

securities convertible into fully paid and non-assessable shares of such stock may be issued for a consideration in money less than the par value of such shares or of shares into which such securities are convertible, or for a consideration other than money the actual value of which is less than the par value of such shares or of the shares into which such securities are convertible.

(9) A statement that the actual value of any consideration, in the opinion of a board of directors or as fixed by incorporators, is not less than a certain sum is a sufficient statement of value to comply with any of the requirements of Sections 43, 44 and 45. This paragraph (9) shall not be construed as implying that in the absence of this paragraph (9) the requirements of Sections 43, 44 and 45 could properly be otherwise construed.

The provisions of art. 23, secs. 61 and 62 of the Code of 1888 would be nugatory if parties could purchase property, convey it to a corporation in exchange for stock of the company and then have the directors (the stockholders and directors being the same persons) pay them the purchase money which they had paid for the property. Purpose of these sections; terms of subscriptions thereunder are to be found in the proceedings of the stockholders and not of the directors. *Conowingo Land Co. v. McGaw*, 124 Md. 654.

When stock was subscribed for while secs. 6, 62 and 65 of art. 23 of the Code of 1888 were still in force, those sections govern. Action by directors (even though they be the same persons as the stockholders) could not be substituted for the required action by the stockholders. Certificates of indebtedness held not to have been legally issued and director's action, *ultra vires*. *McGaw v. Hoen*, 133 Md. 676.

Though services are not completely performed when the stock is issued, the validity of such issue is not affected as between the parties to a contract, such services having been contracted for and the valuation thereof agreed upon. *Larkin v. Maclellan*, 140 Md. 588 (based apparently on this section as it stood prior to the act of 1916, ch. 596).

No attack can be successfully made on the issue of \$600,000 of stock in exchange for property worth about \$1,400,000; who may object where this section and sec. 49 are not complied with. Object of this section. Rights of creditors under sec. 49; appellant in no better position. Meaning of "actual fraud." *Kernan v. Carter*, 132 Md. 584. (Property conveyed in 1911; case decided 1918).

Where stock is issued not for services, but as bonus for a loan, the transaction is not within this section. Demurrer to bill praying that stockholders be required to contribute toward the payment of debts, properly overruled, since such stockholders did not pay for their stock either in money, property or service. Meaning of word "service." *Laches. Hopper v. Brodie*, 134 Md. 300 (stock issued prior to act of 1916, ch. 596).

Since the holder of every share of stock participated in the issue of certain stock in exchange for services, no notice of the meeting is necessary. *Larkin v. Maclellan*, 140 Md. 588 (based apparently on this section as it stood prior to the act of 1916, ch. 596); *Tompkins v. Sperry*, 96 Md. 560.

No corporation could make a valid contract to receive property of any kind in payment for any part of its capital stock, in plain violation of the express conditions imposed by sec. 69 of the Code of 1904. Contract held divisible. *Miller v. Cosmic Cement Co.*, 109 Md. 14; *Baile v. Calvert College*, 47 Md. 120. *Cf. Southern Trust Co. v. Yeatman*, 134 Fed. 810.

If the property is valued at a grossly exaggerated price, it may not constitute payment in full for the stock, so as to protect the holder from liability under sec. 77. *Tompkins v. Sperry*, 96 Md. 560.

A non-compliance by a corporation with secs. 69, 70, 81, and 408 of the Code of 1904 (see this section and secs. 49 and 38), held to form no ground of recovery in an action for misrepresentation and deceit. *Robertson v. Parks*, 76 Md. 133.

Under sec. 69 of the Code of 1904, stock might be paid for in leasehold property or chattels. *Weber v. Fickey*, 52 Md. 518. *Cf. Basshor v. Dressel*, 34 Md. 511.

Sec. 69 of the Code of 1904 cited but not construed in *Wenstrom, etc., Co. v. Purnell*, 75 Md. 116.

See notes to sec. 77.