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1905

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the repayment, with interest, of any money so loaned or advanced by him. He may use and lend his name and credit as security for the partnership in its business, and shall have the same remedies in these respects as its other creditors. With the approval of one or more of the general partners, he may negotiate sales and make purchases for the partnership. Except as herein provided, no special partner shall transact any business for the partnership, and, if he shall interfere contrary to these provisions, he shall be deemed a general partner. (2345)

2832. Preferences by partnership—Every sale, assignment, or transfer of its property by any such partnership when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of any partner, with the intent to give a preference to any creditor or insolvent partner over other creditors of the partnership, and every judgment confessed, lien created, or security given by it, under like circumstances and with like intent, shall be void as against the creditors of such partnership. (2346)

2833. Preferences by partners—Every sale, assignment, or transfer of any of the property of a general or special partner, made by him when insolvent or in contemplation of insolvency, or after or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own or of the partnership a preference over creditors of the partnership, and every judgment confessed, lien created, or security given by such partner under the like circumstances and with like intent, is void as against the partnership creditors. (2347)

2834. Violations—Liability—Every special partner who violates any provision of §§ 2832, 2833, or who concurs in or consents to any such violation, shall be liable as a general partner. (2348)

2835. Special partners as creditors—In case of the insolvency or bankruptcy of the partnership, no special partner shall be allowed to claim as a creditor until the claims of all the other creditors of the partnership are satisfied. (2349)

2836. Dissolution by parties—Notice—No such partnership shall be dissolved by act of the parties before the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of dissolution shall be recorded and published as required in respect to the certificate of its formation. (2350)

2837. Accounting—Fraud—The general and special partners shall be liable to account to each other, both in law and equity, for all their acts relating to the partnership affairs and the management of its concerns. Any partner who shall be guilty of fraud in the affairs of the partnership shall be guilty of a misdemeanor. (2351, 2352)

CHAPTER 58

CORPORATIONS

GENERAL PROVISIONS

2838. Existing corporations continued—Until otherwise provided by law, all private corporations existing and doing business at the time of the taking effect of the Revised Laws, shall continue to exercise and enjoy all powers and privileges possessed by them under their respective articles of incorporation and the laws applicable thereto then in force, and shall remain subject to all the duties and liabilities to which they were then subject.

2839. Terms defined—The term "private corporation," as used in this chapter, shall include every company, association, or body endowed by law

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with any corporate power or function whatsoever, except such as are formed solely for public and governmental purposes, which shall be deemed public corporations. And, when not otherwise indicated by the context, the word "corporation" shall mean a private corporation. The term "certificate of incorporation," whenever used in this chapter in reference to corporations formed prior to the taking effect of the Revised Laws, shall be construed as meaning articles of incorporation.

2840. Domestic and foreign corporations defined—The term "domestic corporation" shall mean every corporation organized under the laws of this state, and the term "foreign corporation" shall mean every other corporation.

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2841. Public service corporations—Corporations may be organized for the construction, acquisition, maintenance, or operation of any work of internal improvement, including railways, street railways, telegraph and telephone lines, canals, slack-water or other navigation, dams to create or improve a water supply or to furnish power for public use, and any work for supplying the public, by whatever means, with water, light, heat, or power, including all requisite subways, pipes, and other conduits. But no corporation so formed shall construct, maintain, or operate a railway of any kind, or any subway, pipe line, or other conduit in or upon any street, alley, or other public ground of a city or village, without first obtaining from, and compensating said city or village for, a franchise conferring such right. (2592)

Corporation organized to improve a stream for "slack-water, etc." not authorized to collect tolls (75-335, 340, 77+989). Permission of municipality (81-140, 159, 83+527, 86+69).

2842. State and local control—Eminent domain—The state shall at all times have the right to supervise and regulate the business methods and management of any such corporation, and from time to time to fix the compensation which it may charge or receive for its services; and every such corporation obtaining a franchise from a city or village shall be subject to such conditions and restrictions as from time to time may be imposed upon it by such municipality. Every such corporation may acquire, by right of eminent domain, such private property as may be necessary or convenient for the transaction of the public business for which it was formed: Provided, that no street railway company shall have or exercise such right within the limits of any city or village. (2592, 2604, 2619; '95 c. 19)

Authority to condemn land appropriated to another public use (76-334, 79+315). Grant of right of eminent domain constitutional (18-155, 130). Railroad can condemn land only for railroad purposes (20-28, 19). What constitutes a public use (41-461, 43+469; 43-527, 46+75). In determining what lands are "necessary or convenient" corporations are subject to the control of the courts (37-164, 33+701). Right of city to require telephone wires to be placed under ground (81-140, 83+527, 86+69).

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2843. Municipality may purchase—The council of any city or village, at the end of any period of five years from the granting of a franchise for the operation of any street railway, telephone, waterworks, gas works, or any electric light, heat, or power works, when authorized so to do by a two-thirds majority of the votes cast upon the question, may acquire and thereafter operate the same, upon paying to the corporation or person owning the franchise the value of such property, to be ascertained in the manner provided by law for acquiring property under the right of eminent domain, upon petition of its governing body. Such vote shall be taken at a special election called for that purpose, and held within three months next preceding the expiration of said five-year period. The consideration for such works or property shall first be applied to the payment of any incumbrances thereon, and the remainder, if any, shall be paid to the owner of said franchise. (2592)

2844. Manufacturing and mining companies—Corporations may be formed:

1. For carrying on any kind of manufacturing or mechanical business not incompatible with an honest purpose;
2. For the mining, smelting, reducing, refining, or working of ores or minerals, for working coal mines or stone quarries, or for buying, working, sell-

ing, or dealing in mineral lands, or for any one or more of the purposes mentioned in this paragraph. (2794, 2805, 2827)

2845. Mortgage loan and land companies—Corporations may be formed for the purpose of loaning money, either for themselves or as agents for others, upon mortgages or other securities, and for the purchase and sale of lands, and of money obligations secured upon real or personal property, with power to execute all contracts, incumbrances, transfers, releases, and other documents necessary or convenient to the transaction of such business. (2838)

See 1905 c. 93

2846. Trading companies, etc.—Corporations may be formed for any of the following purposes:

1. Constructing, leasing, or operating docks, warehouses, elevators, public halls, or hotels.

2. Carrying on any kind of lumbering, agricultural, dairying, mercantile, chemical, transportation, or other lawful business not otherwise provided for in this chapter.

3. Buying, selling, and improving lands and tenements. (2794)

Meaning of "other lawful business" (40-508, 42+481).

2847. Financial corporations—Corporations may be formed for any one of the following purposes:

1. Carrying on the business of banking, by receiving deposits, buying, selling, and discounting notes, bills, and other evidences of debt, domestic or foreign, dealing in gold and silver bullion and foreign coins, issuing circulating notes, and loaning money upon real estate or personal security;

2. Establishing and conducting clearing houses, for effecting, in one place, the speedy and systematic daily exchange and adjustment of balances between banks and bankers in any municipality, town, or county, establishing and enforcing uniform methods of conducting the banking business in such locality, and adjusting disputes or misunderstandings between members of such clearing house engaged in the banking business;

3. Creating and conducting savings banks for the reception, on deposit of money offered for that purpose, the investment thereof, and the declaring, crediting, and paying of dividends thereon as authorized and provided by law;

4. Transacting business as a trust company in conformity with the laws relating thereto; and

5. Carrying on, in accordance with law, the business of building, loan, and savings associations. (2490, 2493, 2535, 2558, 2855; '01 c. 233)

2848. Insurance corporations—Corporations may be formed for carrying on any one branch of the business of insurance authorized by law, or any two or more branches thereof which are permitted by law to be transacted by one company. ('95 c. 175 s. 27; '01 c. 143)

2849. How organized—Certificate—Any three or more persons may form a corporation for any of the purposes specified in this subdivision by complying with the conditions hereinafter prescribed. They shall subscribe and acknowledge a certificate specifying:

1. The name, the general nature of its business, and the principal place of transacting the same. Such name shall distinguish it from all other corporations, domestic or foreign, authorized to do business in this state, and shall end with "Company," "Corporation," or "Association," or the word "Incorporated."

2. The period of its duration, if limited.

3. The names and places of residence of the incorporators.

4. In what board its management shall be vested, the date of the annual meeting at which it shall be elected, and the names and addresses of those composing the board until the first election, a majority of whom, in the case of savings banks and building and loan associations, shall always be residents of the state.

5. The amount of capital stock, if any, how the same is to be paid in, the number of shares into which it is to be divided, and the par value of each

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share; and, if there is to be more than one class, a description and the terms of issue of each, and the method of voting thereon.

6. The highest amount of indebtedness or liability to which the corporation shall at any time be subject.

It may also contain any other lawful provision defining and regulating the powers or business of the corporation, its officers, directors, trustees, members, and stockholders. (2491, 2594, 2807, 2914, 2976)

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2850. Filing and record of certificate—The certificate of every such corporation shall be filed for record with the secretary of state, who, if he finds that it conforms to law, and, if a financial corporation, has indorsed thereon the approval of the public examiner, or, if an insurance company, that of the insurance commissioner, and, in every case, that the required fee has been paid, shall record the same and certify that fact thereon. After such record, such certificate shall be filed for record with the register of deeds of the county of the principal place of business as specified in the certificate. (2593)

Liability of stockholders for failure to file (61-375, 63+1079).

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2851. Publication of certificate—Every such certificate of incorporation shall be published in a qualified newspaper in the county of such principal place of business, for two successive days in a daily, or for two successive weeks in a weekly, newspaper. Upon filing with the secretary of state proof of such publication, its corporate organization shall be complete. (2594; '01 c. 99)

Effect of failure to file proof with secretary of state (49-99, 51+663; 67-194, 69+810. See 37-91, 33+219).

2852. General powers—Every corporation formed under the provisions of this chapter shall have power:

1. To have succession by its corporate name for the time stated in its certificate of incorporation.

2. To sue and be sued in any court.

3. To have and use a common seal and alter the same at pleasure.

4. To acquire, by purchase or otherwise, and to hold, enjoy, improve, lease, incur, and convey all real and personal property necessary to the purposes of its organization, subject to the limitations hereafter declared.

5. To elect or appoint, in such manner as it may determine, all necessary or proper officers, agents, boards, and committees, to fix their compensation, and define their powers and duties.

6. To make and amend, consistently with law, by-laws providing for the management of its property and the regulation and government of its affairs.

7. To wind up and liquidate its business in the manner provided by law. (2595, 2794)

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May incur debts and give negotiable paper therefor (23-6, 28-291, 9+799). Liability on accommodation paper (68-129, 70+1083; 41-84, 42+926).

2853. Additional powers—In addition to the powers enumerated in § 2852, every such corporation, except the financial corporations hereinafter in this chapter specified, shall have power to issue more than one class of stock. And any corporation organized under § 2844 may take, acquire and hold stock in any other corporation, if a majority of the stockholders shall elect. (3415)

2854. By-laws, how adopted—The first board of directors, trustees, or managers shall adopt by-laws, which shall remain effective until and except as amended by the stockholders or members at any regular or special meeting called therefor. (2592, 3407)

2855. By-laws and statement to be filed and posted—A copy of the by-laws of every corporation, whose articles are filed with the secretary of state, the names of its officers and a statement of the amount of the capital stock actually and in good faith subscribed for, if there be any, the amount and character of payments actually made thereon, and in the case of corporations empowered to take private property, the amount of its indebtedness in a general way, shall also be kept posted in its principal place of business; which statement shall be corrected as often as any material change takes place in

relation to any part of the subject matter of such statement. (2593, 2597, 2598)

44-478, 479, 47+155; 61-375, 395, 63+1079.

2856. Duration—Renewal—A railroad corporation may be formed for any period specified in its certificate of incorporation. Every other corporation shall be formed for a period not exceeding thirty years, in the first instance, but may be renewed from time to time for a further term not exceeding thirty years, whenever a three-fourths vote of the stock represented at any regular meeting, or at any special meeting called for that purpose, which shall have been clearly specified in the call, shall adopt a resolution to that effect, and those desiring it shall have purchased at its value the stock of those opposed thereto. (2596, 2802)

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2857. When renewal takes effect—No such resolution shall take effect until a duly certified copy thereof shall have been filed, recorded, and published in the same manner as its original certificate. ('01 c. 207)

2858. Business, how managed—The business of every such corporation, except savings banks, shall be managed by a board of at least three directors, elected by ballot by and from the stockholders or members; that of savings banks, by a board of at least seven trustees, residents of the county of its location, each of whom, before being authorized to act, shall file a written acceptance of the trust. A majority of the directors or trustees shall constitute a quorum for the transaction of business. (2539, 2594)

Authority of directors must be exercised solely in pursuance of the company's chartered purposes and for the benefit of the stockholders (31-140, 149, 16+854. See 35-146, 151, 27+917; 35-163, 164, 27+922; 39-1, 2, 38+772). May act only collectively as a board and not individually (26-43, 1+261).

2859. Officers—Every domestic corporation, except when otherwise specially provided, shall have a president, secretary, and treasurer, and may have one or more vice-presidents and other officers, as its by-laws provide. The by-laws shall prescribe the time and manner of their election and their respective duties. The president shall be a director or trustee; the secretary and treasurer may or may not be directors or trustees, as shall be provided in the by-laws.

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2860. Classification of managers—By so providing in its certificate of incorporation, any corporation may classify its directors or trustees in respect to the time for which they shall severally hold office, the several classes to be elected for different terms: Provided, that no class shall be elected for a term less than one, or more than five, years, and that the term of office of at least one class shall expire each year. (3407)

2861. Regulation as to voting—Unless otherwise provided in the certificate or by-laws, at every meeting each stockholder or member, resident or non-resident, shall be entitled to one vote in person, or by proxy made within one year or other time specially limited by law, for each share or other lawful unit of representation held by him in his individual, corporate, or representative capacity, but no stock shall be voted on at any election within twenty days after its transfer on the books of the corporation. (3412)

2862. Cumulative voting—The certificate of incorporation, original or amended, of any corporation now or hereafter organized under the laws of this state, and thereunder issuing, or authorized to issue, shares of its capital stock, may provide that at all elections of directors or managers each stockholder or member shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors or managers to be elected, and that he may cast all of such votes for a single director or manager, or may distribute them among the number to be voted for, or for any two or more of them, as he may see fit, which right, when exercised, shall be termed "cumulative voting."

2863. Transfer of stock—The delivery, by the rightful owner or by one by him intrusted therewith, to a bona fide purchaser or pledgee for value, of a certificate of stock, duly transferred in writing by the holder personally, or

accompanied by his power of attorney authorizing such transfer, shall be sufficient to transfer title, but shall not affect the right of the corporation to pay any dividend thereon, or to treat the holder of record as the owner in fact, until such transfer has been recorded on its books, or a new certificate issued to the transferee, who, upon delivery of the former certificate to the treasurer, shall be entitled to receive such new one. Stock shall not be transferred upon the books of the corporation while any instalment thereon remains delinquent, nor while any indebtedness of the record holder thereof to the corporation remains unpaid; nor shall any transfer deprive it of the right to maintain a personal action against any subscriber to its stock. A pledgee of stock transferred as collateral security shall be entitled to a new certificate, if the instrument of transfer substantially describe the debt or duty intended to be secured thereby. Such new certificate shall state on its face that it is held as collateral security, and the name of the pledgor, who alone shall be liable as a stockholder and entitled to vote thereon. (2599, 2799, 2819, 2832)

Transfers of stock are good between the parties without entry in the stock books (26-43, 1+261; 38-85, 35+577; 44-183, 187, 46+337; 68-121, 70+1079; 71-123, 73+713; 50-36, 52+268), and are good as against a subsequent attachment (50-36, 52+268). Provisions of section for benefit of corporations (26-43, 1+261; 61-307, 312, 63+721; 44-183, 46+337), and possibly of its creditors (61-307, 312, 63+721). Effect of certificate of stock as evidence of ownership and right to transfer. How far binding on corporation (44-183, 46+337). What constitutes a stock book (65-324, 332, 68+50). Transfer held sufficient to render transferee liable to corporation for calls on stock (61-307, 63+721). Burden of proof to show transfer on stock books (63-405, 410, 65+661, 663). Equitable owner may compel transfer on books (68-121, 70+1079). Stock is personal property (60-362, 363, 62+396). Lien of corporation on stock (35-511, 29+200; 68-121, 70+1079; 71-38, 73+635; 71-123, 73+713). See *McConey v. Belton Oil & Gas Co.*, Filed Jan. 26, 1906.

2864. Effect of transfer—Stock books—The transfer of shares is not valid, except as between the parties thereto, until it is regularly entered on the books of the company, so far as to show the names of the persons, by and to whom transferred, the number or other designation of the shares, and the date of the transfer; but such transfer shall not in any way exempt the person making such transfer from any liabilities of said corporation which were created prior to such transfer. The books of the company shall be so kept as to show intelligibly the original stockholders, their respective interests, the amount which has been paid in on their shares, and all transfers thereof, and such books, or a correct copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same. (2599)

2865. Liability of stockholders—Every stockholder shall be personally liable for corporate debts in the following cases:

1. For all unpaid instalments on stock owned by him or transferred for the purpose of defrauding creditors.

2. For failure by the corporation to comply substantially with the provisions as to organization and publicity.

3. For personally violating any of such provisions in the transaction of any corporate business as officer, director, or member, and for fraudulent or dishonest conduct in the discharge of any official duty. (2600)

1. **In general**—Nature of action defined (34-323, 329, 25+639). Liability of stockholders several and contractual (73-454, 76+254). Constitutional liability unenforceable under this section (61-373, 63+1024). Action by single creditor will lie against corporation and one or more stockholders (34-323, 25+639; 56-180, 57+468; 16-368, 327). Corporation not a necessary party when judgment has been obtained against it and execution returned unsatisfied (44-478, 47+155). Cited (70-292, 73+149). See *McConey v. Belton Oil & Gas Co.*, Filed Jan. 26, 1906.

2. **Subd. 1**—Inapplicable to foreign corporations (64-326, 67+60). Claim provable in probate court (44-478, 47+155; 66-246, 68+1063). In absence of fraud liability on transferee of stock, not on transferrer (56-180, 57+468; 70-292, 73+149). When a receiver has been appointed for an insolvent company individual creditor cannot enforce liability (48-361, 51+119).

3. **Subd. 2**—Refers to failure to comply with §§ 2850, 2851 (61-375, 63+1079). Stockholders of corporation de facto not chargeable as partners in absence of fraud (75-196, 77+822).

4. Subd. 3—To be applied cautiously (87-398, 401, 92+225). Injury must be peculiar to plaintiff. Damages to be measured by creditor's debt not his loss. Action may be at law and not for benefit of all creditors. Liability of superior officer for acts of inferior officer (61-375, 63+1079). Action not penal. Removable to county of defendant (66-213, 68+976). Cannot be joined with one to enforce constitutional liability (66-437, 69+324. See 68-95, 100, 70+869). What will render stockholder liable (61-375, 63+1079; 78-124, 80+853; 87-398, 92+225).

2866. Property of stockholders levied on, when—The private property of a stockholder shall not be levied on for any liability specified in § 2865, unless both he and the corporation are duly served with process in the action, and the issue involving his individual liability is raised and determined therein; and individual property shall never be levied on until all corporate property which can be found has been exhausted. (2601)

See cases under § 2865.

2867. Proceedings of officer levying—The officer holding an execution which may be so levied on private property shall first demand payment of the president, secretary, or other acting officer of the corporation, or who was one of its last acting officers; and, if he fails to forthwith satisfy the execution or point out corporate property upon which it may be levied, the officer shall indorse thereon the fact of such demand and failure to pay, and then levy the same upon individual property of any stockholder impleaded and served as aforesaid. Such levy may be made to satisfy any balance due upon an execution, after levy upon corporate property, or part payment from corporate funds. (2602)

2868. Capital stock—Except as otherwise provided in this chapter, the capital of any stock corporation shall in no case be less than ten thousand dollars. It shall be divided into shares of not less than one dollar nor more than one hundred dollars each, but the capital and number of shares may be increased at any regular or specially called meeting of the stockholders. (2797; '01 c. 347)

Increase of stock at regular meeting. Right of stockholders to subscribe in proportion to original holdings (31-140, 16+854).

2869. Record of stock—Reports—Dividends—In all stock corporations the directors shall cause accurate and complete records to be kept of all corporate proceedings and of all stock subscribed, transferred, canceled, or retired, and proper books, accounts, files, and records of all other business transacted. All such books and records shall at all reasonable times and for all proper purposes be open to the inspection of every stockholder. Its directors shall, when required, present to the stockholders written reports of its condition and business, and declare such dividends of the profits of the business as they deem advisable, but shall not thereby reduce the capital while there are outstanding liabilities. (2800)

2870. Offices without and within the state—Every domestic corporation may establish offices and conduct business in any other state or country: Provided, that an office in charge of some person upon whom legal process affecting it may be served is always maintained in this state. (2801)

Necessity of office in this state (58-330, 59+1048).

2871. Amendment of certificate—Every certificate of incorporation may be amended in respect to amount of stock or any other matter which an original certificate of a corporation of the same kind might lawfully have contained, by the adoption of a resolution specifying the proposed amendment, at a regular meeting or at a special meeting called for that expressly stated purpose, in either of the following ways: (1) by majority vote of all its shares, if a stock corporation; or, if not, (2) by majority vote of its members; or, in either case, (3) by majority vote of its entire board of directors, trustees, or other managers, within one year after having been thereto duly authorized by specific resolution duly adopted at such a meeting of stockholders or members, and by causing such resolution to be embraced in a certificate duly executed by its president and secretary, or other presiding and recording officers, under its corporate seal, and approved, filed, recorded, and published in the manner pre-

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scribed for the execution, approval, filing, recording, and publishing of a like original certificate. (2595, 2738; '95 c. 38; '02 c. 9)

51-263, 53+632. See 32-284, 20+225; -37-13, 32+787; 35-155, 27+924.

2872. Increase of railway stock, how authorized—Before any railroad corporation shall increase its capital stock, it shall apply to the railroad and warehouse commission in writing, setting forth the amount of the proposed increase and the purpose for which it is desired. The commission shall thereupon fix a time and place for hearing the application, and require such notice thereof to be given as they deem reasonable. Upon the hearing the commission shall make findings of the facts established in reference to the proposed increase, and, if they allow it, shall prescribe the manner in which and the terms upon which the same shall be made. If they disapprove such increase, the reasons therefor shall be stated in their next annual report. No capital stock shall be issued by any railway corporation until the full amount thereof has been paid to the corporation in money, labor, or materials actually used in the construction of its road, nor shall the capital stock of any such corporation be increased except by special authority of such railroad and warehouse commission. (2739-2742)

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2873. Fees—Before filing any certificate of incorporation, renewal, or amendment increasing the capital stock, there shall be paid to the state treasurer a fee of fifty dollars for the first fifty thousand dollars, or any fraction thereof, of the capital stock of an original or renewed corporation, and five dollars for each additional ten thousand dollars or fraction thereof. But nothing in this section shall apply to a corporation formed and operated solely for manufacturing purposes, or to mining any stone quarry, or quarrying, manufacturing, or marketing of any kind of stone, or for raising or improving live stock, or for the cultivation or improving of farms, gardens or agricultural lands, growing beets or for canning fruits or vegetables, or to any telephone company connecting towns or villages of less than two thousand inhabitants. (3391, 3392; '01 cc. 206, 245)

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2874. State certificate of incorporation—Whenever any such corporation, whose incorporation has been completed, shall make application therefor to the secretary of state and pay the prescribed fee, said secretary shall execute, record, and issue a certificate, specifying the names of its incorporators, its nature and purpose, the amount of its capital stock, the fact of its compliance with all prescribed statutory provisions, and that it is duly organized and exists as a corporation under the name and of the kind specified, with the powers, rights, and privileges, and subject to the limitations and restrictions pertaining thereto. Such certificate shall be prima facie evidence of the facts stated therein. (3394, 3395)

2875. First and subsequent meetings, how called—The first meeting of every corporation, except as otherwise prescribed in its certificate of incorporation, shall be called upon not less than three weeks' prior personal or published notice, signed by one of the incorporators, to the others, and to each subscriber, if any, to its capital stock, specifying the time, place, and purpose thereof. Unless otherwise provided in the certificate of incorporation or corporate by-laws, every annual meeting shall be called and held at its principal place of business upon three weeks' published notice thereof signed by its secretary, and no business transacted at any annual meeting not so called and held shall be effectual. The manner of calling and holding all meetings may be prescribed by its by-laws. (2808, 3408)

2876. Meeting called by members—Whenever, by reason of the death, absence, or other legal disability of the officers of any corporation, there is no person authorized to call or preside at a legal meeting thereof, any three or more of its stockholders or members may call a meeting by giving to all the others the notice prescribed in § 2875, and designating therein some person to preside at such meeting until a chairman and clerk are chosen, who shall act during the absence of those authorized to act in one or both of those capacities,

respectively. Any business may be done at such meeting which could be lawfully transacted at a regular meeting. (3409, 3410)

2877. Irregular meetings, how validated—Whenever all the stockholders or members of a corporation are present or duly represented at any meeting, however called or notified, and duly execute a written assent thereto on the records thereof, the business transacted at such meeting shall be as valid as if it had been legally called. (3411)

2878. Capital stock—How classified and issued—Save as otherwise specially limited or provided, no corporation shall issue any share of stock for a less amount to be actually paid in than the par value of those first issued. But any railroad or exclusively manufacturing corporation may issue and dispose of such an amount of special, preferred, or full-paid stock as may be deemed advisable by its board of directors. Any corporation whose original or amended certificate of incorporation so provides may issue and dispose of special and preferred and common stock, or special or preferred and common stock; and any corporation, without change of its certificate of incorporation, when its board of directors are so authorized by a majority vote of its stockholders at its annual meeting, or at a meeting called for that specifically stated purpose, may issue its capital stock, part special, part preferred, and part common, or part common and part either special or preferred, and give such preference as it deems best to such special or preferred stock, or to such special and preferred stock. (3415)

Agreement that two or more shares be issued for each share paid for void (67-224, 69+894). Corporation cannot issue its stock as fully paid up and sell the same for less than par and on such terms as its directors deem advisable (70-321, 73+189. See 65-28, 67+652). Unauthorized stock not void so as to exempt holders from liability (67-267, 276, 69+904). Payment for stock by note and mortgage as device to evade statute. Corporation bound (71-123, 73+713. See 71-38, 73+635).

2879. Stock certificates, to whom issued—Upon payment in full of all amounts due any corporation from any person upon any certificate for its stock, and the surrender of all receipts, if any, issued therefor, he shall be furnished with a certificate, under the corporate seal, stating the number of shares and class of its stock owned by him, signed by its president or vice-president, and by its secretary, under its corporate seal. Said certificate shall be prima facie evidence of such ownership. (3416)

2880. New certificate—Every corporation, on the surrender of a worn-out or defaced certificate, shall issue a new one therefor, without indemnity. Whenever an affidavit stating the loss or destruction of any certificate of its stock shall be presented to the directors of any corporation, they shall cause a new one to be issued to the owner thereof, but may, in their discretion, first require a satisfactory bond for not more than double the market value of the stock, to indemnify the corporation against any claim arising from the issue of such new certificate. On giving such bond the corporation shall issue such new certificate. If the evidence is clear that said certificate has been lost or destroyed, and has not been heard of for seven years, it shall be the duty of said corporation to issue a new certificate without indemnity, and the secretary or other proper officer shall make a report thereof in his register of shareholders, and said corporation shall be released from all damages in reference thereto. (3417)

Action against foreign corporation for duplicate certificate (59-332, 61+324).

2881. Executors, etc., may vote—Not personally liable—Every executor, administrator, guardian, or trustee shall represent the shares of stock in his hands, for all purposes, at all meetings of the corporation, but while acting in good faith shall not be personally liable; but the estates and funds in his hands shall be liable in like manner and to the same extent as the beneficiary or other represented party or interest would be if competent to act and holding the stock in their own names, respectively. (3418, 3419)

Executor held not personally liable on stock (75-138, 77+788).

2882. Dissolution of corporations—Whenever any corporation except a bank of discount and deposit or a savings bank has determined, upon the

affirmative vote of a majority of each class of its stock entitled to vote, or of its members if without capital stock, that it is for the interest of all persons concerned therein that it be dissolved, it may cause appropriate action to be taken to effect such dissolution. (3430)

44-460, 47+151; 56-171, 176, 57+463; 56-180, 183, 57+468; 60-284, 62+332; 66-378, 384, 69+144; 66-441, 445, 69+331; 73-319, 324, 76+59; 74-98, 102, 76+1024; 85-302, 307, 88+977.

2883. Continuance for three years to close affairs—Every corporation whose existence terminates by limitation, forfeiture, or otherwise, shall nevertheless continue for three years thereafter, for the purpose of prosecuting and defending actions, closing its affairs, disposing of its property, and dividing its capital, but for no other purpose. (3431)

See 1905 c. 128

38-115, 35+725; 44-460, 463, 47+151; 56-180, 184, 57+468; 60-284, 289, 62+332; 83-314, 320, 86+409; 58 Fed. 651.

2884. Diversion of corporate property—The diversion of corporate property to other objects than those specified in the recorded and published certificate, where injury to any individual results therefrom, the declaring of dividends when the profits are insufficient to pay the same or when the funds remaining will not meet the corporate liabilities, or any intentional deception of the public or individuals in relation to its means or liabilities, are felonies, and every person guilty of any one of them shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the state prison for not more than three years, or by both. (2793)

64-463, 465, 67+355.

2885. False statements—Every officer, agent, or employee of any corporation, who shall knowingly and wilfully subscribe or make any false statement, false report, or false entry in or upon any of the books, papers, or other documents thereof, or in behalf thereof, or shall knowingly and wilfully subscribe or exhibit any false paper, book, or document with intent to deceive any person or officer authorized to examine the financial condition of any such corporation, or shall knowingly and wilfully subscribe or make any false report whatsoever shall be guilty of a felony, and be punished by imprisonment in the state prison not less than one nor more than ten years. ('95 c. 145 s. 11)

2886. Existing corporation, how to reorganize—Any existing corporation whose certificate or charter does not conform to the requirements of this chapter may cause to be executed by its president and secretary a new or amended certificate in compliance herewith, and, upon proceeding in all respects as is prescribed in the case of an original certificate of a corporation of the same kind, shall become entitled to all rights, benefits, and privileges conferred, and subject to all the requirements imposed, upon like corporations by the provisions of this subdivision, save that its rights in respect to property acquired or investments made prior to the taking effect of these Revised Laws shall be determined and governed by the laws in force at the date of such acquisition and investment, respectively. (2603)

2887. Examination by attorney general, etc.—Whenever required by the governor, the attorney general shall examine into the affairs and condition of any corporation, and report such examination in writing, together with a detailed statement of facts found, to the governor, who shall lay the same before the legislature, and the legislature, or either branch thereof, may also examine into the affairs and condition of any such corporation. The attorney general, or either branch of the legislature through a committee appointed by it for that purpose, may administer oaths to and examine the directors and officers of any corporation on oath in relation to its affairs and condition, may examine the vaults, books, papers, and documents belonging thereto or pertaining to its affairs and conditions, and compel the production of all keys, books, papers, and documents. (3436)

FOREIGN CORPORATIONS

2888. Office and agent in state—Every foreign corporation for pecuniary profit, before it shall be authorized or permitted to transact any business in

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this state, or to continue business herein if already established, or to acquire, hold, or dispose of property within this state, or to sue or maintain any action at law or otherwise in any of the courts in this state, shall have and maintain a public office or place in this state for the transaction of its business, and shall appoint an agent, who shall reside in the county in which said public office is located, duly authorized to accept service of process, and upon whom service of process may be had in any action to which said corporation may be a party; and service upon such agent shall be due and personal service upon such corporation. An authenticated copy of the appointment of such agent shall be filed with the secretary of state, and a certified copy thereof shall be prima facie evidence of the appointment and authority of such agent. ('99 c. 69 ss. 1, 2)

84-497, 88+10; 85-121, 88+441; 88-456, 93+520. See cases under § 2890.

2889. Filing articles—License fees—Every such foreign corporation, now or hereafter doing business within this state, shall file with the secretary of state a copy of its charter or certificate or articles of incorporation, duly authenticated by the proper authority; and the principal or agent in this state of the said corporation shall make and file with the secretary of state, with the articles or certificate aforesaid, a statement duly sworn to showing the proportion of the capital stock of said corporation which is represented by its property located and business transacted in this state; and such corporation shall pay into the state treasury fifty dollars for the first fifty thousand dollars or fraction thereof of such proportion of capital stock, and the further sum of five dollars for every additional ten thousand dollars or fraction thereof of such proportion of capital stock; and no increase of the capital stock of any such corporation shall be valid or effectual until the corporation shall have paid into the state treasury five dollars for every ten thousand dollars or fraction thereof of such increase of said proportion of capital stock of such corporation. In determining the proportionate share of the capital stock upon which license fees shall be paid as aforesaid, the business of said corporation transacted in and out of this state during the year immediately preceding the filing of its articles or certificate as above provided for shall be considered and shall control. Upon compliance with the above provision by the corporation, the secretary of state shall issue to it a certificate that said corporation has complied with the laws of this state and is authorized to do business herein, stating the amount of its capital and of the proportion thereof which is represented in this state, which certificate shall be prima facie evidence that said corporation is entitled to all the rights and benefits hereof and of the valid creation and organization of such corporation; and such corporation shall enjoy those rights and benefits for the period of thirty years from and after the date of such certificate, unless its corporate existence shall sooner cease; and the right and privilege of such corporation to so transact business and acquire and hold property in this state may be renewed for like periods by refiling its articles of incorporation with the secretary of state and by the payment of like fees whenever, pursuant to the provisions hereof, its said rights and privileges shall have expired. ('99 c. 69 s. 3; c. 70 s. 1)

2890. Penalties—Exceptions—Every such foreign corporation for pecuniary profit, now doing business in or which may hereafter do business in this state, which shall neglect or fail to comply with the foregoing conditions shall be subject to a fine of one thousand dollars to be recovered before any court of competent jurisdiction; and the secretary of state, as often as he may be advised that corporations are doing business in contravention hereof shall report such fact to the county attorney of the county in which the business of such corporation is located, and such attorney, as soon thereafter as practicable, shall institute proceedings to recover the fine aforesaid, which fine shall be paid into the treasury; and no corporation which shall fail to comply with the foregoing provisions shall maintain any suit or action, either legal or equitable, in any of the courts of this state, upon any demand, whether arising out of contract or tort. Provided, that nothing herein shall be construed as

releasing any such corporation from complying with any provision of the existing laws of this state; and provided, further, that these provisions shall not apply to corporations engaged in an exclusively manufacturing business in this state; nor to drummers or traveling salesmen soliciting business in this state for corporations which are entirely non-resident; nor to any corporation engaged only in the business of loaning money or investing in securities in this state, including all business incidentally growing out of the same and the handling of such real estate and other property as may be taken by foreclosure or otherwise in liquidation of such loans or securities; provided, further, that none of the provisions hereof shall apply to or in any manner affect corporations organized for the purpose of raising and improving live stock, cultivating and improving farms or garden or horticultural lands, or for growing sugar beets, or any corporation formed for the purpose of canning fruits or vegetables. And, provided, further, that these requirements shall not apply to any foreign corporation heretofore licensed or authorized to transact business in this state and which has paid to the state treasurer the fees on capital stock required of domestic corporations under Laws 1889 c. 225, or to any corporation whose sole business in this state is the transportation of freight or passengers, or both, by water. ('99 c. 69 s. 4)

Constitutional (84-497, 88+10; 85-121, 123, 88+441). Inapplicable to contracts made prior to law (89-256, 94+723). Inapplicable to corporations not doing business here but simply attempting to collect in our courts claims against our citizens (90-358, 96+919; 94-472, 103+507). Cannot be applied so as to interfere with interstate commerce. Foreign corporation having warehouse here for convenience in distributing goods sold by its traveling agents held not to be doing business here within statute (93-356, 101+616). Foreign corporation doing business here without first complying with statute cannot maintain action in our courts on any contract or demand growing out of such unlawful business (85-121, 88+441; 89-256, 94+723; 93-201, 100+1101). Compliance after making contract or commencement of action ineffectual (85-121, 88+441): Proviso exempting certain corporations to be strictly construed (93-201, 205, 100+1101). Presumption of compliance with statute. Non-compliance a matter of defence and need not be pleaded by corporation (93-432, 101+796; 94-472, 103+507).

PUBLIC SERVICE CORPORATIONS

RAILROAD CORPORATIONS

2891. Right of way over state lands—A right of way over any swamp, school, internal improvement, agricultural college, or university lands, now belonging or which may hereafter belong to the state, is hereby granted to any railroad company which has located and constructed, or shall hereafter locate and construct, its line of railway over any such lands, to the extent of a strip of land one hundred feet in width; that is, fifty feet on each side of the center line of its main track, and such additional width, not exceeding one hundred and fifty feet, at points where it is found necessary to protect such line from snow, and for depot grounds and stations, when such additional width has been approved by the governor, on the terms and conditions hereinafter provided. (2670, 2671, 2675)

Lawver v. Great Northern Ry. Co., Filed Jan. 5, 1906.

2892. Plat—Payment—Conveyance—Whenever any railroad company desiring a right of way over any such state lands, or additional grounds thereon, shall furnish to the governor a plat showing the line of its road, right of way, additional grounds to protect from snow, depots, station grounds, and water stations proposed to be taken, with the number of acres required, and shall pay to the state treasurer the appraised value per acre of such grounds, and when not appraised such rate per acre as the governor and state auditor shall determine to be a fair appraisal, not less than that fixed by the state constitution, the governor shall execute and deliver to such railroad company an instrument in writing, conveying the use of such right of way, and the use of such lands for depots, station grounds, and water stations, so long as the same shall be occupied for railroad purposes. (2672)

2893. Selection of swamp lands—Any railroad company to whom swamp lands have been granted by the state, which by the terms of the grant is re-

quired to make selection and receive patents therefor, shall make selections and file lists with the state auditor within one year from the date when the right to select shall accrue, but not thereafter. Upon the approval of said lists by said auditor, the governor shall immediately issue deeds for the same; but if there be no swamp lands certified or patented from which such selection can be made, then such company shall have one year from and after the date of the certifying of such lands within which to make its selection. If such railway company shall neglect or refuse to make selection within the time hereinbefore specified, the right to select shall terminate, and the said auditor shall forthwith select and set apart from the swamp lands of the state lying nearest such company's railway an amount of land sufficient to complete the grant, and no other or different lands than such as have been selected by the company within the time specified or set apart by the auditor shall be certified or conveyed to such company. (2677-2679)

2894. Sales, etc., of public land by municipal corporations—The governing board of any municipal corporation may grant, sell, convey, or lease any public grounds within its corporate limits to any railway corporation, subject to all the rights of the original proprietors of such grounds. (2680)

63-330, 351, 63+267, 65+649, 68+458.

2895. Purchase, lease, or control of one road by another—Any domestic or foreign railroad corporation may lease, purchase, or in any other way become the owner of, or may control, or hold the stock of, any other railroad company, whenever their respective roads can be lawfully connected and operated together so as to constitute one continuous line, with or without branches. Whenever such lease or purchase shall be made by a foreign corporation, it shall not be effectual for any purpose until such corporation shall have first complied with all the laws of this state pertaining to such corporations, when it shall have the same rights, powers, and privileges, and be subject to the same duties, obligations, and liabilities, in respect to the railroad so leased or purchased, as pertained to such road. The corporation so leasing or purchasing shall be subject to any law of this state now in force or hereafter enacted relating to the taxation of the property so leased or purchased. But no railroad corporation shall consolidate with, lease, or purchase, or in any way become the owner or have control of any other railroad corporation, or any stock, franchises, rights, or property thereof, which owns or controls a parallel or competing railroad to and with the railroad owned or controlled or operated by such leasing or purchasing railroad corporation; and the question whether any of such railroads are parallel or competing lines shall, when demanded by the party complaining, be decided by jury as in other civil actions. (2714, 2716, 2717; '99 c. 229)

68-542, 547, 71+706; 123 Fed. 692; 161 U. S. 646; 193 U. S. 197; 194 U. S. 57.

2896. Consolidation forbidden—The consolidation of the capital stock, lines, property, franchises, control, or the power of control, of two or more parallel and competing lines of railroad in the hands of any corporation, trustee, agent, or representative of any corporation, wheresoever situated, is hereby prohibited and made unlawful. ('03 c. 86)

2897. Consolidation permitted—Any domestic or foreign railroad corporation, upon such terms as may be agreed upon, may consolidate its stock and franchises with any other railroad corporation whose lines of railroad now or hereafter constructed within or without this state can be lawfully connected and operated with such first-named corporation, so as to constitute one continuous main line, with or without branches, and admit of the passage of trains over them without break or interruption, and may become one corporation under any name selected by them. A certificate stating the terms of consolidation shall be approved by each corporation by a vote, in person or by proxy, of the stockholders owning a majority of the stock, at a regular annual meeting thereof, or at a special meeting called for that purpose by not less than thirty days' personal notice, or by published notice at its principal place of business, stating the object of such meeting, and by mailing a copy of such

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notice to each stockholder whose residence is known, or by the written consent of a majority of such stockholders attached to the certificate. Before such consolidation shall be effective for any purpose, a copy of the certificate thereof, and of the record of such approval or consent, and a list of the stockholders of each corporation and the number of shares held by each, duly certified by its president and secretary under its corporate seal, shall be filed for record in the office of the secretary of state of this state and of each state or territory under whose laws the corporations so consolidating were organized. (2715)

194 U. S. 57.

2898. Rights and duties of consolidated corporation—Upon the filing for record of said copies, such corporations shall become merged in the new corporation, which shall thereafter be known by the name agreed upon. Within this state, such corporation shall succeed to all the rights, powers, franchises, contracts, privileges, and immunities, and be subject to the same duties, liabilities, and obligations in all respects as were granted to or imposed upon the original corporations; but all rights of creditors and all liens upon the property of either of the consolidating corporations shall be preserved unimpaired, and all the debts, liabilities, and duties of either shall thenceforth attach to the new corporation, and be enforceable to the same extent and in the same manner as if such debts, liabilities, and duties had been originally incurred by it. Such corporation shall be subject to the laws of this state and the jurisdiction of its courts in the same manner and to the same extent as domestic corporations. (2715)

36-85, 30+432; 36-481, 32+556.

2899. Method of combination—Any domestic railroad company authorized by law to consolidate its property and franchises, or any portion thereof, with the property and franchises or any portion thereof of another railroad company, or to purchase the railroad property and franchises, or any part thereof, of another railroad company, may effect such consolidation or purchase by acquiring the stock, bonds, or other securities of such other railroad company, and for the special purpose of acquiring the same may create, issue, or dispose of its own stock, bonds, or other securities, in addition to the amounts it is otherwise authorized to issue, to an amount not exceeding the actual value of the stock or bonds of such other company acquired by it. It may also create, issue, and dispose of such amounts of stock for any other authorized purpose as the board of directors may find necessary. Prior to the issue of any stock under the provisions of this section, the corporation shall file with the secretary of state a duly authenticated resolution of its board of directors, stating the number and par value of the shares so to be issued and the purpose of such issue. But no railroad company shall sell its capital stock for less than its full par value in money, property, work, or services, and no such company shall issue or sell any stock or do any act prohibited by any other law relating to such matters. (2715)

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2900. Aid in construction of connecting roads—Any domestic railroad corporation, heretofore or hereafter organized, may aid any other railroad corporation in the construction of its road, by subscription to its capital stock or otherwise, for the purpose of forming a connection with such other railroad; or any railroad corporation may lease or purchase any part or all of a railroad constructed by any other corporation whose lines of road are continuous or connected but not parallel with its own, upon any agreed terms and conditions; or any two or more railroad corporations whose lines are so connected may enter into any arrangement for their common benefit, consistent with, and calculated to promote the objects of, their organization; but no such aid shall be furnished, nor any purchase, lease, or other arrangement perfected, until a meeting of the stockholders of each such corporation shall have been had, and the holders of at least two-thirds of the stock represented at such meeting, in person or by proxy, and voting thereat, shall have assented thereto. (2721)

28-443, 10+594; 36-246, 265, 30+816; 68-542, 548, 71+706.

2901. Bonds—Funding indebtedness—Any domestic railroad corporation may borrow money, execute its bonds or promissory notes therefor, and secure payment thereof by mortgage or pledge of its property or income, or both, but the amount of its indebtedness or liability, exclusive of that so secured, shall not at any one time exceed two-thirds of the amount of its capital or the amount specified in its certificate of incorporation. Such corporation may issue bonds and promissory notes in lieu and in payment of outstanding bonds, bearing such rate of interest as may be agreed upon, and, if the certificate of incorporation so provides, one or more persons selected by the holders of such bonds may be admitted into the board of directors upon such terms and conditions and under such regulations as may be agreed upon between the corporation and its bondholders or their trustees. (2722)

Mortgages (52-246, 53+1151; 56-188, 57+471; 44-115, 46+301).

2902. Mortgages and deeds of trust—Telegraph and telephone companies may mortgage or execute deeds of trust of the whole or any part of their property and franchises to secure money borrowed by them for the construction and equipment of their lines and properties, and for other corporate purposes, and issue their corporate bonds in sums of not less than five hundred dollars, secured by such mortgages or deeds, and, if payable to bearer, negotiable by delivery, bearing interest at a rate not exceeding six per cent. per annum, and convertible into stock or not as may be deemed expedient, may sell them at such prices as they deem proper; and if said bonds shall be sold below their normal or par value they shall be valid and binding on the company, and no plea of usury shall be put in by, or allowed to, said company in any suit thereon. Such mortgages or trust deeds may by their terms include and cover after acquired property, real and personal, and shall be as valid and effectual for that purpose as if the property was in possession at the time of the execution thereof. ('02 c. 22).

2903. Rolling stock, etc.—Lien for purchase money—In any contract for the purchase and sale of railroad equipment or rolling stock, whether deliverable at once or at future stated times, by the terms of which the purchase money is to be paid wholly or partly after such delivery, it may be agreed that the title to such property shall not pass to the vendee until the purchase price shall have been fully paid, or that the vendor shall have and retain a lien thereon for the unpaid purchase money, notwithstanding delivery thereof: Provided, that the term of credit for purchase money, shall not exceed ten years from the execution of the contract. (2729)

2904. Same—Lease—Conditional sale—In any contract for the leasing of railroad equipment or rolling stock, the parties may stipulate for a conditional sale thereof at the termination of such lease, that the rentals, as paid or when paid in full, may be treated and applied as purchase money, and that the title to such property shall not vest in the lessee or vendee until the purchase money shall have been fully paid, subject, however, to the proviso in § 2903. (2730)

2905. Same—Contracts—Requisites of validity—Every such contract shall be acknowledged by the vendee or lessee as in the case of a conveyance of land, and shall be filed for record with the secretary of state and with the register of deeds of the county in which, at the time of its execution, the principal office or place of business of the vendee or lessee is situated in this state. Each locomotive, engine or car so sold or leased shall have the name of the vendor or lessor plainly marked on each side, or be otherwise so marked as to indicate the ownership thereof. And upon compliance with this section, such contract shall be valid and effectual, both in law and equity, against all purchasers and creditors. (2731, 2733)

2906. Record—Notice—Such mortgages or deeds of trust shall be recorded with the secretary of state, and also in the office of the register of deeds of each county through which the telegraph or telephone line runs, or in which it may hold land. To secure the right of all parties interested under such deeds and mortgages so executed and recorded, the personal property belonging or

appertaining thereto shall be deemed a part of the line and the record of such deeds and mortgages shall be notice of the rights of all parties in the real and personal property covered thereby. (2725, 2726)

2907. Preferred and special stock and income certificates—Any domestic railroad corporation may create, issue, and dispose of special and preferred stock and income certificates to such amounts, in such form, and for such purposes as may be determined by its board of directors, with the assent of the holders of at least three-fourths in amount of its then outstanding common capital stock. But no increase of any special or preferred stock or of any income certificates shall be made without the assent thereto of the holders of three-fourths in amount of the special or preferred stock or income certificates to be affected by such issue, as the case may be. (2734)

2908. Holders of bonds, etc., may vote for directors, when—Such corporation, in such manner, under such regulations, and to such extent as may be prescribed by its board of directors and assented to by the holders of at least two-thirds in amount of its then outstanding common capital stock, may confer upon the holders of bonds or other obligations issued to evidence or secure its indebtedness, or upon the holders of its special or preferred stock, or of its income certificates, or of any particular class thereof, or upon all or any of them, the right to vote for directors, and to choose from the stockholders, special, preferred, or common, or from the holders of the bonds or income certificates of such corporation, one or more members of its board of directors. (2735)

2909. Agreement as to control of property—Any domestic railroad corporation may enter into an agreement with the holders of its bonds or other obligations issued to evidence or secure its indebtedness, or with the holders of any particular class of such bonds or obligations, or with the holders of its special or preferred stock or income certificates, or with any particular class or portion thereof, in relation to the sale, lease, or control of the property and franchises of such corporation which shall receive the assent of the holders of two-thirds in amount of each class of special, preferred, and common stock and then outstanding income certificates, at a meeting of the holders of such stocks and certificates called for that purpose in the same manner as other stockholders' meetings are called; but a certificate of such assent, under the corporate seal, and a certified copy of the agreement so assented to, shall be filed with the secretary of state within thirty days after the meeting at which such assent was given, and a copy of the agreement shall be printed upon, or attached to, the class of bonds or other obligations, or the special or preferred stock or income certificates with the holders of which such agreement has been made, and also printed upon or attached to the certificates of common stock. (2736)

2910. Subscription books—Commencement of work—The corporators named in any certificate of incorporation, at their first annual meeting, or at a time designated by them before such meeting, may open books for subscription to the capital stock of such corporation, under such regulations as they shall prescribe; and when sufficient stock has been subscribed to justify the same, and the first instalments thereon paid in, the incorporators or directors may order work commenced, and they shall thereby become invested with all the rights, privileges, and franchises conferred by this chapter. (2737)

2911. Unpaid or fictitious stock—No domestic railroad corporation, or consolidated corporation existing in whole or in part within this state, nor any officer thereof, shall sell, dispose of, or pledge any shares of its capital stock, or issue any certificates of shares thereof, until such shares shall have been paid in full, or issue any stock or bonds, except for money, labor, or property, to the par value thereof actually received and applied to the purpose for which the corporation was organized; and all fictitious stock, dividends, increase of capital stock, or indebtedness shall be void. Every officer who shall issue, sell, pledge, or dispose of any shares or certificates of shares of capital stock contrary to the provisions hereof shall be guilty of a felony. (2743, 2746)

53 Fed. 889; 73 Fed. 914.

2912. Special report to railroad and warehouse commission—Every such railroad corporation, in the month of July in each year, shall file with the railroad and warehouse commission a special report, subscribed and sworn to by its president and treasurer, stating explicitly therein the number of shares of capital stock actually issued, sold, pledged, or disposed of by such corporation before the date of such report, the amount of capital stock issued during the preceding year, the amount received therefor in money, and the amount, if any, improperly received. Every violation of or failure to comply with any of the provisions of this section, and every false statement as to any matter herein required to be stated in such report, shall render the officers and directors of such corporation so violating or neglecting, or making or permitting any such false statement, guilty of a felony. (2744-2746)

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2913. Report to state auditor—In January of each year every domestic railroad corporation shall make a full report to the state auditor of the condition of its affairs for the preceding year, ending December 31, specifying therein the amount of its capital stock, the gross amount of its receipts during such year, the cost of repairs and its incidental expenses, the amount of its profits, and the dividends made, with such other facts as may be necessary for a full statement of its affairs and condition. The auditor shall present to the legislature, at each regular session thereof, an abstract of such reports for the two years immediately preceding. (2747)

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2914. May exercise franchise elsewhere—Every domestic railroad corporation may exercise all its rights, franchises, and privileges in any other state or country, subject to the laws thereof, and may also exercise therein any other or additional powers applicable to such corporation under the laws of such state or country. (2748)

2915. Connection with other roads—Any railroad company, in the location of its line of road, may cross, intersect, join, or unite its railroad with the constructed railroad of any other company at any point on its route. If the corporations cannot agree upon the amount of compensation to be paid therefor, the same shall be ascertained and determined by condemnation proceedings under the right of eminent domain, as in other cases; and, in case such companies shall disagree as to the place and manner of such crossing or connection, the district court, at the time of appointing commissioners in such condemnation proceedings, upon application of either party, shall prescribe the location and manner in which such crossing or connection shall be made, so as to effect the purpose of the petitioner and do the least injury to the owner. When such order is made, the petitioner, upon filing with the clerk a bond in such amount as shall be accepted by the owner, or as shall, upon reasonable notice, be approved by the judge of said court, conditioned to prosecute said petition with diligence and to pay the owner the amount adjudged by the court in such proceeding and to abide the order of such court in the matter, may immediately proceed to make and operate such crossing or connection. (2642)

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112-NW 14

Right not absolute. Court to determine whether crossing is required by public necessity (37-164, 33+701). Court not limited to precise location set forth in petition (35-461, 29+60). Place and manner of crossing must cause least possible injury consistent with accomplishment of purpose (39-162, 39+65). Power of court to impose conditions (50-300, 52+657). Effect of appeal (35-461, 29+60).

2916. Right of way over public ways—When, in the location of any railroad, it becomes necessary to occupy any road, street, alley, or other public way, the municipal corporation or other public authority owning or having charge thereof and the railroad company may agree upon the manner, terms, and conditions in and upon which the same may be used or occupied, or such corporation may appropriate so much of the same as shall be necessary by condemnation proceedings under the right of eminent domain. (2642)

2916
101-M - 133
112-NW 13

Inapplicable to private railroad (56-334, 57+1054), or street railway (83-275, 278, 86+103). Limited to tracks. Does not extend to depots, freight houses, etc. (63-330, 63+267, 65+649, 68+458). Occupancy of street by railroad does not relieve city of care thereof (32-308, 20+320). Nature of right acquired by railroad (22-149). Consent of city does not relieve railroad of obligations to abutting owners (18-260, 236; 17-215, 188).

2917
09 - - 482
909A

2917. Power to acquire property—Every railroad corporation shall have power to acquire, by purchase or condemnation, all necessary roadways, spur and side tracks, rights of way, depot grounds, yards, grounds for gravel pits, machine shops, warehouses, elevators, depots, station houses, and all other structures necessary or convenient for the use, operation, or enjoyment of the road, and may make, with any other railroad company, such arrangements for the use of any portion of its tracks and roadbeds as it may deem necessary. (2645)

37-164, 168, 33+701; 67-339, 346, 69+1065; 76-302, 79+304.

2918. Extensions and branches—Any railroad corporation may extend its road from any point named in its charter or certificate of incorporation, or may build branch railroads from any point on its own line, or on the line of any other railroad connecting or to be connected with its road, whenever it shall have secured the use of such other road between such points and the connection with its own road by lease or agreement for a term not less than ten years from its date. Before making such extension or building such branch road, such corporation shall designate the route thereof by resolution of its board of directors or as provided in § 2922. Such resolution shall be entered in its records, and a duly certified copy thereof and a plat or map signed and verified by its president and secretary shall be filed for record with the secretary of state; whereupon such corporation shall have and exercise all the rights, powers, franchises, and privileges over such extension or branch that it has over its main line. Nothing herein shall apply to street railways. (2749; '01 cc. 225, 248)

81-265, 83+1086, 84+101, 742.

2919. Contractor's bond—Liability of company—Any railway contracting for the construction or repair of its road shall take from the contractor a sufficient bond, conditioned that he will pay all laborers, mechanics, and other persons performing any part of the work, all just debts due them or incurred in carrying on such work, which bond or a certified copy thereof shall be filed with the register of deeds of each county where any part of the work is done. All persons to whom such contractor shall be indebted for any such work, and such railway company in case it shall have paid any debt, claim, or demand as hereinafter provided, may bring an action on such bond for the price of such work or amount of such payment. If the contractor giving the bond shall fail to pay any indebtedness for such work or services, or if any railway company shall fail to take and file such bond, such company shall be liable for the amount of all such debts incurred by such contractor under or pursuant to such contract: Provided, such laborers, mechanics, or other persons shall give the notice and take the action prescribed in § 2920. (2764)

34-32, 33, 24+289.

2920. Liability of company after notice—Whenever a contractor or subcontractor employed by a railway company in the construction or repair of its railway shall be indebted to any laborer or mechanic for services rendered, such railway company shall be liable to pay such laborer or mechanic the amount of such debt, provided he shall have given notice of his claim to such company within sixty days after said debt accrued. Such notice shall be in writing, specify the particular nature and amount of the debt, claim, or demand, and be delivered to the secretary or chief engineer of such company, or to the engineer in charge of the construction or repairing of that portion of the road upon which such labor was performed, either personally or by leaving the same at the office or usual place of business of such secretary or engineer; but no action shall be maintained against any railway company under the foregoing provisions unless the same shall be commenced within sixty days after the service of notice as aforesaid. (2765, 2766)

2921. Alteration of route—The board of directors of any railroad corporation, by a vote of two-thirds of their whole number, may alter the route of their road, or any part of the road, or any extension or branch thereof as constructed, whenever they are of opinion that the line can be improved thereby;

but no railroad, whether in the hands of the original incorporators or of any other person or corporation, shall be diverted from any county, town, city, or village which in its corporate capacity shall have extended aid to such road, without the consent of such municipality. Such consent shall be evidenced by a vote of two-thirds of the legal voters of such municipality, at an election held for that purpose. No such alteration shall be made in any city or village after the road shall have been constructed therein, unless the same shall have been sanctioned by a vote of two-thirds of the governing body of such municipality. Before making any such alteration, unless the route is designated as provided in § 2922, the board of directors shall designate the route thereof by a resolution entered in its records and filed for record with the secretary of state. (2750)

67-339, 69+1085; 81-265, 269, 83+1086, 84+101, 742.

2922. Alterations and extensions of route—Branches—Any railroad company existing in whole or in part under the laws of this state, or authorized to own and operate a railroad in this state, may by an affirmative vote of at least two-thirds of its directors empower its president and chief engineer to designate the route of any extension or branch of its road, and of any alteration of its line or route, but before making or building any such extension or branch or alteration, or condemning any land therefor, the president and chief engineer of the railroad company shall in writing, by map, courses and distances, or otherwise, designate the route thereof and, after having certified to the correctness thereof, file such writing so certified with the secretary of the railroad company, who shall record the same in a book to be by him kept for such purposes, and the railroad company shall obtain a copy of that record; duly certified by its president and secretary and attested by its seal, and file such certified copy with the secretary of state, to be by him recorded, and thereupon such corporation shall have the same right to make any and all such alterations and to build any and all such extensions and branches as it would have if it had been authorized so to do by its charter or articles of incorporation. ('01 c. 248)

2923. To keep general office in state—Every domestic railroad corporation shall establish an office at some point within this state, on the line of its road, to be known as its general office, and keep in such office some officer or agent, upon whom service of all legal process against such company may be made, and who shall be authorized to hear and determine all questions relating to its current business arising within the state. There shall be kept in such office at all times the original minutes of the board of directors or executive committee, and a list of its stockholders, or a true copy thereof, corrected from time to time so as to show all transfers and changes. (2759, 2760)

37-375, 377, 34+593.

2924. Land grant railroad companies—Every land grant railroad company shall keep at some public office within this state the originals, or copies, of all books, papers, and records of every description relating to lands sold, contracted, incumbered, or owned by it, so as to show clearly all material matters connected with its grant and the management of its lands. Such books and papers shall be open to inspection by the state auditor, railroad and warehouse commissioners, or any agent appointed by the governor for that purpose. Every such corporation, failing to comply with the provisions of this section and § 2923, shall forfeit to the state five hundred dollars for each month it shall fail to maintain the offices specified therein or either of them. Proceedings to recover such forfeiture shall be prosecuted by the attorney general in the name of the state. (2761, 2762)

2925. Annual meetings, how called—Who may vote—Every domestic railroad corporation shall annually call and hold a meeting of its stockholders, for the purpose of electing directors and transacting any other business which may lawfully be done thereat. Such meeting shall be called and held in the manner and at the time, if any, prescribed in its charter or certificate of incorporation or in its by-laws. Whenever no time is fixed in the charter, certif-

icate, by-laws, or by statute, such meeting shall be held on the first Monday of June at a place on the line of its road. Four weeks' published notice of the time and place of meeting shall be given by the secretary in the county of its principal place of business. If for any reason the secretary shall fail to give such notice, the same may be given by any director. The stockholders attending such meeting may organize and by a majority vote of those present elect directors and transact all other business proper to be done at its annual meeting. At any meeting of stockholders they may vote in person or by proxy issued within the preceding year, and any person or class of persons having by law a right to vote for directors shall be deemed stockholders for the purposes of this section. (2763)

Effect of meeting out of state (46-454, 49+197).

101-M - 150

2926-2927
101-M - 197
101-M - 217
112-NW 395

2926. Right of eminent domain in certain cases—Any public service corporation shall have the right to obtain by condemnation, under the right of eminent domain, any land, or any right over, through, or across the same, or any easement therein, necessary for the convenient prosecution of its enterprise; and any telegraph or telephone company may in the same manner acquire the right to construct its lines over, along, and upon the right of way and lands of any railway company upon making just compensation therefor to such company; but such right shall at all times be subject to the right of the railway company to use its right of way and lands for railway purposes, and said telegraph or telephone lines shall be so located, constructed, and maintained as not to interfere with the usual operation of such railway. (2604; '01 cc. 301, 360)

First clause a repetition (See § 2842). Right of telephone company to acquire rights in railroad right of way (76-334, 79+315).

2927. Use of public roads—Restriction—Any water power, telegraph, telephone, pneumatic tube, or electric light, heat, or power company may use public roads for the purpose of constructing, using, operating, and maintaining lines, subways, canals, or conduits, for their business, but such lines shall be so located as in no way to interfere with the safety and convenience of ordinary travel along or over the same; and in the construction and maintenance of such line, subway, canal, or conduit the company shall be subject to all reasonable regulations imposed by the governing body of any town, village, or city in which such public road may be. Nothing herein shall be construed to grant to any person any rights for the maintenance of a telegraph, telephone, pneumatic tube, or electric system within the corporate limits of any city or village until such person shall have obtained the right to maintain such system within such city or village, or for a period beyond that for which the right to operate such system is granted by such city or village. (2604, 2641; '01 cc. 301, 360)

Right of city to require telephone wires to be placed under ground (81-140, 83+527, 86+69). Telephone line in highway not an additional servitude (60-539, 63+111). Vested rights acquired by company (81-140, 83+527, 86+69; 84-486, 87+1127).

TELEGRAPH AND TELEPHONE COMPANIES

2928. Telegraph companies common carriers—Persons and corporations engaged in the business of transmitting messages by telegraph lines are common carriers, and as such shall serve all persons, without discrimination or preference, for reasonable compensation; and every contract, notice, or condition stipulating for exemption from liability for the consequences of their neglect shall be void. (2635, 2636)

2929. Delivery of message—When the party to whom a message is addressed resides or does business within the corporate limits of any city or village where a telegraph office is situated, the same shall be promptly delivered at his place of residence or business, if the same is known or can with reasonable diligence be ascertained. Otherwise he shall be notified by the first mail where it can be found. (2637)

2930. Precedence of messages—Messages delivered to the owner or agent of any telegraph line operated in whole or in part within this state shall be transmitted in the order in which they are received, except that government dispatches and messages relating to the movement of railroad trains, to cases of sickness or death, and to the administration of criminal laws shall take precedence if the sender shall so request. (2638)

2931. Liability for damages—If any person or corporation owning or operating a telegraph line wholly or partly within the state shall fail to transmit any message within a reasonable time, or to exercise due diligence to that end, after its reception, or shall fail to deliver any message to the party to whom it is addressed within a reasonable time after its arrival at the place of destination, he or it shall be liable in a civil action at the suit of the party injured for all damages sustained by reason of such neglect or omission. The company delivering the message shall state plainly thereon the exact time when it was received at the original point for transmission. (2639, 2640)

Does not authorize damages for mental suffering (58-252, 59+1078).

2932. Who may construct telegraph lines, etc.—Natural persons, co-partnerships, and associations may construct, maintain, and operate telephone and telegraph lines, and shall have and possess the same rights, powers, and privileges with reference thereto as corporations formed for such purpose. ('01 c. 231)

BOOM COMPANIES

2933. Corporations for driving logs—Corporations formed for the purpose of driving logs may improve any stream or its tributaries, upon which no other person or corporation has constructed any dam or other improvement, by the construction of sluice ways, booms, dams, and other works for the driving, holding, and handling of logs therein, but shall not place any obstruction to navigation in such stream below the head of steamboat navigation. (2633)

See 1905 c. 89

2934. Powers and privileges—Every such corporation which shall so improve a stream, keep it in repair, and operate its works so as to render the driving of logs therein reasonably practicable, may collect reasonable and uniform tolls upon all logs, lumber, and timber driven, sluiced, or floated on the same, and may take possession of all logs put into such streams or upon roll-ways so as to obstruct such stream or impede the driving and delay others in driving logs and lumber placed therein, and drive them down and out of the stream, and collect from the owner or party controlling the same reasonable compensation therefor; and shall also, at the request of the owner, take charge of any logs or lumber put into said stream, and drive the same down and out of such stream, or as far as their improvements extend, and charge and collect reasonable compensation therefor. If any stream so improved is in whole or in part the boundary between this and an adjoining state, such corporation, with the consent of two-thirds of its stock, may purchase and hold stock in any corporation in such adjoining state created for similar purposes upon the same stream, or consolidate or otherwise unite with it whenever its purposes can be better effected thereby. All dams and other works constructed under the provisions of this section and § 2933 shall be so built and operated as to expedite the driving and handling of logs and lumber, and the corporation making such improvements shall not stop logs or lumber destined for points below its works on said stream except where dams have been constructed to accumulate water for sluicing logs and flushing the stream below the same; in which case it shall not detain logs in any part of the stream so as to form a jam or prevent the prompt delivery of logs destined for points below the works constructed by such corporation. (2633)

See 1905 c. 89

Liability to riparian owner for negligence (71-206, 73+847). Right to collect tolls (75-335, 77+939).

CEMETERY ASSOCIATIONS

2935. Existing and new cemeteries, how governed—All public cemetery associations existing at the time of the taking effect of the Revised Laws shall

2933-2934
100-M - 39
101-M - 210

2934
107-NW 405
5-LRA
(n s) 638

2935
07 - 16
07 - 392

2935-2966
09 - 165
09 - 327

continue under the forms of organization adopted by them, respectively, and shall retain all the rights and powers then possessed. All cemetery associations hereafter formed and all private cemeteries hereafter established shall be organized and governed solely by the provisions of this chapter applicable thereto.

2936. Corporate powers—A corporation may be formed for the procuring and holding of lands exclusively for the purposes of a public cemetery, and such corporation may acquire and manage all real and personal property necessary or proper for the establishment, embellishment, care, and management of a cemetery, and may construct and operate thereon a crematory and other proper means of disposing of the dead, agreeably to the request of relatives or others entitled to control the disposition thereof. It may also sell and convey real or personal property lawfully acquired but not needed for cemetery purposes. (3086-3092; '97 c. 132; '01 cc. 220, 224)

54-440, 56+56; 93-191, 101+161.

2937. Actuary—Duties—Every such corporation, in addition to its ordinary corporate officers, shall annually appoint an actuary, or provide by its by-laws, that its secretary shall perform the duties of such office. The actuary shall keep a register of burials, in which he shall enter the date of burial or cremation, and the name, age, sex, nativity, and cause of death, of every person interred or cremated in such cemetery, so far as such facts can be ascertained from the friends, attending physician, or undertaker in charge, and, in case of a pauper, stranger, or criminal, from the public official directing the burial. Such record shall be open to public inspection, and he shall furnish to the state board of health and to local health officers, when so requested, an accurate summary of such record during any specified year. (3093, 3094; '97 c. 132)

Register of burials (85-498, 506, 89+872).

2938. Failure to keep register—Forfeiture—Every actuary, or secretary performing the duties of an actuary, failing to keep such register of burials, and to record therein all interments and cremations, for every such offence shall forfeit not less than two nor more than ten dollars for the benefit of the school fund of the district in which such cemetery or crematory is situated. (3095; '97 c. 132)

2939. Land, how acquired—Extension—Every such corporation may take and hold, by purchase or gift, within the county of its location, not exceeding three hundred acres of land to be actually used and occupied exclusively for the burial or cremation of the dead and for purposes necessary or proper thereto. Such land, or such portion thereof as may from time to time be required for that purpose, shall be surveyed and divided into lots of such size as the trustees shall determine, with such avenues, alleys, and walks as they deem proper, and a map of such survey shall be filed for record with the register of deeds of the county of its location; and whenever the corporation desires to enlarge its cemetery, and cannot agree with the owners of the land desired therefor, the same may be acquired under the power of eminent domain: Provided, that public necessity, propriety and convenience require such proposed enlargement, which together with the boundaries thereof shall be first established and determined as issues of fact. (3096; '01 c. 220)

70-436, 73+153; 93-191, 101+161.

2940. Sale of lots—After the filing of the map mentioned in § 2939, the trustees may sell and convey the lots as designated on such map, upon such terms and subject to such conditions and restrictions as they shall prescribe. Every conveyance of any such lot shall be expressly for burial purposes and no other, and shall be in the corporate name of the association, and signed by its president or vice-president and by its treasurer or secretary. (3097; '01 c. 224)

85-498, 89+872.

2941. Funds, how used—Grants in trust—The proceeds of the sales of lots and of personal property, not invested as hereinafter provided, shall be applied

solely to the payment of debts incurred in the purchase of cemetery grounds and property, to fencing, improving, and beautifying such grounds and the avenues leading thereto, and to defraying the necessary expenses of the management and care of the same. All real or personal estate given or granted to such association for the maintenance of any monument or the keeping or improvement of any grounds within the cemetery shall remain forever to the uses for which it was given or granted. (3103; '01 c. 220)

85-498, 89+872.

2942. "Associates" defined—Vacancies—Annual meeting—The word "associates," as used herein, shall mean the original incorporators and their successors. The certificate of incorporation may provide that vacancies among the associates shall be filled by the remaining associates, and that at all elections after the first the trustees shall be chosen from such associates, or it may provide that they shall be chosen by and from the lot owners. Whenever there are two or more owners of a lot, they shall select one to represent them and to vote at such election. The trustees may fill any vacancy occurring in their own number for the unexpired term. Public notice of every annual election shall be given in the manner prescribed in the by-laws. If for any reason the annual election be not held on the day fixed in the certificate of incorporation, the trustees may appoint another time not more than sixty days thereafter, and give public notice thereof; but the term of office shall be the same as if elected at the annual election. (3091, 3099, 3100, 3101)

2943. Report of trustees—At each annual meeting the trustees shall make a report in writing of their doings, and of the affairs of the association, with an account of all receipts and expenditures during the preceding year. (3102)

2944. Action for damages—Every such cemetery association may recover, in its own name, all damages resulting from injury to or destruction of any stone, monument, building, fence, railing, or other work for protection or ornament, or any tree, shrub, or plant within the limits of such cemetery. (3104)

2945. Employees—Appointment—Powers—The trustees or officers of any cemetery association may appoint such superintendents, watchmen, gardeners, and agents as they may deem advisable, and, upon taking and subscribing an oath similar to that required from constables, every such appointee shall have all the rights and powers of a police officer within and adjacent to the cemetery grounds. (3106)

2946. Exemption from taxation, etc.—The lands and property of any such cemetery association shall be exempt from all public taxes and assessments, and shall not be sold on execution against such association or any lot owner. The owners of cemetery lots, their heirs or legal representatives, may hold the same so exempt so long as they remain appropriated to the use of a cemetery; and no road or street shall be laid through such cemetery, or any part of the lands of such association, without the consent of the trustees. (3107)

36-529, 32+781; 54-440, 445, 56+56; 85-498, 506, 89+872; 93-191, 101+161.

2947. Lots inalienable—Conveyance—Whenever any lot in such cemetery has been sold and conveyed for burial purposes, it shall forever thereafter be inalienable except as hereinafter provided. Before any interment shall have been made therein, or after all bodies therein buried, if any, shall have been lawfully removed, the owner of such lot may sell, convey, and release the same to the association, and when, by the consent of the owner, any lot has been solely used by some other person as a family burial place, such owner, with the consent of the governing body of the association, may convey the same to the person so using it. The association may use any of its funds for such repurchase, and may hold said lot or again sell and convey the same. (3108; '95 c. 39)

Not subject to mortgage (54-440, 56+56; 67-131, 69+708).

2948. Descent of lots—Upon the death of a lot owner, such lot, unless otherwise disposed of by will as provided in § 2949, shall descend as follows:

1. To the surviving spouse of decedent.

2. If there be no living spouse, then to the eldest living son of decedent.
3. If there be no living son, then to the eldest living daughter.
4. If there be no living daughter, then to the youngest brother of decedent.
5. If there be no living brother then to the youngest sister of decedent.
6. If there be no surviving spouse, son, daughter, brother, or sister of decedent, then to the association in trust for the uses of a burial lot for the decedent and such of his relatives as the trustees shall deem proper.

But such association, or, with its consent, any person to whom such lot shall so descend, may grant and convey the same to any one of decedent's sons, daughters, brothers, sisters, or grandchildren, and such grantee shall thereafter be deemed the owner thereof. (3108; '95 c. 39)

2949. Disposition by will—Any owner of a cemetery lot may dispose of the same by will to any one of his relatives who may survive him, or to such cemetery association, in trust, as specified in § 2948; but no such lot shall be affected by any testamentary devise unless the same be specifically mentioned in the will. No interment shall be made in any such lot, except by written consent of the association, of the body of any person who was not, at the time of death, the owner thereof, or a relative of the owner by blood or marriage. Every such association shall keep a record of all deeds, conveyances, judgments, decrees, or other documents affecting the title to lots in such cemetery, copies of which, certified by the secretary, shall be received in evidence by the courts. (3108; '95 c. 39)

2950. Care and improvement fund—Every cemetery association which has established and maintains a public cemetery of more than twenty acres in extent, by a vote of two-thirds of its trustees taken at any regular meeting thereof, may provide for the establishment of a fund, the income of which shall be devoted to the care, maintenance, and improvement of such cemetery. Such fund shall be designated as "The Permanent Care and Improvement Fund." (3109; '97 c. 339) See 1975 c. 197

2951. Trustees of fund—The trustees shall thereupon choose by ballot and appoint by deed of the association a board of not less than three nor more than five trustees of such fund. They shall be resident freeholders of this state during all the time they exercise the powers of such trust. Upon failure of any of those appointed to qualify within thirty days after appointment, the one or more who shall have qualified shall appoint by deed other persons to be trustees in their places. And on failure of any person so appointed to qualify within thirty days another shall be appointed in like manner; but every appointment to fill a vacancy shall be by unanimous vote of those acting: Provided, that instead of appointing such board the trustees of the association may designate any trust company of the state to act as such trustee during their pleasure. All instruments of appointment of such trustees shall be recorded with the secretary. (3110, 3116; '03 c. 150 s. 1)

2952. Powers—Term of office—Accounting—Upon the appointment and qualification of trustees of such fund, or upon the designation of a trust company to act as such trustee, the title to the funds included in said trust, and all the rights, powers, authorities, franchises, and trusts thereto appertaining, shall at once vest in such board, or in the part thereof qualifying within thirty days, or in the corporation so designated. The term of office of the trustees of such fund shall be for life. When a trust company has been appointed, a board of trustees of the fund, or another like corporation, may be appointed in its place, and on notice of such appointment the corporation so acting shall render to its successor an account of its trusteeship, and deliver to it all money, papers, and property in its possession or control belonging or appertaining to such fund. (3110, 3111; '03 c. 150 s. 1)

2953. Bonds—Before entering upon his duties, each person chosen as a trustee of such fund shall give bond to the association in a sum not less than five thousand dollars, and at least equal to one-third the amount of the fund at that time, conditioned for the faithful discharge of his trust. Upon July 1 in each even-numbered year every trustee shall give a new bond, in amount

and with conditions as aforesaid. Every such bond shall be approved by a judge of the judicial district in which such cemetery or some part thereof is situate, and filed with the treasurer of the association. Failure by any trustee to renew his bond within thirty days after the time hereinbefore specified shall be a sufficient ground for his removal on application of any person interested. (3112)

2954. Surviving trustees—Vacancies—In case of the death, resignation, disability, or removal of one or more of the trustees of such fund, the trust shall at once vest in the remaining trustees, who shall forthwith fill the vacancies by appointment. Every newly appointed trustee, upon qualification, shall succeed to an equal share in all the rights and duties of such board. (3113, 3114)

2955. Organization of new board—In case of the death, removal, resignation, or disability of all the members of such board, the trust, until the organization of a new board, shall vest in the district court of the county in which such cemetery is situate. The board may be reconstituted by such court, upon application of any person interested and such notice as it may direct. The trustees so appointed, upon qualifying, shall become vested with all the rights and powers of the original board. Every vacancy in the board continuing for one year may be filled by such court. (3115)

2956. Fund, how constituted—Twenty per cent. of the proceeds of all sales of cemetery lots made after the vote of the trustees to establish said care and improvement fund shall be paid over to such board or trustee, on January 1, April 1, July 1, and October 1 in each year, until the principal of said fund shall amount to at least one hundred thousand dollars; and any other income or funds of the association, in excess of its liabilities, may be added to such fund by a two-thirds vote of its trustees. But the principal of such fund shall in no event exceed five thousand dollars for each acre of the cemetery, nor one million dollars in the aggregate. (3118; '03 c. 150 s. 2)

2957. Investment—Income—Unexpended balances—The principal of such fund shall remain intact and inviolate, and may be invested in the same securities in which savings banks are by law permitted to invest, and not otherwise. The trustees thereof, on January 1 and July 1 in each year, shall turn over to the association all income arising from such fund, which shall be used solely for the care, maintenance, and improvement of the cemetery and the avenues leading thereto; but in case any portion of such income remains unexpended and unappropriated for one year after being so paid over, it shall be returned to the trustees of the fund and become a part of the principal. (3119-3121)

2958. Compensation—Every trustee of such fund shall receive five dollars for each day actually employed in the duties of such trust, but not exceeding one hundred dollars in any one year. Such fees shall be paid out of the general funds of the association until such trust fund reaches one hundred thousand dollars, or two thousand dollars for each acre of the cemetery. Thereafter the same shall be paid out of the income fund. A corporation acting as trustee may receive for its services as such any yearly compensation agreed upon, not exceeding five per cent. of the income. (3122)

2959. Secretary—Annual report—When such fund is in the care of a board of trustees, the secretary of the association shall act as its secretary and keep a full record of its proceedings. Such board, on November 1 each year, shall make a full report of the condition of the fund to the trustees of the association, which report shall be open to the inspection of all lot owners. (3123, 3124)

PRIVATE CEMETERIES

2960. Plat and record—Any private person and any religious corporation may establish a cemetery on his or its own land in the following manner: The land shall be surveyed and a plat thereof made, upon which all streets, alleys, public grounds, blocks, and lots, and the dimensions and number of each, shall be given, with the letter or figure by which each block is designated. A stone or other monuement shall be established to mark one corner of such

cemetery, and its location shall be designated on the plat. Such plat and the correctness thereof shall be certified by the surveyor, his certificate indorsed thereon, and with such indorsement shall be filed for record with the register of deeds. (3130-3132; '03 c. 63 s. 1)

See 1905 c. 38

2961. Effect of recorded plat—When such plat has been recorded, every donation or grant of lands therein to the public, to any religious corporation, or to any individual, shall be deemed a conveyance of such lands, subject to the conditions and restrictions, if any, contained therein. Every conveyance of such lots shall be expressly for burial purposes, and the lands designated on the plat as streets, alleys, ways, commons, or other public uses shall be held by the owner of the cemetery in trust for the uses and purposes thereon indicated. (3133)

05 2962 38

2962. Religious corporations may acquire existing cemeteries—Any religious corporation, or two or more together, may acquire by gift or purchase the cemetery lands and property of any cemetery association or private cemetery, and every such association, and the owner of any private cemetery, are hereby empowered to convey to religious corporations any cemetery land or property. ('03 c. 63 s. 2)

2963. Conveyance of lots—Every religious corporation owning such cemetery may sell and convey lots therein for burial purposes only. Deeds thereof may be executed by the treasurers of such corporations, or by one or more of the trustees thereunto authorized by resolution duly adopted by its board of trustees. ('03 c. 63 s. 3)

2964. Damages—Discharge of firearms—Every person who shall wilfully destroy, mutilate, injure, or remove any tombstone, monument, or structure placed in any cemetery, or any fence, railing, or other work erected for protection or ornament, or any tree, shrub, or plant within the limits thereof, and every person who, without authority from the trustees or owner, shall discharge any firearms upon or over the grounds of any cemetery, shall be guilty of a misdemeanor. (3104, 3105)

2965. Exemptions—All lands, not exceeding eighty acres in extent, so laid out and dedicated as a private cemetery, shall be exempt from public taxes and assessments, and shall not be liable to levy and sale on execution, or to be applied in payment of the debts of any owner thereof, so long as the same remains appropriated to the use of a cemetery; and no road or street shall be laid through the same without the consent of the owners. (3134)

85-498, 506, 89+872.

2966. Vacation—Change of name—Upon application of the owners of such cemetery, the district court of the county in which it is situate may alter or vacate the same or any part thereof, as in the case of town plats. Upon like application, and upon such notice as the court may direct, it may change the name of such cemetery. (3135; '01 c. 36)

FINANCIAL CORPORATIONS

GENERAL PROVISIONS

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2967. Financial corporations defined—A bank is a corporation under public control, having a place of business where credits are opened by the deposit or collection of money and currency, subject to be paid or remitted upon draft, check, or order, and where money is advanced, loaned on stocks, bonds, bullion, bills of exchange, and promissory notes, and where the same are received for discount or sale; and all persons and copartnerships, respectively, so operating, are bankers. A savings bank is an institution under like control, managed by disinterested trustees solely authorized to receive and safely invest the savings of small depositors. A trust company is a corporation under like control, authorized, within prescribed limitations, to act as a safe deposit company, trustee or representative for or under any court, public or private corporation, or individual, and as surety or guarantor. A building and loan as-

sociation is a corporation under like control, authorized solely to accumulate funds to be loaned to members to assist them in acquiring homes.

2968. Supervision by examiner—Every financial corporation shall be at all times under the supervision and subject to the control of the public examiner. At least annually, and as much oftener as he deems it necessary, without previous notice, such examiner, his deputy or assistant, shall visit and examine the business and offices of every such corporation, verify its books, vouchers, and papers, and ascertain its financial condition and ability to perform its functions and fulfil its obligations, and wherein, if at all, it has violated any provision of law, and determine what, if any, further action shall be taken in the premises. For the purpose of making such examination he is authorized to enforce the attendance as witnesses of persons whose testimony is desired, and the production of books and papers, by subpoena or attachment, and may administer oaths to witnesses and compel them to testify. If the examiner is of opinion that the further operation of such corporation is hazardous to public interests, he shall forthwith take possession of its property, and report the matter to the governor for appropriate action. (413; '02 c. 5)

2969. Voluntary liquidation—Any such corporation, by a majority vote of its directors, or a vote of three-fourths of its stock at any regular or special meeting of its stockholders, with the written consent of the public examiner, may voluntarily go into liquidation. Notice of such vote and of the consent of the examiner shall be served by mail upon each stockholder at his last recorded address. Subject to the approval and under the direction of the examiner, such corporation may adopt any lawful plan for closing up its affairs, as nearly as may be in accordance with its original plans and objects. ('01 c. 233 s. 20)

2970. Unclaimed dividends on liquidation—Upon the liquidation of any such corporation, whether voluntary or by order of court, if any dividends or any moneys set apart for the payment of claims remain unpaid, and the places of residence of the owners thereof are unknown to the liquidating officer, he may pay the same into the state treasury as hereinafter provided. Whenever the public examiner shall be satisfied that the process of liquidation should not be further continued he may require the receiver or other liquidating officer to make and certify quadruplicate lists of any such unclaimed dividends or other moneys, specifying the name of each owner, the amount due him and his last known address. Upon one of such lists, to be retained by the liquidating officer, the examiner shall indorse his order that such unclaimed moneys be forthwith deposited in the state treasury. When so deposited, one of said lists shall be delivered to the state treasurer and another to the state auditor and the liquidating officer shall file with the examiner such records and proofs concerning said claims as he may have, which shall thereafter remain on file in the examiner's office. The treasurer shall execute upon the list retained by the liquidating officer a receipt for such moneys, which shall operate as a full discharge of such officer on account of such claims. At any time within ten years after such receipt, but not afterward, the claimant may apply to said examiner for the amount so deposited for his benefit, and upon proof satisfactory to the governor, the attorney general and the examiner, or to a majority of them, they shall give an order to the auditor to issue his warrant upon the treasurer for such amount, and such warrant shall thereupon be issued. If no such claim be presented within ten years the examiner shall so note upon his copy of said list and certify the fact to the auditor and treasurer who shall make like entries upon the corresponding lists in their hands; and all further claims to said moneys shall be barred. ('03 c. 14)

2971. Consolidation—Any such corporation in course of liquidation may, with the consent of the public examiner, consolidate with any other like corporation, upon such terms as may be authorized by their respective boards of directors, with the consent of a majority of the stock, and may transfer to such corporation its entire assets, subject to its existing liabilities. ('95 c. 145 s. 26; '01 c. 233 s. 20)

2972. Selection of name—Before execution of the certificate of incorporation of any such corporation, its proposed name shall be submitted to the public examiner, who shall compare it with those of corporations operating in the state, and if it is likely to be mistaken for any of them, or to confuse the public as to the character of its business, or is otherwise objectionable, additional names shall be submitted until a satisfactory one is selected, whereupon he shall issue his certificate of approval thereof. ('95 c. 146)

2973. Certificate, how accompanied—The certificate of incorporation, when presented to the examiner, shall be accompanied, in the case of a bank, with the certificate of a solvent bank in this state of the deposit therein in cash to the credit of the proposed bank, and payable upon its order when countersigned by the examiner, of an amount equal to its capital stock. In the case of a reorganization of a former national bank, it shall also be accompanied with the written consent of the holders of a majority of its former capital stock. In the case of a savings bank, it shall be accompanied with proof of four weeks' published notice of the intention of the incorporators to organize the same, specifying its proposed name and location, and the names of the proposed incorporators, and that a majority thereof reside in the county of its proposed location, and a sworn declaration by each proposed trustee that he will perform his duties as such to the best of his ability, according to law, with proof of the record of such declaration with the register of deeds; and if there is a savings bank organized and doing business in such county a copy of such notice shall be served by mail on such bank at least fifteen days before the filing of such certificate. (2541; '95 c. 145 s. 28)

2974. Examiner's certificate—Thereupon, if the examiner is satisfied that such corporation has been organized for legitimate purposes, and under such conditions as to merit and have public confidence, and that all provisions of law applicable to every branch of business in which, by the terms of its certificate, it is authorized to engage have been complied with, he shall so certify. When the original certificate, with proof of publication thereof, and the certificate of the secretary of state to the regularity of its incorporation, shall be filed with the examiner, he shall, within sixty days thereafter, execute and deliver to it his certificate of authority. (2539, 2540, 2546, 2549)

2975. By-laws to be filed with examiner—Within ninety days after the adoption of by-laws or any amendment thereof, a certified copy of the same shall be filed with the public examiner. Every such corporation heretofore organized shall file such copy within ninety days after the Revised Laws take effect.

2976. Right to acquire and hold real estate—Save as otherwise specially provided, the entire cost of land and buildings for the transaction of the business of such a corporation, including premises leased to others, shall not be more than as follows, assets other than cash being taken at cash market value: For a bank or a trust company, twenty-five per cent. of its existing capital and surplus; for a savings bank, fifty per cent. of its net surplus; for a building and loan association, five per cent. of its net assets. Any such corporation may change its location, dispose of its place of business, and acquire another, upon the written approval of the examiner. (2563; '95 c. 145 s. 17)

2977. Schedule of fees—All banks organized under the laws of this state shall pay annually, on or before June 30, into the state treasury, the following sums: Those having a paid-up capital of fifty thousand dollars or less, ten dollars; of more than fifty thousand dollars and not exceeding one hundred thousand dollars, twenty dollars; of more than one hundred thousand dollars and not exceeding three hundred thousand dollars, twenty-five dollars; of more than three hundred thousand dollars and not exceeding four hundred thousand dollars, thirty-five dollars; of more than four hundred thousand dollars and not exceeding five hundred thousand dollars, forty dollars; of more than five hundred thousand dollars and not exceeding six hundred thousand dollars, fifty dollars, and of more than six hundred thousand dollars, seventy-five dollars. All trust companies so organized shall so pay the following

sums: Those having a paid-up capital of one hundred thousand dollars and not exceeding two hundred and fifty thousand dollars, twenty-five dollars; of more than two hundred and fifty thousand dollars and not exceeding four hundred thousand dollars, forty dollars; of more than four hundred thousand dollars and not exceeding five hundred thousand dollars, fifty dollars, and of more than five hundred thousand dollars, seventy-five dollars. All general building and loan associations shall so pay for the first one hundred thousand dollars of their assets, or fractional part thereof, twenty dollars; for the next five hundred thousand dollars, ten dollars for each one hundred thousand dollars or fractional part thereof and for the excess of over six hundred thousand dollars, five dollars for each one hundred thousand dollars or fractional part thereof. All building and loan associations shall pay a fee of ten dollars. (2531; '01 c. 233 s. 19)

2978. Unlawful use of certain words—No individual, copartnership or corporation other than a savings bank or safe deposit and trust company subject to and complying with all the provisions of law relating to such banks or safe deposit and trust companies respectively, shall in any manner display or make use of any sign, symbol, token, letter head, card, circular, or advertisement, stating, representing or indicating that he, it or they are authorized to transact the business which a savings bank, safe deposit or trust company usually does, or under said provisions are authorized to do; nor shall any such individual, copartnership or corporation use the word "Savings" or "Trust" or "Safe Deposit" alone, or in combination, in title or name or otherwise, or in any manner solicit business or make loans, or solicit or receive deposits, or transact business as a savings bank or safe deposit or trust company. Every individual, copartnership or corporation which shall violate any of the provisions of this section shall forfeit to the state the sum of one hundred dollars for every day such violation shall continue. (2583)

2979. Failure to report—Forfeitures—Every corporation which shall fail to make and transmit to the public examiner, within ten days after the time prescribed by law therefor, any report required by the provisions of this chapter or by other lawful authority, or shall fail to include therein any matter required by such examiner, shall forfeit to the state the sum of one hundred dollars for every day that such report is withheld or delayed or that it shall fail to report any such omitted matter. (2576; '95 c. 145 s. 10)

2980. Notice of meetings—At least thirty days prior to any annual, and at least ten days prior to any special, meeting of its stockholders, mailed notice shall be given to each stockholder, specifying the time, place, and purpose thereof; also a notice of any resolution or proposition on which action is proposed to be taken.

2981. Violation of requirements—Every officer, agent, or employee of any corporation or copartnership, and every other individual who shall knowingly and wilfully do or omit anything, the doing or omission of which on the part of any such corporation, copartnership, or individual is in violation of any of the provisions of this subdivision, and who continues or repeats such act or omission for or during more than ten successive days, shall be guilty of a felony. ('95 c. 145 s. 11)

2982. Companies subject to this subdivision—All companies, associations, and corporations organized under any law of this state, other than those relating to the organization of banks and trust companies, which assume or exercise any of the functions, powers, or privileges conferred upon banks or trust companies under this subdivision, shall be subject to all the limitations, penalties, and requirements incident or pertaining to such functions, powers, or privileges; and the stockholders or persons forming the same shall be liable in the same manner and to the same extent as if such companies, associations, and corporations were organized as banks or trust companies under this chapter. (2591)

BANKS

2983. How graded—Prepayment—The capital of every bank of discount and deposit shall be at least ten thousand dollars in a municipality of not over one thousand population, and at least fifteen thousand dollars in one of over one thousand and not over fifteen hundred, and at least twenty thousand dollars in one of over fifteen hundred and not over two thousand, and at least twenty-five thousand dollars in one over two thousand; and payment thereof shall be made in full in cash and certified to the public examiner under oath of the president and cashier before it shall be authorized to commence business. ('95 c. 145 s. 1)

2984. Special powers—In addition to the inherent and granted powers of corporations in general, such bank shall have power to exercise by its board of directors, or duly authorized officers and agents, subject to law, all such powers as shall be necessary to carry on the business of banking by discounting bills, notes, and other evidences of debt, by receiving deposits, by buying and selling gold and silver bullion, foreign coin, promissory notes, mortgages, and other evidences of debt, and foreign and inland bills of exchange, by lending money on real and personal securities and receiving interest on any of the same in advance, and by exercising all the usual and incidental powers and privileges belonging to such business; but it shall not transact any business except such as is incidental and necessarily preliminary to its establishment, until authorized by the public examiner to commence business. ('95 c. 145 s. 3 subd. 7)

23-198; 68-409, 411, 71+621.

2985. Stock list—Filing—Effect of transfer—Its president and cashier shall at all times keep an accurate verified list of all its stockholders, with the amount of stock held by each, the dates of all transfers and names of transferees, and on May 1 annually file a copy thereof with the register of deeds and the examiner. Every person becoming a stockholder shall succeed in proportion to his interest to all the rights, and become subject to all the liabilities, of his transferrer. But the liability of the latter shall continue for one year after the entry of such transfer. ('95 c. 145 s. 5)

Transferrer only secondarily liable during year. Execution must first issue against transferee (66-487, 69+610, 1069). Bona fide transferrer not liable for debts incurred after transfer (62-152, 64+145). Liability terminates in a year though no transfer on books if there was a bona fide attempt to secure such transfer (91-264, 98+91). Continuation of liability pending reorganization under 1897 c. 89 § 4 (87-68, 91+259). Reduction of double liability to single by 1895 c. 145 (79-211, 81+1059). Effect of extension of debt on transferrer. Nature of transferrer's liability considered (66-487, 69+610, 1069). Liability enforceable by receivers under § 2998 (70-358, 73+171). Stockholder liable on stock held in his name as collateral security (70-398, 73+153). Liability extends to debts incurred before and after acquisition of stock (7-56, 40; 57-552, 59+635). Liability not enforceable in insolvency proceedings under 1881 c. 148 (57-552, 59+635. See 58-434, 59+1077). Cited (79-211, 220, 81+1059).

2986. Qualification of directors—Whenever the number of directors shall exceed nine, they may designate, semiannually, by resolution, nine of their number, a majority of whom shall constitute a quorum for the transaction of business. Every director of a bank whose capital is not over fifteen thousand dollars shall actually own at least three hundred dollars of full paid stock, and in those with a capital exceeding that sum at least five hundred dollars, and shall take and subscribe an oath that he is the owner in good faith and in his own right of such amount of stock, that the same is not in any way pledged for any loan or debt, and that he will faithfully perform his official duties, and not knowingly violate or permit to be violated any provision of law. The taking of such oath shall be duly certified in the minutes of the records of the bank, and the oath immediately transmitted to the public examiner and filed in his office. ('99 c. 142 s. 1)

2987. Dividends—Surplus—At the end of each dividend period, after deducting all necessary expenses, losses, interest, and taxes due or levied, one-fifth of the remaining net profits for such period shall be set aside as a surplus

fund until it equals one-fifth of the capital stock. The directors may then declare a dividend of so much of the remainder as they think expedient. Whenever in any way impaired, such surplus fund shall be raised to such percentage in like manner. ('99 c. 142 s. 2)

2988. Examining committee—Such board shall annually appoint from its members an examining committee, who shall examine its condition semi-annually, and oftener if required. They shall forthwith make in duplicate a verified detailed report of all assets carried on the books in excess of the actual value thereof, specifying the latter, and deliver the same to the cashier, who shall forthwith transmit one copy to the examiner and duly record the other. ('99 c. 142 s. 3)

2989. Restriction of directors in use of funds—No director shall directly or indirectly, in any manner, use the funds of the bank or any part thereof except in its regular business transactions, and every loan made to any of its directors, officers, servants, or agents shall be upon the same security required of others and in strict conformity to its rules and regulations. Every such loan shall be made by the board and acted upon in the absence of the applicant. ('95 c. 145 s. 9)

2990. Reports to public examiner—At least four times in each year, and at any other time when so requested by the public examiner, every bank shall within seven days make and transmit to him, in such form and within such time as he shall prescribe, a report verified by its president or vice-president, and by its cashier, and attested by at least two of its directors, stating in detail, under appropriate heads, its assets and liabilities at the close of business on the day specified in such request, if upon special request; otherwise on the last business day of the preceding month. Such statement shall be published once at the expense of such bank in a newspaper of the county of its location, and proof thereof filed immediately with the examiner. ('95 c. 145 s. 10)

2991. Books to be kept—Every such bank shall open and keep such books and accounts as the examiner may prescribe, for the purpose of keeping accurate and convenient records of its transactions; and every bank refusing or neglecting so to do shall forfeit ten dollars for every day of such neglect or refusal. ('95 c. 145 s. 12)

2992. Shall not lend on or purchase its own stock—It shall make no loan or discount on the security of its own capital stock, nor be the purchaser or holder thereof, unless necessary to prevent loss upon a debt previously contracted in good faith, and all stock so acquired shall be disposed of at public or private sale within six months after it is so acquired. ('95 c. 145 s. 13)

38-85, 35+577; 57-248, 59+299.

2993. Loans, how limited—The total liabilities to it, as principal, surety, or indorser, of any person, corporation, or copartnership, including the liabilities of the several members thereof, shall never exceed fifteen per cent. of its capital actually paid in cash and of its actual surplus fund. The total liability of any officer or director shall never exceed ten per cent. of the same aggregate amount. But the discount of the following classes of paper shall not be regarded as creating liability within the meaning of this section, viz.:

1. Of commercial paper actually owned by the person negotiating the same.
2. Bills of exchange drawn in good faith against actually existing values.
3. Paper based upon the collateral security of warehouse receipts covering agricultural or manufactured products stored in elevators or warehouses under either of the following conditions:

First. When the actual market value of the property covered by such receipts at all times exceeds by at least ten per cent. the amount loaned thereon.

Second. When the full amount of every such loan is at all times covered by fire insurance in duly authorized companies, within the limit of their ability to cover such amounts, and the excess, if any, in companies having sufficient paid-up capital to authorize their admission, and payable, in case of loss, to the bank or holder of the warehouse receipt, unless accompanied by a cer-

tificate of the railroad and warehouse commission declaring the warehouse issuing the same to be fireproof. ('95 c. 145 s. 15; '97 c. 228 s. 1; '01 c. 107 s. 1)

2994. Contracts, how made—Every contract made by it, except routine business, shall be first duly authorized by resolution of its board of directors, and shall be signed by the president or vice-president and by the cashier or some other officer specially designated by such board, and have its corporate seal impressed thereon. ('95 c. 145 s. 16)

69-421, 72+701.

2995. Real estate—The real estate used by it for the transaction of its business may include premises leased to others, provided the entire cost does not exceed twenty-five per cent. of its actual paid-in capital and surplus. It shall hold no other real estate longer than five years, unless such time has been extended by certificate of the public examiner duly filed for record with the register of deeds of each proper county. ('95 c. 145 s. 17)

2996. Reserve—It shall always keep a reserve equal to one-fifth of all its matured or demandable liabilities, one-half of which shall be cash, including specie, legal tender, and national bank notes. The remainder may be in balances due from solvent banks. Whenever its reserve shall become impaired, it shall make no new loans or discounts except upon sight bills of exchange, nor declare any dividend, until the same has been fully restored. ('95 c. 145 s. 18)

66-463, 465, 69+334.

2997. Capital not to be withdrawn—Dividends—No portion of its capital shall ever be withdrawn by any person or in any way, either in dividends or otherwise, except upon reduction as provided by law. No dividend shall ever be made except out of net profits after deducting all indebtedness, losses, and amounts receivable more than one year overdue and not well secured. ('95 c. 145 s. 19)

2998. Insolvent banks—Examiner to take charge, when—No banking corporation shall make an assignment by reason of existing or probable insolvency. Its governing board or managing officers, if satisfied that it is or is about to become insolvent, shall immediately report such fact to the public examiner, who, if satisfied from such report or any other source that such bank has refused to pay its deposits as required by law, has become insolvent, that its books of account are falsely or fraudulently kept, or that it has violated any provision of law, may forthwith take possession of its books, records, and property. Its property shall not be subject to attachment or levy, nor shall a receiver be appointed during such reasonable time as he may require for examination and to apply for a receiver. When appointed, the receiver shall take possession, under the direction of the court, of such books, records, and other property, collect the debts, sell or compound bad or doubtful ones, and sell all corporate property on such terms as the court shall direct, and when necessary pay corporate debts and enforce the individual liability of stockholders. He shall pay over all moneys received by him and make report of his doings to the examiner at such times and in such manner as he may prescribe. Whenever, after report by such officers and before the appointment of a receiver, said examiner shall find the bank in such condition that all creditors aside from stockholders can be paid in full from its assets, he may relinquish possession of its property to its proper officers; and whenever at any stage of the proceedings the stockholders show the court that it is able to pay all other creditors, and such showing is approved by said examiner, the court may order the property turned over to the stockholders for liquidation or other arrangement, and discharge the receiver. ('95 c. 145 s. 20; '97 c. 228 s. 2)

Receiver may enforce individual liability of stockholders and his right is ordinarily exclusive of the right of creditors to do so (66-441, 446, 69+331; 70-358, 73+171). Actions by receiver governed by same rules as sequestration proceedings under §§ 3173-3190 (70-349, 73+169; 71-497, 500, 74+287. See 67-506, 70+803). Proof of claims. Deductions (71-497, 74+287). Receiver need not apply to court for leave to enforce stockholder's liability. Order granting leave not appealable (70-414, 421, 73+175. See §§ 3179, 3180).

2999. Creditors' petition for receiver—Notice—Whenever, at any time after such receiver has been appointed, a majority in number and amount of the creditors shall petition the court for the appointment as receiver of a competent person, resident of the county, named by them, the court shall make such appointment, and all rights and duties of the first receiver shall devolve upon him. The receiver shall cause three weeks' published notice to be given in a newspaper designated by the court, calling upon persons having claims against such bank to present and prove the same. ('95 c. 145 ss. 20, 21; '97 c. 228 s. 2)

3000. Stock unpaid or impaired—Every bank which shall have failed to pay up its capital stock as required by law, or whose capital shall have become impaired, within ninety days after receiving notice thereof from the public examiner, shall make up the deficiency by a pro rata assessment on the capital stock or go into liquidation, and, in case of refusal to do so, a receiver may be appointed to close up its business as provided in the case of insolvent banks; but, with the consent and approval of the examiner, such bank may reduce its paid-up capital stock as hereinafter provided, pay in any remaining deficiency, and thereupon continue business upon such reduced capital. ('95 c. 145 s. 22; '97 c. 156 s. 1)

3001. Reorganization—Whenever it appears to the examiner by the petition of the owners of a majority of the stock of any bank which is insolvent and under the control of the court that bona fide efforts are being made to reorganize such bank, the examiner may levy an assessment upon the stockholders pro rata, according to the capital stock held by each, in such amount as he deems necessary, not exceeding their liability under the constitution, and order the board of directors to collect such assessment within sixty days thereafter. ('95 c. 145 s. 22; '97 c. 156 s. 1)

3002. Assessment, how enforced—On failure of any stockholder to pay such assessment, the directors may sell his stock at public auction, after three weeks' published notice in a newspaper of the county. Such stock shall not be sold for less than the amount due thereon and the expense of sale, and any excess shall be paid to the delinquent stockholder. If no bidder offers the amount due and expenses of sale, the amount previously paid on such stock shall be forfeited, and the stock sold by order of the directors within six months thereafter, or canceled and deducted from the capital of the corporation; and whenever, by reason of such cancelation and reduction, the capital is reduced below the minimum required by law, the deficiency shall be paid in within thirty days, or a receiver shall be appointed to close up its business. ('95 c. 145 s. 23)

3003. Increase and reduction of capital—No increase or reduction of its capital shall be valid until the entire new capital has been paid in cash, and certified to the examiner under oath of the president, or vice-president, or cashier. The examiner shall thereupon issue his certificate of that fact, and of his approval thereof. No reduction shall affect the liability of any stockholder for any indebtedness incurred prior thereto. ('95 c. 145 s. 25)

59-221, 227, 61+27; 66-1, 4, 68+104; 67-267, 275, 69+904.

3004. Consolidation, when authorized—With the written consent of the examiner, it may effect a transfer of its assets and liabilities to another bank for the purpose of consolidating therewith, but the same shall be without prejudice to the creditors of either. ('95 c. 145 s. 26)

3005. Liquidation—By a resolution duly adopted by the holders of a majority of its stock it may go into liquidation and close its affairs, after filing with the examiner a duly certified copy thereof, and giving eight weeks' published notice to creditors to present their claims, and filing proof thereof with him. ('95 c. 145 s. 27)

3006. State banks organized from national—Whenever any national bank authorized to dissolve has taken the necessary steps for that purpose, a majority of its directors, upon authority in writing of the owners of two-thirds of

the capital stock and the approval of the public examiner, may execute a certificate of incorporation under the provisions of this chapter, which, in addition to the other requirements of law, shall state the authority derived from the stockholders of such national bank; and upon recording and publishing such certificate as provided by law, it shall become a legal state bank. Thereupon the assets, real and personal, of said dissolved bank, subject to its liabilities not liquidated under the federal law before such incorporation, shall vest in and become the property of such state bank. ('95 c. 145 s. 28)

3007. Execution of trust—Whenever any state bank shall reorganize as a national bank, such national bank shall be regarded as continuing the existence of the state bank, and any officer of such bank elected to a corresponding office in said national bank shall be regarded as holding over as such state bank officer, for the purpose of carrying out any duty or trust reposed in the person holding such office or his successor in the state bank as executor of a will or trustee of any trust; and his successors in office in such national bank shall be regarded as his successors in office in such state bank for the purpose of executing such will or performing such trust; and the executor of any will, or any trustee thereunder, who by such will has been directed or recommended to deposit the money of such estate or trust in such state bank, may deposit the same in said national bank under the same conditions as he might have deposited them in the state bank, and with the same immunity from responsibility for its safety. (2590)

3008. Clearing houses—Clearing houses may make and enforce suitable provisions for effecting, at one place, daily exchanges and the settlement and adjustment of accounts between banks in the same locality, and under appropriate regulations may issue clearing house certificates for those purposes only, and may otherwise act in maintaining and enforcing uniformity of methods and harmonious action in banking business. (2533, 2535)

SAVINGS BANKS

3009. Expediency to be ascertained—To enable the public examiner to determine the expediency of the organization of a savings bank as in this chapter prescribed, he shall investigate and ascertain:

1. Whether greater convenience of access to a savings bank will be afforded to any considerable number of depositors by opening the proposed bank;
2. Whether the population in the vicinity of the location of such bank affords reasonable promise of adequate support therefor; and
3. Whether the responsibility, character, and general fitness of the persons named as trustees in the certificate are such as to command the confidence of the community in the proposed bank. (2544, 2545)

3010. Refusal to issue certificate—Notice—Whenever the examiner shall be satisfied that the establishment of such bank will not be expedient, he shall forthwith transmit to the register of deeds of the county of its proposed location his certificate that he has refused to issue a certificate of authorization for such bank, and such register shall forthwith file and record the same and refer thereto on the margin of the record of the declaration of the proposed trustees theretofore filed and recorded in his office. (2547)

3011. Time for commencing business—Extension—If it shall not commence business within one year after the issue of its certificate of authority, it shall forfeit its corporate franchises, unless allowed further time, not exceeding one year, by an order of the examiner, reciting good cause, and transmitted by him to the register of deeds. (2550)

3012. Bonds of trustees—Every trustee, before entering upon his duties, shall give bond to the state in a penal sum of not less than five thousand dollars, with sureties approved by a judge of the district court, conditioned for the faithful discharge of his duties, and file the same for record with the register of deeds of the county, who, after record, shall transmit it to the examiner. An action may be maintained on such bond by any person aggrieved by breach of any of its conditions, upon leave granted by any such judge, for such dam-

ages as the plaintiff may be entitled to, not exceeding its amount; and like successive actions may be maintained until such amount is exhausted. (2539)

3013. Bond of treasurer, etc.—Before entering upon his duties, the treasurer shall also give bond to the bank in such sum, not less than ten thousand dollars, as the board of trustees shall prescribe, for the faithful discharge of his duties, and at any time thereafter he may be required by the board to furnish additional security. The board may also require, at any time, from any other officer, employee, or agent, such security as it deems necessary. (2556)

3014. Trustees—First board—Compensation, etc.—The business of every such bank shall be managed by a board of not less than seven trustees. The persons named in the certificate of authorization shall constitute the first board. Each vacancy shall be filled by the board as soon as practicable, at a regular meeting thereof, except when a resolution reducing the number of trustees named in its charter to a number not less than seven shall have been incorporated into its by-laws, and a copy thereof filed with the examiner, in which case vacancies shall not be filled until the number has been reduced to that specified in such resolution. The number may be increased to any number specified in a like resolution, consented to, in writing, by said examiner. (2551, 2552, 2584)

3015. Meetings—Quorum—There shall be at least one regular meeting of the board of trustees every month for the transaction of business, and five, including the president, or, if he is unavoidably absent or excused, the vice-president, shall constitute a quorum at any meeting. (2554)

3016. Interest in profits—Vacation of office—Compensation—No trustee shall have any interest whatsoever, direct or indirect, in its profits, or directly or indirectly receive any compensation or reward for his services as such, except as hereinafter provided; and no trustee or officer, directly or indirectly, for himself or as the agent or partner of others or otherwise, or in any representative or fiduciary capacity, shall borrow any of its funds or deposits, or in any manner use the same, except in current and necessary disbursements previously authorized by specific resolution of the board; nor shall he become an indorser or surety or in any manner render himself liable to it for money loaned or in any other way or respect whatsoever, or without resignation become a trustee, officer, or employee of any other savings bank. Wilful violation of any of the foregoing provisions shall vacate his office, and render him thereafter ineligible to election or appointment as trustee or officer of any savings bank. Failure to attend the regular meetings of the board or to perform any other of his duties as trustee for six successive months, without having been previously excused, shall vacate his office as trustee, but such non-attendance merely shall not render him ineligible to election or appointment. Trustees, acting as officers, whose duties require and receive their regular and faithful attendance at the bank, may receive such compensation as a majority of the board of trustees, exclusive of those receiving compensation, shall determine. (2555, 2557, 2571)

3017. Deposits—Limitation of amount—It shall receive all sums of money offered for deposit in amounts of not less than one dollar nor more than the maximum fixed by the by-laws, which shall in no case exceed five thousand dollars, and invest the same for the use and benefit of the depositor, at such lawful rate and under such regulations as the board may prescribe, and apply the net income in payment of dividends as hereinafter provided. (2558; '03 c. 71)

3018. Regulations—Before receiving any deposit it shall establish reasonable and proper regulations for the conduct of its business, including the receipt, investment, and repayment of deposits, and cause the same to be kept conspicuously posted in its banking room and printed in full in all passbooks or other evidences of deposit furnished its customers, and the same shall be prima facie evidence of the terms and conditions of their mutual transactions. (2559; '03 c. 71)

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3019. Deposits by minor or in trust—Any deposit made in any bank, or savings bank, by or in the name of a minor, shall be held for the exclusive right and benefit of such minor, free from the control or lien of all other persons except creditors, and, together with the dividends or interest thereon, shall be paid to him, and his receipt, check, or acquittance in any form shall be a sufficient release and discharge to the bank for such deposit or any part thereof, until a guardian appointed in this state for such minor shall have delivered to the bank a certificate of his appointment. And whenever any deposit shall be made by any person in trust for another, and no other written notice of the existence and terms of any legal and valid trust shall have been given to the bank, in case of the death of such trustee the same or any part thereof, and the dividends or interest thereon, may be paid to the person for whom the deposit was made. (2560; '01 c. 74)

3020. Action for deposits—Parties—Limitations—When, in any action against a savings bank to recover money deposited therein, such money is claimed by any person not a party to the action, the court, on application of the bank, upon eight days' notice to the plaintiff and such claimant, may order that such claimant be made a party defendant, and thereupon the court shall hear and determine the rights of the several parties to said money, which may remain on deposit at interest during the pendency of the action or be paid into court by said bank. If paid into court, the bank may be stricken from the record as a party. The statutes limiting the time for the commencement of actions shall have no application to actions brought by depositors, their representatives or assigns, against savings banks for deposits therein. (2561)

3021. Real estate—Any such bank may purchase, hold, or convey land sold upon foreclosure of mortgages owned by it, or upon judgments or decrees in its favor, or in settlement of debts, or received in exchange as part of the consideration of real estate sold by it. But real estate so received in exchange shall not be carried on the books of the bank at a price exceeding the cost of that exchanged, less the cash payment, and all real estate so acquired shall be sold within ten years after its acquirement, unless the time is extended by the public examiner on application of the board of trustees. (2563; '01 c. 247)

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3022. Authorized securities—The trustees of any savings bank shall invest the moneys deposited therein only as follows:

1. In the bonds or other interest bearing obligations of the United States, or in securities for the payment of which and interest thereon the faith of the government is pledged.

2. In the bonds of any state which has not defaulted in the payment of any bonded debt within ten years prior to the making of such investment.

3. In the bonds of any county, city, town, village, school, drainage, or other district created pursuant to law for public purposes in Minnesota, Wisconsin, Iowa, and North and South Dakota, or in any warrant, order, or interest bearing obligation issued by this state, or by any city, city board, town, or county therein, or in the bonds of any city, county, town, village, school district, drainage, or other district created pursuant to law for public purposes, in the United States, containing at least thirty-five hundred inhabitants: Provided, that the total bonded indebtedness of any such municipality or district shall not exceed ten per cent. of its assessed valuation.

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 4. In notes secured by mortgages on unincumbered real estate in Minnesota, Wisconsin, Iowa, and North and South Dakota worth when improved at least twice and when unimproved at least three times the amount loaned thereon. But not more than seventy per cent. of the whole amount of the moneys of the bank shall be so loaned, and such investment shall be made only on report of a committee directed to examine the same and report its value, according to their judgment, and its report shall be preserved among the bank's records.

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 5. In notes secured by such bonds or mortgages as the bank under this section is authorized to invest in, but no such bond or mortgage shall be taken as collateral security for more than its par value, nor shall the aggregate amount of securities taken be less than the full amount loaned thereon, and

no such loan shall be made for a longer time than one year, nor to a greater amount to any one person than one-half of one per cent. of the total deposits of the bank. No such bank shall loan in the aggregate, on the security specified in this paragraph, more than one-fourth of its deposits.

6. In the bonds of any railroad company, or the successor of any railroad company, which has received a land grant from the government, and whose bonds are secured by first lien upon its railroad.

7. In the bonds of any other railroad company which are secured by first lien upon a railroad within the United States, or in the mortgage bonds of any such company, of an issue to retire all prior mortgage indebtedness thereof, or in the bonds of any railroad company in the United States which are guaranteed or assumed by another railroad company within the United States: Provided, that the railroad company, except one whose bonds are so guaranteed or assumed, either issuing, guaranteeing, or assuming any of such bonds, has not within five years prior to such investment failed in the payment of a dividend upon its entire capital stock outstanding of not less than four per cent. per annum each fiscal year, and has not within such time defaulted in the payment of any part of the principal or interest of any debt incurred by it and secured by trust deed or mortgage upon its road or any part thereof, or in the payment of any part of the principal or interest of any bonds guaranteed or assumed by it. But no such bank shall loan upon or invest in railroad bonds to an amount exceeding in the aggregate twenty per cent. of its deposits, nor exceeding five per cent. of its deposits in the bonds issued, guaranteed, or assumed by any one railroad company.

8. In the debenture stock of any railroad company owning and operating a line of road in whole or in part within the state, provided that such stock shall bear interest at the rate of at least four per cent. per annum, and shall be secured by trust deed as a first lien upon such line of railway, and that not more than five per cent. of its deposits shall be invested in such stock.

The term "authorized securities," whenever used in the Revised Laws, shall be understood as referring to the securities specified in this section. (2562; '03 cc. 71, 108, 273)

3023. Expense fund—Its board shall promptly invest all deposits except so much, not exceeding fifteen per cent., as may be required for current necessary disbursements, which it shall retain or deposit in solvent authorized banking institutions in Minnesota or in the city of New York or Chicago, or in loans payable on demand, upon any of the first two classes of authorized securities, to the extent only of ninety per cent. of their cash market value, but never exceeding par; upon condition always that in case of depreciation below that proportion it shall be immediately restored by additional security of the same classes or at once repaid. But meanwhile so much thereof as cannot be judiciously so invested shall be deposited daily in one or more solvent banks or trust companies. In case of insolvency thereof, its indebtedness, if any, to a savings bank shall be preferred to that of every other creditor except the United States and this state. (2564, 2565; '97 c. 74)

3024. Prohibited dealings—Except as otherwise provided in this chapter, it shall not directly or indirectly deal in any kind of property or engage in any other business not essential to the transaction of its own, and no officer or director thereof, except as his duties as such officer may require, shall directly or indirectly engage in lending or collecting money or protesting commercial paper, or buying, selling, or exchanging any kind of property in or about its bank. (2567)

3025. Repayment—Surplus, when distributed—Every deposit and all dividends credited thereto shall be repaid, after demand, in such manner, at such times, and after such previous notice as its board shall prescribe, but it shall not be required to pay a greater dividend than four per cent. per annum. Depositors shall receive, as nearly as may be, all the profits after deducting necessary expenses, and setting aside annually such sum, as such board deems expedient, for a surplus fund for the security of its depositors, and to meet con-

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tingencies, until such fund shall amount to fifteen per cent. of its deposits. No interest shall be allowed on any money for a longer time than the same was actually on deposit, except that deposits made not later than the third or withdrawn within the last three days of any month shall be treated as on deposit for the entire month. No dividend shall be declared, credited, or paid unless authorized by ye and nay vote of its board duly entered upon its minutes, and whenever any dividend in excess of that earned and on hand shall be declared or credited the trustees voting therefor shall be jointly and severally liable to the bank for such excess. The board of every such bank whose surplus amounts to fifteen per cent. of its deposits shall, at least once in three years, divide proportionately the excess among its depositors as an extra dividend, and for that purpose may classify them according to character, amount, and duration of dealings, and so regulate the dividend that each of the same class shall receive the same ratable proportion. (2568, 2569)

3028. Method of determining surplus—In determining the per cent. of surplus held by any such bank, its interest paying stock, notes, and bonds shall be estimated at their market value; notes and bonds having not more than six months' unpaid interest at their face, and real estate not above cost. As to stocks, bonds, and notes having more than six months' accrued and unpaid interest, and all other investments not herein enumerated, their value shall be determined by the public examiner, who may change their valuation from time to time. (2570)

3027. Annual report—Assets—On or before February 1 of each year its trustees shall cause to be made a thorough examination of all its books, vouchers, and other papers, and of its assets, liabilities, and affairs generally, by an experienced and competent accountant, and make a written report upon the form prescribed by the public examiner, showing accurately its condition at the close of the preceding year, and specifying in detail the amounts and particulars following:

1. The amount loaned upon note and mortgage, with a list of such notes and mortgages as have not been previously reported, and the location of the mortgaged premises, and also a list of such previously reported as have since been paid wholly or in part, or have been foreclosed, and the amount of such payments respectively;
2. The cost, par value, and estimated market value of all bond investments, stated separately;
3. The amount loaned upon pledge of securities, with a statement of the securities held as collateral for such loans;
4. A list of all notes, with the names of the drawers and indorsers, the dates when said notes were made and length of time they have to run, the amounts for which they are drawn, and the rates of interest they bear or at which they were discounted;
5. A list of all notes overdue and unpaid;
6. The amount invested in real estate, giving a description and the cost of each tract;
7. The amount of cash on hand and on deposit in banks or trust companies, giving the name of each and the amount of each deposit;
8. Such other information as the public examiner may require. (2572, 2573)

3028. Same—Liabilities—Such report shall also state all its liabilities on the morning of January 1, and show:

1. The amount due to depositors, including any dividend to be credited to them for the half year ending on that day;
2. All other debts or claims against it which are or may be a charge upon its assets.

It shall also state the amount deposited during the previous year, and the amounts withdrawn during the same period; the whole amount of interest or profits received or earned, and the amount of dividends or interest credited to depositors; the number of accounts opened or reopened; the number of accounts closed during the year; and the number of open accounts at the end of

the year; and such other information as may be required by the examiner. (2574)

3029. Verification—The report shall be verified by the oath of the two principal officers of the institution, and the statement of assets shall be verified by the oath of at least two of the trustees and of the person who made such examination; and any wilful false swearing in regard to such reports shall be deemed perjury, and be punishable accordingly. (2575)

3030. Violation of law—Proceedings—Whenever it shall appear to the examiner, from an examination made by him or otherwise, that any such corporation has violated the law or is conducting its business in an unsafe or unauthorized manner, he shall by written order direct such methods to be discontinued and that its business be conducted in conformity with law. If any such corporation refuses or neglects to comply with such order, or to make any report required by law or by the examiner, or if it shall appear to the examiner that it is unsafe or inexpedient for any such corporation to continue to transact business, he shall report the facts to the attorney general, who shall take such action thereon as the case requires. Such action may be for the removal of one or more of the trustees of such corporation, the transfer of its corporate powers to other persons, its merger and consolidation with another like corporation willing to accept the trust, or such other appropriate action as the facts may require; and the court may grant any such relief in the interests of justice, and, to protect the rights of the parties, may from time to time revoke or modify its orders made in the matter. (2580)

64-349, 354, 67+1.

3031. Change of name—Whenever a resolution shall be adopted by the trustees of such bank expressing their purpose to change its name, they shall cause notice of such purpose, containing the present and proposed name, to be published in the manner provided in this chapter for publication of notice of intention to organize. On completion of such publication, said trustees shall make application to the public examiner to change the name of such bank as specified in such resolution and publication, accompanied by proof of the adoption of the resolution and publication of notice. If such change be approved by the examiner, he shall authorize and direct the same by an order under his hand and seal, and designate a day, not more than thirty days from its date, when such change shall take effect. He shall execute such order in triplicate, one to be filed with the register of deeds of the county where the bank is situated, one delivered to the bank, and the other filed in his office. From the date named in such order, such bank shall be known and designated by its new name, and under such name shall have the same rights and powers and be subject to the same liabilities as before the change. (2585)

3032. Existing banks conformed—Exceptions—The powers, privileges, and duties conferred and imposed on any savings corporation heretofore organized, by its charter or act of incorporation, are hereby abridged, enlarged, or modified, as each case may require, so that each such charter or act shall be conformed to the provisions hereof; and every such savings corporation shall possess the powers and privileges, and be subject to the duties, liabilities, and restrictions, herein prescribed; but investments heretofore lawfully made shall be unaffected by this section, if the same be conformed to the provisions of this subdivision as rapidly as may be, in the ordinary course of business, without loss or embarrassment to the bank and its patrons: Provided, that savings banks organized and existing prior to the passage of Laws 1879 c. 109 may continue under the laws then in force applicable thereto and amendatory thereof until they reorganize hereunder, unaffected by any provision in the Revised Laws repealing the same, expressly or by implication. (2586, 2589)

TRUST COMPANIES

3033. Capital—Amount and character of deposits—The capital of every trust company shall not be less than two hundred thousand dollars nor more than two million dollars. It shall not transact any business until at least two

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hundred thousand dollars has been actually paid in, in cash, and at least one-fourth of its capital invested in one or more of the first, second, third, fourth, seventh, and eighth classes of authorized securities, duly assigned and transferred to and deposited with the public examiner, and his certificate thereof procured. Such deposit shall be maintained unimpaired as a guaranty fund for depositors and creditors and for the faithful discharge of its duties, with the right to collect the income thereof and to substitute other like authorized securities of equal amount and value. The capital stock of such company may be reduced with the approval of the public examiner, but not below two hundred thousand dollars; and no assets shall be returned to the stockholders unless its deposits of authorized securities after such return equal one-fourth of such reduced capital; nor shall the liability of any stockholder upon any existing contract be affected thereby. (2843-2845; '99 c. 200 s. 1; '03 c. 70 s. 1)

Authorized securities (85-1, 7, 88+256).

3034. Qualifications of directors—Oath—Vacancies—Each director shall own at least ten shares of its capital stock, and a majority of them shall be residents of this state. Each shall take and subscribe an oath that he will diligently and honestly perform his official duties, and will not knowingly violate or permit to be violated any provision of law relating to trust companies, and that he is the owner in good faith of the stock above specified standing in his name on the books of the corporation; the taking of such oath to be noted on the minutes of the records of the corporation, and filed with the public examiner. Failure of any person selected as director to qualify shall create a vacancy in the board, which shall be filled by the qualified members. ('99 c. 200 s. 4)

3035. Investments in real estate, etc., how limited—Such corporation may acquire, use, and improve, and for that purpose mortgage, lease, sell, and convey, such real and personal property as may be necessary for the transaction of its business. Any estate or interest in real estate which it may acquire by virtue of the foreclosure of any mortgage, trust deed, or other security, or by the settlement of any obligation or otherwise, in the course of its legitimate business, it may sell or continue to hold and use as deemed for its interests or those of the estate or trust to which the same belongs, and to that end it may become the purchaser at any foreclosure or judicial sale to which it is a party as trustee or otherwise. It may also accept or make any deed, mortgage, or other instrument necessary for the transaction of its business, may loan money and secure such loans by mortgage, trust deed or pledge, purchase notes, bonds, mortgages, and other evidences of indebtedness, and securities, and sell and assign the same, and convert them into cash or into other authorized securities, or securities and property not herein expressly prohibited. It may guarantee a title to securities sold and transferred by it; may become sole surety upon any bond without justification; and may maintain and operate safe deposit vaults. It shall invest none of its capital or surplus in real estate except as herein authorized, nor any of its deposits or trust funds or property therein except as so authorized, or under or by virtue of an express contract, judgment, or other instrument conferring or imposing special power and authority so to do. (2849 subd. 1)

3036. May act as agent or attorney in fact—It may take and hold in trust any real or personal property, wherever situated, by order, judgment, or decree of any court of record, or by gift, grant, assignment, transfer, devise, legacy, or bequest from, or by lawful contract with, any public or private corporation or individual, and manage the same upon the terms, conditions, limitations, and restrictions therein declared or imposed. It may also act as agent for the signature, counter-signature, registration, transfer, or redemption of certificates of stock, bonds, coupons, or other evidences of indebtedness of any such corporation or individual, or otherwise act as general or special agent or attorney in fact in the acquisition, management, sale, assignment, transfer, incumbrance, conveyance, or other disposition of any real or personal property, the collection of rents, payment of taxes, and generally as the representative of any such corporation or individual. (2849 subds. 2, 5)

3037. May receive deposits of trust and other funds—It may take and hold on deposit or for safe-keeping money, bonds, stocks, and other securities or personal property which any public officer, or any trustee or other legal representative, or any public or private corporation or person may desire or shall be authorized, ordered, or otherwise required by law to deposit in a bank or other safe depository, or to pay into any court of record; and the same may, instead thereof, be paid into or deposited with any such trust company, and, where the deposit is made pursuant to order of court, in such as the court shall designate, and take the receipt of such trust company therefor; and thereupon the depositor and his sureties shall be relieved from liability thereafter accruing so long as such deposits continue. (2849 subd. 3)

Last clause constitutional (78-228, 80+1118).

3038. May act as assignee, receiver, executor, etc.—It may act as assignee under any assignment for the benefit of creditors, or be appointed and act as a trustee or receiver, as a guardian, as executor of any will, or administrator of any estate, and may accept and perform any other lawful trust conferred by any court, or by any corporation or individual. In the acceptance and performance of any such trust, no oath or security shall be required. (2849 subds. 4, 9-11)

As guardian (40-7, 41+232).

3039. Deposit with trust company instead of larger bond—Whenever new or additional security shall be required from any executor, administrator, guardian, assignee, receiver, or other trustee, if the judge or court having jurisdiction deems it expedient, because of the magnitude of the estate or fund or otherwise, to require the maximum security prescribed by law, it may direct any securities belonging thereto to be deposited with any trust company, subject to the order of such trustee, when countersigned by such judge, and fix the amount of the security with reference only to the remainder. No such security shall be withdrawn, nor any part of the principal or interest thereof collected, except by an officer of such company, without the order of such judge duly entered and certified, upon satisfactory proof that additional security has been furnished, or that the estate or fund has been so reduced that such deposit is no longer required. (2849 subd. 9)

3040. Investment of trust funds—Responsibility of corporation—It may invest all moneys received by it in trust in authorized securities, and shall be responsible to the owner or cestui que trust for the validity, regularity, quality, value, and genuineness of such investments and securities so made, and for the safe-keeping of the securities and evidences thereof. Whenever special directions are given in any order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which any investment shall be made, it shall follow such directions, and in such case it shall not be further responsible by reason of the performance of such trust. In all other cases it may invest the same in any of said authorized securities, using its best judgment in the selection thereof, and shall be responsible for their validity, regularity, quality, and value thereof at the time made, and for their safe-keeping. It may, in its discretion, retain and continue any investment and security or securities coming into its possession in any fiduciary capacity. (2849 subds. 4, 6)

3041. Transfer of trusts to company—Condition—The trustees of any estate or property may surrender and resign such trust in favor of such trust company which will accept the same, and convey and deliver to it all property and assets of such trust, upon condition that the grantor, cestui que trust, and all parties in any manner interested in the execution and performance of such trust shall execute, acknowledge, and deliver an instrument in writing, whereby they shall consent to such transfer and the release and discharge of the original trustee, and the appointment of such trust company as his successor. But if either party to the original trust is dead, or does not join in such written consent, or if such original trust was created under a last will, or an order or decree of a court of record, then such transfer shall not be valid except up-

on the judgment or decree of such court as would have jurisdiction of an action to remove the acting trustee, and full compliance with the terms and conditions of such judgment or decree. (2849 subd. 7)

3042. Compensation—Commission not deemed interest—For the faithful performance of its duties and discharge of its trust it shall be entitled to reasonable compensation, or such amount as has been or may be agreed upon by the parties, and all necessary expenses, with legal interest thereon, unless otherwise agreed upon. No compensation or commission paid or agreed to be paid by it for the negotiation of any loan, or the execution of any trust, shall be deemed interest within the meaning of the law, nor shall any excess thereof over the legal rate be deemed usury. (2849 subd. 8)

3043. Trust funds—Investment of accumulations—Any amount not less than one hundred dollars received by it as executor, administrator, guardian, or other trustee, or by order of court, not required for the purposes of such trust, or not to be accounted for within one year, it shall invest as soon as practicable in authorized securities either then held by it or specially procured by it; and the income, less its proper charges, shall become part of the trust estate, and the net accumulations thereon shall be likewise invested, accounted for, and allowed in the settlement of such trust. (2850; '99 c. 200 s. 5; '03 c. 70 s. 2)

3044. Trust accounts to be kept separate—Securities, how deposited—Besides its general books of account, it shall keep separate books for all trust accounts. All funds and property held by it in a trust capacity shall at all times be kept separate from the funds and property of the corporation, and all deposits by it of such funds in any banking institution shall be deposited as trust funds, to its credit and as trustee and not otherwise. Every security in which trust funds or property are invested shall at once, upon receipt thereof, be indorsed and transferred to it as trustee, executor, administrator, guardian, receiver, assignee, or other trustee, as the case may be, and not in blank or otherwise, and immediately entered in the proper books as belonging to the particular trust whose funds have been invested therein. Any change in such investment shall be fully specified in and under the account of the particular trust to which it belongs, so that all trust funds and property can be readily identified at any time, by any person. (2844; '99 c. 200 s. 5; '03 c. 70 s. 2)

85-1, 88+256.

3045. Dealings and indebtedness prohibited—It shall not engage in any banking, mercantile, manufacturing, or other business, except such as is herein expressly authorized for such a corporation. It shall not lend its funds, moneys, capital, trust funds, or any other property whatsoever, to any director, officer, agent, or employee, nor shall any such director, officer, agent, or employee become in any manner indebted to it by means of any overdraft, promissory note, account, indorsement, guaranty, or any other contract; and any such director, officer, agent, or employee who shall become so indebted to it shall be guilty of larceny of the amount of such indebtedness from the time of its creation. (2851)

3046. Powers of court—Annual report—Every such corporation shall be subject at all times to the further orders, judgments, and decrees of any court of record from which it shall have accepted any trust, appointment, or commission as to such trust, and shall render to such court such itemized and verified accounts, statements, and reports as may be required by law, or as the court shall order in relation to a particular trust. It shall also be subject to the general jurisdiction and authority of the district court of the county of its principal place of business. On or before June 30 in each year it shall render to the public examiner a full and detailed account of its condition, and such further accounts, either in full or in part, or in relation to any particular investments, trusts, funds, or other business as the examiner may from time to time direct or request; and a condensed statement of such annual account, together with a list of its board of directors, approved by the said examiner, shall

be published by such corporation in a newspaper of the county of its principal place of business. (2852; '99 c. 200 s. 6)

3047. Violation of law or insolvency—Procedure—The directors and managing officers of such corporation, whenever satisfied that it is, or is about to become, insolvent, shall immediately report such fact to the public examiner; and whenever said examiner shall be satisfied from such report, or from any examination made by him that it is conducting its business in an unlawful or unsafe manner, or that it is insolvent, he may at once take possession of its books, records, and assets, which shall not be subject to any levy or attachment, nor shall any application for a receiver be entertained by any court, during such reasonable time as may be necessary for further examination. If upon such examination it shall appear to said examiner that its business is being conducted in a safe and lawful manner, and that all creditors except those represented by stock can be paid in full from the assets, he may relinquish possession of its assets to its directors and officers; otherwise he shall apply to a court for the appointment of a receiver, who shall take possession of all its books, records, and assets, and close up its affairs under the direction of the court: Provided, that if at any stage of the proceedings the directors or stockholders shall satisfy the court that such corporation is able to pay all creditors other than themselves, if such showing is approved, after investigation by the examiner, the court may order the return of the assets to the company for liquidation or such other course as the stockholders, in compliance with law, may determine; and in such case the receiver shall be discharged. (2854; '99 c. 200 s. 8)

64-349, 354, 67+1.

LOCAL BUILDING AND LOAN ASSOCIATIONS

3048. Purpose—Building and loan associations may be formed for the accumulation of funds to be loaned to their members, to be secured as hereinafter provided; and hereafter no such corporation shall be organized or operated for any such real or nominal purposes otherwise than as herein prescribed.

3049. Limits of operations—Every such corporation hereafter formed, by provision in its certificate of incorporation or by-laws, and every one heretofore formed, by proper amendment thereto, within six months after the Revised Laws take effect, shall confine its field of operation exclusively to the county of its principal place of business and those immediately contiguous thereto, and upon failure so to do shall, without any other act or proceeding, forfeit all corporate rights and franchises, except to close its affairs.

3050. Loans and securities—Powers—For every loan made on real estate security a non-negotiable note or bond secured by first mortgage shall be given, which security shall be satisfactory to the directors and shall be accompanied by a transfer and pledge of the shares of stock of the borrower to the association. The shares so pledged shall be held as collateral security for the performance of the conditions of said note or bond and mortgage: Provided, that the shares, without other security, may be accepted in the discretion of the directors as security for loans to an amount not exceeding ninety per cent. of their cash or withdrawal value, as herein provided. Any such association may provide by contract with its borrowers that loans shall be fully paid at a definite period upon receipt of the specified number of payments. The association may purchase tax or assessment titles or liens affecting property in which it is in any manner interested; and it may borrow money for any legitimate object of its incorporation. ('01 c. 233 s. 4; '03 c. 93 s. 2)

3051. Capital—Preferred stock—Every such association hereafter formed shall have an authorized capital of at least fifteen thousand dollars. It shall not issue or create any preferred or non-contributing stock, except in payment of matured contributing stock, but it may issue different series of stock. Each shareholder shall have one vote for each share of stock held or owned by him in his name. (2898)

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3052. Bids and loans—The terms and conditions upon which it shall receive applications for loans to its members, and consider and vote upon the same, shall be just, equitable, and uniform, and shall be prescribed in full in its by-laws. ('01 c. 233 s. 29)

3053. Profits and expenses—Whenever a distribution or calculation of profits is made, which shall be at least semiannually, it shall first deduct therefrom its expenses for the same period if such profits are sufficient; if not, the balance of such expenses shall be carried as "expenses paid," and be deducted from the earliest future net profits. Such balance shall be charged to an account called "permanent expense," and finally be paid by a proportionate deduction from the value of each matured share of stock. The remainder shall be deemed the true maturity value of such stock. ('01 c. 233 s. 30)

3054. Premiums not usury—No premiums for loans made by such association shall be considered or treated as interest or render it amenable to usury laws. ('01 c. 233 s. 25)

3055. Withdrawals—The holder of any shares not in arrears or pledged may withdraw the same upon thirty days' written notice to the secretary of his intention so to do, given at any time after the expiration of six months from the payment of the first cash instalment thereon; whereupon his rights to profits and liability for indebtedness for the future shall cease, and he shall receive the amount of such instalments, less all arrears and fines. But not over fifty per cent. of its monthly receipts shall be so used unless otherwise determined by resolution of the directors. (2900)

3056. Stock when and how sold—Whenever any instalment, fine, or penalty upon any of its stock continues delinquent for three months, the directors may, and whenever such delinquency continues for one year shall, cause such stock to be sold according to its by-laws, at a regular monthly meeting, to the highest bidder for cash, and, if there be no outside bidder, to be bought in by one of the officers for the corporation, but no stock shall be sold or bought in for less than its withdrawal value. (2899)

3057. Dealing in real estate prohibited—No such association shall engage in the business of buying and selling or dealing in real estate, but it may secure obligations due to it and the payment of its loans by taking real estate mortgages. It may purchase at any sheriff's, judicial, or other sale, public or private, any real estate upon which it has a mortgage, judgment, or other lien, or in which it has any interest. It may acquire title to any real estate on which it holds any lien, in full or part satisfaction thereof, and may sell, convey, hold, lease, or mortgage the same. (2897)

3058. Application of the foregoing provisions—Save as hereinafter provided, the provisions of §§ 3048-3057 shall apply to all building and loan corporations hereafter formed.

GENERAL BUILDING AND LOAN ASSOCIATIONS

3059. Application of certain provisions—Sections 3050, 3053 and 3054 shall apply also to existing domestic building and loan associations authorized to transact a general business throughout the state, and the provisions of §§ 3060-3067 shall apply exclusively to such last named corporations.

No provision is made for the future organization of general building and loan associations. See Report Revision Commission, p. 24.

3060. Securities deposited with examiner—Every such association having not less than five hundred thousand dollars of permanent stock subscribed, and not less than two hundred thousand dollars paid-in cash capital, shall at all times keep with the public examiner a deposit of securities approved by him of at least two hundred thousand dollars, as a guaranty fund, in trust for all its members and creditors. Such securities shall consist of any or all of the first three classes of authorized securities or of first mortgages on real estate. So long as such deposits be not reduced below two hundred thousand

dollars, it may at any time substitute like securities and may collect interest and dividends. ('01 c. 233 s. 6; '03 c. 93 s. 3)

3061. Interest, etc., on securities—Surrender—So long as it remains solvent and faithfully performs all contracts with its members, it may collect and retain all interest, dividends, and premiums accruing on such securities, all dues or monthly payments on stock pledged as collateral thereto, and all balances due or any part thereof. Whenever the minimum required by law will not be reduced thereby, any mortgage or other security so deposited may be withdrawn with the approval of the examiner upon satisfactory proof by affidavit that it has been paid or sold or hypothecated or is needed for foreclosure. ('01 c. 233 s. 7)

3062. Powers—Such association may make loans on real estate security to, and receive deposits from, its members and others; it may purchase at any sale, public or private, any real estate upon which it may have a mortgage, judgment, or other lien, or in which it may have any interest, and may sell, convey, mortgage, lease, or improve the same. It may acquire a lot or lots on which a building or buildings may be erected for the convenient transaction of business, and lease such portions thereof as may not be required for its own use. ('01 c. 233 s. 5; '03 c. 93 s. 2)

3063. Kinds of stock prohibited and allowed—No such domestic association shall issue preferred stock, but may issue different series of stock. It may issue deposit stock upon the terms and conditions provided in the by-laws; instalment stock to be paid in periodical sums, which shall mature when the amount so paid with the dividends thereon shall equal its par value; a dividend bearing prepaid stock, upon which a partial dividend may be paid semiannually out of the full dividend apportioned thereto; and full-paid stock upon which the par value thereof shall be paid in advance, and upon which a full or a definite dividend may be paid, not exceeding the per cent. of profits earned by all classes or series of stock at the time when declared, and in the certificate of such stock the right of withdrawal may be waived for a definite time. Such association may issue permanent stock for which the full par value shall be paid at the time of issue, or in such instalments as may be provided in its by-laws, and which shall be entitled to dividends not exceeding the per cent. of profits earned by all fully participating classes of stock at the time the dividend is declared, to be credited to the stock until the same is fully paid, and afterwards paid in cash. The balance of profits, if any, and the principal paid on such stock shall not be paid to holders thereof so long as such association shall have any other legal obligations outstanding. No such association shall issue any certificates of shares until the terms and conditions thereof shall have been approved by the state examiner. ('01 c. 233 s. 26)

3064. Withdrawal of stock—Valuation—Times—Any holder of prepaid or instalment stock, except permanent stock; whose shares are not in arrears or pledged for a loan, may withdraw the same after twenty-four months from the date of the first payment, and not before. But the board of directors, at any earlier date, may buy in the shares of any such stockholder desiring to withdraw, by paying him the amount paid in thereon less agreed discount of not more than eight per cent. Any such shareholder may give written notice of withdrawal to the secretary, and his liability for further instalments and right to share in future profits shall thereupon cease. At the end of two years he shall receive all monthly payments made on such shares, not including admission fees, less fifty cents for issue and cancellation of certificate, and two per cent. of amount paid, for reserve fund, but, if such shares be in arrears, there may also be deducted a fine of ten cents per share for each thirty days of such delinquency. Failure to give such notice and make payments shall subject any stockholder to a fine of ten cents per share per month, for a period of six months after the last payment made. If the arrearages and fines remain unpaid for six months, the balance of such monthly payments, if any, after deducting the certificate fee, contingent fund,

and fines, shall be subject to withdrawal after twenty-four months from first payment, on application of stockholder. If such delinquent shares are not called for within twenty-four months from date of last payment, the balance, if any, to the credit of such shares shall be transferred to the reserve fund, and the stockholder shall have no further claim thereon. If such withdrawing member has made twenty-four or more payments, he shall receive the amounts so paid, less the deductions hereinbefore specified, and three-fourths of the net profits credited to his stock. No more than one-half the monthly receipts on withdrawable stock shall be used to pay the withdrawal or maturity value of stock, unless otherwise determined by resolution of the directors. ('01 c. 233 s. 27)

3065. Reserve fund—At the close of each dividend period it shall set apart for a reserve fund not less than five nor more than ten per cent. of the profits for such period, to which shall be added two per cent. of the aggregate instalments paid on all instalment stock withdrawn before maturity, on notice, after two years, and the amount to the credit of all stock delinquent more than two years. ('01 c. 233 ss. 27, 28)

3066. Report to public examiner—At the close of each fiscal year of the association the directors shall cause to be made a thorough examination of all its books, vouchers, and other papers, and of its assets, liabilities, and affairs generally for the preceding fiscal year, and a detailed report thereof to the stockholders or members in duplicate on a form prescribed by the examiner, and one copy thereof to be delivered to him within thirty days from the close of such fiscal year together with the prescribed fee, and the other to the stockholders at their annual meeting. It shall contain the following statements: (1) The authorized capital and par value of each share; (2) The number sold during the year; (3) the number canceled or withdrawn; (4) the number remaining in force; (5) the receipts and disbursements; (6) the assets and liabilities. It shall show the amount received as dues under each separate class of stock, and all deductions therefrom for expenses, withdrawals, cancelations, forfeitures, refundments, or otherwise, the profits, if any, credited or subject to credit, the number of shares of each monthly issue or series in force, and the amounts paid in salaries, wages, traveling expenses, rent, postage, telegraph and express charges, printing, books, stationery, furniture, office supplies, advertising, and commissions to agents and others. If it appears from such report that said corporation is solvent and is able to meet its obligations, the examiner shall within thirty days issue a new certificate authorizing it to transact business for one year from the date of such report. The secretary shall also transmit to the examiner promptly a certified copy of every semiannual report to its stockholders or members. (2896; '01 c. 233 s. 18)

3067. Name, what to include—Building and loan associations, as referred to in §§ 3059–3066, shall include all corporations doing savings and loan or investment business on the building society plan. ('01 c. 233 s. 22)

OTHER CORPORATIONS FOR PROFIT

MANUFACTURING CORPORATIONS

3068. Formation—Purpose—A corporation may be formed for the purpose of engaging in any manufacturing or mechanical business not inconsistent with an honest purpose. The amount of its capital stock shall be fixed and limited by the stockholders in their certificate of incorporation, and shall be divided into shares of not less than ten dollars nor more than one hundred dollars each, but may be increased at any stockholders' meeting called for that purpose. (2805–2821; '97 c. 249)

A corporation cannot be organized under this section except for an exclusively manufacturing or mechanical business (40–213, 222, 41+1020). What constitutes a "manufacturing" or "mechanical" corporation within Const. art. 10 § 3 exempting stockholder from liability (90–144, 95+767 and cases cited; 84–408, 87+1016; 65–263, 68+48; 90–501, 97+140).

3069. Withdrawal of capital—Liability of stockholders—If the capital stock of a manufacturing corporation is withdrawn and refunded to the stockholders before the payment of corporate debts for which it would have been liable, the stockholders shall be liable to any creditor, to the amount of the sum so refunded to each of them, respectively; but if, in any action under this statute, any stockholder shall be compelled to pay any such debt, he may call upon every stockholder to whom any part of such stock has been refunded to contribute his proportionate share of the sum so paid by him. If the directors shall pay a dividend when such corporation is insolvent, knowing such corporation to be insolvent, or that such dividend would render it so, or when its payment would render it insolvent, those assenting thereto shall be jointly and severally liable in an action on the statute for all debts due from such corporation at the time of such dividend. Every officer who shall intentionally neglect or refuse to perform any duty imposed upon him by law shall be liable for all corporate debts contracted during the period of such neglect, and if the corporation shall violate any provision of law, whereby it becomes insolvent, the directors ordering or assenting to such violation shall be liable in an action under the statute for all debts contracted after such violation. (2822-2825)

After insolvency of corporation and appointment of receiver he alone can sue for capital wrongfully withdrawn (44-37, 46+310). Liability of directors assenting to or engaging in ultra vires corporate acts (41-84, 42+926; 84-408, 87+1016). Action by single creditor to enforce liability of directors. Practice (41-84, 42+926. See 44-37, 40, 46+310; 61-375, 393, 63+1079). Limitation of actions (66-213, 68+976; 78-124, 80+853; 48-349, 51+117, overruled).

FOR MINING AND OTHER PURPOSES

3070. Formation—Purpose—A corporation may be formed for the purpose of mining, smelting, reducing, refining, or working ores or minerals, or for working coal mines or stone quarries and marketing the products, or for manufacturing brick, stone, iron, steel, copper, or other metals, or for buying, working, selling, and dealing in mineral or other lands, or for the whole or any part of said purposes. (2827, 2828)

Articles of incorporation held authorized by this section (65-281, 68+49).

3071. Meetings—Stock in other companies—Fraudulent issue of stock—The directors, managing officers, or stockholders of a mining corporation may meet and transact business without the state, and may establish offices elsewhere; but an office shall always be maintained within the state where legal process may be served. Every such corporation may acquire and hold stock in any other corporation, if a majority in amount of the stockholders agree thereto. Every officer of such corporation or other person who shall fraudulently issue or cause to be issued any stock, scrip, or evidence of corporate debt, or who shall sell, offer for sale, hypothecate, or otherwise dispose of any such stock, scrip, or evidence of debt, knowing the same to be fraudulently issued, shall be guilty of a felony. (2833, 2834)

Acquiring stock in other corporation (65-263, 270, 68+48).

MORTGAGE AND LOAN COMPANIES

3072. Powers—Mortgage loan companies may acquire, hold, sell, hypothecate, assign, transfer, and convey any obligations thereof, or of any person or other corporation, which are secured by mortgage or other real estate security, and collect, foreclose, compound, compromise, release satisfy, and discharge the same of record. (2838)

CO-OPERATIVE ASSOCIATIONS

3073. Formation—Purposes—A co-operative association may be formed for the purpose of engaging in any lawful mercantile, manufacturing, or agricultural business. Its certificate of incorporation shall be filed for record with the register of deeds of the county of its principal place of business, and thereupon it shall become a corporation. A majority of the incorporators shall be

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residents of the county of its principal place of business, and its duration without renewal shall not exceed twenty years. (2903, 2904; '97 c. 351)

See 1905 cc. 276, 313

Effect of defective incorporation (70-303, 73+147; 93-8, 100+387).

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3074. Officers—Management—Every such association shall have a president, a treasurer, and not less than three directors, who shall together constitute a board of managers and conduct its business. Such officers shall be chosen annually by the stockholders, and hold their offices until others have been chosen and qualified. The association shall make its own by-laws, not inconsistent with law, and may therein provide for any other officers deemed necessary, and the mode of their selection. It may amend its certificate of incorporation at any general stockholders' meeting, or at any special meeting called for that purpose, upon ten days' notice to the stockholders. (2905, 2906; '97 c. 351)

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3075. Capital—Limit of interest—Shares—The amount of capital stock shall be fixed by the certificate of incorporation, which amount and the number of shares may be increased or diminished at a stockholders' meeting specially called for that purpose; but the whole amount of stock shall never exceed one hundred thousand dollars, and, in case of a creamery association, shall not exceed twenty-five thousand dollars. Within thirty days after the adoption of an amendment increasing or diminishing its capital, it shall cause the vote so adopting it to be recorded in the office of the register of deeds where its original certificate is on record. No share shall be issued for less than its par value, and no member shall own shares of greater par value than one thousand dollars, or be entitled to more than one vote. It may commence business whenever twenty per cent. of the stock has been subscribed for and paid in, but no certificate of shares shall be issued to any person until the full amount thereof has been paid in cash, and no person shall become a shareholder therein except by consent of the managers. (2907-2909; '97 c. 351 s. 2)

07 3076 - 293

3076. Liability of officers—Dissolution—If such board of managers, or the directors or officers having control of such association, for five consecutive years after its organization shall fail to declare a dividend upon its capital or shares, five or more stockholders, by petition setting forth such facts, may apply to the district court of the county of its principal place of business, for its dissolution. If, upon hearing, the allegations of the petition are found to be true, the court may adjudge a dissolution of the association. (2910; '99 c. 217 s. 1)

07 3077 - 293

3077. Distribution of profits—The profits on the earnings of such association shall be distributed to those entitled thereto by its by-laws, and in the proportions and at the times therein prescribed, which shall be as often as once in twelve months. (2912)

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3078. Annual report to dairy and food commissioner—Every creamery association, on or before December 30 in each year, shall make a report to the state dairy and food commissioner, or such officer as may at any time, by law, be given the supervision of dairy products. Such report shall contain the name of the corporation, its principal place of business, the location of its creamery, and the number of pounds of butter or other dairy product manufactured by it during the preceding year. ('97 c. 351 s. 3)

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AGRICULTURAL SOCIETIES

STATE AGRICULTURAL SOCIETY

3079. Confirmation—Purposes—The state agricultural society as it now exists is hereby confirmed and established as a public corporation. The conveyance to the state of the land in Ramsey county known and used as "The State Fair Grounds" is hereby confirmed, and the same shall be held by the state forever for the following public purposes, and no other: For exhibiting thereon annually, under the management and control of said society, the agricultural, stock-breeding, horticultural, mining, mechanical, industrial, and

other products and resources of the state, including proper exhibits of the arts and sciences, and all other public exhibitions pertinent to expositions of human art, industry, or skill. Neither the state nor said society shall ever charge or incur said property. ('03 c. 126 ss. 1, 2, 8)

Society a department of the state government and its managers public officials. Exempt from civil liability. Constitutionality of 1903 c. 126 (93-125, 100+732; 104+534).

3080. Membership—Its membership, except honorary, shall be confined to citizens of this state. Such membership shall be composed as follows:

1. Three delegates to be chosen annually by each county and district agricultural society in the state. If no county agricultural society exists in any county, or if an existing one fails to hold an annual fair, and any city therein shall maintain an annual street fair devoted to agricultural interests, then three delegates from such street fair association. If any of such associations fail to choose delegates, then the president, secretary, and treasurer thereof shall, by virtue of their offices, be members. Whenever there is in any county more than one such fair association, the senior association shall be entitled to such membership. But any such society, to entitle it to membership, shall maintain an active existence and hold annual fairs, and shall have paid out each year at least three hundred dollars in premiums, and have an annual membership of at least twenty-five.

2. Individuals who, by reason of eminent services in agriculture, horticulture, or in the arts and sciences connected therewith, or of long and faithful service in the society, or of benefits conferred upon it, may, by a two-thirds vote at any annual meeting, be elected honorary members of said society.

3. Two delegates elected by, and the president, ex officio, of, the following societies and associations: The state horticultural society, the state amber cane society, the state dairymen's association, the state forestry association, the state poultry association, the state beekeepers' association, the Minnesota stock breeders' association, and any other state society or association having for its object the promotion of any branch of agriculture, horticulture, stock raising or improvement, or mechanics related to agriculture or horticulture.

4. The members of the governing board of said society and its officers. ('03 c. 126 s. 3)

See 1905 c. 307

3081. Governing board—Annual meeting—Auditors—The management and control of its affairs shall be vested in its president, two vice-presidents, and six other managers, to be known as its governing board, all of whom shall be citizens of this state, and any five thereof shall constitute a quorum. The annual meeting of such society shall be held at such place in St. Paul or Minneapolis or upon the state fair grounds as the governing board may select, on the second Tuesday in January. It shall continue until the following Thursday, on which day a president and two vice-presidents shall be elected for terms of one year each, and also two managers for terms of three years each, who shall take the place of the present managers as their respective terms expire so that two of the said six other managers shall be chosen each year. The governor and three other persons appointed by him, with the advice and consent of the senate, shall constitute a board of auditors, who shall examine all transactions of said society, and report to the legislature at each session thereof. ('03 c. 126 s. 4)

3082. Secretary and treasurer—Term—Compensation—On the third Tuesday of January in each year the president, vice-presidents, and board of managers shall elect a secretary and a treasurer, each of whom shall hold office for one year and until his successor qualifies. Their compensation and that of other officers of the society shall be fixed by such board. ('03 c. 126 s. 5)

3083. Annual report—Contents—On or before December 10 of each year, the secretary shall make a report to the governor, showing all the proceedings of the society during the current year, and its financial condition as appears from the books of the treasurer. Such report shall contain a full detailed statement of all receipts and expenditures during such year, which shall be printed in like manner as the reports of state officers. ('03 c. 126 s. 6)

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3084. Property vested in state—Moneys, how expended—The title to all money and other property of such society shall vest in the state, and there shall be no division of its assets among its members. All moneys received by said society shall be used in the holding of its annual fair and for the improvement of the fair grounds, the payment of expenses, premiums, and purses, and furnishing such attractions and amusements as the governing board shall deem necessary for the success of its fairs. ('03 c. 126 s. 7)

3085. Management of property—General offices—The custody, management, and control of said fair grounds and all structures thereon shall be vested in said society as a department of the state, and its general offices, containing its property and records, shall be maintained upon said fair grounds. ('03 c. 126 s. 9)

3086. Exhibitions—Standing appropriation—Said society shall hold upon said fair grounds an annual fair, and may invite the co-operation of any other states or countries therein. It shall provide for and pay premiums, and all moneys expended for premiums, exhibits, or other displays shall be for the purpose of encouraging agriculture, horticulture, stock breeding, manufactures, and the mining, mechanical, and industrial arts and sciences. The sum of four thousand dollars is annually appropriated out of the revenue fund, to aid said society in the payment of such premiums, the same to be paid out by the state treasurer upon the order of the president and treasurer of the society countersigned by its secretary. ('03 c. 126 s. 10)

3087. Rules and regulations—Said society may make all by-laws, ordinances, and rules, not inconsistent with law, which it may deem necessary or proper for the government of said fair grounds and all fairs to be held thereon, and for the protection, health, safety, and comfort of the public thereon, and provide penalties for their violation; the same to be in effect from the time of filing with the secretary of the society. ('03 c. 126 s. 11)

3088. To license privileges—Said society may license and regulate all shows, exhibitions, performances, and privileges on said grounds, and may revoke any such licenses, and prohibit, remove, and summarily stop all exhibitions, performances, or privileges which it may deem offensive to good morals or which are contrary to law. ('03 c. 126 s. 12)

3089. Unlicensed or improper exhibition—Every person who shall engage in any play, game, concert, theatrical or other performance, or exhibit any show, caravan, circus, or curiosity, for which pay or any admission fee is required or received, without license therefor from the governing board, and any person who shall exhibit or perform therein any indecent, obscene, or immoral play or other representation, shall be guilty of a misdemeanor. If any show or exhibition licensed shall prove to be indecent, obscene, or immoral, the governing board shall forthwith close the same, and the license fee paid for such privilege, and any and all other moneys which may have been paid in connection therewith, shall be forfeited to the society. ('03 c. 126 s. 23)

3090. May contract in its own name—Said society may contract in its own name, and through its duly appointed officers and agents, and the provisions of this subdivision, and all ordinances, by-laws, rules and regulations adopted by its governing board, shall be deemed a part of every such contract entered into with any exhibitor, privilege holder, lessee, licensee, or other person. ('03 c. 126 s. 25)

3091. Special peace officers—At or before the time of holding any such fair, the president of said society may appoint, in writing signed by him, as many persons to act as special constables as he may judge necessary, for and during the time of holding the same and for a reasonable time prior and subsequent thereto. Such constables, before entering upon their duties, shall take and subscribe the usual oath of office, indorsed upon their appointment, and shall have and exercise upon the grounds of said society, and within one-half mile thereof, all the power and authority of constables at common law, and in addition thereto may, within such limits, without warrant arrest any person found violating any law of the state, or any rule, regulation, by-law, or or-

dinance of said society, and may summarily remove the persons and property of such offenders from the grounds, and take them before any court of competent jurisdiction to be dealt with according to law. The president, vice-presidents, and members of the board of managers shall also have all the powers by this section conferred upon such constables. Every such peace officer shall wear some appropriate badge of office while acting as such. ('03 c. 126 ss. 13, 14)

3092. Sale of liquors—No person shall sell, barter, give away or otherwise dispose of or introduce, have or keep for barter, gift or sale any spirituous, malt or fermented liquor or intoxicating liquors of any kind upon or within one-half mile of the state fair grounds or aid and abet in so doing and the presence and possession of any kind of such liquors in any quantity upon the person or upon the premises leased or occupied by any person within said limits, is declared a public nuisance, and shall be prima facie evidence of the purpose of such person to barter, give away or sell the same. Any person who shall violate any provision of this section shall be guilty of a misdemeanor. (2008; '95 c. 103)

3093. Lockup—Seizure of liquors—Said society is authorized to provide and maintain a watchhouse or lockup on said grounds for the confinement of offenders and the temporary detention of suspected persons. The governing board, by itself or its special constables, shall without warrant seize and destroy any spirituous, malt, fermented, or intoxicating liquors of any kind found upon said grounds. ('03 c. 126 ss. 15, 17)

3094. Holding justice court on fair grounds—The governing board of said society may designate a justice of the peace of Ramsey county, who shall hold his court within the limits of said fair grounds while any fair is being held, and for one week prior and subsequent thereto, and there try and determine in a summary manner all cases within his jurisdiction, and not be required to grant any change of venue. While acting as such court he shall receive such compensation, not exceeding five dollars per day, as may be fixed by said governing board. All fines, penalties, and costs collected for any offence committed on said grounds shall forthwith be paid to the treasurer of said society, and his receipt therefor filed by the court with the county auditor. Said governing board may appoint and provide for the compensation of a person to prosecute actions before said court, or to act as its legal adviser. ('03 c. 126 s. 24)

3095. Larceny of ticket—Any person who shall steal or unlawfully obtain any ticket, paper, or other writing entitling, or purporting to entitle, the holder to admission to the state fair grounds, or any part thereof, or who shall sell or dispose of any such ticket which upon its face appears to have been issued to another and not transferable, without informing the purchaser of its character, shall be guilty of a misdemeanor. ('03 c. 126 s. 22)

3096. Misdemeanors—In addition to other misdemeanors specified in and made punishable by a statute, every person who shall trespass on, enter, or attempt to enter said fair grounds, by jumping, climbing, or passing through any inclosure, or in any manner except through the gates provided therefor, or who shall enter such gates or other reserved inclosure on said grounds without authority of the governing board or its authorized officers, or who shall obtain permission to enter said grounds by impersonating another, or by any misrepresentation or false pretence, or who shall be found lurking, lying in wait, or concealed in any building, yard or premises, upon said fair grounds, or loitering about the immediate vicinity thereof with intent to steal or commit other offences or mischief, shall be guilty of a misdemeanor. ('03 c. 126 s. 21)

COUNTY AGRICULTURAL SOCIETIES

3097. Formation—General powers—An agricultural society may be formed by citizens of any county or of two or more counties jointly, but only one such society shall be organized in any county. Such society shall have jurisdiction and control of the grounds upon which it holds its fairs, and of the streets and

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grounds adjacent thereto during such fair, so far as may be necessary to preserve good order, and it may make all rules and regulations necessary for such purpose. Every person who shall wilfully violate any such rule or regulation during the days of a fair shall be guilty of a misdemeanor. (2975, 2976)

3098. Standing appropriation for county societies—The sum of fourteen thousand dollars is hereby annually appropriated to county agricultural societies and joint-stock societies holding agricultural fairs, and butter, cheese, dairy, and stock associations of the state, pro rata, to be paid out in premiums at the fairs of only such societies as have an annual membership of twenty-five or more, maintain an active existence, hold annual fairs, and which have paid out in premiums as much as they receive from the state. Such pro rata shall be paid to the oldest active society in a county, except where there are two of the same age, when it shall be divided equally between them. All payments hereunder shall be made only upon the filing with the state auditor of a sworn statement showing the holding of the fairs and the payment in premiums of the amount claimed from the state, or that such societies have advertised annual fairs, and been prevented from holding the same, and have incurred expense in such advertising and preparation for the same, equal to the amount claimed from the state. The secretary of the state agricultural society on or before April 10 in each year shall certify to the state auditor a list of all county agricultural and joint-stock societies that have complied with this section. ('97 c. 86)

3099. County lands may be leased, when—Any county board of any county may lease to agricultural societies established and existing in its county, for such period and on such terms as it shall deem expedient, any lands of the county, to be used by such society for fair purposes. Said society may construct on such leased land suitable buildings, race tracks, and other improvements. (2977)

3100. Annual meeting—Secretary's report—Every such society shall hold an annual meeting for the election of officers and the transaction of other business at the time named in its by-laws, at or before which its secretary shall make a report of its proceedings during the preceding year. Such report shall contain a statement of all transactions at its fair, the number of entries, the amount and source of all moneys received, and the amount paid out for premiums and other purposes, and show in detail its entire receipts and expenditures during such year. Said report, or a certified copy thereof, shall be filed with the register of deeds of such county. (2978, 2979)

3101. Delegates to state society—The president of every such society, and two members to be elected annually, shall be members of the state agricultural society. (2980)

SOCIAL AND CHARITABLE CORPORATIONS

GENERAL PROVISIONS

3102. For what purposes formed—Any three or more persons may form a corporation for the promotion of religious, moral, educational, scientific, benevolent, fraternal, or reformatory purposes. (2913)

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Does not authorize incorporation of association for profit or designed to bestow benefits for a consideration (23-92; 35-458, 29+155; 37-13, 32+787; 85-498, 89+872). Unauthorized incorporation held to create corporation de facto (35-458, 29+155). Cited (88-524, 93+672; 88-535, 93+669; 93-72, 100+666; 42-204, 44+57; 72-498, 75+692).

07 3102-3107 - 345

09 3102 - 483

3103. Certificate—Contents—Record—They shall adopt and sign a certificate containing:

07 3103 - 16

1. Its name, its general purpose and plan of operation, and its location.
2. The terms of admission to membership, and the amount of monthly, quarterly, or yearly contributions required of its members.
3. If there be capital stock, the number of shares, and the amount of each share.
4. The officers of the corporation or society, with time and place of electing or appointing the same, the number of trustees, directors, or managers, if any.

who are to conduct the transactions of the society during the first year: Provided, that societies for the promotion of temperance or social or moral reform may hold their annual meetings for the election of officers and the transaction of other business at such time and place in the state as a majority of the members thereof may by vote determine; and any such existing society may hold its annual meetings at any time or place so determined.

Said certificate shall be acknowledged and recorded with the secretary of state and with the register of deeds in the county where the corporation is located. Any such corporation may amend its certificate as provided in the case of other corporations, but the amendment need not be published. (2914, 2917, 2918; '95 c. 333)

Amendment (72-498, 75+692).

3104. Powers—Collection of assessments—Upon filing for record its certificate of incorporation, it shall have the ordinary powers of corporations, and may establish by-laws and regulations for the management of its affairs, in accordance with law and consistent with an honest purpose. It may in its corporate name, and for the use and benefit of the corporation, sue and recover judgment, for an amount not exceeding twenty dollars upon any one share in any one year of subscribed stock in said corporation, after ten days' notice to each stockholder of an assessment upon the shares. (2916)

07 3104 16

3105. Election by another corporation—Any benevolent, charitable, missionary, hospital, or religious corporation, whenever its certificate shall so provide, may authorize the election of a specified number of its directors, trustees, or managers by another corporation. (2919; '97 c. 2 s. 1)

3106. No dividend until dissolution—No distribution of property among members or shareholders of any such corporation shall be made until the dissolution of the corporation, except dividends upon its capital stock, if any, out of the net annual receipts after payment of all outstanding indebtedness. ('01 c. 87)

85-498, 507, 89+872.

3107. Power as to property—Every such corporation, in addition to its other powers, may acquire by purchase, gift, grant, or devise, and hold, use, and convey, any real or personal property whatever, and may lease, mortgage, or use the same in any manner deemed most conducive to its interests and prosperity; but it shall not divert any gift, grant, or bequest from the specific purpose designated by the donor without his consent; but no street, road, or alley shall be established, opened, or extended through or upon lands not exceeding ten acres in area upon which a hospital building, incorporated as such, is situated, except with the consent of the managing board of such hospital. (2922; '99 c. 294)

05 3107 75

Diversion of gift (85-302, 88+977).

3108. Colleges and seminaries—Diplomas—The trustees of any incorporated college or seminary, in addition to their other powers, may prescribe its course of study and discipline, grant such literary honors and degrees as are usually granted by similar institutions, and give suitable diplomas in evidence thereof. They may make all rules, ordinances, and by-laws necessary and proper to carry into effect its powers. Every such college shall be subject to visitation and examination by the superintendent of public instruction. They may require the treasurer and other officers and agents to give bonds. They shall annually, on or before January 1, report to the superintendent of public instruction the name of each trustee, officer, and student, the amount of stock subscribed, donated, and bequeathed, and the amount actually paid in. (2923-2925, 2927)

85-498, 511, 89+872.

3109. Existing institutions—Any existing institution of learning, whether incorporated or not, on complying with the foregoing requirements, may by a majority vote become a corporation, with all its powers and privileges, and assume a corporate name. It may by a like vote transfer to such corporation,

when so formed, all its property, real, personal, or mixed. Such corporation in its corporate name may sue for and collect all debts, demands, subscriptions, devises, and bequests to said institutions. But said corporation so taking such property of the original corporation or company shall take the same subject to all liens, trusts, and limitations to which it was subject before transfer, and shall be liable to pay all debts of such previous corporation to the extent of the value of the property so taken. (2928)

CORPORATIONS TO ADMINISTER CHARITIES

3110. Formation—Requisites—A corporation may be formed under the provisions of this subdivision for the purpose of administering and furnishing relief and charity for the worthy poor who may reside in a designated locality, and shall comply with the provisions of this section and § 3111, under the name specified in its certificate of incorporation. Such certificate shall declare:

1. Its name and principal place of business.
2. That it is organized to administer and furnish relief and charity for the worthy poor who may reside in a designated locality, and without discrimination as to age, sex, color, or religious inclination of the beneficiaries.
3. The names and places of residence of the incorporators, and how and when their successors may be appointed or elected.
4. The names of the first board of directors or managing officers, and in what officers or persons the government of the corporation and the management of its affairs shall be vested, and how and when they shall be elected or appointed, and any other provisions not inconsistent with law which may be desired. ('95 c. 158 ss. 1, 2)

3111. Powers of corporation—Visitorial right—The persons so executing said certificate and their successors shall thereupon become a corporation by the name specified therein, with all the powers of a common law corporation. It may sue and be sued by its corporate name, have perpetual succession, adopt a corporate seal, and change the same at pleasure. It may in its corporate name acquire and receive, by purchase, gift, grant, devise, and bequest, any property, real, personal, or mixed, and the same hold, sell, convey, assign, loan, lease, or otherwise use for the purposes named in its certificate of incorporation, and for such time and in such manner as may be directed by any grantor or testator who may make a gift, devise, or bequest to such corporation, to be administered and used to furnish relief and charity for the worthy poor who may reside from time to time in a locality designated by such donor or testator; and it shall have no power to divert any gift, grant, or bequest from the specific uses and purposes designated by the donor or testator. Such corporation shall have no capital stock, and any court of equity, on its own motion or on application, may have and exercise visitorial powers over its officers and affairs. ('95 c. 158 ss. 3, 4)

93-210, 227, 100+1104.

CHAMBERS OF COMMERCE, ETC.

3112. Formation—Purposes—A corporation may be formed in any county, city, village, or town for the purpose of advancing the commercial, mercantile, manufacturing, or agricultural interests of such municipality; for inculcating just and equitable principles of trade; for establishing, maintaining, and enforcing uniformity in its commercial usages; for acquiring, possessing, and disseminating useful business information; for adjusting the controversies and misunderstandings which may arise between individuals engaged in trade and business; and for promoting the general prosperity of such municipality. (2982)

3113. Chambers of commerce and boards of trade—In addition to its ordinary powers, every chamber of commerce or board of trade whose certificate shall state the purpose of its incorporation to be to acquire and disseminate useful business information; to inculcate equitable principles of trade; to establish, maintain, and enforce uniformity in the commercial usages, business

transactions, and trade relations of the municipality in which it is located, or of citizens thereof—shall also have power, by and through its committees, boards, and agents, in such manner, not inconsistent with law, as its by-laws or regulations may provide, to arbitrate, adjust, and determine differences between itself and its members, or between any such members, or between any such members and other persons assenting in writing thereto, including the taking of testimony and the rendition of awards as the basis of judicial proceedings, and the enforcement of any such awards, regulations, or by-laws, either by fine or by forfeiture of personal or proprietary rights of members. (2982, 2983)

By-law requiring arbitration constitutional (86-448, 91+8).

CAMP MEETING ASSOCIATIONS

3114. Formation—Capital stock—Camp or grove meetings, Sunday school assemblies, or any societies for religious instruction or worship, and for mutual improvement in moral, literary, or social culture, may be incorporated under this chapter. The amount of capital stock shall not be less than five thousand dollars, divided into shares of not less than ten dollars nor more than fifty dollars, and paid in as provided in its by-laws. (2940, 2942, 2944)

3115. Exempt from taxation—Laying streets through—All property necessarily used by any such corporation, and not leased or used for profit, shall be exempt from taxation. No roads or streets shall be laid through any such property without the consent of the governing board of such corporation. (2946, 2949)

3116. Peace officers may be appointed—The governing board of any such corporation may appoint peace officers for the purpose of keeping order on its grounds, to be paid by such corporation. Such officers while on duty shall have the same power and authority as constables. (2948)

SOCIETIES FOR SECURING HOMES FOR CHILDREN

3117. Formation—Twenty or more citizens of this state may form a corporation for the purpose of securing homes in private families, by adoption or otherwise, for orphans, or homeless, abandoned, neglected, or grossly ill-treated children. Such incorporators shall file with the secretary of state their certificate of incorporation, accompanied by a certificate of the governor and three or more justices of the supreme court, that said corporation is trustworthy and entitled to confidence. A like certificate of three or more justices of the supreme court shall be filed every ten years thereafter. Such corporation shall have a main office, adopt and publish rules for the transaction of its business, and its financial records shall be open to public inspection. (2932)

3118. Powers of such societies—Every such society may receive and become the legal guardian of any resident child under ten years of age, who is grossly ill-treated, or who has been abandoned, or is without a home, or surrounded by bad or immoral influences, or whose living parents shall in writing assign to it the custody thereof, and through its agent may consent to the adoption of a child in all cases where a parent or guardian might so consent. It may contract in writing with any person who, after ninety days' trial, shall take, without adopting, any such child, for its proper care until sixteen years of age if a girl, and eighteen if a boy. Such contract shall also specify the amount to be paid to such child at the expiration thereof, but shall contain no provision for its political or sectarian training or education. (2933; '99 c. 64 s. 1)

3119. Compensation—Said society shall in no case charge or receive from any person adopting a child any compensation except the expense of taking it to the home provided, and the person taking the child shall receive no compensation for the care, clothing, or medical attendance thereof in case it is returned to the society. (2934)

3120. Supervision of children in homes—Said society shall keep careful supervision over all children placed by it, and, except in case of legal adoption,

require from persons taking them a full report of their condition and welfare at least once a year. Its agents shall have the right to visit such children, and personally investigate their condition, as often as may be deemed desirable. If such society becomes satisfied, upon due investigation, that the influence of any home is harmful, or the treatment of the child is unduly severe or inconsiderate, its superintendent may require his return to its main office, at the expense of the family having it. (2935)

3121. Report to state board of control—The secretary of every such society shall, from time to time, report to the state board of control such facts in reference to the children in its custody as such board may require, on blanks prescribed by it. The board of control may at all times investigate the homes where such children are placed, and if any child is found to have been placed in an improper home it may order its transfer to a proper one, and if the change is not made within thirty days it may take charge of such child and make suitable provision for it. (2936)

3122. Application to probate judge—His duties—Whenever two members of the governing board of any city, county, town, or village shall make petition, in writing, to the probate judge of any county, that a child under the age of ten years, residing in such county, is, in their opinion, dependent upon the public for support; has been abandoned or neglected or is a vagrant; or whose life, health, or morals is imperilled by cruel treatment or by the habitual intemperance or other misconduct of its parents or guardian—such judge shall issue a citation fixing a time and place of hearing upon such complaint, which citation shall be served upon such parents or guardian not less than five days before the day of hearing, if they or either of them can be found in the state, of which the sheriff's return shall be sufficient proof, provided that if such parent or guardian shall join in the petition no notice shall be necessary. In either case said judge shall cause an investigation to be made as to the truth of the allegations of the petition and the condition of such child, and upon any such hearing he may compel the attendance of witnesses, and shall enter his findings on the records of the court. The county attorney shall attend all such hearings, and any other person may appear thereat in behalf of such child. In case of refusal by the parents or guardian to surrender a child to such society on order of such judge, he may direct the sheriff to take possession of the child and deliver it to such society or its agent. ('99 c. 64 ss. 2, 3)

3123. Order of probate judge—If the judge finds the allegations of the petition to be true, upon the written request of the superintendent of such society, he may direct that such child be turned over to its care and custody for the purpose of adoption, or to be placed by contract, and shall deliver to such society a copy of its order, which, in addition to other findings, shall state, as far as can be ascertained, the name and age of the child, and the name, nativity, residence, and occupation of the parents or either of them. Upon entering such order, the parents of such child shall be released from all parental duties and responsibilities in respect thereto, and thereafter shall have no right to its custody, services, or earnings, except by direction of such society or order of court. ('99 c. 64 ss. 2, 3)

3124. Child, how restored to parents—Whenever one or both of the parents of any ward of such society so committed to its care have become able to support and educate such child, by resolution of the governing body of the society and by order of said court it shall be returned to the parent making application therefor. But all orders of the probate judge relative to such child shall be appealable to the district court by the petitioners, parents, or guardians. ('99 c. 64 s. 2)

SOCIETIES FOR PREVENTION OF CRUELTY

3125. Purposes—Powers—The "Minnesota Society for the Prevention of Cruelty" is hereby confirmed and continued, with all existing powers, for the purpose of inculcating humane principles, the enforcement of law, and the prevention of cruelty, especially to children and animals. It may appoint representatives in any county where no active county society exists, for the purpose

of receiving and accounting for funds from any source, and may also appoint agents at large to prosecute the work of said society throughout the state. Said society and all county societies may appoint agents for the purpose of prosecuting persons guilty of cruelty to children or animals. Every such agent whose appointment has been approved and made a matter of record by the probate judge of the county from which he was appointed may arrest any person in his county found violating any law for the protection of children or animals, take him before any court or magistrate having jurisdiction, and make complaint against him. Branches of said society, consisting of not less than ten members, may be organized in any part of the state to prosecute the work of the society in their several localities under rules established by it. It may elect officers and make such rules and by-laws as are necessary. (3016)

See 1905 c. 274

3126. County societies—County societies for the prevention of cruelty to children and animals may be formed in any county by not less than seven incorporators, and the members, at a meeting called for that purpose, may elect not less than three of their number directors, who shall continue in office until their successors are qualified. (3017)

3127. May acquire and hold property—Municipal appropriations—Every such society may acquire by purchase, gift, grant, or devise, and hold, use, or convey, real estate and personal property, and lease, mortgage, sell, or use the same in any manner conducive to its interest, to the same extent as natural persons. The county board of any county, or the council of any city or village, in which such societies exist, may, in their discretion, appropriate for the maintenance and support of such societies in the transaction of the work for which they are organized, any sums of money not otherwise appropriated not exceeding twelve hundred dollars in any one year provided that no part of such appropriation shall be expended for the payment of the salary of any officer of such society. (3020)

3128. Duties of peace officers—Fees—Any member of such association may require, and it shall be the duty of any sheriff or his deputy, any constable, police officer, or the agent of any such society, state or county, whose appointment has been approved by a judge of probate as provided in this subdivision, to arrest any person found violating the law relative to cruelty to persons or animals, and to take possession of any animals in their respective municipalities which have been cruelly treated, and deliver the same to the proper officers of the association. For such services such officers or agents shall be allowed and paid such fees as are allowed for like services in other cases, which fees shall constitute a part of the costs taxed on conviction. (3021)

FRATERNAL SOCIETIES

3129. How organized—Any subordinate lodge or encampment of Odd Fellows, any subordinate lodge of the Ancient Order of United Workmen, any subordinate lodge of Free and Accepted Masons, Grand Chapter of Royal Arch Masons, or Commandery of Knights Templars, any lodge of Ancient and Accepted Scottish Rites Masons of the Southern Jurisdiction, any subordinate lodge of Knights of Pythias, any state or county board of the Ancient Order of Hibernians, any subordinate lodge of the Scandinavian Aid and Fellowship Society, any subordinate or branch lodge of the I. Katolicka Slovenska Jednota v Spojenych Statoch Severnej Ameriky, and any subordinate lodge of any similar body now existing or hereafter organized, installed under the authority of the grand bodies of such orders respectively, or of any other supreme body authorized to institute such subordinate bodies, and any post of the Grand Army of the Republic, may become incorporated in the manner hereafter specified. (2985-3014; '03 cc. 17, 171)

See 1905 c. 4

3130. Certificate—Contents—Such subordinate lodge, encampment, chapter, post, division, section, state board, or county board, as the case may be, shall cause to be prepared a certificate of incorporation, which shall contain:

	3129	
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	3129	
09	-	42
	3129-3132	
09	-	152
	3130	
05	-	4
07	-	364
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1. The charter name and number of such lodge, chapter, encampment, commandery, or post;
2. The time when and the authority by which the same was instituted;
3. The name of the charter members thereof and its location;
4. The names of the elective officers of such body for the current term. (2986, 2991, 2995, 2999, 3003, 3008, 3012)

05 3131
07 - 364
4
3131. **Corporate seal**—The seal of any such lodge, branch, commandery, or encampment shall be its corporate seal. (2988, 2993, 3005, 3014; '03 c. 171 s. 4)

05 3132
07 - 364
4
3132. **Surrender of charter—Disposition of property**—Whenever the charter of any such subordinate body shall be surrendered or taken away by the supreme body granting it, its corporate powers shall cease, except that it may sell and dispose of such of its property as is not designed for and used exclusively by said order, and collect debts, and all such property and debts shall be delivered up to said grand body, and be disposed of in accordance with its laws. (2989, 2997, 3001, 3006, 3010, 3015)

RELIGIOUS CORPORATIONS

05 3133
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3133. **Election of trustees**—The stated worshippers with any church, congregation or religious society, not already incorporated, who are of lawful age and have been considered as belonging thereto, may elect trustees thereof and incorporate the same in the manner herein provided. A written notice signed by at least five of such stated worshippers, which notice shall state the time, place and object of the meeting, shall be posted at least fifteen days prior to the time therein fixed, in some conspicuous spot at the place of worship of some church, congregation or society. At the time and place so fixed, such worshippers, not less than five thereof being present, shall, by a plurality vote, elect a chairman and secretary, who shall together determine the qualification of voters and receive and count the votes. The voters, as so determined, shall, by a plurality vote, elect not less than three nor more than nine members of their church, congregation or society as trustees, to take charge of its property and temporal affairs; and said voters shall also adopt a name, by which said trustees and their successors in office shall forever thereafter be known; and they may also determine the qualifications of the trustees thereafter to be chosen and the religious denomination or sect to which the society shall belong. Immediately after such meeting, the chairman and secretary thereof shall sign, in the presence of two subscribing witnesses, and shall acknowledge a certificate which shall state the names of the trustees elected, the name adopted for the incorporated society, the qualifications of future trustees, if any shall have been determined by the electors, and the name of the religious denomination to which the society shall belong, if any shall have been selected. (3022-3025; '99 c. 73)

Change of name (37-241, 33+786). Held a corporation de facto (37-447, 35+260). Merely cited as to fact of incorporation (25-202; 69-141, 143, 71+1031; 81-32, 34, 83+487; 83-269, 270, 86+330).

3134. **Certificate to be recorded—Powers of trustees**—Such certificate, together with the certificate of acknowledgment and a copy of the notice of meeting and affidavit of the posting thereof, shall be recorded with the register of deeds of the county where the place of worship of such society is located, and thereafter such trustees and their successors shall be a body corporate by the name expressed in such certificate. Such trustees may have a common seal and alter the same at pleasure. They may take possession of all temporalities of such church, congregation, or society, real and personal, given, granted, or devised, directly or indirectly, to such body or to any other person for their use. They may sue and be sued in their corporate name, recover and hold all debts, demands, rights, and privileges, all churches, buildings, burial places, and all the estate and appurtenances belonging to such church, congregation, or society, however acquired or by whomsoever held, as fully as though originally vested in them; and they may hold other real or personal estate to an amount which will produce a yearly income of not more than

three thousand dollars, and may demise, lease, and improve the same. (3026-3028)

31-173, 176, 17+282; 69-141, 144, 71+1031.

3135. Erection and repair of churches, etc.—Such trustees may repair and alter churches, make rules, regulations, and orders for managing the temporal affairs of the church, congregation, or society, and dispose of all moneys belonging thereto. They may regulate the renting of pews or slips, and the breaking of ground in their cemeteries. Under the direction of the congregation or society they may erect churches and dwellings for their ministers, and other buildings for the use of the church, congregation, or society. They may appoint a clerk and treasurer of their board and a collector, regulate their compensation, and remove them at pleasure. The clerk shall enter all rules and orders made by the trustees, and payments ordered by them, in a book kept for that purpose. (3029-3031)

Ratification of act of building committee (81-32, 83+487).

3136. Trustees—Term of office—Powers—The term of office of the trustees shall be three years, and until their successors are qualified. Immediately after their first election they shall be divided by lot into three classes, the first class retiring at the end of the first year, the second at the end of the second year, and the third at the end of the third year; and, as near as may be, one-third of the whole number shall thereafter be chosen annually. Two trustees may call a meeting of their board, and, when assembled, a majority of their whole number shall constitute a quorum for the transaction of any business. Fifteen days before the expiration of the term of office of any trustee the clerk shall give notice of the election of his successor, by posting the same at the place where the society stately meets for worship, therein stating the name of the trustee and the time and place of election; and in addition to such notice the minister or some other officer of such church or society shall give public notice of such election to the congregation at least one week before the election; and the foregoing provisions shall apply to filling vacancies by death, resignation, or removal. (3032-3034)

3137. Qualifications of voters—Register, etc.—No person belonging to any such church, congregation, or society shall be entitled to vote at any election after its incorporation until he has been an attendant on public worship in such church, congregation, or society at least six months before the election, and contributed to its support according to its usages and customs. The clerk of the trustees shall keep a register of all persons who desire to become stated hearers in such church, congregation, or society, and therein note the time of such request, and he shall attend all subsequent elections in order to test the qualifications of such voters in case of question. Nothing in this subdivision contained shall be construed to give the trustees power to fix the salary of any minister, but the same shall be fixed by a majority of the society entitled to vote at the election of trustees. (3035-3037)

Power to fix salary of minister (41-94, 42+922).

3138. Sale of real estate—"Society" defined—Any religious corporation organized under the provisions of this subdivision, by and through its trustees, may sell and convey, incumber, or otherwise dispose of any of its real estate; but no such conveyance or incumbrance shall be made by the trustees, except when first authorized by resolution of such society adopted by a two-thirds vote of the members present and voting at a meeting thereof called for that purpose, notice of the time and place and object of which shall be given for at least four successive Sabbaths on which said society stately meets for public worship, immediately preceding said time. When any religious society ceases to have stated meetings for public worship, or for any cause is unable to give such notice of the time and place of the meeting of such society, said corporation may make such sale, conveyance, or incumbrance by its trustees, upon being so authorized by resolution as hereinbefore specified, adopted at a meeting of which at least twenty days' posted notice has been given. Proof of such notice, meeting, and the adoption of resolution may be made by the

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affidavit of a trustee or member of the society cognizant thereof. Such affidavit shall be recorded in the register of deeds' office where the certificate of incorporation was recorded, and the same and the record thereof, or certified copies of such record, shall be presumptive evidence of the facts therein contained. The word "society," as used in this chapter, and not otherwise qualified, shall mean the religious body constituted in accordance with the principles of the ecclesiastical polity which forms the basis of the corporation designated in this chapter as the church, congregation, or society, as distinguished from the corporation itself. No person shall vote at any meeting called to authorize the trustees to sell, convey, incumber, or dispose of any real estate of such corporation who is not a member of such religious body, and no such religious corporation shall sell, transfer, or otherwise dispose of any of its real estate in any manner other than as provided by the denominational rules and certificate of association of such society as the same appears of record in the office of the register of deeds of the county: Provided, that nothing herein contained shall in any manner affect or infringe any provision of chapter 59. (3038)

3139. Existing societies confirmed—Reorganization—Every church, congregation, or religious society heretofore incorporated under any general or special law, and not since dissolved, is hereby confirmed. In case of the dissolution of any such corporation, or of any corporation formed under the provisions of this subdivision, the same may be incorporated or reincorporated under the provisions thereof at any time within six years after such dissolution; and thereupon all the estate, real and personal, at any time belonging thereto, and not lawfully disposed of, shall vest in said corporation the same as though there had been no dissolution. (3039)

37-241, 242, 33+786.

3140. Lands held in trust—Lands, tenements, or hereditaments conveyed by devise, grant, purchase, or otherwise, to any persons as trustees in trust for the use of any religious society heretofore or hereafter organized, for a meeting house, burial ground, or parsonage, with the improvements thereon, shall descend in perpetual succession, and be held by such trustees in trust for such society. (3040)

69-141, 145, 71+1031.

3141. Appointment of trustees—Whenever by the constitution, rules, or usages of any particular church, denomination, congregation, or religious society, trustees are required to be appointed, elected, or chosen in any way, by any minister, presiding elder, or other officers, or by any conference, assemblage, body, or meeting of any kind, and are so appointed, elected, or chosen, such minister, presiding elder, officers, or the presiding officer and secretary of any such conference, assemblage, body or meeting so appointing, electing, or choosing trustees, shall execute, acknowledge, and deliver to such trustees a certificate, stating the names of such trustees, the time when and the persons or body by which they were appointed, elected, or chosen, and the name by which such trustees and their successors in office shall forever thereafter be called and known. Upon the filing and recording of such certificate as required by law, such trustees, and their successors appointed or chosen in the same manner, shall be a body corporate under the name specified therein, and have all the rights, powers, and privileges of other religious corporations organized under this subdivision. (3043)

3142. Certificate of election of trustees—Whenever trustees have been heretofore elected, appointed, or in any way chosen by a conference or assembly of any kind, of any church or religious society, in accordance with its own constitution, rules, or usages, and a certificate thereof made by its presiding officer and secretary, or either of them, specifying the corporate name by which such trustees are to be known, and duly recorded, with intent to make such trustees a body corporate, they shall in all legal proceedings be deemed a religious corporation under the provisions of this subdivision from the time of the recording of such certificate, and all their acts thereafter as a corpora-

tion shall be as valid and as effectual as though originally formed under the provisions of this subdivision; and all conveyances to such trustees as a corporation are hereby confirmed and declared valid. (3043)

3143. Certificate when designated persons are trustees—Whenever by the constitution, rules, and usages of any particular church or religious denomination, the minister or ministers, elders, and deacons, or other officers elected by any church or congregation according to such constitution, rules, or usages, are thereby constituted the trustees of such church or congregation, such designated persons may assemble and execute and acknowledge a certificate, stating therein the name by which they and their successors in office shall forever thereafter be called and known. Upon the filing and record of said certificate with the register of deeds of the proper county, such persons and their successors shall be a body corporate by the name expressed therein. (3044)

3144. Organization of parish corporations—The bishop of any religious denomination may associate with him the vicar general of the same diocese and the pastor of such denomination of the parish wherein a corporation is to be located, which shall be within the diocese of such bishop, and said bishop, vicar general, and pastor, or a majority of them, shall designate and associate with them two lay members of any such denomination, and, upon adopting, signing, and acknowledging in duplicate a certificate of incorporation reciting the fact of such association, and of the selection of such laymen, and containing the name, general purpose, and place of location of such corporation, and having one such certificate recorded with the register of deeds of the county of its location and the other filed with the secretary of state, the said five persons and their successors shall become a corporation, subject to all the requirements, and vested with all the rights, powers, and privileges, of a religious corporation. The persons at any time holding the offices hereinbefore specified in any diocese shall by virtue of their respective offices be members of, and, with the two laymen aforesaid, constitute, such corporation, but every such person, on ceasing to hold such office, shall cease to be a member thereof, and his successor in office shall become a member in his place. The two laymen designated as aforesaid shall remain members for the term of two years from the date of the certificate, and thereafter their term of office shall be two years, and in either case until their successors are chosen. They shall always be designated and appointed by the three first named corporators, who shall also fill all vacancies in their number. Their appointment shall be in writing and entered upon the records of the corporation. Should there at any time be a vacancy in the office of bishop of any diocese, or should any other person be appointed in his stead to administer the spiritual and temporal affairs of such diocese, then, during such vacancy or suspension of the authority of such bishop, such administrator of the affairs of the diocese, or any other person appointed under the rules of such denomination to preside over and administer its affairs, shall, while acting as such administrator or appointee, be a member of such corporation, with all the rights and powers incident thereto; but his membership shall at once cease when such vacancy has been filled or suspension of authority removed. If any diocese now existing or hereafter created, in which any such corporation is or may hereafter be located, shall be subdivided according to the rules and practice of such denomination, and one or more new dioceses formed therefrom or from parts thereof, the bishop and vicar general of any such new diocese and their successors in office, as soon as appointed and instituted, shall, by virtue of their respective offices, forthwith become members of any such corporation within such new diocese, with all the rights, duties, privileges, powers, and obligations of such members, and the bishop and vicar general of the diocese in which such corporation was located prior to such subdivision shall cease to be members thereof. (3045)

3145. Diocesan corporations—Formation—The bishop of any such diocese may associate with him the vicar general and chancellor of such diocese, and

they, or a majority of them, shall designate and associate with them two other members of such religious denomination, residents of such diocese, and upon adopting, signing, and acknowledging in duplicate a certificate reciting the fact of such association and selection of such two persons, and containing the name, general purpose, and location of such corporation, and filing and recording the same, as provided in § 3144, the said five persons and their successors shall become a corporation, with power to take, hold, receive, and dispose of any real or personal property for the use and benefit of such diocese, and for the use and benefit of the religious denomination therein creating such diocese, and to administer the temporalities of such diocese, to establish and conduct schools, seminaries, colleges, or any benevolent, charitable, religious, or missionary work or society of such religious denomination within such diocese, with all the rights, powers, and privileges enumerated in this and § 3144. The persons who may hold the offices, respectively, of bishop, vicar general, and chancellor of such religious denomination within and for such diocese, and their successors in office forever, shall, by virtue of their respective offices, always be members of such corporation, but on ceasing to hold such office the corporate membership of each shall at once cease. The other two incorporators and their successors in office shall always be selected and appointed by the bishop, vicar general, and chancellor of such diocese, or a majority of them, for the same term and in the same manner as provided in § 3144 for the selection and appointment of the two laymen by the bishop, vicar general, and pastor, and all vacancies shall be filled by the three first named corporators. Every such appointment shall be in writing and entered of record in the minutes of the corporation, and such appointees shall be members of such religious corporation and residents of the diocese of its location. Any corporator so selected may at any time resign, and such resignation and its acceptance shall always be entered on the minutes of said corporation. In case of a vacancy in the office of bishop of such diocese or the temporary suspension of his authority to act, the provisions of § 3144 in reference to such a case shall in all respects apply. Any member of either corporation specified in this and § 3144 may by a writing signed by him appoint a proxy to represent and act for him, and in his name and stead to vote at any meeting of such corporation. (3045)

3146. Formation—Certificate—Powers—Any parish of the Protestant Episcopal Church organized under and in conformity with the constitution and canons of any diocese now or hereafter existing in this state may form a corporation as follows: Such parish shall cause to be prepared a certificate containing:

1. The name and location of the parish.
2. The name of the rector, if any, and of the church wardens, and the names and number of the vestrymen, which shall not be less than three nor more than nine.
3. The date of the organization of said parish.
4. Said certificate shall be signed and duly acknowledged by said rector, if any, and by a majority of said wardens and vestrymen. (3049, 3050)

3147. Filing certificate—Powers of corporation—Upon signing, acknowledging, and filing such certificate for record with the register of deeds of the county of its location, such parish shall become a corporation by the name specified in its certificate, and by and through its officers may transact all the business of said parish, including calling a rector and determining his salary; and in its corporate name may acquire or receive by purchase, gift, grant, devise, or bequest any property, real, personal, or mixed, and hold, sell, transfer, mortgage, convey, loan, let, or otherwise use the same for the use and benefit of said parish, provided that such use shall not contravene the laws and usages of the Protestant Episcopal Church of the state; but it shall not have power to divert any gift, grant, or bequest from the purpose specified in writing by the donor or deviser, nor to sell, convey, or mortgage its church or church site except when first authorized so to do in a meeting of the parish called for that purpose, nor in contravention of the canons of the diocese or of the gen-

eral convention of the Protestant Episcopal Church of the United States. (3051)

3148. Annual meeting—Election of vestry—The annual meeting of such corporation shall be holden at the parish church or other usual place of worship, on Easter Monday of each year, at which time church wardens and vestrymen shall be elected in the manner and by such voters as are at any time prescribed by the canons of the church in such diocese, and shall hold their respective offices until the next Easter Monday and until the election of their successors. The provisions of this section shall be applicable to and govern all parishes of such church heretofore incorporated under any law of the state. (3052, 3054)

3149. Meetings of vestry—The rector of such parish shall ex officio be a member, and, when present, the presiding officer of the vestry, and entitled to vote at all its meetings. Meetings may be called by the rector at his discretion, or by either warden at the request of a majority of the vestrymen, on three days' notice in writing to each member of the vestry. (3053)

3150. Incorporation in other cases—The members of any church or religious society, not less than three in number, not wishing to form a corporation under any of the preceding provisions of this subdivision, may become a corporation by adopting and signing a certificate containing:

1. Its name, general purpose and plan of operation, and its location.
2. The terms of admission, qualification for membership, selection of officers, filling vacancies, and the manner in which the same is to be managed.

Such certificate shall be recorded with the register of deeds of the county of its location.

And any existing corporation created by special law, which does not desire to incorporate under any preceding provision of this subdivision, may reincorporate under the provisions of this section, when authorized by a three-fourths vote of its members present and voting at a stated meeting called for the purpose of considering such reincorporation. (3045, 3055)

3151. Existing churches may incorporate—Reincorporation—Every church or society organized as such, and not incorporated, may become a corporation by executing, acknowledging, and causing to be recorded with the proper officers a certificate of incorporation under this subdivision. And thereupon, and also when any existing religious corporation shall reincorporate under this subdivision, all property and franchises of every kind belonging to such society or such original corporation, as the case may be, shall vest in the corporation so organized; but rights in pews possessed by any members at the time of any such reorganization shall not be impaired. And such board of trustees or other governing body of any corporation so reorganizing, or their survivors, when requested by the governing board of such new corporation, shall convey to the new corporation, by sufficient deed, all property owned by it. Such conveyance shall recite the fact of such reorganization, shall be prima facie evidence of the facts therein stated, and shall pass all title to the property therein described possessed by the corporation in whose behalf it is executed. (3048, 3056, 3060)

69-141, 144, 71+1031.

3152. Diocesan council—Synod—Conference, etc.—Incorporation—Any diocesan council, synod, presbytery, conference, association, consociation, or other general organization for ecclesiastical or religious purposes, existing in any church or religious denomination in this state, and which, according to the polity, constitution, canons, customs, discipline, or usages of such church or denomination, is composed of or represents several parishes, congregations, or particular churches, may form a corporation by adopting a canon or resolution stating:

1. Its purpose to form such a corporation.
2. Its name and its general purposes and powers, not inconsistent with law.
3. The name of the church or religious denomination to which the body

organizing the corporation belongs, and the district or territorial limits of its jurisdiction.

4. The number and official titles of the officers through whom it shall act, and by whom and in what manner such officers shall be elected or appointed, and the length of their terms, and their general duties, powers, and authority.

5. The names and address of those elected or appointed as the first officers of the corporation. (3062, 3063)

72-498, 508, 75+692.

3153. Approval of attorney general—Recording—Amendments—A copy of such resolution or canon, certified by the presiding officer of the body adopting it, and verified by the affidavit of its secretary or clerk, with the certificate of the attorney general that the same conforms to law indorsed thereon, shall be filed with the secretary of state, who shall record the same at length, including such indorsement, and issue his certificate that, the provisions of law having been complied with, said body has become duly incorporated according to law. The secretary of state shall keep in a book in his office an alphabetical index of all such corporations. The body organizing such corporation or its successor, by resolution or canon adopted by it at two regular successive sessions thereof, and so certified, verified, and recorded with the secretary of state, may amend or modify the resolution under which the corporation was formed, in respect to its jurisdictional limits, or to the number, official titles, terms of office, or the manner of electing or appointing officers, or their duties, powers, and authority, or to the purposes and powers of the corporation not inconsistent with law, and not impairing any trusts or vested rights of property. (3064, 3065)

3154. Special powers of such corporations—Any such corporation may receive in trust for any parish, mission, local church society, or congregation, whether incorporated or not, any property, real or personal, which may be given, granted, transferred, devised, or bequeathed to it for the use of such parish, mission, local church society, or congregation, for religious, charitable, or educational purposes, and may hold the same, and the rents, issues, and profits thereof, until such parish, mission, local church society, or congregation shall demand a conveyance thereof, accounting from time to time, when required, for the rents, issues, and profits. Any property now held in trust by any person, corporation, or trustees for the use and benefit of the religious body forming a corporation under the provisions of § 3153, or any of its parishes, missions, societies, congregations, or local churches, may, with the consent of the beneficiary, be conveyed and the title thereto vested in the said corporation as the successor in such trust, but no such corporation shall have power in any manner to create any lien upon or incumber any property held by it in trust as aforesaid. (3067, 3068)

3155. Place of annual meeting—Notice—Any such corporation, the membership of which in part resides in other states, may hold its annual meetings at such points outside the state as it may from time to time designate at a previous annual meeting, or it may authorize its president to designate such place. At least three months before the time of such annual meeting notice of such time and place shall be given by publication in the recognized organ of such corporation, if it has one; otherwise by publication in at least two papers of general circulation published at the capital of the state. (3069)

3156. Amendment of certificate—Any religious corporation, by a resolution adopted, certified, acknowledged, and recorded in the same manner as its original certificate, may alter, modify, or add to such original certificate in any manner not inconsistent with law. When recorded, such amended certificate shall take the place of the original. (3076, 3077)

3157. How consolidated—Any two or more incorporated churches, congregations, or religious societies, which employ the same minister or pastor, may consolidate and reorganize as a single church, congregation, or society by complying with the provisions of law for the formation of such church, congregation, or society contained in this subdivision. (3078)

3158. Procedure—Notice of meeting—Proof—Before any action is had for that purpose, a resolution authorizing such consolidation and reorganization shall be adopted by at least two-thirds of the members present and voting at a meeting of each of said churches, congregations, or societies called for that purpose, notice of the time, place, and object of which shall be given on four successive Sabbaths, on which such society statedly meets for public worship, immediately preceding the time specified for such meeting. Proof of the fact of such notice, meeting, and resolution may be made by affidavit of one of the officers or members cognizant of the facts, which shall be recorded with the certificate of incorporation. (3079)

3159. Previous joint worship—Powers of new corporation—After the adoption of such resolutions and before consolidation said several churches, congregations, or societies shall for at least eight Sabbaths worship together as one society. Proof of this shall be made in the manner provided in § 3158. Such churches, congregations, or societies when so reincorporated shall forever thereafter be known as a corporation under the name specified in its new certificate, and shall have all the rights, powers, and privileges of such corporations, and all the property, real and personal, of every kind and description, shall be fully vested in the new corporation, but the original corporations so consolidated shall not be dissolved until the new corporation is fully perfected. (3080, 3081)

3160. When society ceases to exist, property how disposed of—Whenever any religious society, which is in any way under the control or supervision of a superior body, ceases to exist or to maintain its organization, all its remaining real and personal property shall vest in and be transferred, in the manner hereinafter provided, to the incorporated annual conference, presbytery, diocese, diocesan council, association, or other incorporated governing or supervising body of the same religious denomination within whose jurisdiction such society was located; or with which it was affiliated, it being intended that said property shall vest in and be transferred to the next higher governing or supervising corporate body of the same denomination. ('01 c. 98 s. 1)

3161. Hearing—Upon application to the district court of the county where such society was located by any member of the body in which said property is to vest as aforesaid, said court shall appoint a time for hearing the application, and three weeks' published and posted notice thereof shall be given, and any additional notice which the court may direct. If upon the hearing it appears that a proper case exists therefor under § 3160, the court shall adjudge and direct a transfer thereof to be made through a trustee appointed by it for that purpose. Affidavits of the notice may be filed in said proceedings, and they shall be evidence in all actions and proceedings in the courts of the state. ('01 c. 98 s. 2)

3162. General powers of religious corporations—Every corporation organized under this subdivision may, in its corporate name, sue and be sued, hold, purchase, and receive title by gift, grant, or other conveyance of and to any property, real or personal, with power to mortgage, sell, or convey the same, may adopt all by-laws and make all regulations necessary or expedient for the management of its affairs in accordance with law. (3045)

3163. Limitation of right to hold property—Nothing in this chapter contained shall be construed to authorize the taking or holding of real or personal property by any religious corporation for purposes other than those of its incorporation, and all of its provisions are subject to any limitation or modification which may hereafter be enacted by general laws as to the amount of property which may be held by the corporations herein provided for. (3069)

YOUNG MEN'S CHRISTIAN ASSOCIATIONS

3164. Formation—Certificate—Any number of persons not less than three may form a corporation to be known as a Young Men's Christian Association, by adopting, signing, and acknowledging a certificate of incorporation containing:

1. The names and places of residence of the incorporators;
2. The name of the corporation, the location of its principal place of business, and the period of its duration;
3. The objects of its organization expressly stated;
4. The number of its directors, not less than five nor more than thirty, who shall manage its affairs, how and when elected, and the time and place of holding annual meetings;
5. The terms of admission to active membership.

Such certificate shall be executed in duplicate, and one filed with the secretary of state and the other with the register of deeds of the county of its principal place of business. (3070-3072; '03 c. 89)

3165. Classification of members—The directors may in their by-laws divide the members into active, senior, junior, associate, and such other classes as they may deem convenient, and determine the qualifications for associate membership and provide rules for the trial and expulsion of members. Only active members shall be entitled to vote or hold office in such corporation. (3074)

3166. Board of trustees may manage real property—Any such association may create a board of trustees to control its property. Such board shall consist of not less than five trustees, of whom the president of the association shall ex officio be one. Each trustee shall be a member in good standing of some protestant evangelical church, but not more than three, exclusive of such president, and in no case a majority, shall be members of any one church denomination. The first board of trustees shall be elected at any regular meeting of the association by a majority vote of the members thereof entitled to vote thereat present and voting, and shall hold office for such time as may be prescribed by its by-laws. Vacancies shall be filled by a majority vote of the remaining trustees from nominations made by the board of directors or managers. ('95 c. 334 ss. 1-3)

3167. Property rights—Such board shall have the control of the real property of the association and such other property as its board of directors or trustees may designate. No real property belonging to the association shall be conveyed, disposed of, or mortgaged without the consent of said board, nor shall the same be liable for any debt or obligation of the association unless the same shall have been contracted with its approval. All property so under the control of said board and the income thereof shall be devoted only to the purposes of the association, and so long as the directors and managers of the association shall so expend the same such income shall be paid over to the treasurer of said board of directors or managers. ('95 c. 334 s. 4)

3168. Reincorporation—Any religious society now conducting its affairs as a Young Men's Christian Association may reincorporate under the provisions of §§ 3164-3167, but in such case the certificate of incorporation shall be executed by all of the directors of such association. Upon such reincorporation, all of the property of such society shall pass to and vest in the corporation so formed, without further action. (3075)

ACTIONS RESPECTING CORPORATIONS

3169. Mode of prosecution—Foreign corporations may prosecute in the courts of this state in the same manner as domestic corporations, and neither shall maintain an action upon an obligation or liability arising out of, or in consideration of, an act which is contrary to law or public policy or forbidden to the other. Except as otherwise expressly provided by law, actions against them shall be commenced by summons, and proceed in the same manner as civil actions against natural persons. (5890-5892)

3170. Mandatory and restraining orders—Upon complaint filed under the direction of the attorney general in any district court, such court may restrain by injunction any corporation from assuming or exercising any franchise, liberty, or privilege, or transacting any business not authorized by its act of incorporation, and may restrain any individuals from exercising any

corporate rights, privileges, or franchises not granted them by law. Such injunction may be issued before answer upon satisfactory proof that the defendant has usurped, exercised, or claimed any franchise, privilege, liberty, or corporate right not granted to it. (5893, 5894)

3171. Power of court over corporation officers—In any case affecting a corporation the district court may:

1. Require any officer thereof to account for his official conduct in the management and disposition of any funds or property of the corporation at any time in his charge or possession;

2. Compel any such officer to pay to such corporation or to its representative all funds, and the value of all property acquired and held, or transferred to others, or lost, wasted, or damaged, in violation of official duty;

3. Suspend any such officer whenever it appears that he has violated his trust;

4. Remove any such officer upon conviction or satisfactory proof of gross misconduct;

5. Cause an election to be held to fill any vacancy created by such removal, when deemed necessary, in which case it shall appoint a disinterested person to conduct the same under its direction, and, in case of suspension or removal of a majority of the managing board, it may appoint a temporary receiver to act until such suspension shall terminate in the one case, and in the other until the vacancies shall have been filled by new officers duly elected and qualified;

6. Set aside any unauthorized or unlawful alienation of property made by any officer thereof whenever satisfied that the alienee knew or had reasonable cause to believe that such conveyance was unauthorized or illegal;

7. Restrain and prevent any such alienation, threatened or intended;

8. Cause a meeting of its managing board, stockholders, or members to be held when deemed necessary for the preservation of its property or protection of its interests:

Provided, that nothing in this section contained shall be construed to impair any visitorial power or authority over any corporation vested by law in any corporate body or public officer. (5895, 5896)

61-375, 384, 63+1079; 66-437, 439, 69+324.

3172. Appeal—Effect of—An appeal from an order or judgment removing an officer or trustee, under § 3171, shall not operate to stay its effect or any proceeding under it; but the term of office of any officer, director, or trustee elected thereunder to fill a vacancy, or of any receiver appointed, shall be terminated by a reversal or vacation of such order or judgment. (5895)

3173. Sequestration—Order of distribution—Upon complaint of a person obtaining judgment against a corporation or his representatives, made after the return unsatisfied of an execution issued thereon, the court may sequester the stock, property, things in action, and effects of such corporation, and appoint a receiver of the same, and upon final judgment upon any such complaint the court shall order the property remaining, or the proceeds thereof, to be disposed of under its direction, proportionately in the following order:

1. In payment of the costs and expenses of the receivership;

2. Debts due the United States and the state of Minnesota, if any;

3. Taxes and assessments, if any;

4. Claims duly proved and allowed of clerks, servants, or laborers, for services performed within three months preceding the appointment of the receiver, if any;

5. Other claims duly proved and allowed.

After payment of the expenses of receivership and claims of creditors duly proved, the remainder, if any there be, shall be distributed pro rata among the stockholders proving themselves entitled thereto. (5897, 5898)

1. Subdivision generally—History (48-158, 50+1114; 66-378, 69+144). To be construed liberally (83-71, 73, 85+931). All its provisions are to be harmonized so far as possible (60-355, 62+399). All its provisions are applicable to all corporations except where expressly limited (25-543, 555; 48-158, 168, 50+1114; 61-510, 513, 63+1109). Reme-

dies afforded by this subdivision for the enforcement of the constitutional liability of stockholders exclusive (25-543; 30-173, 176, 14+799; 56-420, 423, 57+1065; 61-373, 63+1024).

2. Who may maintain action—The plaintiff must be a judgment creditor who has exhausted his legal remedies by having an execution returned unsatisfied (60-355, 62+399), or the assignee of such a creditor (83-71, 85+931). Prior to the revision it was held that under certain circumstances a simple contract creditor might maintain an action to enforce the liability of stockholders (66-378, 69+144; 66-437, 69+324). The omission of G. S. 1894 § 5905 from the revision and the adoption of 1899 c. 272 apparently overrule these cases. A stockholder or director who is also a creditor may bring an action to enforce liability of stockholders but the court may turn the management of the case over to another person (70-334, 73+173; 72-312, 75+232; 79-488, 82+984). Special rules apply to an action under § 3180.

3. Parties defendant—The plaintiff may in the first instance make the corporation the sole defendant, but the ordinary and correct practice is to make all the stockholders defendants at the outset (44-409, 412, 46+851; 61-359, 361, 63+1068; 65-90, 95, 67+893). All the stockholders within the jurisdiction of the court should be made defendants (25-543, 556; 58-16, 19, 59+632; 73-454, 76+254). An ancillary action may be maintained against defendants omitted in the original action (73-454, 76+254). If the original plaintiff does not make the stockholders defendants at the outset he may do so later by means of an amended or supplemental complaint (65-90, 95, 67+893). If he does so other creditors cannot file supplemental complaints (70-334, 73+173; 64-386, 67+217). If the original plaintiff does not make the stockholders defendants for the purpose of enforcing their liability it may be done on leave of court by other creditors (44-409, 46+851; 48-158, 50+1114; 61-359, 63+1068; 65-90, 67+893; 64-386, 67+217). Stockholders may be made parties either before or after the time limited for filing claims (61-359, 63+1068).

4. What will prevent or defeat action—After an assignment for the benefit of creditors under the assignment law of 1876 or the insolvency law of 1881 creditors cannot have a receiver appointed as of right (62-501, 65+78, 632; 58-434, 59+1077). A receivership in an action to foreclose a mortgage will not prevent a receivership hereunder (53-129, 54+1064), nor will an action by a creditor to set aside a fraudulent transfer of corporate assets (60-82, 61+902). A proceeding hereunder will not be defeated by a subsequent assignment under the insolvency law of 1881 (55-139, 56+575; 84-144, 151, 86+872), nor by an action by the attorney general for the forfeiture of the corporation's charter (67-506, 70+803).

5. Right of creditors to recover corporate assets—After a receiver has been appointed a creditor cannot maintain an action for the recovery of corporate assets (44-37, 40, 46+310; 35-543, 546, 29+349; 48-361, 51+119).

6. Appointment of receiver—How far discretionary (55-139, 56+575). Not subject to collateral attack (64-133, 66+266).

7. Judgment on which action based—How far conclusive on corporation and stockholders (65-249, 68+15; 65-324, 68+50; 72-312, 315, 75+232; 80-32, 82+1088). Against corporation and others sufficient (57-325, 59+308).

8. Return of sheriff—How far conclusive (44-401, 46+848).

9. General nature of action—The object of the action is to wind up the affairs of the corporation; to collect and convert all the corporate assets, appropriating them ratably among all the creditors; and, if there is a deficiency of assets, to enforce the individual liability of stockholders and others to the extent of such deficiency. Rules of equity practice are to be applied when not inconsistent with the statute. The proceedings are exceedingly flexible and susceptible of being molded into almost any form necessary to accomplish their purpose of securing a full and final adjustment of the rights and liabilities of all parties growing out of the corporate business (44-409, 412, 46+851; 34-323, 327, 25+639; 68-95, 99, 70+869; 72-312, 315, 75+232; 73-454, 461, 76+254; 56-180, 184, 57+468; 25-543, 556; 35-543, 546, 29+349; 47-464, 50+601; 44-37, 39, 46+310). The proceeding is under the control of the court and not of the original plaintiff. After it is begun and the complaint filed it is no more that of the plaintiff than it is of any other creditor who appears, files a claim and thus takes part in the litigation. The court may at any time designate which creditor shall have general management of the proceeding (70-334, 338, 73+173; 72-312, 313, 75+232). A creditor cannot maintain the action solely for his own benefit. Whether the original complaint so states or not the action is in behalf of all creditors who may come in (64-386, 388, 67+217; 25-543, 556; 73-454, 461, 76+254; 61-359, 361, 63+1068; 35-543, 546, 29+349; 79-297, 298, 82+639; 47-464, 466, 50+601). The action is in the nature of insolvency proceedings (47-464, 466, 50+601; 37-82, 83, 33+117). The sequestration is in the nature of an attachment or execution on behalf of the creditors (35-543, 546, 29+349; 44-37, 39, 46+310).

10. Enforcement of stockholder's liability incidental—The proceeding to ascertain and enforce the liability of stockholders is not an independent action but a step in the original action against the insolvent corporation for the sequestration of its property and the appointment of a receiver (70-349, 352, 73+169; 65-90, 97, 67+893; 48-174, 190, 50+1117). Sections 3184-3190 merely regulate the practice in an action or proceeding already begun. They do not authorize an independent action (See 80-125, 133, 83+36). G. S. 1894 § 5905, which authorized an independent action, is omitted from the revision.

The liability of stockholders is not a corporate asset and can only be enforced for the benefit of creditors and then only to the extent of paying the corporate debts remaining unpaid after the corporate assets have been exhausted (74-354, 362, 77+234, 407, 968).

11. What liabilities enforceable—Under this section there may be enforced the liability of stockholders under the constitution (See § 3184); for bonus stock (48-174, 50+1117. See 70-321, 73+189); for stock fraudulently issued at a grossly inadequate price (68-95, 70+869); on unpaid stock subscriptions (47-464, 50+601. See 64-133, 66+266); on stock received for over-valued property (65-28, 67+652); on a guaranty of corporate bonds (77-329, 335, 79+1010); of directors for capital wrongfully withdrawn (44-37, 46+310); of a transferrer of stock (62-152, 64+145); of directors for unauthorized debts (84-408, 87+1016). The liability of stockholders under § 2865 subd. 3 cannot be enforced (66-437, 69+324).

12. Powers and duties of receiver—Substantially the same as those of an assignee in bankruptcy or a receiver on a creditor's bill or in supplementary proceedings. He succeeds to the rights of both the creditors and the corporation. Everything becomes assets in his hands, and hence in the custody of the law, which were assets as to creditors, as well as what were assets as to the corporation (35-543, 546, 29+349; 44-37, 39, 46+310; 53-129, 132, 54+1064). Nature of his interest in corporate property defined (69-131, 134, 72+60; 41-150, 152, 42+862). Duties administrative or executive. Not required to perform legal services though he happens to be an attorney. Authority to employ counsel (72-320, 75+378). Cannot allow or disallow claims (72-266, 280, 75+380; 71-190, 193, 73+856). Duty to contest improper claims (68-308, 311, 71+274). Duty to file claims presented (84-217, 220, 87+604). He is a trustee of an express trust and should bring actions in his own name as such receiver (70-349, 355, 73+169). He has authority to enforce stockholders' liability (§ 3184); to recover on undertaking entered into by him in violation of an order of court (62-46, 64+84); to recover unpaid stock subscriptions (64-133, 66+266; 60-481, 62+817); to avoid unfilled chattel mortgages (35-543, 29+349); to recover capital wrongfully withdrawn (44-37, 46+310); to avoid a fraudulent mortgage to directors (80-492, 83+418); to avoid a fraudulent judgment (87-52, 91+269); and to enforce the liabilities mentioned in Note 11. Prior to 1897 c. 341, 1899 c. 272, it was held that he could not enforce stockholders' liability by action in another state (188 U. S. 56; 189 U. S. 335).

13. Pleadings—Complaint under § 3173 held insufficient (62-501, 506, 65+78, 632). Cross-bill by creditor filing claim (64-386, 67+217). Supplemental complaint under § 3173 to charge stockholders (64-386, 67+217; 70-334, 73+173; 70-358, 73+171). Complaint to charge stockholders held not demurrable for defect of parties (72-312, 75+232). Defect of parties waived by failure to demur or answer (66-487, 507, 69+610, 1069; 46-54, 48+528, 681; 44-409, 46+851). Defect of parties not appearing on face of complaint not a ground for demurrer. That plaintiff is a stockholder is not a ground for demurrer (72-312, 75+232). Complaint in action for unpaid stock subscription held insufficient (58-247, 59+1016). Complaint in action to recover for bonus stock held sufficient (48-174, 50+1117). Counterclaims and setoffs (76-328, 79+313; 74-354, 362, 77+234, 407, 968; 75-138, 77+788; 113 Fed. 670; 126 Fed. 429).

14. Joinder of actions—66-437, 69+324; 68-95, 70+869.

15. Defences—Estoppel—90-282, 96+85; 103+1032; 67-194, 69+810; 64-133, 66+266; 60-82, 61+902; 70-292, 73+149; 77-110, 79+606; 77-329, 79+1010.

16. Assessment—Cannot reduce extent of constitutional liability (58-167, 59+997). Proportionate when all stockholders not joined (58-16, 59+632).

17. Allowance of claims—It is for the court and not the receiver to allow and disallow claims (71-190, 193, 73+856; 72-266, 280, 75+380; 71-497, 503, 74+287). Proceeding by way of motion and order to show cause for allowance of claim held not to bar action on judgment (82-423, 85+156). Judgment on default against corporation after appointment of receiver held not allowable as a claim (68-308, 71+274). Claim on indorsement of note by insolvent allowable without surrender of note (71-497, 74+287). Scope of review on appeal from disallowance (63-393, 65+626). State a preferred creditor (64-400, 67+212).

18. Miscellaneous—Right to levy on judgment against insolvent (52-417, 54+372). Right to attach property of stockholders (80-354, 83+1118). Substitution of legatees and devisees of deceased stockholder (80-432, 83+377. See 75-138, 77+788). Compromise of stockholder's liability not binding on non-assenting creditor (74-175, 77+31). Compensation of creditor and attorney prosecuting action for benefit of all creditors (79-297, 82+639. See 74-405, 77+219). Liability of estate of deceased stockholder (56-420, 57+1065). Duty of court to supervise and scrutinize trust account (72-320, 75+378). Fees of attorney for receiver (72-320, 75+378). Distribution of fund among creditors (72-266, 75+380). Statute of limitations (84-144, 86+872; 92-423, 100+222; 62-152, 64+145; 66-487, 69+610, 1069). Consolidation of separate actions (64-386, 67+217). No redemption from receiver's sale (41-150, 42+862). Interest on stockholder's liability runs from filing of findings of court (72-266, 281, 75+380). Effect of receivership on corporate property (69-131, 135, 72+60). Findings (46-491, 49+252; 66-413, 69+217). Appeals (41-256, 43+180; 51-108, 113, 52+1081. See 60-82, 88, 61+902).

19. Judgment—Form and extent (66-487, 69+610, 1069; 72-266, 282, 75+380). Against part of the stockholders does not release the others. In action against omitted stock-

holders judgment in original action conclusive (73-454, 76+254). Amendment on appeal (75-441, 78+12). Extent of on default (47-464, 50+601). Interest should be allowed on liability from time of filing findings (72-266, 281, 75+380). Creditors appearing cannot attack collaterally (51-108, 52+1081). Modification (79-226, 81+1057).

3174. Forfeiture of rights—Dissolution—Whenever any railway company doing business in this state shall charge, demand, or receive unreasonable rates for the transportation of freight or passengers, or when any corporation remains insolvent, neglects or refuses to discharge its notes or other evidences of debt, or suspends its lawful business for one year, or fails to dispose of all its property, with or without payment of all its debts, within the time allowed by law for the liquidation of its affairs, or whenever any corporation shall violate any provision of its articles or certificate of incorporation or any law obligatory upon it, such corporation shall forfeit all its rights, privileges, and franchises, and be adjudged to be dissolved. The attorney general shall make complaint against any corporation which shall in any manner violate any provision of this section or commit any act herein recited, and if upon trial it is found to have committed any such acts the court shall render judgment of forfeiture and dissolution of the corporation. Upon the trial of any action against a railway company for charging, demanding, or receiving unreasonable rates for transportation of freight or passengers, the court or jury shall find specially as to the truth of such allegations. (5899)

36-246, 30+816; 68-500, 505, 71+691.

3175. Dissolution on petition of corporation—A majority in number or interest of the members of a corporation, desiring to close their concerns and dissolve the corporation, may present a petition to the district court of the county of its principal place of business, setting forth the name of the corporation; when and by or under what law it was incorporated; the names and addresses of the bondholders, stockholders, or members, and, if not then transacting business, when it ceased to do so; the amount of its indebtedness; the amount and character of its personal property; and the amount and description of its real estate. It shall also state the grounds upon which dissolution is sought and the interest of the petitioner, and shall pray for proper relief. (3430)

44-460, 47+151; 56-171, 57+463; 56-180, 57+468; 60-284, 62+332; 66-378, 384, 69+144; 73-319, 76+59; 74-96, 102, 76+1024.

3176. Hearing—Notice—Upon the presentation of such petition, the court shall fix a time and place for hearing thereon, and order three weeks' published notice thereof to be given, and such other notice to parties interested as it may deem proper. At the time and place so fixed the court shall hear the allegations and evidence of all parties interested, and, if any of the grounds specified in the petition is sustained, shall adjudge the corporation dissolved, and appoint a receiver to close its affairs. (3430)

3177. State interested, proceedings—Whenever, in any action or proceeding to dissolve a corporation, it shall appear at any stage of the proceedings that the state is or is likely to be interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general, in the manner of serving a summons in a civil action; and the attorney general shall intervene in any such proceeding when in his opinion the public interest requires it, whether so notified or not. (5899)

3178. Appointment of receiver—Duties—In any action or proceeding to dissolve a corporation, the court at any time before judgment, or within three years after judgment of dissolution, may appoint a receiver to take charge of its estate and effects, and to collect the debts and property due and belonging to it, with power to prosecute and defend actions in its name or otherwise, to appoint agents under him, and do all other acts necessary to the final settlement of the unfinished business of the corporation which it might do if in being. The power of such receiver shall continue so long as the court deems necessary for said purposes. Such receiver shall pay all debts due from the corporation, if the funds in his hands are sufficient therefor, and, if not, shall

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distribute the same ratably among the creditors who prove their debts, in the manner directed by the court; and, if there be any balance after the payment of the debts, he shall distribute and pay the same to and among those who are justly entitled thereto, as having been stockholders or members. Every receiver appointed under the provisions of this chapter shall give bond in such amount as the court shall require, with sureties approved by it. (3430, 3432, 3434, 3435)

56-180, 183, 57+468; 60+284, 289, 62+332.

3179. Insolvent banks and insurance companies—Whenever any insurance company or any corporation having banking powers, or the power to make loans on pledges or deposits, becomes insolvent or unable to pay its debts, or neglects or refuses to pay its notes or evidences of debt on demand, or violates any provision of the act under which it was incorporated, or of any other law obligatory upon it, the court may by injunction restrain it and its officers from exercising any of its corporate rights, privileges, and franchises, and from collecting or receiving any debts or demands, and from paying out or in any way transferring or delivering to any person any of its moneys, property, or effects, until otherwise ordered by the court. (5900)

Applicable to a building and loan association (64-349, 67+1); to an insurance company on the co-operative or assessment plan (49-158, 51+908). A building and loan association held not "insolvent" (73-203, 215, 75+1116). Effect of injunction on bank (74-98, 103, 76+1024). Cited (61-510, 513, 63+1109; 66-487, 496, 69+610, 1069; 66-437, 440, 69+324). See cases under § 3180.

3180. Forfeiture of charter—Receiver—Suit by creditor—Such injunction may be issued on the complaint of the attorney general in behalf of the state, or of any creditor or stockholder of the corporation. Whenever it issues against a bank for any violation of its charter, on complaint of a creditor, the court shall proceed to final judgment, and if the proof be sufficient adjudge a forfeiture, notwithstanding such creditor may settle with the corporation and relinquish his claim against it. In such cases the attorney general or a creditor may appear and prosecute the action, which shall not be discontinued if either of them so appears and prosecutes the same. At any stage of the proceedings the court may appoint one or more receivers to take charge of the property and effects of such corporation. If such injunction be upon application of a creditor of a corporation whose directors or stockholders are liable by law for the payment of such debts in any event or contingency, such directors or stockholders or any of them may be made parties to the action, either at the time of filing the complaint or at any subsequent time when it becomes necessary to enforce such liability. (5901-5903)

Simple contract creditor may maintain action to sequester assets and enforce stockholder's liability (66-378, 69+144; 60-355, 62+399; 64-400, 401, 67+212; 65-139, 67+800). Appointment of receiver how far discretionary (55-139, 56+575). If a creditor institutes proceedings but takes no steps to enforce the stockholder's liability another creditor may be allowed to intervene for that purpose (65-90, 67+893). Discretionary power of attorney general to bring action (64-349, 67+1). Creditor may maintain separate action to enforce stockholder's liability during pendency of action by attorney general for forfeiture of charter or with leave of attorney general may intervene in the latter action for that purpose (67-506, 70+803). Sale by receiver for inadequate price held properly set aside (68-468, 71+671). Repudiation of lease by receiver. Claim of lessor for damages (74-98, 76+1024). State a preferred creditor (64-400, 67+212). Duty of court to adjudge a forfeiture (74-98, 103, 76+1024). Independent action cannot be maintained against receiver on claim which might be filed under § 3182 (71-190, 73+856). Modification of judgment (79-226, 81+1057). Enforcement of stockholder's liability (65-90, 67+893; 25-543; 72-266, 75+380). See cases under §§ 2998, 3179.

3181. Unpaid stock subscription, etc.—Whenever the property of any corporation is insufficient to pay its debts, upon application of a creditor the court shall order the payment by each stockholder of the amount, if any, unpaid on the shares held by him, or such portion thereof as may be necessary to satisfy the corporate debts, and when necessary may direct the receiver to enforce such order by appropriate proceedings; and on application of a stockholder the court may make such order as will equalize the payments made by

stockholders for their stock, and in like manner the court may enforce any liability of directors and officers. (5909, 5910)

46-491, 494, 49+252; 68-95, 99, 70+869. See cases under § 2865.

3182. Order limiting time to present claims—Extension—The court, upon adjudication of dissolution, shall therein limit the time in which creditors may present claims against the corporation, which shall not be less than six months nor more than one year from its date, and fix the time and place when and where it will examine and adjust the same. No claim or demand shall be received or allowed after the expiration of the time so limited, except by permission of the court for good cause shown, and upon notice to the receiver, but in no case unless presented within eighteen months from the date of adjudication and before final settlement. (5911)

Discretion in allowing creditor to come in after time limited (48-313, 51+377; 69-176, 71+928; 75-286, 77+967; 92-399, 100+100). Order not subject to collateral attack. Order improperly made in one action sustained in another (60-82, 61+902). Cited (67-506, 508, 70+803; 70-334, 337, 73+173; 84-217, 218, 87+604).

3183. Notice of hearing—Three weeks' published notice of such order of hearing shall be given, which shall require all creditors to present their claims, duly verified, within the time limited, or be precluded from participation in any distribution of corporate property thereafter made. (5911)

Claims filed are deemed controverted without an answer or reply and must be proved on the hearing unless expressly admitted (64-386, 388, 67+217; 76-328, 331, 79+313; 66-361, 368, 69+317). If claimant desires other relief than the allowance of his claim and such as cannot be had under the original complaint he must apply for leave to file a cross-bill (64-386, 67+217). Filing claim exclusive remedy. Claimant cannot maintain an independent action on claim against receiver (71-190, 73+856). Duty of receiver to file claims presented to him (84-217, 220, 87+604). Presentation of claim not a cross-complaint (47-464, 466, 50+601). Creditors filing claims are parties without any formal order (65-90, 99, 67+893), and are bound by the judgment (51-108, 112, 52+1081). Creditors not filing claims cannot share in proceeds of estate. Creditor filing claims may contest claims of other creditors (68-308, 311, 71+274; 71-190, 193, 73+856).

3184. Enforcement of stockholders' liability—Whenever it shall be made to appear by the petition of a receiver or assignee of a corporation, or of any creditor thereof whose claim has been filed, that any constitutional, statutory, or other liability of stockholders or directors or both exists, and that it is necessary to resort to the same, the court shall appoint a time for hearing, not less than thirty nor more than sixty days thereafter, and order such notice thereof as it deems proper, by publication or otherwise, to be given. When the receiver is not the petitioner, personal notice shall be given to him. ('99 c. 272 ss. 1, 2)

1899 c. 272 did not repeal 1897 c. 341. The latter act, which is repealed by the revision, made it the duty of receivers and assignees to enforce the liability of stockholders (86-42, 90+119). Prior to 1897 c. 341 they had no authority to do so (66-441, 69+331). 1899 c. 272 is a supplementary practice act formulated after the practice followed in this state for the collection of unpaid stock subscriptions when insolvency has ensued (80-125, 133, 83+36). Sections 3184-3186 are constitutional (80-125, 83+36; 84-144, 150, 86+872). Held applicable to proceedings begun prior to its enactment (84-217, 87+604). Merely cited as basis of proceedings (79-414, 82+673; 87-473, 474, 92+403; 90-144, 145, 95+767; 90-172, 174, 95+1110; 90-282, 283, 96+85; 91-96, 97, 97+574; 92-399, 100+100; 103+1032). See 126 Fed. 429.

3185. Hearing upon petition—Upon such hearing, after proof of due service of notice, the court shall receive and consider such evidence by affidavit or otherwise as may be presented by the receiver, or by any creditor, officer, or stockholder, appearing in person or by attorney, upon the following points:

1. The nature and probable extent of the indebtedness of the corporation;
2. The probable expense of the receivership;
3. The probable amount of available assets;
4. The parties liable as stockholders, the nature and extent of the liability of each, and their probable solvency or responsibility.

If it appears that the available assets, or such amount as may be realized therefrom within a reasonable time, will be insufficient to pay such expenses and indebtedness in full and without delay, the court shall order a ratable assessment upon all parties liable as stockholders, or upon account of any stock of such corporation, for such amount, proportion, or percentage of such liability upon or on account of each share of such stock as it shall deem proper, considering the probable solvency and responsibility of the stockholders and the probable expense of collecting such assessment, and shall direct payment of the amount so assessed against each share of such stock to the assignee or receiver, within the time specified in such order. ('99 c. 272 s. 3)

Constitutional. Findings of fact unnecessary (80-125, 83+36; 84-144, 150, 86+872). Order levying assessment appealable (84-144, 86+872). Facts to be considered in determining amount of assessment. Assessment held not excessive. (84-144, 86+872; 84-217, 220, 87+604).

3186. Contents of order—Conclusiveness—Such order shall authorize and direct the assignee or receiver to collect the amount so assessed, and, on failure of any one liable to such assessment to pay the same within the time prescribed, to prosecute an action against him, whether resident or non-resident, and wherever found. Such order shall be conclusive as to all matters relating to the amount, propriety, and necessity of the assessment, against all parties therein adjudged liable upon, or on account of, any stock or shares of such corporation, whether appearing or being represented at the hearing or not, or having notice thereof or not. ('99 c. 272 ss. 4, 5)

Constitutional. Order how far conclusive (80-125, 83+36).

3187. Actions for assessments, how and where prosecuted—Upon expiration of the time specified in the order for the payment of assessments, the assignee or receiver shall commence action against every party so assessed and failing to pay, wherever he or any property subject to process in such action is found, unless he shall report to the court that he believes such stockholder to be insolvent, or that the expenses of the prosecution will probably exceed the amount likely to be collected, in which case the court, unless satisfied to the contrary, shall order action suspended as to such party. ('99 c. 272 s. 6)

3188. Additional assessments, how levied—Joinder of causes—Whenever, at any time after an assessment for an amount less than the maximum stockholder's liability has been levied, it shall appear, by petition or otherwise, and after hearing as hereinbefore provided, that by reason of the insolvency of stockholders, or for any other cause, it is necessary, or for the interest of creditors, that a further assessment be levied, the court shall order the same for such amount, proportion or percentage as it may deem proper; and in the same manner, and with like effect, at any time thereafter may levy additional assessments, not exceeding in the aggregate the maximum stockholder's liability. Whenever two or more assessments shall have been levied, the assignee or receiver may recover therefor in a single action, or, unless otherwise directed, may maintain a separate action against each stockholder for each successive assessment. ('99 c. 272 ss. 7-9)

3189. Proceedings on failure of assignee or receiver to prosecute—If the assignee or receiver shall neglect to begin an action against any stockholder who has failed to pay his assessment, and is not excepted from the present operation of such order, or to diligently prosecute the same, any stockholder who has paid his assessment in full, or any creditor, may petition the court to order such assignee or receiver to prosecute such action against such delinquent stockholder, or to permit such petitioner to begin and maintain or to continue any such action already begun, in the name of such assignee or receiver, for the benefit of such estate; and if the petitioner shall furnish such security for costs and expenses as the court may direct, it shall either require the assignee or receiver to prosecute such action forthwith, or permit the petitioner to begin and prosecute, or continue the prosecution of the same. ('99 c. 272 s. 10)

3190. Surplus to be divided among stockholders—Whenever, after the payment of all expenses of such assignment or receivership, and all indebtedness of and claims allowed against such corporation, any surplus money or property remains in the hands of the assignee or receiver, the same shall be equitably distributed, under the direction of the court, among the stockholders who have paid their assessments. Any stockholder who has paid his assessments, in addition to any remedy herein provided, shall be entitled to enforce contribution from any stockholder who has not paid such assessments, and for that purpose shall be subrogated to the rights of the creditors or assignee or receiver of such corporation against every such delinquent stockholder, in such manner and to such extent as may be just and equitable. ('99 c. 272 s. 11)