

An. Code, sec. 66. 1904, sec. 72. 1888, sec. 64. 1868, ch. 471, sec. 59. 1872, ch. 325. 1908, ch. 240, sec. 41. 1916, ch. 596, sec. 66.

**77.** Every stockholder of every corporation of this State shall be liable for the benefit of the creditors of said corporation for the amount of his subscription to the stock of said corporation, less the amount which he shall already have paid thereon, until he shall have paid said subscription, according to the terms thereof, in good faith; and in the event of the insolvency of the corporation, such liability shall be considered as an asset of the corporation and may be enforced by the receiver, trustee or other person winding up the affairs of the corporation, notwithstanding any release, agreement or arrangement short of actual payment which may have been made between the corporation and said stockholder. Nothing in this section shall be taken or construed as limiting or affecting the liability of stockholders in banking, safe deposit, trust and loan corporations.

#### **Trust fund.**

Unpaid subscriptions to the stock of a corporation constitute a trust fund for the benefit of general creditors of the corporation, which cannot be defeated or impaired by any device short of actual payment in good faith. *Crawford v. Rohrer*, 59 Md. 604. And see *Md. Trust Co. v. Mechanics' Bank*, 102 Md. 625; *Basshor v. Dressel*, 34 Md. 508.

If property, in payment for which stock is issued under sec. 41, is taken at a grossly exaggerated valuation, it may not protect the holder against liability under this section. *Tompkins v. Sperry, etc., Co.*, 96 Md. 580; *Basshor v. Dressel*; 34 Md. 508.

#### **Defenses.**

When a stockholder is not liable under this section by reason of an implied condition annexed to his subscription, that the entire amount of capital stock shall be subscribed. When such implied condition exists, and how it may be waived. *Gettysburg Bank v. Brown*, 95 Md. 383; *Musgrave v. Morrison*, 54 Md. 164; *Morrison v. Dorsey*, 48 Md. 472. And see *Stillman v. Dougherty*, 44 Md. 384; *Garling v. Baechtel*, 41 Md. 306; *Hager v. Cleveland*, 36 Md. 476.

The fact that a corporation was not legally incorporated held to be no defense to an action by a creditor against a stockholder under art. 26, sec. 52, of the Code of 1860, when the legislature, by an act, had recognized the existence of the corporation. *Basshor v. Dressel*, 34 Md. 510.

Under act of 1852, ch. 338, a stockholder when sued by a creditor of the corporation could not recoup a debt due him by the corporation. Equities as between creditors and stockholders. Contribution. Stockholders held not liable for debts contracted by company subsequent to their parting with their stock. A pledgee of stock is not liable as a stockholder. (As to pledgees, see sec. 76.) *Matthews v. Albert*, 24 Md. 527. And see *Burgess v. Seligman*, 107 U. S. 30; *Emmert v. Smith*, 40 Md. 123; *Fiery v. Emmert*, 36 Md. 465.

Where a creditor agreed to rely only on the responsibility of the company and the sufficiency of the mortgage given to secure the debt, he could not recover against a stockholder, under art. 26, sec. 52, of the Code of 1860. *Basshor v. Forbes*, 36 Md. 166.

#### **Generally.**

This section while taking from the creditor his right of action against the stockholder, makes no distinction between a "chancery" receiver and a "statutory" receiver. The insolvency of the corporation may be established either by a decree or by proof of the fact. Stockholders can only be called on under this section after the tangible assets of the corporation have been exhausted. *Hughes v. Hall*, 117 Md. 552. And see *Hughes v. Hall*, 118 Md. 679; *Hall v. Hughes*, 119 Md. 489.

This section is now the statute law of Maryland relative to the liability of stockholders. Sec. 135 does not in any way interfere with the proceedings by receivers under this section. Stockholders are liable to creditors only for debts and contracts created while they are stockholders; when stock is disposed of in good faith, the stockholder is not liable for debts thereafter created. *Hall v. Hughes*, 119 Md. 489.