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. 45, 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.* Dressell, 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. 81.) 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. 134 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.

Contention that stockholders whose subscriptions are rescinded by a decree of court, are not creditors to the amount paid on account of their subscriptions, overruled. Definition of "creditor"; prayer properly rejected. See notes to sec. 79. Goldstein *v.* Leitch, 142 Md. 187.

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 services. Laches. See notes to sec. 45. Hopper *v.* Brodie, 134 Md. 300 (stock issued prior to act of 1916, ch. 596).

Under the act of 1872, ch. 325, it was held that where one stockholder was required to pay a debt of the corporation, he was entitled to contribution from all other stockholders whose subscriptions were unpaid. Requisites of a declaration under this section in a suit by a creditor of the corporation who is himself a stockholder. Bill of particulars. Defenses. Evidence. Weber *v.* Fickey, 47 Md. 199. And see Garling *v.* Baechtel, 41 Md. 306; Norris *v.* Wrenschall, 34 Md. 492.

When a corporation already formed, has been authorized to increase its stock, while the obligation of a subscriber to such stock to pay for it enures under this section to the benefit of creditors of the corporation, the subscriber has no beneficial interest in the corporation as a stockholder until the stock is paid for. Baltimore Passenger Ry. Co. *v.* Hambleton, 77 Md. 351.

Under art. 26, sec. 52, of the Code of 1860, held that the stockholder's liability to one creditor might be enforced in an action at law, even where other creditors were shown to exist. Extent of the stockholder's liability under said section. Norris *v.* Johnson, 34 Md. 488. And see Morley *v.* Thayer, 3 Fed. 746.

The liability *vel non* of a stockholder in a safe deposit and loan company under this section, does not affect such stockholder's liability under sec. 146. Murphy *v.* Wheatley, 102 Md. 515.

A receiver appointed under sec. 376, *et seq.*, of the Code of 1904 (see sec. 97), held to be entitled to sue to recover the balance due on a subscription to stock. Stillman *v.* Dougherty, 44 Md. 384.