§ 256 (194). **Effect of Valid Amotion; Vacancy.** — If the amotion be *legal and authorized*, the office becomes *ipso facto vacant* from the time the amotion is declared, and another person may be elected or appointed to fill it. If the removed officer afterward continues to act, he is a mere usurper, and may be ousted on *quo warranto* and punished. Amotion from one office does not, of course, affect the party's title to another.[1]

shown. Harman *v.* Tappenden, 3 Espin. 278; s. c. 1 East, 555; Ferguson *v.* Earl of Kinnoul, 9 Cl. & F. 289.

Jurisdiction as to the *election* and *amotion* of officers in corporations, when not changed by statute *belongs to the common-law courts and not to equity.* Attorney-General *v.* Earl Clarendon, 17 Ves. 491; Dyer, 332; Cochran *v.* McCleary, 22 Iowa, 75. See, also, *In re* Sawyer, 124 U. S. 200 (1887); *ante*, secs. 202, note, 204, note, 275, and note. Where, by charter, a city council had power to remove police officers, and the mayor had power also to increase or diminish their number at discretion, it was held, in an action brought by a policeman, removed by the mayor for malfeasance, for his salary, that in the former case the judgment of the council, being judicial, was conclusive, while the action of the mayor, being ministerial, was not conclusive upon the officer. Oliver *v.* Americus, 69 Ga. 165; *ante*, sec. 202; *post*, sec. 275.

[1] Jay's Case, 1 Vent. 302; Symmers *v.* Regem, Cowp. 503; Willc. 268, pl. 704; Rex *v.* Doncaster, 2 Ld. Raym. 1566; 1 Barnard. 265; Rex *v.* Chalke, 1 Ld. Raym. 226. Mr. Willcock, 267, pl. 704, whose language is adopted by Glover (Corp. 334), states that if a person legally amoved continues to act, he is a mere usurper, and that "all corporate acts in which he has concurred are equally void, as though he had never been elected or admitted." But if he is permitted to act after amotion, it would probably be considered, in this country, that his acts would, as to third persons, be valid, like those of an officer *de facto*. If the removal be unauthorized, Mr. Willcock states the rule to be, "That all corporate acts in which he has concurred between the moment of his removal and restitution are of equal validity as if he had never been amoved," &c. Willc. 269, pl. 707. If he was regularly present and concurred, it can well be seen how this should be so; but his concurrence when not regularly acting, or when a *de facto* successor has taken his place and is acting, would not seem to alter the legal quality of the act. In this country *the acts of a de facto officer* of a *de jure* office are everywhere considered valid as respects the public. *Ante*, secs. 215, note, 221, note, 230, note, 235, note, 237, note. *Post*, secs. 276, 892, note; Cushing *v.* Frankfort, 57 Me. 541.

CHAPTER X.

CORPORATE MEETINGS.

§ 257 (195). **Subject outlined.** — The *subject of Corporate Meetings* will be considered under the following general heads: —

1. Common Law Requisites of a Valid Corporate Meeting — secs. 258–261.
2. Notice of Corporate Meetings at Common Law and under the English Municipal Corporations Act — secs. 262–265.
3. New England Town Meetings; Requisites of Notice and Power of Adjournment — secs. 266–269.
4. Constitution and Meetings of Councils, or of Select Governing Bodies, and herein of Quorums and Majorities; of Integral Parts; and of Stated, Special, and Adjourned Meetings — secs. 270–287.
5. Mode of Proceeding when convened — secs. 288–292.

§ 258 (196). **Common-Law Requisites of a Valid Corporate Meeting.** — As respects *their mode of action*, municipal corporations in this country are of *two general classes.* In the one, as in the organization of *towns* in the New England States, heretofore adverted to, *all of the qualified inhabitants* meet, act, and vote, *in person.*[1] In the other, which is the kind that prevails generally throughout the States, and even in many of the larger places in New England, the affairs of the town or city are administered by a *select or representative body*, usually denominated the council, and which is elected by the qualified voters of the incorporated place, not assembled together in a meeting, but at an election, where each elector votes separately and by ballot.[2]

§ 259 (197). **Corporate Meetings.** — The *latter class* of corporations is properly municipal. The *former class* is not so strictly municipal as it is public in its character.[3] Where there is a *council* or *governing body*, the inhabitants or voters, in their natural capacity, have no power to act for or to bind the corporation, but the corpora-

[1] *Ante*, chap. ii. sec. 28.

[2] *Ante*, chap. ii. sec. 28 *et seq.*; chap. ix. sec. 194 *et seq.*

[3] *Ante*, chap. i. sec. 9; chap. ii. secs. 22, 23, and note.

tion must act, and can be bound only through the medium of this body. Therefore, authorized acts done by the council are not their acts, but those of the corporation. The council is a body which is constantly changing; it is simply the agent of the corporation. But its members, it has been well observed, are not only not *the* municipal corporation, but are not even *a* corporation.[1] Whether the corporation be of the one class or the other, *its affairs must be transacted at a corporate meeting*, in the one case of the qualified inhabitants, and in the other of the members of the council or governing body, duly convened at the proper time and place, and upon due notice in cases where notice is requisite.[2]

§ 260 (198). **Requisites of a valid Corporate Meeting of the old English Municipal Corporations.** — In England, prior to the General Municipal Corporations Act of 1835,[3] the *requisites of a valid corporate meeting* depended upon the constitution of the particular corporation under its charter, or prescriptive usage. To constitute a *corporate assembly* there must *at common law* be present the mayor or other head-officer (he being considered an *integral part* of the corporation,[4] in whose absence no valid corporate act could be done), a *majority* of the members of each select or definite class (these classes being also considered integral parts), and *some members* of the indefinite body (indefinite in point of numbers) usually styled the commonalty, and of each of the indefinite classes if there be more than one.[5] If there be no indefinite class, and the governing body consist of a select or definite class, the common-law requisite of a valid corporate assembly is, that a majority of the select class must be present; and if there be more than one such class, then a majority of each of the select classes of which the corporation is constituted; and the presence of the mayor at a select assembly of this kind is not necessary, unless it is expressly required.[6] But where a common council exists (which, in contemplation of the ancient law, is a meeting of the body at large, or those of them who

[1] Regina *v.* Paramore, 10 Ad. & El. 286; see Regina *v.* York, 2 Queen's B. 850; Mayor *v.* Simpson, 8 Queen's B. 73; *ante*, sec. 39. The Municipal Corporations Act 1882, sec. 10, expressly provides that "the council shall exercise all the powers vested in the corporation by this Act or otherwise." *Post*, sec. 265.

[2] Dey *v.* Jersey City, 19 N. J. Eq. 412 (1869); Baltimore *v.* Poultney, 25 Md. 18 (1866).

[3] *Ante*, chap. iii. sec. 35 *et seq.*

[4] *Ante*, chap. iii. sec. 35. Further as to mayor, see *ante*, chap. ix., relating to Municipal Elections and Officers, sec. 208.

[5] Willc. 52, 53, 66; Rex *v.* Atkyns, 3 Mod. 23; 1 Rol. Abr. 514; Rex *v.* Carter, Cowp. 59; Rex *v.* Smart, 4 Burr. 2143; Rex *v.* Gaborian, 11 East, 87, note; Rex *v.* Morris, 4 East, 26; Rex *v.* Bellringer, 4 Term R. 823; Rex *v.* Miller, 6 Term R. 278; Rex *v.* Varls, Cowp. 250; Rex *v.* Monday, Cowp. 539.

[6] See authorities cited in the last note.

thought proper to attend, or were considered by their fellow freemen the men best fitted to attend), though such council has become a select or definite class, there the presence of the mayor or head presiding officer is necessary to a valid assembly, though such presence be not required by the charter.[1]

§ 261 (199). **Same subject.** — *A majority of each definite part* means a majority of the number of members of which that part consists, not merely a majority of the existing members of the part; but if the act is to be done by an indefinite body alone, it is valid if done at a meeting duly convened, although but a small fraction of the whole body at large be present. But while the presence of a majority of each definite integral part was necessary to a valid corporate meeting, yet it is settled law that a majority of those present, when legally assembled, will bind the rest.[2] Not only did the law of the old corporations in England require the presence of a majority of the members of each definite integral part, but it went to the extreme length of holding that where the presence of the mayor was necessary, he must be the *legal* mayor, and if he be merely an officer *de facto*, and afterwards be ousted on *quo warranto*, all corporate acts done under the sanction of his office are voidable.[3] By reason of the change in the constitution of municipal corporations in England, wrought by the Corporations Act of 1835, many of the rules respecting corporate meetings are no longer applicable, though, as we shall see, some of them still are. Under that statute the corporation acts, and can only act, through the council; and it is provided that all questions shall be decided by a majority of all the councillors present, including questions of adjournment; that one

[1] Willc. 67.

[2] Rex *v.* Bellringer, 4 Term R. 810 (1792), and cases cited; Rex *v.* Miller, 6 Term R. 268; Rex *v.* Monday, Cowp. 531, 538; Rex *v.* Devonshire, 1 Barn. & Cress. 609; Rex *v.* Bower, 1 Barn. & Cress. 492; Rex *v.* May, 4 Barn. & Ad. 843; Rex *v.* Headley, 7 Barn. & Cress. 496; Willc. 216, pl. 546; Blacket *v.* Blizard, 9 Barn. & Cress. 851; Rogers, *In re*, 7 Cow. (N. Y.) 526 (1827); *Ib.*, note *a*, 764; Willcocks, *In re*, 7 Cow. (N. Y.) 402, and note 462, 463 (1827); Young *v.* Buckingham, 5 Ohio, 485, 489 (1832); Buell *v.* Buckingham, 16 Iowa, 284 (1864), and cases cited; State *v.* Deliesseline, 1 McCord (S. C.), 52 (1821); State *v.* Huggins, Harper (S. C.), 94 (1824); Booker *v.* Young, 12 Gratt. (Va.) 303 (1855), approving Willc. 216, pl. 546; Labourdette *v.* Municipality, 2 La. An. 527 (1847); Kingsbury *v.* School District, 12 Met. (Mass.) 99 (1846); Damon *v.* Granby, 2 Pick. (Mass.) 345, 355 (1824); Coles *v.* Trustees, &c., of Williamsburg, 10 Wend. (N. Y.) 658 (1833); Rex *v.* Greet, 8 Barn. & Cress. 363; The Queen, *ex rel.* Hyde *v.* Barnhart, 7 Upper Can. L. J. 126; The Queen, *ex rel.* Heenan *v.* Murray, 1 Upper Can. L. J. N. S. 104; 2 Kent Com. 293; Angell & Ames Corp. sec. 501; Launtz *v.* People, 113 Ill. 137.

[3] Rex *v.* Carter, Cowp. 59; Rex *v.* Hebden, Andr. 391; Rex *v.* Dawes, 4 Burr. 2279; Willc. 54, 55.

third part of the number of the whole council shall be a quorum; that the mayor, if present, shall preside, and if absent, that a presiding officer shall be chosen, who shall have a second or casting vote.[1]

§ 262 (200). **Notice of Corporate Meetings at Common Law, and under the English Municipal Corporations Act.** — Due *notice of the time and place of a corporate meeting* is, by the English law, essential to its validity, or its power to do any act which shall bind the corporation. Respecting notice, the courts in England adopted certain rules, which, since they form the basis of much of the statute law in this country upon the subject, and have in the main been followed by our courts, and are founded on reason, may advantageously be here mentioned. All corporators are presumed to know of the days appointed by the charter, statute, usage, or by-laws, for the transaction of particular business, and hence no notice of such meeting for the transaction of *such* business is necessary, or for the transaction of the mere ordinary affairs of the corporation on such days; yet if it is intended to proceed to any other act of importance, a notice is necessary, the same as at any other time.

§ 263 (201). **Notice how Given and how Waived.** — A notice, when necessary, must, if practicable, *be given to every member* who has a right to vote, where the act is one to be done by a body consisting of a definite class or classes, and it must be given by, or issued by order of, some one who has the authority to convene a corporate meeting. But notice may be altogether *dispensed with* or its necessity *waived*, by the presence and consent of *every one* of those entitled to it.[2] It must be *served* personally upon every resident member, or left at his house. If temporarily absent, it may be left with his family, or at his house or last place of abode. An order to serve all is not sufficient; all, if practicable, must be served, but if the party entitled to notice has entirely quit the municipality, and has no family or house within its limits, notice is not necessary. It must be served a *reasonable time before* the hour of meeting, of which the court will judge from all the circumstances, including usage. If the charter provides a method by which the notice shall be served, its provisions must be strictly obeyed.[3]

[1] 5 and 6 Wm. IV. chap. lxxvi. sec. 69; Rawlinson on Corp. (5th ed.) 136; *ante*, chap. iii. secs. 35, 37; English Municipal Corporations Act 1882, sec. 21.

[2] Beaver Creek *v.* Hastings, 52 Mich. 528; Lord *v.* Anoka, 36 Minn. 176; State *v.* Smith, 22 Minn. 218.

[3] Lord *v.* Anoka, 36 Minn. 176.

§ 264 (202). **Requisites of Notice; Time and Place; Waiver.** — The notice must state *the time* of meeting, and *the place*, if it be not the usual place. It is not necessary to state what business is to be done, when the meeting relates only to the ordinary affairs of the corporation; but when it is for the purpose of electing or removing officers, passing ordinances, and the like, the fact should be stated, so that members may know that something more than the usual routine of business will be transacted. Such great importance is attached to notice that it can *only be waived by universal consent;* but if every member of a select body be present at a regular or stated meeting or at a special meeting, they may, if *every one* consents, but not otherwise, transact any business, ordinary or extraordinary, though no notice was given, or an insufficient notice, but the unanimity of consent should plainly appear from their recorded declaration, acts, or conduct. This unanimity is only necessary in order to enter upon the business; once commenced, the usual rules which govern the body and its actions apply. It is to be observed that the foregoing rules are not applicable where they are in conflict with the charter; and hence, if this imperatively requires a *special notice*, it cannot be waived, even by consent of all. The guild hall is the proper place for the meeting; if there be none, the meeting should be at the usual place; and if at any other place, it should be stated, to prevent fraud or surprise. Acts done at an unusual place will be closely scrutinized.[1]

§ 265 (203). **Notice under English Act.** — By the English Municipal Corporations Act,[2] *the subject of meetings*, stated and special,

[1] Authorities in support of the last and two preceding sections of the text: Willc. chap. i. sec. 42, *et seq.*; Rex *v.* Hill, 4 B. & C. 441; Rex *v.* Liverpool, 2 Burr. 764; Rex *v.* Doncaster, 2 Burr. 744; Rex *v.* Theodorick, 8 East, 545; Rex *v.* May, 5 Burr. 2682; Rex *v.* Oxford, Palm. 453; Rex *v.* Grimes, 5 Burr. 2601; Kynaston *v.* Shrewsbury, 2 Stra. 1051; Musgrove *v.* Nevison, 1 Stra. 584; s. c. 2 Ld. Raym. 1359; Rex *v.* Mayor of Shrewsbury, Cases temp. Hardw. 147; Smyth *v.* Darley, 2 House of Lords Cases, 789; Grant on Corp. 154–156; Glover on Corp. chap. viii. pp. 146–173. Formerly the rule that where notice was necessary every member must be notified, was applied only to the case of definite bodies, but it has more recently been declared to be applicable to both select and indefinite bodies of public corporations. Rex *v.* Langhorne, 4 Ad. & El. 538. See, also, Rex *v.* Faversham, 8 Term. R. 356, *per* Lord Kenyon, *arguendo*. Where the city charter provided that the mayor might call special sessions of the council, and that he should "*specially state* to them when assembled the objects for which they have been convened, and their action shall be confined to such objects," an ordinance, passed at a meeting so called, having no reference to anything alluded to in the mayor's message, was declared void. St. Louis *v.* Withaus, 16 Mo. App. 247; affirmed on appeal, 90 Mo. 646.

[2] 5 and 6 Wm. IV. chap. lxxvi. sec. 69; *ante*, secs. 35, 37; Consolidated Act 1882, sec. 22.

and the notice and summons required are made matter of express regulation. It provides for every borough or city four quarterly meetings of the council in each year, to be held at a fixed date. No *notice* of the *business to be transacted* at these quarterly meetings is necessary; but three days' *notice*, by posting on or near the town hall, is required of the time and place of every intended meeting. Power is given to the mayor to call special meetings, or, on his refusal, to five members of the council, in which case the notice on or near the town hall shall state therein the business proposed to be transacted at such meeting, and in every case a summons (in addition to the notice) must be left at the usual place of abode of every member of the council, or at the premises occupied by him, in respect of which he is enrolled as a burgess, at least three clear days before the meeting, and no business can be transacted not specified in the summons. Power *to adjourn meetings* is expressly conferred upon the council by the same section.[1]

§ 266 (204). **New England Town Meetings; Notice and Adjournment.** — In New England the inhabitants are required to be notified or warned of *town meetings*. The requisites of such notice, and manner of giving it, are prescribed by statute. The provision is quite general that the articles or *matters to be acted upon shall be specified* or inserted in the notice or warrant. The courts in those States concur in requiring the statute as to notice to be faithfully observed by the officers charged with the duty of calling meetings. Meetings, to be valid, must be warned or notified according to law. The rule of the English courts applied to indefinite corporate bodies, that if all are present notice may, by unanimous consent, be waived,[2] is not regarded as applicable to the town meetings of New England, and hence a *de facto* meeting, not duly notified, though attended by all the voters capable of attending, is not a valid meeting, and its acts are void.[3]

[1] In construing this statute, it has been held that where the meeting is an *adjourned* quarterly meeting, *notice is necessary as to any business which was not actually entered upon* at the general or regularly quarterly meeting, but not otherwise; and hence, a coroner cannot be elected at such an adjourned quarterly meeting without the notice and summons which the statute requires. Regina *v.* Grimshaw, 10 Queen's Bench, 747, 755. See Regina *v.* Thomas, 8 Ad. & El. 183; Rex *v.* Harris, 1 Barn. & Ad. 936. *As to notice.* Town Council, &c. *v.* Court, 1 E. & E. 770; Regina *v.* Whipp, 4 Queen's Bench, 141. *Ante*, sec. 259, note.

[2] Rex *v.* Theodorick, 8 East, 545; *ante*, sec. 28.

[3] Hayward *v.* School District, 2 Cush. (Mass.) 419 (1848); Moor *v.* Newfield, 4 Greenl. (Me.) 44 (1826); School District *v.* Atherton, 12 Met. (Mass.) 105 (1846); Little *v.* Merrill, 10 Pick. (Mass.) 543; Perry *v.* Dover, 12 Pick. (Mass.) 206; Reynolds *v.* New Salem, 6 Met. (Mass.) 340; Congregational Society *v.* Sperry, 10

§ 267 (205). **Requisites of Notice; Object of Meeting.** — It is, however, sufficient if the *purpose or object* of the meeting *can fairly*

Conn. 200; Bloomfield *v.* Charter Oak Bank, 121 U. S. 121, 130; Rand *v.* Wilder, 11 Cush. (Mass.) 294 (1853); Stone *v.* School District, 8 Cush. (Mass.) 592; Brewster *v.* Hyde, 7 N. H. 206; Northwood *v.* Barrington, 9 N. H. 369; Giles *v.* School District, 11 Fost. (31 N. H.) 304; Lander *v.* School District, 33 Me. 239 (1851); Jordan *v.* School District, 38 Me. 164 (1854.) So in *Vermont* it has been decided that it cannot be shown, by parol, to validate the *levy of tax* by a meeting not legally warned, that *all the legal voters* of the district were present at the meeting. Sherwin *v.* Bugbee, 17 Vt. 337 (1845); distinguished by the court from Rex *v.* Theodorick, 8 East, 543. And see, also, Hunt *v.* School District, 14 Vt. 300; Pratt *v.* Swanton, 15 Vt. 147. *Requisites of notice and sufficiency.* Wyley *v.* Wilson, 44 Vt. 407 (1872). Under the legislation of *Connecticut*, although it is held that the right to call a borough meeting for any lawful purpose is a legal right of every freeman, yet as it is shared with all other freemen it can be enforced only by a proceeding in the name of the State. Peck *v.* Booth, 42 Conn. 271 (1875). But see *post*, secs. 865, 900, 921, 923, n. "A town [in Connecticut] cannot make a contract, or authorize any officer or agent to make one in its behalf, except by vote in a town meeting duly notified or warned; and the notice or warning must specify the matter to be acted on, in order that all the inhabitants (whose property will be subject to be taken on execution to satisfy the obligations of the town) may know in advance what business is to be transacted at the meeting. If the subject of the vote is not specified in the notice or warning, the vote has no legal effect, and binds neither the town nor the inhabitants. No one can rely upon a vote as giving him any rights against the town, without proving a sufficient notice or warning of the meeting at which the vote was passed. Reynolds *v.* New Salem, 6 Met. 340; Stoughton School District *v.* Atherton, 12 Met. 105; Moor *v.* Newfield, 4 Greenl. 44; Dillon Mun. Corp. secs. 266–268. Upon this point the statutes and decisions of Connecticut are perfectly clear." *Per Gray*, J., Bloomfield *v.* Charter Oak Bank, 121 U. S. 129 (1886). A *tax voted at a meeting not legally warned is illegal*, and may be recovered back if the party did not pay it voluntarily. Rideout *v.* School District, 1 Allen (Mass.), 232 (1861). So it may be recovered back if the assessment is *void.* Gerry *v.* Stoneham, 1 Allen (Mass.), 319 (1861); Tobey *v.* Wareham, 2 Allen (Mass.), 594; *post*, chap. xxiii. See *Massachusetts* act of 1859, chap. cxviii., limiting, in such cases, the plaintiff's right of recovery to illegal *excess* of taxation.

Authority to the clerk to *call* and warn "the annual meetings," does not authorize him to call and warn special meetings; and the acts and doings of a special meeting thus called are wholly void. School District *v.* Atherton, 12 Met. (Mass.) 105 (1846). And authority "to warn" future meetings does not authorize him "to call" such meetings. Stone *v.* School District, 8 Cush. (Mass.) 592 (1851).

As to *proof of notice*, and the return of the person or officer making the warning, and what it shall show, see State *v.* Williams, 25 Me. 564 (1846), and the *Massachusetts* and *Maine* decisions therein cited and commented on. Christ's Church *v.* Woodward, 26 Me. (13 Shep.) 172 (1846); Fossett *v.* Bearce, 29 Me. 523 (1849); Bearce *v.* Fossett, 34 Me. 575 (1852); Jordan *v.* School District, 38 Me. 164 (1854); Perry *v.* Dover, 12 Pick. 206; Houghton *v.* Davenport, 23 Pick. 235; Williams *v.* Lunenberg, 21 Pick. 75; Briggs *v.* Murdock, 13 Pick. 305; Rand *v.* Wilder, 11 Cush. (Mass.) 294 (1853); Cardigan *v.* Page, 6 N. H. 182; State *v.* Donahay, 1 Vroom (30 N. J. L.), 404; Hardcastle *v.* State (27 N. J. L.), 552; Detroit, &c. R. Co. *v.* Bearss, 39 Ind. 598; McPike *v.* Parr, 51 Mo. 63; French *v.* Edwards, 13 Wall. 511. In Sherwin *v.* Bugbee, 17 Vt. 337, the strict view is held that the *notice* or warning *must be recorded* by the clerk. If, as recorded, the *time* for which the meeting was to be holden is not specified, the defect cannot be supplied by parol evidence that in the original warning the hour for

be understood from the notice or warrant.[1] And where the statute requires the *time and place* to be stated in the notice, its requirements must be observed, and there can be no legal meeting unless it originally assembles at the prescribed time and place. The law is strictly held as to the important particulars of time and place, as will appear by the illustrations in the notes.[2]

the meeting was named. This decision was not put upon the ground that the statute expressly required the warning to be recorded (which it did not), but upon the ground that the statute intended that the records should furnish all the means for testing the validity of the proceedings. See, also, Stevens *v.* Society, &c., 12 Vt. 688 (1839); *post*, sec. 310. Where the place of an annual meeting is not fixed by statute or charter, notice of the meeting and place is essential. United States *v.* McKelden, 8 Rep. Dec. 1879, p. 778; McArthur & Mackey, 162. *Presumption in favor of legality* of meeting after lapse of long time. Peterborough *v.* Lancaster, 14 N. H. 382, 392; *post*, secs. 267, note, 285, note. *Length of notice.* Hunt *v.* School District, 14 Vt. 300; Pratt *v.* Swanton, 15 Vt. 247; *post*, sec. 285, note.

Under a statute of *New York*, the notice it required of school meetings held to be *directory* only, and the want of notice, when not fraudulently or wilfully omitted, does not render the meeting invalid, and its proceedings void. Marchant *v.* Langworthy, 6 Hill (N. Y.), 646; affirmed in error, 3 Denio (N. Y.), 526. See, also, Williams *v.* Larkin, 3 Denio, 114; *post*, sec. 290. Where the charter required the clerk to publish a notice requiring all persons interested in and opposed to a local improvement to attend before the council at a day named, and such notice was given and a hearing had, it was held that since the charter provided for but one notice and one hearing, it was a matter of discretion with the council whether another hearing should be allowed, and that subsequent action by the council without such notice or second hearing was not, under the circumstances, invalid. Locke *v.* Rochester, 5 Lansing (N. Y.), 11 (1871); *post*, secs. 803, 804, 927, note.

[1] School District *v.* Blakeslee, 13 Conn. 227.

[2] Sherwin *v.* Bugbee, 16 Vt. 439, 444, (1844). In reference to town meetings, the statute of *Vermont* requires that the notice shall be in writing, and shall "specify the business to be done, and the *time and place* of holding said meeting." Referring to this statute, *Redfield*, J. (in Sherwin *v.* Bugbee, *supra*), says: "We have no doubt *the place* of holding the meeting must be definitely specified. It would hardly do to warn a meeting to be held at *some* place in the district, or at a designated village, or at one of two or more dwelling-houses. So, too, in regard to *time*, there seems to be a propriety in having it definitely fixed. If the day, only, is named, the question immediately arises, Shall the inhabitants be required to attend the whole day? or, When can the meeting transact the business for which they meet, so as to bind the absent members? The fact that the meeting adjourned to another day and hour will not help the matter, on the obvious principle that the adjourned meeting could have no more authority than the original meeting, which was void."

Where it appears that a meeting was held on the day appointed, *it will be presumed* that it was held at a suitable time in the day, and pursuant to the notice. A meeting should be opened within a reasonable time after the hour specified; but what is such reasonable time depends upon circumstances. School District *v.* Blakeslee, 13 Conn. 227. Where a meeting was called *at* a certain school-house, it was held to mean within the walls of the building. An assemblage of some of the citizens in the highway *near* the school-house, and an adjournment to another place, was not a legal meeting, and its transactions were not binding, though the school-house was locked, and the weather cold and no fire in the building. Chamberlain *v.* Dover, 13 Me. 466 (1836). See, also, Haines *v.* School District, 41

§ 268 (206). **Specification of Object of the Meeting.** — Where the statute requires the notice "*to specify the business to be done,*" an omission to comply with this requirement makes the meeting void, and it is held that a notice stating generally "to do any proper business," is insufficient, and the acts and votes of a meeting held under it are of no binding or legal force.[1] Indeed, the rule is general that where the statute requires the business to be stated in the warrant or notice, this is absolutely essential, and the meeting must be confined to those matters.[2]

§ 269 (207). **Power to adjourn.** — At a meeting duly constituted and organized, a majority of the members, electors, or corporators present, in the absence of any statute either conferring or denying the power, have, in the absence of any restrictive statute, the implied incidental corporate right *to adjourn the meeting* to another time,

Me. 246 (1856); Kingsbury *v.* School District, 12 Met. 99. But, in *Maine*, where a meeting had been called for *the basement of a building*, the fact that the meeting, which was crowded, being unable to take a division within the walls with ease or comfort, by unanimous consent and without protest from any one passed out into the open air, where the count was made, was held not to render its proceedings invalid. Brown *v.* Winterport, 79 Me. 305.

[1] Hunt *v.* School District, 14 Vt. 300 (1842); Sherwin *v.* Bugbee, 16 Vt. 439; s. c. 17 Vt. 337, 444 (1844). "Such meetings are void for all purposes of transacting business not specified" in the written notice required by the statute. *Ib., per Redfield*, J.

[2] *Ib.;* Johnson *v.* Wilson, 2 N. H. 202; Tucker *v.* Aiken, 7 N. H. 113; Baker *v.* Shepherd, 4 Fost. (24 N. H.) 208.

By-laws passed at a *town meeting not duly warned* (as, for example, where the notice did not "specify the objects" of the meeting as required by statute) are void. Hayden *v.* Noyes, 5 Conn. 391 (1824); Willard *v.* Killingworth, 8 Conn. 247; Bloomfield *v.* Charter Oak Bank, 121 U. S. 121, 130. The party claiming under a by-law must show it was passed at a meeting duly warned. 8 Conn. 247, *supra*. And must, perhaps, show all the essentials of its validity, such as the due passage, publication, &c. *Ib.*

Where the statute requires that all matters to be acted upon at the meeting shall be inserted in the warrant or notice, a *failure to do this will avoid as to both parties any contract* that may be made, or any act that may be done, with respect to a matter not embraced in the warrant or notice. Cornish *v.* Pease, 19 Me. (1 Appl.) 184 (1841); Spear *v.* Robinson, 29 Me. (14 Shep.) 531 (1849); Little *v.* Merrill, 10 Pick. (Mass.) 543; Blackburn *v.* Walpole, 9 Pick. (Mass.) 97; Torrey *v.* Millbury, 21 Pick. (Mass.) 64; *Ib.* 75; Hadsell *v.* Hancock, 3 Gray (Mass.), 526; Jones *v.* Andover, 9 Pick. (Mass.) 146 (1829); Kingsbury *v.* School District, 12 Met. (Mass.) 99 (1846); Rand *v.* Wilder, 11 Cush. (Mass.) 294 (1853). But if the matter is embraced in the warrant or notice, and the meeting duly met, it is no objection to its action that it was had near the close of the meeting, and when a portion of the voters had retired. Bean *v.* Jay, 23 Me. (9 Shep.) 117 (1843). Subsequent *legal meeting may ratify* acts of previous meeting not duly notified. Jordan *v.* School District, 38 Me. 164. By participating in a meeting illegally called, a party is *not estopped* to deny its legality. School District *v.* Atherton, 12 Met. (Mass.) 105.