed upon the stockholders of a corporation receiving subsidy bonds, personal liability for any debts due the United States from such corporations by reason of its failure to pay said bonds, It cannot be supposed that Congress intended that the stockholders of the California corporation which received such bonds, should be individually liable under the corporate laws of California. It held in effect that stockholders in a corporation organized under the laws of California could not be held personally liable for bonds from received by the corporation by the United States by Acts of Congress, as such statute imposed no personal liability on the stockholder.

Sect. 2. INDIVIDUAL LIABILITY.

The individual liability is generally placed at such proportion of the debts and liabilities as the amount of stock owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like

proportion only of each debt or claim against the corporation, and is further limited to those debts contracted while the relation of shareholder existed (Spelling on Private Corps. sec. 900).

Where the enabling act under which a corporation is formed provides that a substantial failure to comply with its agreements shall render the stockholder's individually liable and the statute is not coupled with it, they are primarily liable and may be sued by creditors before the corporate assets are exhausted (Clegg v Hamilton etc. 61 Iowa, 121; Bigelow v Gregor, 73 Ill. 197).

Sec. General Liability. The stockholders as between themselves and the corporation, are sureties or guarantors while the corporation is the principal debtor (Prince v Lynch, 38 Cal. 528).

Sec. 3. ABSOLUTE INDIVIDUAL LIABILITY--TO LABORERS

In many states stockholders are made individually liable by statute for certain classes of preferred indebtedness, such as laborers' wages, debts contracted for materials furnished, improvements on the corporate property and the like---the statute must be consulted for a full understanding. Usually the preference is confined to

"servants and laborers"(Rev.Stat.Wis.1769; Laws of 1833,Md. cap.383; Search v Ellicott,(Md)18 A.363; Rev.Stat.N.J cap 188,sec.63; Pub.Acts Mich.1837,No.94; Rev.Stat.Ind. 1881,sec.3934;Spelling on P.Corp.sec.918; N.Y. Stock.Corp. Law,sec.54) .

The mere dissolution of the corporation by its own voluntary act does not relieve the stockholders from liability for such debts due to its clerk,servants and laborers,and this liability is in addition to the liability of stockholders for the amount of unpaid stock.

(Sleeper v Goodwin,67 Wis.517) . The taking of a note from the corporation by a laborer does not affect his claim against the stockholders: nor can the latter avoid his accrued liability by transferring his stock(Jackson v Meek, 3 Pick.Tenn.Rep.69) .

stock

The New York Statute.— "The holders of every stock corporation,shall,jointly and severally,be personally liable for all debts due and owing to any of its laborers, servants or employees other than contractors,for services performed by them for such corporation. Before such laborer,servant or employee shall charge such stockholder for such services he shall give him notice in writing within thirty days after the termination of such services,that.

he intends to hold him liable, and shall commence an action therefore within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services" (N.Y. Stock Corp. Law Sec. 54).

The term "employee" in its ordinary and usual sense, includes all whose services are rendered for another: it is not restricted to any kind of employment or services, but includes as well the professional man as the common laborer and a claim for counsel fees will be sustained (Gurney v Atlantic and G.W. Ry. Co. 58 N.Y. 358). The act of 1848, cap. 40 sec. 18, making stockholders liable for all debts that may be due and owing to their laborers, servants and apprentices, for services performed for such corporation, does not include a book-keeper and general manager employed at a yearly salary. The services referred to are menial or manual services (Wakefield v Fargo, 90 N.Y. 214).

In *People v Remington*, 45 Hun. 329 (Affd. in 109 N.Y. 631) it was held that a superintendent and attorney were not employees, operators or laborers, nor were

their wages,earnings within the statute under the laws of 1885(Cap.376) allowing preference to be given employees and laborers .

Sec. 5 . PARTNERSHIP LIABILITY OF STOCKHOLDERS .

Although the liability of partners is in many cases declared by statute,as in New York Stock Corp.Law(sec.54) ,and under similar statutes,as in Massachusetts(affirmed in Trust National Bank v Almy,117 Mass.476,and in Ill.in Baker v Backus,32 Ill.79) so under a charter providing that,"until thirty thousand of the capital stock shall have been paid in,every stockholder shall be held individually liable for the debts of the company,stockholders are liable to be sued as partners and not as guarantors. (Perkins v Sandars,56 Miss.733) . However,it cannot be regarded in all cases that this liability is special and statutory,since before there has been a de facto organization the stockholders are liable as partners under the general principles of law(Kaizer v Laurence Saving Bank, 56 Iowa.104; Fuller v Row,57 N.Y.23) .

If a corporation is formed and doing business as such and has not followed the prescribed method of becoming incorporated,then the supposed stockholders are

liable as partners, without any regard to the name which they may have chosen to call themselves, As where the stockholders in a manufacturing corporation upon the expiration of its charter agree to continue the business it was held that they all became liable as partners as to third persons, and for debts contracted by their agents, (National Union Bank v Langdon, 45 N.Y. 410).

In Nebraska, the filing of articles of incorporation with the county clerk is a condition imposed by law before a franchise may exist. When such association has failed to comply with the prescribed method, then the members are liable as partners (Abbot v Omaha, Smelting Co. 4 Neb. 416; Cross v Jackson, 5 Hill. 478 Wells v Gates, 18 Barb. 534).

Sec. 6. CHARTERS DECLARING PARTNERSHIP LIABILITY. Stockholders of incorporated companies have been held liable as partners under a charter provision declaring them individually liable "in the same manner as carriers at common law" (Allen v Servall, 2 Wend. 327, reversed on other grounds, 6 Wend. 335), and under a charter making them personally liable "at all times for all debts due by said corporation" (South-Mayd v Russ, 3 Conn. 52), and under similar statutes (Deming v Bull, 10 Conn. 409; New Eng. Com.

Bank v Stockholders, 6 R.I. 154; Thompson on Corps. sec. 3074) .

Sec. 7. FULL LIABILITY CORPORATIONS.

In New York, every corporation formed under this chapter may be or become a full liability corporation by inserting a statement in the certificate of incorporation that the corporation thereby formed is intended to be a full liability corporation. All the stockholders in such corporation shall be severally individually liable to its creditors for its debts and liabilities. New York Business Corp. Law, sec. 6) . A limited liability corporation may be converted into a full liability corporation by the unanimous consent of the stockholders, in New York a R.R. construction company cannot be incorporated, and therefore the liability of individuals composing such company is that of partners (Panter in Cent. Law Jour. vol. 34. p. 35) sec

Sec. 8. DOUBLE LIABILITY OF STOCKHOLDERS.

The following states have statutes which make the stockholders liable to ^{an additional} amount equal to the amount of the par value of their stock and the liability is generally called "double liability": Florida, Ohio, Kansas,

and Indiana. In New York the stockholders in ~~National~~ Banks have also this double liability. California and Idaho impose even a greater liability than the above (See Alb. Law Journal, vol. 46, p. 266). The constitution of Kansas, Art. 12, enacts: "Dues from corporations shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by such stockholders, and such other means as shall be provided by law: but such individual liability shall not apply to railroad corporations, nor corporations for religious and charitable purposes". This provision is enforced by Sec. 32 and 44 of the Laws, with respect to the liability of stockholders in corporations.

The constitution of California provides: "Each stockholder of a corporation or joint-stock association shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association" (Consti. Cal. adopted March 3rd, 1879, see Art. 12 Sec. 3; 1 Deering's Codes & Sta. 59). This constitution

probably imposes the greatest liability on the stockholders of all the states in the Union. Idaho has a statute similar to the above constitution (Rev. Stats. 1837, sec. 2600; See also McClelland's Florida Digest, 232).

In the case of insolvency each of the stockholders shall be liable in an amount equal to the amount of his stock at the time the debts were contracted and no further, after the assets of the corporation are exhausted, (Ind. Stat. Rev. 1894, Burns Sec. 3451).

Florida has a similar personal liability statute (McClelland's Digest, Florida Stat. p. 232). And stockholders are liable upon a dissolution of the corporation for the debts thereof to an amount equal to the amount in par value of the stock held by them at the time of such dissolution (Gibbs v Davis, 27 Fla. 531).

In Ohio the statute makes the stockholders liable to an amount equal to their stock subscribed in addition to said stock, for purpose of securing creditors of the corporation (Wright v McCormack, 17 O. St. 86; Consti. Art. 13, Sec. 3; 2 Rev. Stat.).

Sec. 9. LIABILITY OF STOCKHOLDERS IN BANKING CORPORATIONS.

In New York: "Except as prescribed in Stock Corporation Law, the stockholders of every such corporation shall be individually responsible equally and rateable and not one for another for all contracts, debts, and engagements of such corporations to the extent of the amount of their stock therein at the par value thereof in addition to the amount vested in such shares (Banking Law L 1892, cap. 689, sec. 52)"

The New York constitution adopted September 1894, enacts that the stockholders of every corporation and joint stock association for banking purposes shall be individually responsible to the amount of their respective share or shares of stock in any such corporation for all its debts and liabilities of every kind (N.Y. Const. Art 7, 1395).

The double liability of the individual must be imposed by constitutional ordinance or by a statute or does not exist at all (82 Me. 397; 100 Mass. 241; National).

National Banks.

The National Currency Act provides: "The shareholders of every national banking association shall be

held individually responsible, equally and rateably, and not one for another, for all contracts, debts of such association, to the extent of the amount of their stock therein at the par value thereof, in addition to the amount invested in such shares now existing under state laws (U.S. Rev. Stat. sec. 5151):

Sec. 10. STATUTE LIABILITY NOT A CONTRACTUAL LIABILITY.

Under the constitution of Kansas enacting: "Dues from corporations shall be secured by individual liability of the stockholders to an additional amount equal to the stock owned by such stockholders etc", the stockholder's liability has been held to be purely statutory and must be enforced in the state where the corporation is domiciled. In an action by a creditor of the Meltonvale State Bank, a corporation organized under the laws of Kansas, against the defendant, a stockholder residing in New York, to enforce the above liability imposed by the constitution of Kansas, the court, per O'Brien J., said: "The debt which the plaintiff is seeking to enforce is not the debt of the defendant but that of the Bank. The only liability that in law is imposed upon the defendant to pay this particular

debt, is created by statute of the state where the corporation is domiciled, and such liability is not strictly based upon contract but is created by statute. It is a principle of universal application recognized in all civilized states, that the statutes of one state have *ex propria vigore*, no force or effect, and while this is not an action for a penalty, yet we think that it belongs to a class of cases in which there is no obligation under any well recognized principle of the law of comity to enforce a claim founded upon a statute and to administer the statute would work injustice to our own citizens. It is reasonable and just to decline to administer them all"....."It is quite well established that in a case like this an action at law by a single creditor against a single stockholder for the recovery of a specific sum of money cannot be maintained in our courts under our statutes declaring the liability of stockholders, but the liability must be enforced in equity in a suit brought by or in behalf of all the creditors against all the shareholders where the amount of the liability and all the equities can be ascertained and adjusted" (Marshall v Sherman, 148 N.Y.9).

It has been held that an action by a New York creditor of a corporation organized under the Manufacturing Act of this state against a New Jersey trustee in the courts of that state, could not be maintained. (Derrickson v Smith, 27 N.J.Law. 166) The courts of Massachusetts have uniformly refused to entertain actions of this character (New Haven Horse Nail Co. v Sinden Spring Co., 142 Mass. 349; Post v Toledo R.R. Co. 144 Mass. 341; Bank of N.A. v Rindge, 154 Mass. 203). The highest court of Illinois has also refused to enforce the Kansas statutes (above stated), on the ground that the remedy was special and must be pursued in the state where the corporation exists (Fowler v Sampson, 146 Ill. 472). It has been also held that a creditor of an Ohio corporation could not enforce the statutory liability of a stockholder in the courts of West Virginia (Nimic v Mingo Iron Wks. 25 W.Va. 182). There are numerous other decisions that hold in effect that such a liability cannot be enforced at all beyond the local jurisdiction or that such an action must be in equity after all remedies against the corporation had been exhausted (National Tube Wks. Co. v Bellow, 146 U.S. 517; Peck v Meller, 39 Mich. 594; Allen v Walsh,

25 Minn. 543; Barick v Gifford, 47 O.St. 181; Smith v Huckabee, 53 Ala. 191; May v Black, 77 Wis. 101).

Penal Liability of Stockholders. Where a statute makes a stockholder individually liable for certain contracts which it expressly forbids the corporation to make, it is not to be regarded as making them liable as on a contract, but creates a liability in the nature of a penalty (Lawler v Burk, 7 O.St. 340; Bird v Haven, 1 Robb. N.Y. 303; Thompson on Corps. 3018). So a statute making stockholders liable to pay the debts of the corporation contracted while it is in default in publishing a notice of the state of its affairs, therein provided for, is penal in its character (Cable v McKuhn, 26 Mo. 371).

Sec. 11. TAXATION OF SHARES BY THE STATE.

It has been held that shares of stock in a corporation are taxable under the general designation of "Property" in a constitutional provision or in a revenue law, and without being specially named as subject to taxation (San Francisco v Flood, 64 Cal. 504). The United States Rev. Stat. sec. 3251, declares: "that every proprietor or possessor of, and every person in any manner interested in the use of any still etc., shall be jointly and severally

liable for the taxes imposed by law on distilled spirits produced therefrom(See U.S.v Wolters,45 Fed.Rep.509), And all the capital stock of the corporation may be wholly invested in bonds of the United States which are exempt from state taxation,the shares of stock in the corporation in the hands of the individual stockholders are nevertheless taxable(National Bank v Comm. 9 Wall.353).

In the following decisions a double taxation both on the corporation and on its shares has been allowed: Union Bank v State,9 Gerg.490; Porter v Rockford, R.Co.,76 Ill.561; Thompson on Corps.sec.2304).

The terms "personal estate" within the state of New York,which is subject to taxation,includes public stock and stocks in moneyed corporations(Rev. Stat. N. Y. 3th. Ed. p. 1082). This is qualified by sec. 7, which states: "The owner or holder of stock in any incorporated company liable to taxation on its capital,shall not be taxed as an individual for such stock. The general laws of the state of New York require all property owned by individuals as well as by corporations,to be as-

essed for purposes of taxation, and this embraces all shares of stock held by individuals except in cases where the capital stock of such corporation is itself liable to taxation as against the corporation. (McMahon v Palmer, 102 N.Y. 186). The following corporations are taxed in New York: "All corporations except Savings Banks, life insurance companies, banks, and foreign insurance companies, and manufacturing or mining corporations, not including gas or trust companies, shall be subject to pay a tax into the treasury annually (N.Y. Rev. Stat. 8th. Ed. p. 1153).

Sec. 12. ASSESSMENTS AND CALLS.

Stock which has been fully paid up, cannot be further assessed without special authority conferred by charter or statute, and moreover, this authority in order to be valid, must have been conferred prior to the subscription or it would impair the obligation of the contract and be void (Gt. Falls etc. v Bopp. 30 N.H. 124; Atlantic & Co. v Mason, 5 R.I. 463; Steacy v Little Rock Co. 5 Dill. U.S. 348).

It has been held under a statute of Pa. authorizing corporations to "assess upon each share of stock such sums of money as the corporation may think proper, not exceeding in the whole the amount at which each

share was originally limited--that the provision is valid and stockholders must pay assessment although his stock has, been, so to speak, fully paid up (Price's Appeal, 106 Pa. St. 421). In general the stockholders of paid up stock are liable to assessment at any time from the corporation, but if the charter confers the power to raise a definite sum, when that sum is raised, the power of assessment is exhausted (State v Morristown Fire Ins. Co. 23 N.J.L. 195).

P A R T III.

Chapter 1.

INTRODUCTION.

A stockholder having acquired stock in a corporation and the liabilities already mentioned, he sometimes wishes to relieve himself of what, in many cases, becomes a burden, and then again, his object is merely to secure the profits of a rise in the market. There are many ways by which this change may be accomplished, but in all cases regular prescribed forms must be followed, and often the transferee finds himself held accountable after he has made a transfer of his shares in good faith to a bona fide transferee. A stockholder in a corporation may divest himself of all liability by making a bona fide sale of his stock, by having a legal discharge or withdrawal from the corporation, by surrendering his stock, or by a forfeiture and having his stock revert in the corporation. By Bankruptcy, by dissolution of the corporation, and by his own death. But in all cases the proper steps must be taken to have the transfer properly made on the books and a general compliance with the regulations and bye laws of the company.

Sec. 2. BY SALE OR TRANSFER.

The general rule is that a transfer of shares, not perfected as required by the charter, statutes, articles of association or deeds of settlement, governing the corporation, does not relieve the transferrer from his liability as a stock holder to creditors (Borland v Haven, 37 E.394). The stockholder is not relieved from his liability to creditors where upon the sale of his shares while the corporation is solvent, the transfer is not made in the proper book, although the failure to so enter the transfer is caused by the neglect of the company's agent, and the company afterwards becomes insolvent. And the fact that the corporation afterwards treated the purchaser as the owner does not alter the case (Harpold v Stobart, 46 O.St.397). An original subscriber to the stock of a corporation can, in the absence of a special provision, escape liability for the balance of the stock subscribed not yet called for, by a transfer sufficient to exempt him in any ordinary case of individual liability, and the transferee will take his place as regards the corporation and its creditors (Webster v Upton, 91 U.S.65; Harlford R.R.Co. v Boorman, 12 Conn.530; Billings v Robin-

son, 28 Hun. 122; Lowell on Trans. Stock, p. 199). In England shares in companies are assignable under the provisions of the Companies Clauses Act 1845, and the Companies Act of 1862.

Many cases have held that the shareholder who was such at the time the debt was contracted was the one liable (Moss v Oakly, 2 Hill 265; Taylor on Corp. sec. 718; Williams v Harma, 40 Ind. 535; Larrabee v Baldwin, 35 Cal. 155; Windham Ins. Co. v Sprague, 43 Vt. 502; Chesley v Pierce, 32 N.H. 288; Brown v Hitchcock, 36 Ohio 667). The Ohio rule is, that the shareholder who is such at the time the corporation contracts the debt, is the one liable; and the liability is not discharged by transfer but the transferee must indemnify the transferrer (Harpold v Stobart, 46 Ohio, 397; See also Sales v Bates, 15 R.I. 342; Jackson v Meek, 87 Tenn. 69). In Moss v Oakley (supra) where the charter of a mining company declared the stockholders jointly and severally personally liable for the payment of all debts contracted by the company, and that any person having a demand against the company who had obtained judgment against it and procured execution to be issued against

it, etc., and returned unsatisfied etc., might sue any stockholder etc. It was held that the suit could be brought only against such as were stockholders when the debt was contracted, and not those who became so afterward.

But in the absence of provisions or indications in the statutes or charters to indicate the contrary, the stockholder's liability in respect to the shares, ceases upon the absolute and regular transfer of them to a person capable of succeeding to the liabilities of the former holders; and provided that the transfer be not made to an irresponsible person in fraud of creditors. (Hebby's Case, L.R. 2 Eq. 167; Veiller v Brown, 13 Hun. 571; Sharanka v Allen, 76 Mo. 452; Bond v Appleton, 8 Mass. 470; Middleton Bank v McGill, 5 Conn. 28; Cleveland v Burham, 55 Wis. 595; Root v Sumock, 120 Ill. 350; Taylor, sec. 720).

Sec. 3. IRREGULAR TRANSFERS.

In New York when the name of the transferee was put in the dividend book and the corporation had paid him dividends for four years, it was held to be a good transfer and the corporation could not recover from the trans-

ferer(*Cutting v Damorel*, 88 N Y.410) In most cases of irregular transfers the shareholder will not divest himself of any liabilities towards creditors although liability may attach to the transferee(*Shellington v Howland*, 53 N.Y.271). Still in England it is held that if the transferee has done all in his power to perfect the transfer he is discharged from his liability as a shareholder (*Nations Case*, L.R.3 Eq.77; *Taylor* Sec.589; *Upton v Burnham*, 3 Biss. 431; *Shellenam R.R.Co. v Daniel*, 2 Eng. R'y. Ca. 728). Where a valid transfer of stock between the parties was made but not consummated in the form required by statute, i.e. by entry upon the books of registry of stockholders, the transferrer was not divested of his liability as a stockholder to the creditors of the corporation(*Shellington v Howland*, supra).

Transfer after Insolvency.. It is the American doctrine that a transfer of shares in an insolvent corporation, made to an irresponsible person for the purpose of getting rid of liability on the shares, is void both as to the corporation and as to its creditors(*Nattan v Whitlock*, 9 Paige, 152). The English cases on the other hand hold that a shareholder may transfer his shares to an

irresponsible person for the sole purpose of freeing himself from future liability on them, and provided the transfer be absolute so that as between transferrer and transferee the latter does not hold the shares in trust for the former, the transferrer will be free from future liabilities in respect of the shares (Jessopp's Case, 2 DeG. & J. 638; DePass' Case, 4 DeG. & J. 544; Taylor, sec. 749).

A stockholder, who makes a sale of stock and has the transfer registered, is, however, relieved from liability for future debts (Wakefield v Fargo, 90 N.Y. 213). If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid provided a copy of this section is written or printed upon the certificate of stock (Stock Corp. Law N.Y. Sec. 26). By the dissolution of a banking corporation the transferable nature of the stock is destroyed, and a subsequent sale by a holder of stock at the time of dissolution, transfers only his right to the balance which may be found due him after paying all his debts due the bank (James v Woodruff, 10 Paige, 541; Thompson on Corps. sec. 2310).

Sec. 4. STATUTORY REQUIREMENTS.

"A book must be kept showing names of all the stockholders and open to creditors, and declares that no transfer of stock shall be valid except to render the transferor liable for debts of the company until it shall be entered on this book. An entry upon the books of registry of stockholders is required for the protection of the company and its creditors and each may hold the stockholders to their liability as such until they have divested themselves of the title to their shares by a complete transfer as prescribed by law. No secret transfer will avail (Laws N.Y. 1848, cap. 40; *Shellington v Howland*, supra; Also in Colorado, Laws. Colo. 1893, cap. 49). The general rule is that a corporation looks only to its books for the purpose of ascertaining who are its shareholders (*Thompson on Corps* Sec. 2387). A general doctrine is that unregistered transfers of shares are good as between the parties to them although they may not be good as against the corporation itself or third persons (*Gilbert v Manchester Iron Man. Co.* 11 Wend. 627; *Quiner v Marblehead Social Ins. Co.* 10 Mass. 476; *Union Bank v Said*, 2 Wheat. 390; *Baldwin v Canfield*, 26 Minn. 43). The authorities on this subject are so conflicting and the statutes so diverse that the only safe rule is to seek for decisions under the statutes.

Chapter II.

W I T H D R A W A L.

Sec. 1. No release from subscription possible.

No action among the stockholders though unani-
mously assented to between them and their agents, however
formal and solemn, by which they undertake to release them-
selves from their obligation to contribute capital, will
be allowed to stand in the face of what with their know-
ledge, is held out to those dealing with it to be their
connection with the corporation (Sawyer v Hoag, 17 Wall. 610;
Upton v Tribblecock, 91 U. S. 48; Barron v Paine, 83 Me. 312;
Glenn v Garth, 15 M. Y. S. 202; See Spelling on Private
Corps. sec. 790).

Fraud. Stockholder cannot be released
from his unpaid subscription on the grounds that the sub-
scription was obtained by fraud and misrepresentation of
the agent of the company (Ogilvie v Knox Ins. Co. 22 How.
380). Or that his subscription was feigned and frau-
dulent, and that the company was party to the fraud, for his
subscription will be enforceable for the benefit of other
subscribers and creditors (Graff v Pittsburg R'y, 31 Pa. St.
439; Phoenix Warehouse Co v Badger, 6 Hun, 293, affd. in 57

N.Y.294;Taylor on Corps.sec.523).

Sec. 2. BANKING CORPORATIONS.

The limitation of a stockholder in a banking corporation is stated in the New York Banking Law(sec.53) as follows: "No person who has in good faith and without any intent to evade his liability as a stockholder,transferred his stock on the books of the corporation when solvent to any resident of this state of full age,previous to any default in the payment of any debt or liability of the corporation,shall be subject to any personal liability on account of the non-payment of such debt or liability of the corporation,but the transferee of any stock so transferred previous to such default,shall be liable for any such debt or liability of the corporation,to the extent of such stock in the same manner as if he had been the owner at the time the corporation contracted such debt or liability".

National Banks Transfers. The title to and ownership of stock in a national bank can only pass by the transfer on the books of the bank(Koons v Jeffersonville Bank,89 Ind.178; National Bk.Act.sec.12; U.S Rev.Stat. Sec.5139(1864)).

Sec. 3. WITHDRAWAL.

It is incompetent for the directors or the body corporate to permit the holder of partially paid up shares or shares to the ownership of which individual liability attaches, to withdraw in any way not authorised by the constitution of the corporation, such permission is ultra vires and will affect the right only of those assenting to it (Chontean Ins. Co. v Floyd, 74 Mo. 236; Mann v Cooke, 20 Conn. 178; Whitaker v Grummond, 68 Mich. 249; Taylor, sec. 549).

In a leading English case, Spackman v Evans, (3 H.S L.R. 171) the directors granted to a dissenting shareholder leave to retire from the company on conditions which were not in accordance with the deed of settlement. The shareholder's name was for years removed from the list of shareholders. The company changed its business without his knowledge and dividends were received in which he did not participate, nevertheless, it was held that his name should be inserted in the list of contributors on the final windup of the company.

A person who has subscribed for shares cannot

annul his subscription by giving notice to the agent with whom he contracted (Lowe v E. & K. R'y Co. 1 Head (Tenn) 659; Rider v Morrison, 54 Md. 429; In Greer v Chartien R'y Co. 96 Pa. St. 391, where defendant took a subscription book from the agent of the company; subscribed therein, persuaded others to do so and kept the book about six months and then cut out his own name and returned the book to the corporation. It was held that he was liable on the subscription as he had perfected a contract with the company and was bound as much as if he had left his name in the book (Taylor sec. 551).

Sec. 4. TRUST FUND.

Whether a fund is withdrawn after insolvency or before the trust in favor of creditors attaches. (Wood v Dunn, 5 N.Y. Sup. 95; Curran v Bank, St. Of Ark. 35 How. 307) and after insolvency, there being no longer any surplus out of which to pay dividends, the shareholders ceased to have any interest in the general assets and they become a trust fund for the exclusive benefit of creditors. (Spelling on Priv. Corps. sec. 716).

Sec. 5. SURRENDER.

If the corporation is in failing circumstances, or if for any reason it cannot legally acquire its own shares, a shareholder will not avoid any liability he may be subject to by surrendering his shares to it, even though the corporation reissue them (Matter of Reciprocity Bank, 22 N.Y.9). And whatever money or property he receives from the corporation in payment for his shares transferred to it, he will hold subject to the claims of creditors (Crandall v Lincoln, 52 Conn.73; Taylor on Corps. sec.552). But a shareholder however, who surrenders unpaid stock to a corporation is not liable thereon to the creditors whose claim accrues after the surrender (Johnson v Lullman, 15 Mo. App.55; Carter v Union Printing Co., 54 Ark.576).

Sec. 6. STATUTES ABROGATING COMMON LAW DISSOLUTION.

The enormous injustice of the rules of the common law has been met by statutes abolishing them in various forms and various means the common law principle that the debts due by or to a corporation are extinguished by dissolution and providing for survival of such debts (Folger v Chase, 18 Pick.66; Franklin Bank v Cooper, 38 Me.179;

Thompson on Corps.sec.6733. If the capital stock should be divided leaving any debts unpaid, every stockholder receiving his share of the capital stock would, in equity, be held liable pro rata to contribute to the discharge of such debts out of the fund in his own hands(2 Story. Eq.Jur.sec.1252; Wood v Dummer, 3 Mason 308; Vose v Grant, 13 Mass.515; Thompson on Corps.2963). Accordingly when the property has been divided among the stockholders a judgment creditor, after the return of an execution against the corporation unsatisfied, may maintain a creditor's bill against a single stockholder(Hastings v Drew, 76 N.Y.9; Bartlett v Drew, 57 N.Y.587), or against as many stockholders as he can find within the jurisdiction to charge him or them to the extent of the assets thus diverted, and it is immaterial whether he got them by fair agreement with his associate or by an act wrongful as against them(Wood v Dummer, supra; Thompson on Corps.sec.2963).

Insolvency of the corporation is no defence to a suit brought to collect a subscription(Delt v Wabase Valley R'y.Co.21 Ill.91).

Chapter III.

FORFEITURE OF SHARES.

Sec. 1. The corporation may forfeit shares for non-payment of calls when power to do so is given by the constitution of the corporation, but cannot do so by a bye law (Matter of Long Island R. Co. 19 Wend. 37; Taylor, sec. 546). And by a valid forfeiture of shares the relations between the shareholder and the corporation are terminated and the corporation can maintain no subsequent action for calls (Small v Herkimer Mfg. Co. 2 N.Y. 330). But power to sue a shareholder after a forfeiture may be given by statute (Lexington R. R. Co. v Chandler, 13 Met. 311).

The New York Stock Corporation Law provides in sec. 43, that subscriptions to the capital stock of a corporation shall be paid at such times and in such instalments as the board of directors may by resolution require. If default shall be made in the payment of any instalment, as required by such resolution, the board may declare the stock and all previous payments thereon forfeited for the use of the corporation after the expiration of sixty days from

the service on the defaulting stockholder, personally or by mail directed to him, written notice requiring him to make payment within sixty days from the service of the notice, and stating that in case of failure to do so, his stock and all previous payments thereon will be forfeited for the use of the corporation. Following the above statute the New York courts have held that the liability of a stockholder ceases upon a sale of his stock ~~and its transfer~~ on the books of the corporation (Tucker v Gillman, 121 N.Y. 189). And after forfeiture, a subscription cannot be proceeded against for unpaid calls (Wheeler v Millar, 90 N.Y. 353), for his stock becomes the property of the corporation (Weeks v Silver Islet Co. 54 N. Y. 1; Jones Bus. Corp Law. p. 67). If there is not strictly a forfeiture but rather a foreclosure of the lien of a corporation on its shares by a sale of them after notice, then according to the prevailing opinion, the shareholder while losing his rights as a shareholder, remains liable to the corporation for the deficiency (Merrimac etc. v Bageley, 14 Mich. 501; Herkimer Mfg. Co. v Small, 21 Wend. 273). But where there is a strict forfeiture by resolution of the directors by which the corporation seizes the shares to

its own use. This severs the connection of the shareholder with the corporation, and he thereupon ceases to be a stockholder, or to be further liable for his unpaid subscription. (Mills v Stewart, 41 N. Y. 334; McCaulay v Robinson, 13 La. 619). Assuming the forfeiture to be valid in the sense of not being collusive or ultra vires, he thereby ceases to be a stockholder for all future purposes, but if the forfeiture is invalid in respect of something which the parties cannot waive, and which cannot be cured by their acquiescence, he remains liable to the company's creditors in the event of its insolvency (Exp. Trading Co. 12 Ch. Div. 191; 1 App. Ca. 39; Thompson on Corps. sec. 1792).

Sec. 2. RELEASE UNDER INSOLVENCY LAW.

It was held in Minnesota that a judgment discharging a corporation from its debts under the insolvency law of that state, releases and discharges the stockholders from the individual liability imposed upon them by a provision of the constitution (Tripp v Northwestern Natl Bank. 41 Minn. 400). About two weeks after this decision was rendered the legislature of Minnesota enacted a statute providing: "That the release of any debtor under this in-

solvency act shall not operate to discharge any other party liable as security, grantor or otherwise, for the same debt" (Minn. Laws, 1889, cap. 30).

A great number of cases hold that an alteration of the constitution affecting a radical change in the corporate enterprise releases a shareholder from his subscription, and on the theory that this would be to enforce a contract which the shareholder never made. (Manhein etc. Turnpike Co. v Arndt. 31 Pa. 317; Richmond St. R'y Co. 37 Wis. 168).

Sec. 3. ALTER OF CHARTER.

In The Hartford & New Haven Railroad Co v Cross-wall, (5 Hill, 338), case, where the action was to recover certain instalments upon the stock subscription, it appeared that the charter of the railroad company had been altered, giving them authority to purchase such number of steamboats to be used in connection with the road as they might deem expedient provided the amount did not exceed \$200,000, and it was held that neither the board of directors nor a majority of the stockholders could sanction the alteration so as to bind the defendant without his consent, and that he was therefore absolved from all liability upon

his subscription.

Sec.4. STATUTE OF LIMITATIONS.

Shareholders may, to the extent of their unpaid subscription, be regarded as trustees for creditors, and accordingly the statute of limitations does not run against the right of creditors to enforce the payment of unpaid subscriptions until the corporation has ceased to be a going concern (Allebone v Hager, 46 Pa. St. 48; Taylor on Corps. sec. 709).

New York Statute of Limitations. The New York Stock Corporation Law provides in section 55: "No stockholder shall be personally liable for any debt of the corporation not payable within two years from the time it is contracted, nor unless an action for its collection shall be brought against the corporation within two years after the debt becomes due; and no action shall be brought against a stockholder after he shall have ceased to be a stockholder for any debt of the corporation, unless brought within two years from the time he shall have ceased to be a stockholder". It follows from this enactment that whenever an existing stockholder shall be divested of his interest in or control over the affairs of a corporation,

whether by voluntarily transferring his share to another person or compulsory as by forfeiture upon the declaration of the company, the time begins to run, and at the end of two years the statutory limit is reached, and he is no longer liable for any debt of the corporation. The same result must follow upon the actual dissolution of the corporation by formal judgment or surrender of its corporate rights, franchises and privileges (Hollingshead v Woodward, 107 N. Y. 100).

Chapter IV.

BANKRUPTCY OF THE SHAREHOLDER.

Sec. 1. Shares in a corporation being property, pass by an assignment in bankruptcy, and a sale of such shares by the assignee in bankruptcy and an order of the court in bankruptcy would, as a general rule, terminate the liability of the bankrupt in respect of such shares (Thompson on Liab. Stock. sec. 243).

Chapter V.

BY DEATH.

Sec. 1. The liability of personal representatives of deceased shareholders.

The executors or administrators of deceased shareholders are liable as contributors, not on the same principle as other trustees, but in general only in respect of their trust estates (New England Com. Bank v Stockholders 6 R. I. 154). And whenever the liability of partners attaches the assets of deceased shareholders are liable (Diven v See, 36 N. Y. 302). The American doctrine is, namely, that the estate of a deceased shareholder is liable for his contributory share of the losses of the company the same as for any other of his debts. (Grew v Breed, 10 Met. 569).

The New York Statute provides that the estates and funds in the hands of the administrator guardian, or trustee, shall be liable in the like manner, and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been if he had been

living incompetent to act and held the same stock in his own name, unless it appears that such executor, guardian or trustee voluntarily invests the trust funds in such stock, in which case he shall be personally liable as a stockholder (New York Stock Corp .Law .sec .54) .

Statutes which merely impose upon stockholders an individual liability for the debts of the corporation, not being penal in their nature, the liability thus created does not die with the stockholder, but survives and may be enforced against his estate in the hands of his personal representatives (Cochran v Wiechers, 119 N.Y. 399) .

CONCLUSION.

Before a person acquires shares of stock in a corporation, he should first ascertain the liabilities of the stockholders according to the laws of the state by examining the State Constitution and the statutes where the corporation is organized, and second, he should know the contents of the charter under which the corporation expects to, or has gone into existence, and third, the bye laws and regulations of the company. Without the above knowledge a person may in some cases by judicious investing, receive excellent returns of dividends, ~~but~~ many instances have shown that stockholders in corporations have not only lost their money invested in the enterprise, but have also been made to suffer for the carelessness and wrongful acts of others. Advice of counsel will in most cases avoid the dangers heretofore mentioned, and the authorities cited show that but few persons can afford to act upon their judgment and knowledge of these bodies corporate.

