1940 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1940)

(Superseding Mason's 1931, 1934, 1936 and 1938 Supplements)

Containing the text of the acts of the *1929, 1931, 1933, 1935, 1937* and *1939* General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.

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7421. Rights of partners to application of partnership property.

Burnett v. H., 187M7, 244NW254; note under §7412.

A creditor of both a partnership and one of partners individually has no right, nothing more appearing, to apply payments made by partnership out of its own funds upon indebtedness of individual partner. Mastley v. M., 193M411, 258NW591. See Dun. Dig. 7368.

(1).

Promissory note executed by a partnership and by two of the surviving partners "payable out of funds to be received from partnership matters", did not give holder preference over other creditors of partnership, and, unless individual signers held funds of partnership when sued, there could be no recovery. Selover v. S., 201M562, 277NW205. See Dun. Dig. 7401.

7423. Rules for distribution.

Burnett v. H., 187M7, 244NW254; note under §7412.

Where a partner contributes more than his share of a partnership funds, he is not entitled to interest on the excess, in the absence of an agreement to that effect. 177M602, 225NW924.

Where several contributed property of an unequal value in the purchase of land, one of them was entitled to an interest based upon the value to which all the parties agreed, and not the actual value. Kallusch v. K., 185M3, 240NW108. See Dun. Dig. 4949.

Dependent widow of employee of a partnership could recover compensation from partnership and insurer, notwithstanding that she is a member of the partnership. Keegan v. K., 194M261, 260NW318. See Dun. Dig. 7406.

(b).

Promissory note executed by a partnership and by two of the surviving partners "payable out of funds to be received from partnership matters", did not give holder preference over other creditors of partnership, and, unless individual signers held funds of partnership when sued, there could be no recovery. Selover v. S., 201M562, 277NW205. See Dun. Dig. 7401.

7426. Accrual of actions.

Conversion action arising out of partnership between two attorneys held properly dismissed on pleadings by municipal court, since rights of parties must be determined by an accounting action and conversion will not lie until termination of partnership. Grimes v. T., 200M 321, 273NW816. See Dun. Dig. 7406.

CHAPTER 58
Corporations

GENERAL PROVISIONS

7429. Existing corporations continued.

Paterson v. S., 186M611, 244NW281; notes under §§7447, 7447-1.

General franchise to be a corporation is subject to conditions and limitations as to its exercise imposed by grant, which are part of franchise itself; especially so of method fixed by grant to implement and assure intended corporate succession. State v. Quinlivan, 198M65, 268NW858. See Dun. Dig. 1998.

Where a corporation was organized under Laws 1876, c. 28, with perpetual succession, it maintained that succession, notwithstanding the repeal by §10963 of the law under which it was organized, in view of the provisions of this section. Op. Atty. Gen., May 3, 1930.

7432. Public service corporations—Purposes of.

Street car company was not liable to one injured while climbing a pole upon which it had permitted city to attach a fire alarm wire. 171M395, 214NW658.

Contract between city and power company for furnishing of electricity delivered at city's power plant was not franchise within meaning of restrictions in city charter. Northern States Power Co. v. C., 186M209, 242 NW714.

Power company could not serve public in city granting only right to deliver and meter power at city's power plant. Northern States Power Co. v. C., 186M209, 242NW714. See Dun. Dig. 2996a.

7433. State and local control—Eminent domain.

There was no authority and no public necessity for the condemnation of an easement for an electric power line through Jay Cooke State Park. 177M343, 225NW164.

3. Governmental control.

City may impose regulations upon a common carrier operating motorbusses upon its streets for transportation of passengers for hire, and may compel its acceptance of a franchise as a condition to its use of such streets. City of St. Paul v. T., 187M212, 245NW33. See Dun. Dig. 6618.

Matter of regulating rates for public service companies is left to the city council of South St. Paul, and fact that ordinance granting twenty-five year franchise was submitetd to the people did not affect such power. Op. Atty. Gen., Sept. 12, 1930.

No state department has authority to regulate rates of electric light and power companies. Op. Atty. Gen., Feb. 7, 1930.

Where a city, such as Duluth, is operating under a home rule charter it has authority to regulate the rate of a public service corporation and to require such reasonable extension as fact warrants. Op. Atty. Gen. (624c-11), Aug. 20, 1934.

7. Rates.

Village operating under Laws 1885 is bound by 25 year franchise granted to a power company in 1916, and cannot lower rates by ordinance. Op. Atty. Gen. (624-6), Sept. 16, 1937.

7434. Municipality may purchase.

City of Hutchinson could purchase public utility plant at the end of every term of five years notwithstanding provision in franchise to contrary. Op. Atty. Gen., Mar. 24, 1932.

7435. [Repealed.]

Repealed Apr. 18, 1933, c. 300, §63.

Paterson v. S., 186M611, 244NW281; note under §7447.

7436. Mortgage loan and land companies.

The First Bank Stock Corporation and the Northwest Bancorporation are not "banks" or "mortgage loan companies" within statutes providing method for taxation of banks. Op. Atty. Gen., Aug. 29, 1930.

An agricultural credit corporation organized to lend money to those engaged in production or marketing of agricultural products could not have been organized under §7440, but is governed by §7436, and is subject to §2026-1, relating to assessment and taxation of bank and mortgage loan company stock. Op. Atty. Gen. (92b-1), July 15, 1937.

7440. [Repealed].

Repealed Apr. 18, 1933, c. 300, §63.

Op. Atty. Gen., July 6, 1931; note under §7441.

An agricultural credit corporation organized to lend money to those engaged in production or marketing of agricultural products could not have been organized under §7440, but is governed by §7436, and is subject to §2026-1, relating to assessment and taxation of bank and mortgage loan company stock. Op. Atty. Gen. (92b-1), July 15, 1937.

7441. Financial corporations.

Neither a foreign corporation duly organized to conduct a safe deposit business nor a domestic corporation, unless a bank or trust company, can conduct a safe deposit business within the state. Op. Atty. Gen., July 6, 1931.

7441-1. Proceedings in organization of state banks legalized and validated.—Wherever heretofore any persons have in good faith attempted to incorporate any state bank under the provision of any general law of the state of Minnesota relating to the incorporation of banks, but where the incorporation was defective because after the commencement of the proceedings to so incorporate but prior to their completion, the Revised Laws 1905 took effect and repealed the law under which such incorporation was being attempted; but where any such incorporation was completed in substantial compliance with any general law of the state of Minnesota repealed by the Revised Laws 1905 relating to the incorporation of banks, and where a certificate was issued by the proper department or official of the state of Minnesota authorizing any such bank to transact business, and where ever since any such bank has transacted a banking business and evercised its powers in all respects as though lawfully incorporated as a state bank, and has at all times been recognized as a state bank by the superintendent of banks or commissioner of banks or banking department of the state of Minnesota; then the incorporation of any such bank is hereby legalized and validated and any such state bank is hereby declared to be a valid corporation de jure and shall be so deemed in all courts and as to all transactions past and future. All amendments to the articles of incorporation of any such bank which,

except for the defects in its incorporation, were lawfully adopted, are hereby legalized and validated, and the corporate existence of any such bank may be renewed in the same manner and under the same conditions as though lawfully incorporated. This act shall not affect any action now pending in any court. (Act Apr. 11, 1935, c. 150.)

7442. Insurance corporations.
State v. Brown, 250NW2; note under §3315.

7443. 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; provided, no corporation shall be formed under this section which might be formed under the Minnesota Business Corporation Act. 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 contain the word "company," "corporation," "bank," "association," or "incorporated." In the case of a state bank the name shall contain the words "state bank."
2. The period of its duration, if limited.
3. The name and place 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 share; and, if there is to be more than one 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. (R. L. '05, §2849; '07, c. 468, §1; G. S. '13, §6147; '19, c. 111, §1; Apr. 18, 1933, c. 300, §62, II.)

Correction—The citation in the sixth paragraph of notes under this section in the 1927 statutes should read 159-51, 197+967 instead of 158-459, 197+964.

Whether a corporation is to exchange its capital stock for an issue of non-par stock rests in the judgment of majority stockholders. 172M303, 215NW185.

To constitute a de facto corporation there must be a valid law under which a corporation de jure may be formed; a bona fide or colorable attempt to incorporate; and a user of power. Ebeling v. I., 187M604, 246NW373. See Dun. Dig. 1981.

Insurance company may issue preferred stock which shall not be subject to any double liability, but such stock may not be exempted from assessment to make up impairment of capital. Op. Atty. Gen., Sept. 26, 1933. (5).

Banks may issue preferred stock. Op. Atty. Gen., Aug. 12, 1933.

7445. Publication of certificate.

Omission to file affidavit of publication of amended articles of incorporation, held not to preclude corporation from being a de facto one according to terms of amended articles, and a corporation having acted under such amended articles stockholders were estopped to deny validity of amendment to avoid consequent stockholders' liability. Henry v. M. (USCCA8), 68F(2d)554. See Dun. Dig. 1981, 1987.

Corporate term of existence began on date of filing articles of incorporation, and not upon later date of filing proof of publication of articles. Op. Atty. Gen. (92a-9), Aug. 23, 1937.

7446-2. Same.

Corporate term of existence began on date of filing articles of incorporation, and not upon later date of filing proof of publication of articles. Op. Atty. Gen. (92a-9), Aug. 23, 1937.

7446-3. Certain corporations validated. — That every private corporation heretofore in good faith organized, or attempted to be organized, under the general laws of this State, but where the Articles of Incorporation were not published, and the affidavit of such publication was not filed in the office of the Secretary of State until after the date fixed for the commencement of the corporation, or where the Articles of Incorporation have been recorded with the Register of Deeds, but when published did not contain with the publication the record of the recording with said Register of Deeds, but that such affidavit of proof of such publication of the Articles of Incorporation, without the recording data of the Register of Deeds, has been heretofore filed in the office of the Secretary of State, and where the said Certificate of Incorporation has been amended or attempted to be amended to change the name of such corporation, but where the amendment of such Certificate of Incorporation has been published only once, and the affidavit of such publication was not filed with the Secretary of State until after the said corporation commenced using the amended name, but such affidavit has been heretofore filed in the office of the Secretary of State, and where the persons organizing such corporation and amending the same have been acting in good faith and corporate meetings have been held and business transacted, and the amended name in good faith used since the attempted amendment, and such corporation has acted in all things as though there were no errors or omissions in its organization or amendment, the same is hereby declared to be in law a valid corporation de jure, and as amended shall be so deemed, and held in all courts as to all transactions, past and future, the same as though there were no defects in its organization or amendment thereof; provided, this Act shall not affect any action now pending in any court. (Act Mar. 21, 1933, c. 104.)

7447. General powers.

Correction—The citation "156M104, 194NW107" in vol. 2, Mason's Minn. Stat. 1927, should be "156M79, 194NW 108."

The relations of a stockholder to a corporation and to the public require good faith and fair dealing in every transaction between the stockholder and the corporation which may injuriously affect the rights of creditors and the general public, and a careful examination will be made into all such transactions in the interests of creditors. Burntside Lodge, Inc. (USDC-Minn), 7FSupp785.

When stockholders sue to cancel stock, the corporation should be made a party. 172M110, 215NW192.

Articles of incorporation held to confine the corporation to an exclusively manufacturing business. 172M 394, 215NW521.

A bank has no power to pledge any of its assets to secure the repayment of the deposits, except as given by the statutes. 174M286, 219NW163.

Where an unauthorized pledge of assets is made by bank and it becomes insolvent, the receiver may recover assets pledged, or damages, if they have been converted. 174M286, 219NW163.

Estoppel of corporation to assert defense of ultra vires. 180M319, 240NW797.

Articles of incorporation, held not to authorize the corporation to become on accommodation guarantor. 181M 306, 232NW327. See Dun. Dig. 2007.

Defective industrial bonds held subsisting obligations of the company, to the title to which plaintiff succeeded. Hicks v. F., 182M93, 233NW828. See Dun. Dig. 2021.

A corporation may adopt a contract made by its promoters prior to and with a view to its organization. Veigel v. O'T., 183M407, 236NW710. See Dun. Dig. 2116.

Where individual organized a corporation with very name under which he had long done business as a sole trader, corporation was liable for a debt of the business outstanding when the corporation took it over. Fena v. P., 185M137, 239NW898. See Dun. Dig. 2023.

An ultra vires contract not expressly prohibited by statute fully performed on one side is enforcible by the one who has performed. Benson Lumber Co. v. T., 185 M230, 240NW651. See Dun. Dig. 2026(80).

A corporation which has received the full benefit of an ultra vires contract cannot repudiate the contract without restoring the benefit received. Benson Lumber Co. v. T., 185M230, 240NW651. See Dun. Dig. 2026(93).

An individual who has received money or property from a corporation under an ultra vires contract cannot repudiate it without restoring what he has received. Ben-

son Lumber Co. v. T., 185M230, 240NW651. See Dun. Dig. 2026(86).

Stockholders of corporation held estopped from questioning validity of chattel mortgage given to secure money lent to corporation. Bacich v. N., 185M544, 242 NW379. See Dun. Dig. 2025a.

Adjustment of lawsuits, payment of disputed taxes, and payments for services and expenses in connection therewith, may not be questioned by corporation on ground of improvidence alone. Butler v. B., 186M144, 242 NW701. See Dun. Dig. 2016.

Plaintiff consented to purchase of his own stock by defendant corporation out of surplus and is not in position to ask equitable relief on that account. Butler v. B., 186M144, 242NW701. See Dun. Dig. 3142(58).

A stockholder of a corporation may contract with the corporation in the same manner as any other individual. Heider v. H., 186M494, 243NW699. See Dun. Dig. 2073.

In absence of unfairness or fraud, a court will not, upon petition of small minority of stockholders, restrain corporate action in selling its property or merging with another corporation to detriment of majority, where interests of minority may be otherwise protected. Paterson v. S., 186M611, 244NW281. See Dun. Dig. 2014, 2074, 2122.

Evidence held to sustain finding that man appointed by chairman of pageant committee of a veterans' organization had authority to purchase printing so as to bind corporation. Dimond v. D., 196M52, 264NW125. See Dun. Dig. 2117.

7447-1. Sale, lease, or exchange of property, etc. —Procedure.—Every corporation heretofore or hereafter organized under the laws of this state, except those formed or coming under the Minnesota Business Corporation Act, may at any meeting of its board of directors, sell, lease or exchange all of its property, rights, privileges and franchises upon such terms and conditions as its board of directors deem expedient, and for the best interests of the corporation, when and as authorized by the affirmative vote of the holders of two-thirds of the shares of stock of the company issued and outstanding having voting power, given at a stockholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of two-thirds of the shares of stock of the company issued and outstanding having voting power. Provided, however, that the certificate of incorporation may require the vote or written consent of a larger portion of the stockholders. ('25, c. 320, §1; Apr. 18, 1933, c. 300, §62, III.)

Stockholders of corporation authorizing transfer of assets to Delaware corporation were not prejudiced and cannot complain of transfer to Minnesota operating company for Delaware company. Bacich v. N., 185M544, 242NW379. See Dun. Dig. 2014.

Evidence held not to support claim that transferee of assets of bus company and its associates used their influence to prevent obtaining of certificate of convenience so as to make it impossible to perform contract of sale. Bacich v. N., 185M544, 242NW379.

Stockholders may authorize president and secretary to execute necessary papers to complete transfer of assets and good will of corporation. Bacich v. N., 185NW544, 242NW379.

Minnesota company accepting consideration from another Minnesota corporation and transfering its assets to it with acquiescence of Delaware corporation, operating in Minnesota, through transferee company, a subsidiary, held to constitute accord and satisfaction of contract to convey to Delaware corporation and to constitute complete defense to any subsequent demand by Delaware company. Bacich v. N., 185M544, 242NW379. See Dun. Dig. 34.

Under power given, held that trustees could vote their consent to exchange of stock of corporation for property or stock of another corporation, or exchange their trust stock for stock of another corporation. Butler v. B., 186 M144, 242NW701. See Dun. Dig. 2003.

Purchasers of stock and assets of corporation, held entitled to recover for deficiency in net quick assets, whether they or third persons restored such assets. Sheffield v. C., 186M278, 243NW129.

Finding that there was deficiency in "net quick assets" of corporation, whose stock and assets were sold to defendants, held sustained by evidence. Sheffield v. C., 186M278, 243NW129. See Dun. Dig. 2014.

Ordinarily a corporation cannot sell all of its property and disable itself from business intended by charter as against objection of single stockholder. Paterson v. S., 186M611, 244NW281. See Dun. Dig. 2014, 2074, 2122.

Majority of stockholders of Minnesota corporation were justified in authorizing sale of all its assets to a Delaware corporation organized by them, against protest of a minority stockholder, and in accepting stock of Delaware corporation in payment for property. Hill v. P., 198M30, 268NW705. See Dun. Dig. 2014.

Power of majority to exchange assets for stock in new corporation. 35MichLawRev626.

7449. Deeds of trust may draw interest at 8%.

After-acquired property under conflicting corporate mortgage indentures. 13MinnLawRev81.

7453. By-Laws, how adopted.

Not applicable to corporations governed by §§7492-1 et seq. See §7492-62(I).

The provisions of the by-laws of corporation for creation of a sinking fund out of which its directors could redeem outstanding bonds, not included in or referred to in its bonds, did not make such sinking fund sole fund for payment of bonds or relieve the corporation from its obligation to pay the bonds at maturity. Heider v. H., 186M494, 243NW699. See Dun. Dig. 1974.

Where a variable clause appears in certificate of incorporation, commissioner of banks may insist on adoption of by-law fixing definite number of directors. Op. Atty. Gen. (29a-13), June 2, 1937.

Amendments to by-laws of cooperative associations need not originate with board of directors, unless vote is to be had thereon by mail. Op. Atty. Gen. (93a-4), Jan. 5, 1938.

7454. By-laws and statement to be filed and posted.

Not applicable to corporations governed by §§7492-1 et seq. See §7492-62(I).

7455. Duration of corporate existence—Renewal. —A railroad corporation may be formed for any period specified in its certificate of incorporation. A savings bank shall have perpetual succession. Every other corporation, except as hereinafter otherwise provided, 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 or members in case of mutual or non-stock corporations represented at any regular meeting, or at any special meeting called for that purpose, which shall have been clearly specified in the call, shall have heretofore or shall hereafter adopt a resolution to that effect, and in case of stock companies when those desiring it shall have purchased at its value the stock of those opposed thereto; provided, that no corporation formed under the provisions of the Minnesota Business Corporation Act, and no corporation which accepts the provisions of that Act or which elects not to accept the same, as provided by Section 61 of that Act, may be renewed hereunder. Religious, social, fraternal and charitable corporations shall have perpetual succession unless the duration thereof is specifically limited in the certificate of incorporation and in case of existing religious, social, fraternal and charitable corporations where no period of duration is fixed in the certificate of incorporation the duration thereof shall be perpetual unless said corporations amend their articles of incorporation limiting the duration within ninety days after the taking effect of this Act, and where the certificate of incorporation of any such corporation provides a fixed period of duration, such corporation may have perpetual succession by amending its certificate of incorporation so as to provide therefor at any time within one year after the passage of this Act. (R. L. '05, §2856; '07, c. 468, §2; G. S. '13, §6156; '21, c. 39, §1; '27, c. 32; Apr. 18, 1933, c. 300, §62, IV.)

Act Jan. 13, 1936, c. 23, Sp. Ses., 1935-36, extends corporate existence of corporations to receive proceeds of federal appropriations for forest fire relief.

Act Jan. 15, 1936, Sp. Ses., c. 30, authorizes renewal of existence of corporations whose charter has expired prior to passage of act.

Act Jan. 18, 1936, Sp. Ses., 1935-36, c. 34, validates renewal proceedings theretofore had.

It is doubtful whether a corporation may continue to exist as a de facto corporation after expiration of term. Townsend v. M., 194M423, 260NW525. See Dun. Dig. 1981.

General laws providing for extension of corporate existence do not confer contract rights to corporations organized thereunder to have their existence extended in same manner and on same conditions as when organized, as power to alter or modify general law in that respect should be regarded as reserved to state. Wm. Warnock Co. v. H., 273NW710. See Dun. Dig. 1997.

Section 2, c. 212, Laws 1935, adding subdivision 4 to §39, c. 300, Laws 1933 [§7492-39], violates §33, art. 4 of constitution, classification of corporations in said subdivision 4 being arbitrary and without any reasonable basis. Id.

An old corporation may renew its corporate existence under old provisions. Op. Atty. Gen., Dec. 27, 1933.

It is doubtful whether Duluth Police Pension Relief Association comes within section. Op. Atty. Gen. (785m), Jan. 7, 1936.

Only act under which a corporation may extend its corporate existence is found in this section, and office of attorney general is not required to examine or approve certificate of amendment of co-operative where extension is taken under this section. Op. Atty. Gen. (93a-2), Mar. 19, 1937.

Pipestone Fire Department Relief Asso. organized under general statutes of 1894, title 3, c. 34, has perpetual existence. Op. Atty. Gen. (198a-3), Jan. 6, 1938.

Quorum necessary when a cooperative votes upon question of coming under Laws 1923, c. 326, and when voting to renew period of corporate existence, is fixed by §7835, but there must be a three-fourths vote of all of the stock or members for resolution of extension. Op. Atty. Gen. (93a-2), August 25, 1939.

Cooperatives when voting to come under Laws 1923, c. 326, and when voting to renew period of their corporate existence, may use the mail vote. Id.

Resolution of cooperative taking advantage of Laws 1939, c. 14, in extending its existence should contain jurisdictional requisites set forth in that act. Op. Atty. Gen. (93a-2), August 28, 1939.

7456. Publication of notices of renewal of corporate existence.—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. Provided, that in the case of a co-operative association, it shall not be necessary to publish said resolution. (R. L. '05, §2857; G. S. '13, §6157; Apr. 10, 1933, c. 189.)

Act Apr. 8, 1939, c. 174, provides for renewal of existence of corporations bound by Laws 1933, c. 300.

Renewal of corporate existence. Laws 1939, c. 16.

Existence of certain corporations, not having power of eminent domain extended. Laws 1939, c. 115.

Renewal of corporate existence. Laws 1939, c. 174.

7457. Renewal of corporate existence of certain corporations authorized.

Act Apr. 15, 1933, c. 253, validates renewal proceedings of mutual creamery and cheese factory insurance companies.

Act Jan. 24, 1936, Sp. Ses., 1935-36, c. 85, provides for renewal of corporate existence of agricultural societies after time for such renewal has expired.

7457-4 to 7457-8. [Repealed].

Act Apr. 5, 1933, c. 156, repeals the provisions of §§7457-4 to 7457-8.

Act Feb. 17, 1939, c. 16, provides:

Sec. 1. **Corporate existence of certain corporations may be renewed.**—Any corporation heretofore organized under the laws of this state, for pecuniary profit, and social corporations, and corporations created under General Statutes of 1894, Chapter 34, Title 3, whose period of duration has expired less than 21 years prior to the passage of this act and the same has not been renewed and such corporation has continued to transact its business, or *whose assets have not been liquidated and distributed,* may, by a majority vote of the voting power of the shareholders of such corporation, subject to the rights and remedies of stockholders not assenting thereto, as now provided in Laws 1933, Chapter 300, Section 39 [§7492-39], renew its corporate existence from the date of its expiration for a further definite term or perpetually from and after the term of its expired period of duration with the same force and effect as if renewed prior to the expiration of its term of existence, by taking the same proceedings and by paying into the state treasury the same incorporation fees as now provided by law for the renewal of the corporate existence of such corporations in cases where such renewal is made before the end of its period of duration, provided that in so doing every corporation of the kind which might be formed under or accept and come under the Laws of 1933, Chapter 300 [§§7492-1 to 7492-62], shall be conclusively deemed to have elected to accept and be bound by the provisions of Laws 1933, Chapter 300 [§§7492-1 to 7492-62], as the same now is or may be amended.

Sec. 2. **Limitations of act.**—Such proceedings to obtain such extension shall be taken within one year after the approval of this act.

Sec. 3. **Proceedings to relate back.**—When such proceedings are taken within such period of time, such proceedings shall relate back to the date of the expiration of such original corporate period, as fixed by its articles of incorporation or by statutory limitation, and when such period is extended as provided by this act, any and all corporate acts and contracts done and performed, made and entered into after the expiration of said original period, shall be and each is hereby declared to be legal and valid.

Sec. 4. **Application of Act.**—This act shall not apply to any corporation, the charter of which has been declared forfeited by the final judgment of any court of competent jurisdiction of this state or to any corporation as to which there is pending any action or proceeding in any of the courts of this state, for the forfeiture of its charter, nor shall this act affect any action or proceeding now pending in any of the courts of this state in relation to any corporation described in Section 1 of this act.

ANNOTATIONS UNDER REPEALED SECTIONS

7457-4. Corporate existence of corporations for pecuniary profit and social corporations renewed.

Renewal of corporations after expiration of period of existence: Laws 1929, cc. 73, 136, 171; Laws 1931, cc. 107, 219; Laws 1933, c. 193; Act July 14, 1937, Sp. Ses., c. 25, amending §1 of Act Apr. 17, 1937, c. 242; Act Feb. 17, 1939, c. 14.

7457-9. Corporate existence of cooperative associations renewed.

Subsequent acts: Laws 1931, c. 149; Laws 1933, c. 199. Laws 1935, c. 163; Laws 1937, c. 13, Act July 15, 1937, Sp. Ses., c. 60; Act Mar. 7, 1939, c. 51, relating to cooperative associations for carrying on newspaper publishing.

7457-11. Corporate existence of corporations, etc.

Subsequent curative acts. Act Mar. 15, 1929, c. 73.

7457-12. Consolidation of corporations.

Not applicable to corporations governed by §§7492-1 et seq. See §7492-62(I).

Laws 1927, c. 385, and not Laws 1927, c. 328, is the law of the state. 172M306, 215NW221.

Where court found that merger of corporations was not fair to minority stockholders, it could refuse to appoint a receiver and give minority stockholders option to take stock in consolidated company on basis of fair exchange, or take value of their stock in original corporation at highest market or intrinsic value between consolidation and trial, with interest. Paterson v. S., 186 M611, 244NW281. See Dun. Dig. 2014, 2074, 2122.

In litigation to determine right of mining corporations to merge over objection of minority stockholders, it was within discretion of court to permit evidence of result of explorations had up to time of trial, but refusal to do so held not so important as to require new trial. Paterson v. S., 186M611, 244NW281. See Dun. Dig. 2014, 2074, 2122.

7457-13 to 7457-18.

Not applicable to corporations governed by §7492 et seq. See §7492-62(I).

7457-19. Corporate existence renewed in certain cases.—Any corporation heretofore organized under the laws of this state, for pecuniary profit, and social corporations, and corporations created under General Statutes of 1894, Chapter 34, Title 3, whose period of duration has expired less than twenty years prior to the passage of this act and the same has not been renewed and such corporation has continued to transact its business, may, by a majority vote of the voting power of the share-holders of such corporation, renew its corporate existence from the date of the expiration for a further definite term or perpetually from and after the term of its expired period of duration with the same force and effect as if renewed prior to the expiration of its term of existence, by taking the same proceedings and by paying into the state treasury the same incorporation fees as now provided by law for the renewal of the corporate existence of such corporations in cases where such renewal is made before the end of its period of duration, provided that in so doing such corporation shall be deemed to have elected to accept and be bound by the provisions of Laws 1933, Chapter 300 [§§7492-1 et seq.], as the same now is or may be amended. (Act Apr. 24, 1935, c. 272, §1.)

Act has no application to a corporation such as the Duluth Police Pension Relief Association. Op. Atty. Gen. (785m), Jan. 7, 1936.

7457-20. Proceedings to be begun within one year.—Such proceedings to obtain such extension shall be taken within one year after the approval of this act. (Act Apr. 24, 1935, c. 272, §2.)

7457-21. To relate back to date of expiration.—When such proceedings are taken within such period of time, such proceedings shall relate back to the date of the expiration of such original corporate period, as fixed by its articles of incorporation or by statutory limitation, and when such period is extended as provided by this act, any and all corporate acts and contracts done and performed, made and entered into after the expiration of said original period,

shall be and each is hereby declared to be legal and valid. (Act Apr. 24, 1935, c. 272, §3.)

7457-22. Application of act.—This act shall not apply to any corporation, the charter of which has been declared forfeited by the final judgment of any court of competent jurisdiction of this state or to any corporation as to which there is pending any action or proceeding in any of the courts of this state, for the forfeiture of its charter, nor shall this act affect any action or proceeding now pending in any of the courts of this state in relation to any corporation described in Section 1 of this act. (Act Apr. 24, 1935, c. 272, §4.)

7457-23. Non-assenting stockholders.—The provisions of Laws 1933, Chapter 300, Section 39 [§7492-39], shall apply as to rights and remedies of stockholders of such corporations who do not assent to such renewal; provided, that in any case where action is commenced to recover the amount of the value of stock owned by any such non-assenting stockholder, the court may in its discretion, in any order for judgment therefor, require that such amount be paid in one payment or in installments at stated intervals as to the court may seem just and proper, consistent with the best welfare of said non-assenting stockholder, and the ability of said corporation to make such payment or payments. (Act Apr. 24, 1935, c. 272, §5.)

7458. Election of board of directors.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Every director must be a stockholder. 172M119, 215 NW192.

Damages due corporation from officers guilty of negligence and mismanagement. 174M339, 219NW185.

Mortgage given by corporation to its directors, in a good-faith endeavor to protect an equity of subrogation already existing in favor of the directors, is valid. 176 M516, 223NW785.

One who was a director of a certain company, was estopped to claim that he was induced through deceit to accept stock in the company and believed that he was stockholder in another company with a similar name. 178M9, 225NW927.

Notice of meetings de facto directors. 180M486, 231 NW197.

Directors may not be heard in equity to plead ignorance of practices which it was their duty to know and to stop. Barrett v. S., 185M596, 242NW392. See Dun. Dig. 2096.

A director or officer does not stand in a fiduciary relation to another stockholder in respect of his stock, and he has same right as any other stockholder to buy stock from or sell his stock to another. Nelson v. N., 197M 151, 266NW857. See Dun. Dig. 2113.

Where nine directors were chosen by stockholders but only seven accepted and qualified, vacancies could be filled by remaining members of board, stockholders or members. Op. Atty. Gen. (29a-13), June 2, 1937.

Estoppel to object to acts of directors.

Plaintiffs in a stockholders' action, themselves former directors of the corporation, held barred by acquiescence therein from complaining of unlawful expenditures by the management which were made pursuant to fixed policies of the company established and long maintained as such while plaintiffs were directors, no objection having been made before the institution of the action. Barrett v. S., 183M431, 237NW15. See Dun. Dig. 3196.

7459. Officers—Certain Corporations legalized.

See notes under §7492-27.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

De facto officers cannot invoke the aid of their own acts as such to promote their individual interests in an action to cancel their stock, though the doctrine is applicable when third persons are involved. 172M110, 215 NW192.

Officer of corporation was not liable for negligence in a matter in which he took no part. 175M563, 222NW335.

Where officer of corporation, without authority, employed a broker for sale of real estate, a limited ratification by directors to the extent of allowing the broker reasonable value of his services should not be carried further, where the majority are in ignorance of the terms of the original unauthorized employment. Thompson v. N., 183M314, 236NW461. See Dun. Dig. 2116.

Neither the president nor, in his absence, the vice president, of an ordinary corporation has the power, by virtue of his office alone, to employ a broker for the sale of the company's real estate, and fix his commission. Thompson v. N., 183M314, 236NW461. See Dun. Dig. 2114.

Stockholders of corporation, held estopped from questioning right of president and secretary to hold their respective offices. Bacich v. N., 185M544, 242NW379. See Dun. Dig. 2075.

Minority stockholders who, when members of board of directors permitted officers to make illegal political contributions from corporate funds, are not entitled in equity to compel officers to pay back such funds. Barrett v. S., 185M596, 242NW392. See Dun. Dig. 2075.

Resolution fixing salaries of corporate officers and attempted ratification thereof held ineffectual and void as against minority stockholders. Barrett v. S., 185M 596, 242NW392. See Dun. Dig. 2074.

Bonuses received by officers without authority from board of directors must be returned. Barrett v. S., 185 M596, 242NW392. See Dun. Dig. 2121.

A corporation doing its business in name of another corporation, its agent, may be held as undisclosed principal of latter for loans obtained to conduct business for former, there having been no payment to or settlement with agent by undisclosed principal before lender discovered existence of undisclosed principal and presentation of claim against latter. American Fund v. A., 187M300, 245NW376. See Dun. Dig. 2112a.

Officer and agent of corporation is accountable to it for secret profits and commissions received by him. Chicago Flexotile Floor Co. v. L., 188M422, 247NW517. See Dun. Dig. 2113(97).

Evidence justified finding that president of a corporation had apparent authority to contract for an audit of its books. Temple, Brissman & Co. v. G., 189M236, 248NW 819. See Dun. Dig. 2114.

1. Acts of Promoters.

Cause of action for secret profits made by a promoter vested in corporation upon its organization when it consummated purchase in course of which secret profit was made, and a release by corporation bars action by defrauded co-promoter. Barrett v. S., 187M430, 245NW 830. See Dun. Dig. 1977.

7460. Classification of managers.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7461. Regulation as to voting.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Voting trust agreement existing before purchase of stock, and forming part of the contract of purchase, held valid. Mackin v. Nicollet Hotel, (USCCA8), 25F(2d)783, aff'g 10F(2d)375.

Corporate stock sold by insolvent corporation for one-fourth of par value was entitled to vote, in absence of judicial determination that it was invalid. Bacich v. N., 185M544, 242NW379. See Dun. Dig. 2032.

7462. Cumulative voting.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7463. 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 in any corporation, except one formed or coming under the Minnesota Business Corporation Act, shall not be transferred upon the books of the corporation while any installment 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; provided, that corporations formed or coming under the Minnesota Business Corporation Act shall not be subject to the provisions of this sentence. (R. L. '05, §2863; G. S. '13, §6176; Apr. 18, 1933, c. 300, §62, V.)

Correction—The last citation in the first paragraph of notes under this section in the 1927 statutes should read (155-6, 192+356) instead of (155-88, 192+356).

In replevin for capital stock counterclaim setting up lien was interposed and plaintiff dismissed complaint, reply asserting statutory lien was admissible as a defense to the counterclaim, though a departure from the complaint. 171M65, 212NW738.

Lien given by this section is never lost by mere negligence; only by waiver, surrender, or estoppel. 171M 65, 212NW738.

Statutory lien is paramount to the rights of a purchaser or pledgee of the stock. 171M65, 212NW738.

One making fraudulent representations to purchaser of corporate stock was not liable as for money had and received upon rescission of the transaction by the buyer, where not enriched thereby. Erickson v. B., 177M 360, 225NW145.

A corporation may buy and sell its own shares, provided it does so in good faith without intent to injure and without in fact injuring its creditors. 178M179, 226 NW513.

Issuance of stock to stockholder, held, as between the parties security for loan from stockholders, but as to creditors it was sale of stock. 178M179, 226NW513.

Assignment of shares passes title without registration of transfer on books of company. 179M373, 229NW 353.

The right to vote at a stockholders' meeting is an incident of the legal title to the stock, but a purchaser of stock cannot designedly fail to have the transfer entered on the books and increase his voting power by taking proxies from the seller of the stock. 179M373; 229NW353.

Corporation may by its charter or by-laws require that transfer be entered on the books of the company. 179M373, 229NW353.

Corporation obtained a lien on stock of stockholder indebted to it where it had no notice of an assignment of the stock and none of it had been presented for transfer on the books. Benson Lumber Co. v. T., 185M230, 240NW651. See Dun. Dig. 2038.

A state bank has no statutory lien upon shares of stock therein owned by a stockholder who is indebted to bank which equity will enforce by set-off or counterclaim. Rockwood v. F., 195M64, 261NW697. See Dun. Dig. 771.

Where a state bank ceases to do business, pledging certain assets to another bank which assumes its liabilities, and proceeds to liquidate, and, after its stockholders have authorized dissolution, declared a liquidating dividend of $30 a share upon its capital stock, receiver of an insolvent corporation, owner of shares of such bank stock, is entitled to receive such dividend and bank may not set off debts due from corporation to bank at time receiver was appointed and when bank ceased to function as a bank. Id. See Dun. Dig. 2044.

A share of stock in insurance corporation may be freely sold or disposed of by its owner, there being no prohibition against sale in corporate articles or by-laws, and there being no statutory limitation. Nelson v. N., 197M151, 266NW857. See Dun. Dig. 2113.

Shares in stock of corporations are contract rights, and, as such, choses in action. State v. First Bank Stock Corp., 197M544, 267NW519. See Dun. Dig. 2027. Aff'd, 301US234, 57SCR677.

Members of a nonstock co-operative marketing corporation have right at common law to inspect books, records and papers of corporation in proper cases and under reasonable circumstances. State v. St. Cloud Milk Producers' Assn., 200M1, 273NW603. See Dun. Dig. 2070.

An uneducated widow reposing confidence in a lawyer having reputation for ability and integrity was not estopped to claim conspiracy and fraud against lawyer and corporation of which he was president because she retained stock of the corporation for some years and received dividends thereon. Scheele v. W., 200M554, 274 NW673. See Dun. Dig. 2022.

Contract respecting corporate stock held an absolute contract of sale and purchase, and not an option to purchase, and seller was entitled to recover unpaid part of purchase price, though one paragraph of contract designated the transaction as an option to purchase. Oleson v. B., 204M450, 283NW770. See Dun. Dig. 2044.

State bank has no lien on a stockholder's stock for his indebtedness to bank. Op. Atty. Gen. (520), August 22, 1939.

7464. Effect of transfer—Stock books.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

179M373, 229NW353; note under §7463.

As between the parties, a transfer of stock is good between entry on the books. 172M110, 215NW192.

Stock issued by a corporation was valid though there were no book entries showing a transfer of the stock to the new stockholder. 172M110, 215NW192.

In a running account the creditor is a subsequent creditor as to items charged after a transfer of the stock, and rent under existing lease accruing subsequent to transfer comes within this rule. Crowley v. P., 180M 250, 230NW645(2).

The corporate books and records are not conclusive evidence as to the ownership of stock. 181M316, 232NW 519. See Dun. Dig. 2044.

7465. Liability of stockholders.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

1. In general.

That it is the custom for banks to pay certificates of deposit before they become due does not change the contract made by the certificate. Barsness v. B., 176M 355, 223NW298.

Findings that directors of insolvent corporation had not converted property to their own use but had used it to pay debts of the corporation sustained. Williams v. D., 182M237, 234NW11. See Dun. Dig. 2107.

The evidence is not conclusive that there was a promise by one of the defendants to repay a loan made to a corporation of which he was a stockholder. Mahlberg v. J., 182M578, 235NW280. See Dun. Dig. 2092.

One accepting stock in lieu of dividends, stands in same situation as though he bought such stock, as regards stockholder's liability. Hallam v. T., 60SD45, 242NW920. See Dun. Dig. 2083.

7465-1. Stockholders liabilities.—Except as provided by Section 7465, Mason's Minnesota Statutes of 1927, no stockholder or member of any corporation or of any co-operative corporation or association, however or whenever organized, except a stockholder in a banking or trust corporation or association, shall be liable for any debt of said corporation, co-operative corporation or association. (Act Apr. 18, 1931, c. 210, §1.)

This section cannot be said to be invalid as impairing contract rights, in view of §7465-2, excepting existing liability. Saetre v. Chandler, (USCCA8), 57F(2d)951.

A stockholder in a corporation organized under laws of a foreign state, must be held to contract with reference to all of laws of state under which corporation is organized; and extent of his individual liability to creditors of company must be determined by laws of that state, not because such laws are in force in this state, but because he has voluntarily agreed to terms of company's constitution. Furst v. B., 192M454, 257NW79. See Dun. Dig. 2082.

Finding that purchases by retailer corporation constituted but one continuing account upon which payments made were directed to be applied to earliest maturing obligations held supported by evidence. Martin Brothers Co. v. L., 198M321, 270NW10. See Dun. Dig. 2080.

Shares in a cooperative organized after 1931 are not assessable or liable in case of dissolution under present law, but legislature has power to limit and regulate liability of stockholders and members of corporations and cooperatives, regardless of how organized. Op. Atty. Gen. (93a-18), June 30, 1939.

7465-2. Not to affect existing liability.—This act shall not affect any existing liability. (Act Apr. 18, 1931, c. 210, §2.)

Saetre v. Chandler, (CCA8), 57F(2d)951; note under §7465-1.

Where old corporation organized in 1920, incurred indebtedness in 1928, unpaid in 1935, after the incorporation of a new company in 1930, that took over the assets and liabilities of the old company, a receiver appointed for the companies in 1935 was entitled to enforce the double liability of the stockholders in the old company, but the stockholders in the new company were not subject to such a liability. Badger v. H. (USCCA8), 88F(2d) 208.

Stockholders of elevator company are not subject to double liability for debts thereof, unless incurred prior to Nov. 4, 1930. Op. Atty. Gen., Feb. 18, 1933.

A reincorporation would not affect right of creditors. Op. Atty. Gen. (93a-25), Feb. 8, 1939.

Articles of incorporation may be such as to give creditors contractual rights against stockholders. Id.

Stockholders who acquired their stock prior to Nov. 24, 1930, are constitutionally liable to extent of amount of their stock, as to those creditors who became such prior to Nov. 24, 1930, but no constitutional liability attaches to purchases of stock subsequent to Nov. 24, 1930, even though corporation had existing liabilities at that date. Id.

Transfer of shares of stock to infant—liability of transferor on subsequent assessment. 17MinnLawRev 546.

7466. Property of stockholders levied on, when.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7467. Proceedings of officer levying.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7468. Capital stock.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Stockholders of corporation held estopped from questioning validity of stock issued while corporation was insolvent for one-fourth of par value. Bacich v. N., 185 M544, 242NW379. See Dun. Dig. 2032.

7469. Capital stock of certain telephone companies.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7470. Record of stock—Reports—Dividends.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Duty of stockholders in charge and control of corporation to keep books and records. Backus v. Finkelstein, (USDC-Minn), 23F(2d)357.

Petition for examination of corporation books held not sufficient to support mandamus. 173M198, 217NW 119.

Members of a nonstock co-operative marketing corporation have right at common law to inspect books, records and papers of corporation in proper cases and under reasonable circumstances. State v. St. Cloud Milk Producers' Assn., 200M1, 273NW603. See Dun. Dig. 2070.

Statute applies to all stock corporations and is broad enough to include co-operatives with capital stock. Id.

Members of co-operative are not entitled to mandamus to compel corporation to permit inspection and examination of records where purpose is to benefit other companies who have interfered with contractual relations existing between association and its members. Id.

7470-1. Corporate stock without par value, etc.

Not applicable to corporations governed by §7492-1 seq. See §7492-62(I).

This act does not contravene Const., Art. 10, §3. 172 M303, 215NW185.

Whether a corporation is to exchange its capital stock for an issue of non-par stock rests in the judgment of the majority stockholders. 172M303, 215NW185.

7470-2, 7470-3.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7470-4. Same—Value for tax purposes.—For the purpose of determining the minimum or maximum capital prescribed by law for stock corporations, but for no other purpose, such shares shall be taken to be of the value of $10.00 each. ('25, c. 333, §4; Apr. 24, 1935, c. 230, §1.)

7470-5.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7470-6. Same—Increase or reduction.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Corporation must follow pre-corporate agreement in issuing additional stock. 174M219, 219NW82.

7470-7 to 7470-11.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7471. Officers without and within the state.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7472. Amendments to Certificates of Incorporation.—The certificate of any incorporation now or hereafter organized and existing under the laws of this state may be amended so as to change its cooperate [Sic] name, or so as to increase or decrease its capital stock, or so as to change the number and par value of the shares of its capital stock, or in respect to 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 a majority vote of entire board of directors, trustees, or other managers within one year after having been thereto duly authorized by specific resolution duly adopted at such meeting of stockholders or members, and 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 prescribed for the execution, approval, filing, recording, and publishing of a like original certificate, provided however if such amendment be made for the purpose of changing the principal place of the business of such corporation, said certificate shall be published, filed and recorded in the office of the register of deeds of the county of such principal place of business immediately prior to such amendment, and shall also be recorded in the county where the business is to be carried on after the amendment.

As to a local building and loan association and corporations organized for the establishing, maintaining and operating of hospitals not for profit, the resolution to amend may be adopted as above provided, or by a two-thirds vote of the stockholders or members of the association attending the meeting in person or by proxy. (R. L. '05, §2871; G. S. '13, §6185; '13, c. 247, §1; '17, c. 404, §1; '23, c. 405, §1; '27, c. 293; Apr. 20, 1929, c. 275.)

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Stockholders are bound by an amendment of the articles of incorporation unless there is some fundamental defect in the proceedings, and mere failure to file affidavit of publication as required by §7445 is insufficient to deprive the corporation of its de facto existence under the amendment. Henry v. M. (CCA8), 68F(2d)554. See Dun. Dig. 1995, 1996.

The assent of stockholders to an amendment of the articles of incorporation may be implied. Id.

Fundamental amendments of articles of incorporation which change the nature and purposes of the corporation must be accepted by the stockholders in order to bind them. Id.

Increase of capital stock of co-operative association beyond $100,000 held invalid, and stockholder was not liable on constitutional liability on the stock in excess of that amount. 172M334, 215NW428.

Part of opinion in 168M234, 210NW29, vacated and withdrawn. 172M334, 215NW428.

An amendment of the charter so as to convert a manufacturing corporation into a mercantile corporation was ultra vires where there was no unanimous vote of the stockholders, and there was no double liability under Const., Art. 10, §3. 176M588, 224NW245.

Stockholders or members, may, at adjourned meeting, transact any business which might have been transacted at meeting as called. Nelson v. N., 197M151, 266NW857. See Dun. Dig. 1995, 2079.

Amendment of articles of incorporation of a wholesale oil corporation so as to authorize it to engage in any mercantile, jobbing, wholesale and retail, mining, manufacturing or mechanical business, is a fundamental alteration of the corporation, not comprehended within the reserved power to amend the articles of incorporation. Midland Co-Operative W. v. R., 200M538, 274NW624. See Dun. Dig. 1995.

An amendment to the articles of incorporation was valid at an adjourned regular meeting by more than a majority of entire stock issued and outstanding. Id.

Where charter of elevator company expired by limitation of law and the company was re-incorporated under a different name, the Railroad and Warehouse Commission after such re-incorporation having granted a license to the old company could amend the same and insert the correct name of the licensee, but a bond must be filed containing the correct name. Op. Atty. Gen., Dec. 3, 1931.

Articles of association of co-operative association may be amended by majority vote of all of its shares of stock. Op. Atty. Gen., May 31, 1933.

Articles of co-operative association may be amended so as to make it a non-stockholder association by majority vote of all shares of stock. Op. Atty. Gen., June 9, 1933.

Amendment to articles of incorporation of state horticultural society must be by a majority vote of all members entitled to vote, but they may vote by proxy. Op. Atty. Gen. (236), July 15, 1937.

Pipestone Fire Department Relief Asso., incorporated under general statutes of 1894, may amend its articles under this section. Op. Atty. Gen. (198a-3), Jan. 6, 1938.

Cooperative organized under §7822 need not file amendment increasing or diminishing capital stock with secretary of state, but should file them with register of deeds. Op. Atty. Gen. (93a-2), August 3, 1939.

7473-1. Certain social and educational corporations may amend articles.—That any educational corporation or association organized under the laws of this state for social and/or educational purposes, without capital stock, and having ten thousand or more members, may amend its articles of incorporation or may adopt new articles of incorporation by a majority vote of the members present and voting thereon at any general or special meeting of its members, providing at least three thousand members are present at such meeting, and provided further that the notice of such meeting shall have stated such proposed action would come up for consideration thereat. It shall be sufficient if such notice shall state generally that the matter of amending the articles or the adoption of new articles will come up for consideration at such meeting. The amendment or the new articles so

adopted shall become effective upon the filing thereof with the secretary of state, accompanied by a certificate, signed by the president and secretary of such corporation or association, certifying the adoption thereof as herein provided. (Act Apr. 8, 1933, c. 167, 1.)

7473-2. Same—Territorial units in state—General governmental body.—Any such corporation or association may provide in its articles or by-laws for the division of the state into two or more territorial units or divisons, with such organization, powers and authority as shall be prescribed therein, and for a general governmental body, to be composed of members elected by such territorial units or divisions and such ex-official and other members as may be prescribed in the articles or in the by-laws. Such body shall have and possess such powers and authority as shall be vested in it by the articles and its by-laws, and may include the election of the officers of the corporation or association and an executive board with such powers and authority as may be prescribed in the articles or by-laws or be fixed by such general governmental body, if any. (Act Apr. 8, 1933, c. 167, §2.)

7475. Fees for filing.—Domestic corporations shall pay to the state treasurer the following fees:

(1) For filing articles of incorporation or instruments extending or renewing corporate existence, $25.00 for the first $25,000.00 or fraction thereof, of the par value of its authorized shares and 50 cents for each additional $1,000.00, or fraction thereof.

(2) For filing any amendment of articles of incorporation increasing the authorized number of shares, or the par value of shares previously authorized, or both, 50 cents for each $1,000.00, or fraction thereof, of such increase.

(a) For the purpose of determining the fees prescribed by this section, but for no other purpose, shares without par value shall be deemed to have a par value of $10.00 each, unless such shares are entitled to priority over other shares upon liquidation in which case the involuntary liquidation price stated in the articles of incorporation shall be deemed to be the par value thereof.

(b) This section shall not apply to cooperative associations or corporations organized without capital stock and not for pecuniary profit. (R. L. '05, §2873; '07, c. 329; '09, c. 202, §1; G. S. '13, §6188; Apr. 24, 1935, c. 230, §2.)

If issuance of non-par value stock in place of capital stock does not increase the capital assets, no additional filing fee is required. 172M303, 215NW185.

Nonprofit organization organized with capital stock, and not on a membership plan, must pay fees provided by this section. Op. Atty. Gen. (92a-12), Dec. 15, 1937.

Mutual fire insurance company organized in 1901 under Laws 1895, c. 175, and filing its articles with insurance department and not with secretary of state, without paying any filing fee, should pay the present filing fee if it now decides to file its articles with the secretary of state. Op. Atty. Gen. (93a-12), July 21, 1939.

7475-1. County agricultural societies may renew corporate existence.—That any corporation heretofore or hereafter organized as a county agricultural society under any law of this state is hereby authorized to extend the term of its corporate life in the manner prescribed by law without the payment of any filing fee or other fee to the State of Minnesota. (Act Apr. 15, 1931, c. 165.)

7477. First and subsequent meetings, how called.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Ousted officers and directors, held to have no standing to call a stockholders' meeting. 181M281, 232NW 262. See Dun. Dig. 2079.

7478. Meeting called by members.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7479. Irregular meetings, how validated.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7480. Capital stock—How classified and issued.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Non-par value stock. 172M303, 215NW185.

Persons wilfully and deliberately causing stock to be issued to them without proper authority were not entitled to restitution for legal services as condition precedent *to cancellation of the stock.* 172M110, 215NW192.

An action in equity to compel the issuance of corporate stock may be maintained where the remedy in damages is uncertain or inadequate. 174M219, 219NW82.

Banks may issue preferred stock. Op. Atty. Gen., Aug. 12, 1933.

7481. Stock certificates to whom issued.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7483. Executors, etc., may vote—Not personally liable.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

7484. Dissolution of corporations.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Paterson v. S., 186M611, 244NW281; notes under §§7447, 7447-1.

A bank which has transferred all its deposits to another bank may not terminate its existence by merely filing amendment to articles of incorporation shortening term of charter, but should apply to district court for an order of dissolution and obtain certificate from commissioner of banks that deposit liabilities have been either paid or secured in a manner satisfactory to him. Op. Atty. Gen. (29a-6), July 24, 1936.

7485. Continuance for three years to close affairs.

A dissolved corporation, during the three year period, may become a general voluntary bankrupt or initiate proceedings for reorganization in bankruptcy court. International Sugar Feed Co., (DC-Minn), 23FSupp197.

In the absence of express statutory exclusion, the *continuing powers vested in dissolved corporation* should be liberally construed. Id.

Though reorganization proceedings of dissolved corporation may be dismissed where no reorganization can be effected that will permit full operation of this statute, a dismissal before such fact appears is premature. Id.

Question raised by petition for dismissal of corporation reorganization proceedings because of expiration of corporation's charter, being one of jurisdiction, would be considered upon the merits, as against objection to right of petitioner, as a single stockholder, to be heard. Id.

Bank does not cease to exist as corporation merely by transferring all of its assets to another bank which assumes its deposits and bills payable, but such bank may be liquidated by commissioner of banks and its stockholders assessed for amount necessary to pay its creditors. Bank of Litchfield v. M., 191M308, 253NW764. See Dun. Dig. 824b, 1982.

It is doubtful whether a corporation may continue to exist as a de facto corporation after expiration of term. Townsend v. M., 194M423, 260NW525. See Dun. Dig. 1981.

Evidence held to sustain decree of specific performance against Salvation Army under contract for exchange of property. Karp v. S., 203M285, 281NW41. See Dun. Dig. 2114.

An incorporated benevolent society is authorized to divide its membership into units, and, if permitted by its by-laws, a member of one unit may be a member of another unit. Olson v. G., 203M267, 281NW43. See Dun. Dig. 4822.

Corporate term of existence began on date of filing articles of incorporation, and not upon later date of filing proof of publication of articles. Op. Atty. Gen. (92a-9), Aug. 23, 1937.

A cooperative corporation whose period of existence has expired, may authorize sale of all of corporation's *assets to a new cooperative association in consideration* of issuance of new stock, and purchase of shares at their value of old shareholders who do not consent to exchange. Op. Atty. Gen. (932-8), Jan. 31, 1938.

7486. Extension of time for closing affairs, etc.

Laws 1931, c. 335, extends period for closing corporate affairs for two years after Apr. 24, 1931, date of passage of act.

Laws 1935, c. 73, extends period for closing corporate affairs for two years after Mar. 29, 1935.

7487. Conveyances, etc., legalized.

Extension of time for winding up affairs of corporations whose existence has terminated by expiration of period of duration. See Laws 1929, c. 39; Laws 1933, c. 248.

Act Mar. 19, 1937, c. 71, extends time for closing affairs after expiration of charter, and legalizes transfers made.

Act Mar. 31, 1939, c. 115, extends for two years from passage of act time for closing affairs after expiration of charter on or prior to July 1, 1936, and legalizes transfers made.

7489. Diversion of corporate property.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

This section did not apply to a loan of corporation to stockholder. Benson Lumber Co. v. T., 185M230, 240NW 651.

State is entitled to interest on preferred claims against insolvent bank in favor of surety claiming through subrogation. American Surety Co. v. P., 186M588, 244NW 74. See Dun. Dig. 824d.

Preferred claims against an insolvent bank should include interest if fund is sufficient. American Surety Co. v. P., 186M588, 244NW74. See Dun. Dig. 824d.

Interest to which state is entitled on preferred claims against insolvent bank is that provided by deposit contract. American Surety Co. v. P., 186M588, 244NW74. See Dun. Dig. 2524, 4881.

7491. Existing corporation, how to reorganize.

Not applicable to corporations governed by §7492-1, et seq. See §7492-62(I).

MINNESOTA BUSINESS CORPORATION ACT

7492-1. Definitions.—As used in this Act:

I. "Corporation" means a corporation formed under this Act, or one which has accepted and come under this Act.

II. "Domestic corporation" means a corporation formed under the laws of this State, and the term "foreign corporation" includes every other corporation.

III. "Articles of incorporation" and "articles," when not otherwise indicated by the context, include the original articles of incorporation or amended articles of incorporation, all articles of amendment, all certificates made pursuant to Section 13, Subdivision V and Section 32, Subdivision II of this act, agreements of consolidation or merger, and charters granted by special act or acts of the Legislature of the State or Territory of Minnesota. (As amended Apr. 5, 1935, c. 117, §1.)

IV. An "incorporator" is one of the signers of the original or amended articles of incorporation.

V. A "subscriber" is one who subscribes for shares in a corporation whether before or after incorporation.

VI. "Shares" are the units into which shareholders' rights are divided.

VII. A "shareholder" is one who owns one or more fully paid shares or one who is the assignee for value of a certificate purporting to represent fully paid shares without knowledge or notice that the shares so represented had not been fully paid for.

VIII. A "certificate of shares" is a written instrument signed by the proper corporate officers, as required by this Act, and evidencing the fact that the person therein named is the registered owner of the share or shares therein described.

IX. "Allotment" means the apportioning of a certain number of shares to a purchaser, or to a subscriber in response to the application contained in his subscription, or to a shareholder pursuant to the declaration of a share dividend.

X. The "stated capital" of a corporation at any time is:

(a) the sum of

(1) The aggregate par value of all shares having par value theretofore allotted, whether then outstanding or not,

(2) The aggregate amount of consideration received for all its shares without par value theretofore allotted, whether then outstanding or not, except such portion thereof as shall have been designated as paid-in surplus pursuant to Section 20 of this Act,

(3) Such amounts as may have been transferred from surplus to stated capital upon declaration of a share dividend,

(4) Such amounts as may have been transferred from surplus to stated capital by action of the directors of shareholders;

(b) less such amounts, if any, as may have become paid-in surplus by reason of a reduction or reductions of stated capital pursuant to Section 38 of this Act.

XI. The term "registered office" means that office maintained by the corporation in this State, the address of which is kept on file in the office of the Secretary of State in the manner required by the provisions of this Act.

XII. "Acknowledged" means acknowledged before any officer authorized by the laws of this State to take acknowledgments of deeds within or without the State. (Act Apr. 18, 1933, c. 300, §1; Apr. 5, 1935, c. 117, §1.)

Where corporation is used by an individual as an instrument of fraud, or to hinder and delay and defraud creditors, or for other wrongful purposes, courts will go as far as necessary in disregarding corporate entity in order to accomplish justice. Lake Park Development Co. v. P., 201M396, 276NW651. See Dun. Dig. 2021, 2113a.

Comparison of business corporation law of Minnesota and Delaware. 22MinnLawRev661.

7492-2. Purpose of incorporation and qualification of incorporators.—Three or more natural persons of full age may form a corporation under this Act for any lawful business purposes; provided, that banks, savings banks, trust companies, building, loan and savings associations and insurance companies shall not be formed under the provisions of this Act; and provided, further, that where other statutes prescribe a special procedure for the incorporation of designated classes of corporations, such corporations shall be formed under such statutes and not under this Act. (Act Apr. 18, 1933, c. 300, §2.)

Corporation organized by banks to represent holders of municipal bonds with power itself to hold such bonds, held a corporation organized for profit and not exempt from federal taxes as a "business league" under §101(7) of the Federal Revenue Act of 1934. N. W. Municipal Ass'n v. U. S., (CCA8), 99F(2d)460, aff'g (DC-Minn), 22F Supp18.

Corporation may be formed under this act to engage in creamery business. Op. Atty. Gen. (93a-33), Feb. 10, 1937.

7492-3. Articles of incorporation.

I. Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them and, in addition to stating the name of the corporation, shall state in the English language:

(a) Its purposes;

(b) Its duration, which may be limited or perpetual;

(c) The location and post-office address of its registered office in this State;

(d) The total authorized number of par value shares and the par value of each share; and, if any of its shares are without par value, the authorized number of such shares;

(e) A description of the classes of shares, if the shares are to be classified and a statement of the number of shares in each class, and the relative rights, voting power, preferences and restrictions granted to or imposed upon the shares of each class; provided, the articles of incorporation may authorize the board of directors, within the limitations and restrictions stated therein, if any, to fix or alter from time to time the dividend rate, or the redemption or liquidation price of shares of any class, or of any series of any class, or the number of shares constituting any series of any class, in respect of shares then unallotted;

(f) The amount of stated capital with which the corporation will begin business, which shall be not less than one thousand dollars;

(g) The names, post-office address and terms of office of the first directors;

(h) The name and post-office address of each of the incorporators;

(l) Such provisions as may be desired, if any, limiting or denying to the shareholders, or to any class or classes thereof, the preemptive right to subscribe for any or all shares of any or all classes or series.

II. Articles of incorporation may contain any other provisions, consistent with the laws of this State, for regulating the corporation's business or the conduct of its affairs. (Act Apr. 18, 1933, c. 300, §3.)

Articles of incorporation are charter of a corporation, and, subject to constitution and laws of the state, its fundamental and organic law, and is a contract between the state and the corporation and among the corporators inter se, and evidences contract by which stockholder binds himself. Midland Co-Operative W. v. R., 200M538, 274NW624. See Dun. Dig. 1992.

A corporation may amend its articles so as to limit number of shares of stock that any one stockholder may hold. Op. Atty. Gen. (92a-1), May 17, 1939.

(l) (b).

Corporations may not by amendment of their articles shorten their corporate duration. Op. Atty. Gen., Feb. 9, 1934.

7492-4. Corporate name.

I. The corporate name shall end with the word "Corporation," or the word "Incorporated" or the abbreviation "Inc.", or shall contain the word "Company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&." The provisions of this subdivision shall not affect the right of any corporation existing at the time this Act takes effect to continue the use of its name.

II. The corporate name shall not be the same as, nor deceptively similar to, the name of any other domestic corporation or of any foreign corporation au*thorized to do business in this State unless*—

(a) Such other domestic or foreign corporation is about to change its name, or to cease to do business, or is being wound up, or such foreign corporation is about to withdraw from doing business in this State, and

(b) The written consent of such other domestic or foreign corporation to the adoption of its name or a deceptively similar name has been given and is filed with the articles of incorporation.

III. The corporate name shall not be the same as, nor deceptively similar to, the trade name of any person or unincorporated association doing business under such trade name in this State or elsewhere, if such person or unincorporated association has within the last preceding twelve months signified an intention to procure incorporation in this State under such name by filing notice of such intention with the Secretary of State, unless the written consent to the adoption of such name or deceptively similar name has been given by such person or unincorporated association, and is filed with the articles of incorporation.

IV. The corporate name shall not be the same as, nor deceptively simliar to, the name of any foreign corporation doing business elsewhere than in this State if such foreign corporation has within the last preceding twelve months signified an intention to procure incorporation in this State under such name, or to do business as a foreign corporation in this State under such name, by filing notice of such intention with the Secretary of State, unless the written consent to the adoption of such name or a deceptively similar name has been given by such foreign corporation and is filed with the articles of incorporation.

V. Nothing in this section shall abrogate or limit the law as to unfair competition or unfair practices, nor derogate from the common law, the principles of equity, or the statutes of this State or of the United States with respect to the right to acquire and protect trade names.

VI. A corporation formed under this Act may have a corporate name in any language, but the same must be in English letters or characters.

VII. No corporation formed under this Act shall include in its corporate name any of the following words or phrases: bank, trust, insurance, building and loan, savings or co-operative.

VIII. The use of a name in violation of this section shall not affect or vitiate the corporate existence, but the courts of this State having equity jurisdiction may, upon the application of the State, or of any person, unincorporated association, or corporation interested or affected, enjoin such corporation from doing business under a name assumed in violation of this section, although its articles of incorporation may have been approved and a certificate of incorporation issued. (Act Apr. 18, 1933, c. 300, §4.)

"Brown Sheet & Steel Company" located in St. Paul, was not entitled to enjoin one by name of Brown from incorporating "Brown Steel Tank Co.," located in Minneapolis, though there might be some confusion resulting. Brown Sheet Iron & Steel Co. v. B., 198M276, 269NW633, See Dun. Dig. 1971.

Names "Domestic Finance Corporation," and "Domestic Credit Company", and "Domestic Loan Company" are "deceptively similar". Op. Atty. Gen. (92a-16), March 16, 1939.

Secretary of state may disregard notice filed by an individual who does not state that he or others are doing business in Minnesota or elsewhere under name stated, as a corporation or otherwise, or that he is affiliated with any organization using the same and giving him authority to file such notice. Op. Atty. Gen. (92a-1), May 6, 1939.

"Paul Bunyan Bait Company" is not "deceptively similiar" to "Paul Bunyan, Inc.", organized to foster and promote summer resorts and tourist business in the state. Op. Atty. Gen. (92a-16), May 31, 1939.

7492-5. Filing articles of incorporation with Secretary of State; issuing certificate of incorporation.

I. The articles of incorporation shall be filed for record with the Secretary of State. If the articles conform to law, he shall, when all fees and charges have been paid as required by law, record the same and issue and record a certificate of incorporation, which shall state the name of the corporation and the fact and date of incorporation.

II. Upon the issuance of the certificate of incorporation, the corporate existence shall begin.

III. Within fourteen days after the issuance of the certificate of incorporation, the corporation shall cause to be published once in a qualified newspaper in the county wherein it has its registered office, a notice stating the name of the corporation, the date of its incorporation, the general nature of the business being, or about to be conducted by it, the address of its registered office, and the names and addresses of the incorporators and of the first board of directors. Proof of the publication of such notice shall be filed with the Secretary of State within ten days after its publication. If a corporation shall fail to comply with the provisions of this subdivision it shall forfeit to the State $50.00. (Act Apr. 18, 1933, c. 300, §5.)

Corporate term of existence began on date of filing articles of incorporation, and not upon later date of filing proof of publication of articles. Op. Atty. Gen. (92a-9), Aug. 23, 1937.

7492-6. Filing certain papers with Register of Deeds.—The Secretary of State, after recording in his office any instrument in this Act provided to be "filed for record" in his office, shall file the same, or a copy thereof certified by him, for record in the office of the register of deeds of the county in which the registered office of the corporation is situated, for which service there shall be paid to the Secretary of State a fee of one dollar for each instrument in addition to all his other fees provided by law. There shall also be paid to the Secretary of State, for transmission by him to such register of deeds, a sum sufficient under existing laws to pay the proper fees of the register of deeds for recording such instruments. (Act Apr. 18, 1933, c. 300, §6.)

7492-7. Validity and effect of certificate of incorporation.—The certificate of incorporation issued by the Secretary of State in accordance with the provisions of Section 5 of this Act shall be conclusive

evidence of the fact of incorporation. Nothing in this section shall limit the existing rules of law as to corporations de facto, nor as to corporations by estoppel. (Act Apr. 18, 1933, c. 300, §7.)

When a member of a defectively organized corporation has been active as an officer and director thereof, he and his representatives are estopped to deny its valid existence for purpose of holding stockholders or other members liable to contribution as partners, or for purpose of holding them personally liable on contracts made by such officers with corporation. Thompson v. M., 202M 318, 278NW153. See Dun. Dig. 1980a, 1983.

7492-8. Powers common to corporations.—Every corporation shall have power:

(a) To continue as a corporation for the time limited in its articles of incorporation, or, if no such time limit is specified, then perpetually.

(b) To sue and be sued.

(c) To adopt, use, and, at will, alter a corporate seal, but failure to affix the corporate seal, if any, shall not affect the validity of any instrument.

(d) To acquire, hold, lease, encumber, convey or otherwise dispose of real and personal property within or without the state, and to take real and personal property by will or gift, subject to any limitation prescribed by law or the articles of incorporation.

(e) To conduct business in this State and elsewhere.

(f) To enter into obligations or contracts and to do any acts incidental to the transaction of its business or expedient for the attainment of the purposes stated in its articles. (Act Apr. 18, 1933, c. 300, §8.)

Generally, a corporation is regarded as a legal entity, but courts of equity will ignore this fiction when it is used as an instrumentality to defeat rights of creditors, justify a wrong, or perpetrate a fraud. Burntside Lodge, Inc., (DC-Minn), 7FSupp785. See Dun. Dig. 1969.

Whether separate entity theory of corporations should be recognized, or should be disregarded, is dependent upon facts and circumstances in particular case under consideration. E. Albrecht & Son v. L., (DC-Minn), 27FSupp 65.

In action by former employees of defendant, which refused to redeem co-operating preferred stock upon ground that redemption would prejudice rights of its creditors, evidence held to sustain verdicts for plaintiffs. Stasek v. M., 194M564, 261NW398. See Dun. Dig. 2041.

Where stockholders consented and acquiesced in act of officer, case of corporation suing third person is not strengthened by fact that officer used corporate name and organization to hinder and delay, if not defraud, his creditors. Lake Park Development Co. v. P., 201M396, 276NW651. See Dun. Dig. 2113a.

If a corporation is authorized to invest in a particular manner, it must exercise power of investment within express terms of authorization. First Minneapolis Trust Co., 202M187, 277NW899. See Dun. Dig. 1998.

A corporation has only powers and capacity expressly granted to it by law, or incidental to its existence, or necessary to exercise of its express powers, and is to be distinguished from natural persons not forbidden by law. Id.

Adoption of promoter's contracts. 23MinnLawRev224.

(b).

A corporation and its stockholders are treated as separate entities. E. Albrecht & Son v. L., (DC-Minn), 27F Supp65.

Corporations are regarded as separate entities, even though their stockholders are the same, but when it appears that a corporation is controlled by another in such a manner as to make it merely an instrumentality or adjunct of the other, theory of separate identity will not be recognized. Id.

Doctrine rejected that a corporation may properly be considered as a fiction of the law. Clarke's Will, 204M 574, 284NW876. See Dun. Dig. 1969.

Concept of disregard of entity and separate status of a corporation rejected, process in that field of inquiry being rather but judicial refusal to make the presence and action of a corporation a bar to a judgment required by the sum of facts before the court. Id. See Dun. Dig. 1969.

(f).

Every corporation has power to make all contracts that are necessary and usual in course of business it transacts unless expressly prohibited by law or provisions of its charter. Equitable Holding Co. v. E., 202M 529, 279NW736. See Dun. Dig. 1998.

Prima facie, contracts of corporations are valid and there is no presumption of excess of power attaching to them, and burden of showing they should be avoided is on impeaching party. Id. See Dun. Dig. 2018.

Courts should not look for excuses or loopholes to avoid contracts fairly and deliberately made whether by individuals or corporations. Id. See Dun. Dig. 2018.

7492-9. Holding shares and securities of other corporations.—When so provided in its articles of incorporation a corporation may acquire, hold, mortgage, pledge or dispose of the shares, bonds, securities and other evidences of indebtedness of any domestic or foreign corporation; and, without such authority in its articles, may guarantee, acquire, hold, mortgage, pledge or dispose of the shares, bonds, securities and other evidences of indebtedness of any domestic or foreign corporation when reasonably necessary or incidental to accomplish the purposes stated in its articles. (Act Apr. 18, 1933, c. 300, §9.)

7492-10. Constructive notice of recorded articles and certificates not to be implied.—The filing for record of articles and certificates pursuant to this Act is for the purpose of affording means of acquiring knowledge of the contents thereof, but shall not constitute constructive notice of such contents. (Act Apr. 18, 1933, c. 300, §10.)

7492-11. Ultra vires acts.

I. Every corporation shall confine its acts to those authorized by the statement of purposes in the articles of incorporation and within the limitations and restrictions contained therein, but shall have the capacity possessed by natural persons to perform all acts within or without this State.

II. No claim of lack of authority based on the articles shall be asserted or be of effect except by or on behalf of the corporation (a) against a person having actual knowledge of such lack of authority, or (b) against a director or officer.

III. The provisions of this section shall not affect:

(a) The right of shareholders or the State to enjoin the doing or continuing of unauthorized acts by the corporation; but in such case the court shall protect or make compensation for rights which may have been acquired by third parties by reason of the doing of any unauthorized act by the corporation.

(b) The right of a corporation to recover against its directors or officers for violation of their authority. (Act Apr. 18, 1933, c. 300, §11.)

Neither law nor morals forbids a corporation to repay what it has obtained or borrowed from another even though obtained or borrowed ultra vires. Equitable Holding Co. v. E., 202M529, 279NW736. See Dun. Dig. 2026.

A corporation cannot, in order to escape liability for wrongful acts of its agents or employees, assert that such acts were beyond the scope of its corporate power or that they occurred in connection with transaction beyond scope of such power, since all torts are ultra vires. Ziegler v. D., 204M156, 283NW134. See Dun. Dig. 2022.

7492-12. Conditions precedent to beginning business; liability.

I. A corporation shall not begin business nor incur any debts except such as are incidental to its organization or to the obtaining of subscriptions to or the payment for its shares, until consideration for its shares, equal to the amount of stated capital with which it will begin business, as set forth in the articles of incorporation, has been fully paid in.

II. If a corporation has incurred any debts or transacted any business in violation of this section, the officers who participated therein, and the directors who authorized or ratified the same, shall be jointly and severally liable for the debts or liabilities of the corporation arising therefrom to an amount not exceeding the unpaid portion of such stated capital, to be paid to the corporation for the benefit of such creditors. (Act Apr. 18, 1933, c. 300, §12.)

7492-13. Shares; filing certain resolutions; options and conversion rights.

I. The shares of a corporation may be divided into classes, and the classes may be divided into series, with such rights, voting power, preferences and restrictions as may be provided in the articles of incorporation, or by resolution of the board of directors if authorized by the articles under subdivision I (e) of Section 3 of this Act.

II. Any or all of the shares may have a par value or be without par value as provided in the articles of incorporation.

III. Except as otherwise provided by the articles of incorporation, or by the board of directors pursuant to the provisions of subdivision I hereof, each share shall be in all respects equal to every other share.

IV. All shares of a class which is not divided into series shall be equal in all respects, and all shares of a series shall be equal in all respects.

V. Before the corporation shall allot any shares of any class, or of any series of any class, of which the dividend rate, the redemption price, the liquidation price or the number of shares constituting any series is not set forth in its articles of incorporation but is fixed in a resolution adopted by the board of directors pursuant to authority given by the articles, a certificate setting forth a copy of such resolution, made by the president or a vice-president of the corporation and by its secretary or an assistant secretary and acknowledged by such officers, shall be filed for record in the office of the Secretary of State.

VI. Within the limitations and restrictions, if any, stated in its articles, a corporation may grant, (a) rights to convert any of its securities into shares of any class or classes, or (b) options to purchase or subscribe for shares of any class or classes, but such grants shall be made only in connection with the allotment of shares or issuance of other securities; provided, however, that nothing herein contained shall limit the right of a corporation to grant to its shareholders or any class or classes thereof, options to subscribe for unallotted shares of the corporation ratably in proportion to the number of shares held. The corporation may issue share purchase or subscription warrants or other evidences of such option rights, setting forth the terms, provisions and conditions thereof, and such options may be transferable or nontransferable and separable or inseparable from other shares or securities of the corporation.

VII. The terms and provisions of such rights or options shall be set forth in the articles or determined by the shareholders; provided, that the articles or the shareholders may authorize the board of directors by resolution to grant such rights or options.

VIII. The contract certificate, warrant or other instrument evidencing such conversion rights or options shall set forth in full, summarize or incorporate by reference all the terms and provisions thereof. The corporation shall at all times reserve sufficient shares to meet the exercise of all conversion rights or options at the time outstanding. (Act Apr. 18, 1933, c. 300, §13.)

Rights of preferred shareholders in excess of preference. 19MinnLawRev406.

Declaration of dividends—cumulative and non-cumulative preferred shares. 22MinnLawRev676.

7492-14. Shares—allotment and consideration; liability for improper valuation.

I. No shares shall be allotted except in consideration of cash, or other property, tangible or intangible, received or to be received by the corporation, or services rendered or to be rendered to the corporation, or of an amount transferred from surplus to stated capital upon a share dividend.

II. At the time of each allotment of shares, the shareholders or directors making such allotment shall state by resolution their determination of the fair value to the corporation in monetary terms of any consideration other than cash for which shares with or without par value are allotted.

III. The amount of consideration to be received, in cash or otherwise, shall not be less than the par value of shares so allotted nor less than the stated capital to be represented by shares without par value so allotted. The provisions of this subdivision shall not apply to shares of its own stock acquired by the corporation nor to shares of a corporation having par value allotted in consideration of the cancellation of an indebtedness of such corporation the amount of which is at least equal to the par value of the shares so allotted, unless the consideration received by such corporation upon the creation of such indebtedness was less than 85 per cent of the amount of such indebtedness. (As amended Apr. 5, 1935, c. 117, §2.)

IV. If shares are allotted in violation of the provisions of subdivision III of this section, the person to whom such shares are allotted and his assignees with notice, and shareholders and directors voting in favor of such allotment, shall be liable to the corporation for the benefit of all persons thereafter becoming creditors who did not assent thereto and are damaged thereby, to the extent of their damages, not exceeding, however, the difference between the par value of shares having a par value so allotted, or the stated capital to be represented by shares without par value so allotted, and the fair value to the corporation of the consideration therefor; provided, however, that the person to whom such shares were allotted, or his assignees, shall not be liable under the provisions of this subdivision if he received such shares in good faith and without actual knowledge of the violation of subdivision III of this section; and, provided, further that directors and shareholders shall be liable only if they wilfully or without reasonable investigation voted in favor of such allotment.

V. No action shall be maintained under the provisions of this section unless commenced within three years from the date on which such allotment was made. In any such action, creditors shall not be presumed to have extended credit to the corporation relying upon the compliance by the corporation with the provisions of this section relating to allotment of shares and the consideration to be received therefor. (Act Apr. 18, 1933, c. 300, §14; Apr. 5, 1935, c. 117, §2.)

7492-15. Shares—allotment and consideration—cont'd.

I. Shares with or without par value shall not be allotted for a cash consideration which is unfair to the then shareholders nor for a consideration other than cash upon a valuation thereof which is unfair to such shareholders.

II. Directors or shareholders who, wilfully without reasonable investigation, either make an allotment of shares for a cash consideration which is unfair to the then shareholders or so overvalue property or services received or to be received by the corporation as consideration for shares allotted, shall be jointly and severally liable to the corporation for the benefit of the then shareholders who did not assent to and are damaged by such action, to the extent of their damages; provided, that if shares or securities convertible into shares or securities in connection with which options are granted to purchase or subscribe for shares, shall, before allotment or offer of such shares or securities is made to others, be offered in substantially ratable amounts to the then shareholders, who in the absence of waiver of such rights would be entitled to preemptive rights, at not more than the same considerations and terms as said shares or securities are allotted or offered to others, the portion of such shares or securities not subscribed for within the offering period by such shareholders may, at any time within four months after the expiration of the offering period, be allotted or sold to others at not less than the same considera-

tions and terms, and any such allotment or sale shall, except in case of deliberate fraud, be conclusively presumed to have been fair. Such perior offer to shareholders shall be made by not less than sixty days' notice mailed to them at their addresses as shown by the records of the secretary of the corporation. Directors or shareholders who are present and entitled to vote but fail to vote against such allotment or valuation shall be considered, for the purposes of this section, as participating in such allotment or valuation. (As amended Apr. 5, 1935, c. 117, §3.)

III. Any director or shareholder against whom a claim is asserted pursuant to this section, except in case of participation in a deliberate fraud, shall be entitled to contribution on an equitable basis from other directors or shareholders who are liable. (Added Apr. 5, 1935, c. 117, §5.)

IV. No action shall be maintained against a director or shareholder under the provisions of this section unless commenced within three years from the date on which such allotment was made. (Act Apr. 18, 1933, c. 300, §15; Apr. 5, 1935, c. 117, §§3-5.)

7492-16. Subscription for shares, acceptance thereof; calls; enforcement.

I. All subscriptions for shares of a corporation shall be in writing.

II. Unless otherwise provided in the writing, subscriptions for shares of a corporation to be formed shall be:

(a) Irrevocable until sixty days after the issuance of the certificate of incorporation, but void unless accepted within said period; and

(b) Irrevocable for a period of one year after first subscription for shares of such corporation if no certificate of incorporation shall be issued within such period of one year, but void upon the expiration of such year.

III. Notwithstanding the foregoing provisions, a subscription for shares may be avoided at any time by either party upon such grounds as exist at law or in equity for the avoidance of any contract.

IV. Acceptance of a subscription, or the making of a contract by the corporation to sell shares, shall constitute an allotment of the shares subscribed for or agreed to be purchased.

V. Acceptance or rejection of subscriptions for shares made before incorporation shall be by the board of directors. Acceptance or rejection of subscriptions for shares made after incorporation shall be by the shareholders at any annual meeting or at any special meeting duly called and held for that purpose, or by the board of directors acting under authority conferred by the shareholders or the articles of incorporation.

VI. When no provision as to the time of payment is made in the subscription therefor, shares shall be paid for on the call of the board of directors. Notice of each call shall be mailed to each subscriber at his address as shown by the records of the secretary of the corporation. Such notice shall state the due date of the payment required by such call, which due date shall not be less than twenty days from the date of mailing such notice unless the subscription expressly provides for a shorter period of notice.

VII. If a subscriber be indebted to the corporation on account of a subscription for shares, it shall have a lien upon such shares for such indebtedness; but no corporation shall have any such lien upon any shares evidenced by any certificate of shares by it issued and delivered.

VIII. A subscriber shall be treated for all purposes as if he were a holder of a number of shares equal to that proportion of the total number of shares subscribed for by him which the portion of the subscription price paid bears to the total subscription price, unless the subscription agreement expressly restricts or negatives such rights. Unless otherwise provided in the subscription agreement, no certificate of shares shall be issued for any of the shares so ratably paid for while any part of such subscription remains unpaid.

IX. If any payment for shares subscribed and allotted is not made on the due date, the corporation may:

(a) Invoke its remedies at law or in equity; or

(b) Foreclose its lien by advertised sale.

X. In case of foreclosure of the lien by advertised sale:

(a) The sale shall be at public auction, at the registered office of the corporation, between nine o'clock in the morning and five o'clock in the afternoon.

(b) Two weeks published notice of such sale shall be given.

(c) At least two weeks before the appointed time of sale a copy of the notice of sale may be served upon the subscriber in like manner as a summons may be personally served in a civil action in the district court, and if not so served such notice shall be mailed, by registered mail, to such subscriber at least ten days before the appointed time of sale at his address appearing upon the books of the secretary of the corporation, and if no address shall there appear, then to such address as shall be known to the secretary. In case neither the place of residence nor the postoffice address of such subscriber is known to or appears upon the records of the secretary, the published notice herein provided shall be sufficient to authorize such sale.

(d) Such notice shall state the time and place of sale, the amount which will be due on the date of sale exclusive of the expense of sale, and the number and description of the shares to be sold.

(e) Under the power of sale hereby given only enough shares shall be sold to pay the expenses of sale and to satisfy the amount due.

(f) The proceeds of such sale shall be applied first to the payment of the expense of sale, then to the satisfaction of the amount due on such subscription, and the remainder, if any, shall be deposited with the corporation and be paid upon demand of such subscriber or other person entitled thereto.

(g) The corporation or its assigns may fairly and in good faith purchase any shares sold under the provisions of this subdivision, provided the sale is conducted by the sheriff, his deputy, or constable. Shares so acquired by the corporation shall have the status of unallotted and unsubscribed shares.

(h) Notwithstanding any such sale, the lien shall continue unimpaired upon all shares not sold, to secure payment of any indebtedness thereafter becoming due on such subscription.

XI. Enforcement contracts to purchase shares from the corporation shall for all purposes have the same status as accepted subscriptions. (Act Apr. 18, 1933, c. 300, §16.)

7492-17. Payment for shares; issue of certificate.

I. Each shareholder shall be entitled to a certificate of shares but no certificate of shares shall be issued until the shares represented thereby have been fully paid for.

II. Shares allotted as share dividends, and shares for which the agreed consideration has been paid, delivered or rendered to the corporation shall be fully paid shares.

III. When a corporation has received a note or check as consideration for shares, such shares shall not be considered fully paid until such note or check has been paid.

IV. Every certificate of shares shall be signed by the president and the secretary, or by such officers as the articles of incorporation or by-laws may provide, but when a certificate is signed by a transfer

agent or registrar the signature of any such corporate officer and the corporate seal, if any, upon such certificate may be facsimiles, engraved or printed.

V. Every certificate of shares shall state:

(a) The name of the corporation, and a statement that it is organized under the laws of Minnesota;

(b) The name of the registered holder of the shares represented thereby;

(c) The number of shares, and if the corporation is authorized to issue shares of more than one class, the class, or series and class, of the shares represented thereby;

(d) The par value of each share represented, or a statement that such shares are without par value;

(e) If the corporation is authorized to issue shares of more than one class, the rights, preferences, and restrictions granted to or imposed upon the shares of all classes or series, or a summary thereof with a reference to the articles, and the authority, if any, vested by the articles in the board of directors under subdivision I (e) or Section 3 of this Act to fix the rights of series of shares then unallotted.

VI. Such certificate shall be prima facie evidence of the ownership of the shares therein referred to.

VII. A certificate of shares without par value shall not state any par value, nor any value thereof in money, nor any rate of dividend to which such shares shall be entitled in terms of a percentage of any par or other value. (Act Apr. 18, 1933, c. 300, §17.)

7492-18. Liability of subscribers and shareholders.

I. Except as provided in subdivision IV of Section 14 of this Act, and except in case of actual fraud, a subscriber to or holder of shares of a corporation shall be under no liability to the corporation, whether for the benefit of its shareholders or creditors, with respect to such shares, other than the obligation to comply with the terms of the subscription or contract therefor.

II. One who becomes a shareholder by transfer and in good faith, and without knowledge or notice that the shares acquired have not been fully paid for, shall not be liable to the corporation or to its creditors with respect to such shares. (Act Apr. 18, 1933, c. 300, §18.)

A stockholder in a corporation organized under laws of a foreign state, must be held to contract with reference to all of laws of state under which corporation is organized; and extent of his individual liability to creditors of company must be determined by laws of that state, not because such laws are in force in this state, but because he has voluntarily agreed to terms of company's constitution. Furst v. B., 192M454, 257NW79. See Dun. Dig. 2082.

Power to expel members and stockholders from a corporation exists in virtue of statute under which corporation is organized, or its articles of incorporation; and, when the right exists, it is in membership and can be exercised by board of directors only when it has been delegated to board pursuant to statute or articles of incorporation. State v. St. Cloud Milk Producers' Ass'n., 200M1, 273NW603. See Dun. Dig. 2098.

Stockholders have interests subordinate to rights of corporation's creditors. Equitable Holding Co. v. E., 202 M529, 279NW736. See Dun. Dig. 2152.

7492-19. Validity of shares.—The fact that shares are allotted in violation of, or without full compliance with, the provisions of this Act shall not make the shares so allotted invalid. (Act Apr. 18, 1933, c. 300, §19.)

7492-20. Stated capital and surplus.

I. In the case of shares without par value, unless a part of the total consideration for such shares is designated as paid-in surplus in the manner set forth in subdivision III of this section, the entire amount thereof shall be stated capital.

II. In the case of shares having par value, the consideration received therefor in excess of such par value shall constitute paid-in surplus.

III. If upon the allotment of shares without par value any part of the consideration received therefor is to constitute paid-in surplus, the shareholders or directors, as the case may be, who fix the amount of cash or determine the value of other consideration for such shares, shall at the time of allotment specify in monetary terms the amount thereof that is to be stated capital and the amount thereof that is to be paid-in surplus; provided, however, that in the case of shares having a preference upon liquidation, unless the subscription or contract for purchase thereof expressly otherwise provides, only that part, if any, of *the value of the consideration received therefor, which* is in excess of the amount to which such shares upon involuntary liquidation are entitled in preference to shares of another class or classes, may constitute paid-in surplus.

IV. Upon a reduction of the stated capital of a corporation pursuant to Section 38 of this Act, the amount of such reduction shall constitute paid-in surplus.

V. If upon a consolidation or merger the stated capital of the consolidate or surviving corporation shall be less than the aggregate of the stated capital of the constituent corporations, the amount of such difference shall constitute paid-in surplus.

VI. All contributions by shareholders to a corporation shall constitute paid-in surplus.

VII. The shareholders or directors may at any time by resolution transfer amounts from paid-in or earned surplus to stated capital.

VIII. Whenever a corporation acquires all or substantially all of the assets of another corporation in consideration of the allotment of shares of the acquiring corporation, with or without other consideration, the earned surplus of the acquired corporation shall become earned surplus of the acquiring corporation, but only to the extent that the aggregate of the stated capital, paid-in surplus and earned surplus of the acquired corporation exceeds the aggregate of the following amounts.

(a) The value of the consideration given therefor, other than shares of the acquiring corporation and other than the assumption by the acquiring corporation of liabilities of the acquired corporation.

(b) The par value of all shares of the acquiring corporation having par value, given as consideration, and

(c) The stated capital represented by all shares of the acquiring corporation without par value, given as consideration.

IX. Whenever two or more corporations shall hereafter be consolidated or merged, the earned surpluses of the constituent or merged corporation or corporations may, to the extent that they are not capitalized upon such consolidation or merger, be treated as earned surplus by the consolidated or surviving corporation.

X. The provisions of this section with reference to paid-in surplus and earned surplus are, for the purposes set forth in Section 21 of this Act, subject further to all the terms and provisions thereof. (Act Apr. 18, 1933, c. 300, §20.)

7492-21. Dividends and purchase of own shares.

I. In determining the fair value of the assets of a corporation to ascertain whether it may pay a dividend or may purchase its own shares, unrealized appreciation of assets shall not be included; provided, that securities having a readily ascertainable market value, other than securities issued by the corporation, may be valued at not more than market value. Proper deduction shall be made for depreciation and depletion and for losses of every character whether or not realized. The excess of such value, if any, above the aggregate of the liabilities and stated capital of the corporation shall constitute the aggregate of its paid-in and earned surplus and the balance remaining,

if any, after deducting therefrom the earned surplus of the corporation, shall constitute its paid-in surplus. If the payment of a dividend or the purchase by a corporation of its shares is otherwise lawful, it shall not be unlawful because of failure to determine the fair value of all its assets.

II. A corporation may declare dividends in cash or property only as follows:

(a) Out of earned surplus;

(b) Out of paid-in surplus, provided, that if there are outstanding shares entitled to preferential dividends, then dividends may be declared out of paid-in surplus only upon such shares. When dividends are paid from paid-in surplus, notice of such fact shall be given to the shareholders receiving the same concurrently with the payment thereof;

(c) Out of its net earnings for its current or for the preceding fiscal year, whether or not it then has a paid-in or earned surplus, provided, that if there are outstanding shares entitled to a preference upon liquidation, such dividends shall not be paid upon any other shares except to the extent that the fair value of its assets, determined as set forth in subdivision 1 of this section, exceeds the aggregate of its liabilities and its stated capital represented by all shares entitled to a preference upon liquidation; provided, further, that no such dividend shall be declared if the fair value of the assets of the corporation is less than the aggregate of its liabilities, including such proposed dividend as a liability.

III. A corporation may declare dividends payable in shares of the corporation only as follows.

(a) Out of earned surplus;

(b) Out of paid-in surplus, provided, that notice of such fact shall be given to the shareholders receiving such dividends concurrently with the payment thereof;

(c) Upon declaration of a dividend payable in shares, the amount of surplus from which such dividend is declared shall be capitalized. If a dividend is declared in shares having a par value, the amount of surplus so to be capitalized shall equal the aggregate par value of such shares. If a dividend is declared in shares without par value then if such shares are preferred shares they shall be capitalized at the amount to which such shares, upon involuntary liquidation, are entitled in preference to shares of another class or classes, or if such shares are common shares they shall be capitalized on the basis of the estimated fair value of such shares upon allotment as determined by the board of directors:

(d) No dividend payable in shares of any class shall be paid to shareholders of any other class unless the articles so provided or such payment is authorized by the vote or written consent of the holders of two-thirds of the shares of the class in which the payment is to be made.

IV. Nothing in subdivision III of this section shall be construed to forbid or limit the power of a corporation to split up or subdivide its shares into a larger number of shares without increasing its stated capital.

V. A corporation engaged principally in the exploitation of mines, quarries, oil wells, gas wells, patents or other wasting assets, or organized principally to liquidate specific assets, may distribute the net income derived from the exploitation of such wasting assets or the net proceeds derived from such liquidation without making any deduction or allowance for the depletion of such assets incidental to the lapse of time, consumption, liquidation or exploitation; provided, however, that it shall make adequate provision for meeting liabilities and fixed preferences of outstanding shares as to assets on liquidation and shall give notice to shareholders concurrently with the payment of each distribution that no deduction or allowance has been made for depletion.

VI. A corporation may purchase or redeem shares of its own stock, whether pursuant to contract previously made or otherwise, only as follows:

(a) Out of earned surplus;

(b) Out of paid-in surplus; provided, that, if the corporation has outstanding shares entitled to preferential dividends or to a preference upon liquidation, then only such share may be purchased or redeemed out of paid-in surplus.

VII. Subject to any provisions of the articles of incorporation or by-laws, the board of directors may fix a time not exceeding forty days preceding the date fixed for the payment of any dividend or distribution, or the date for the allotment of rights or, subject to contract rights with respect thereto, the date when any change or conversion or exchange of shares shall be made or go into effect, as a record date for the determination of the shareholders entitled to receive payments of any such dividend, distribution or allotment of rights, or to exercise rights in respect to any such change, conversion or exchange of shares, and in such case only shareholders of record on the date so fixed shall be entitled to receive payment of such dividend, distribution or allotment of rights or to exercise such rights of change, conversion or exchange of shares, as the case may be, notwithstanding any transfer of any shares on the books of the corporation after any record date fixed as aforesaid. The board of directors may close the books of the corporation against the transfer of shares during the whole or any part of such period. (Act Apr. 18, 1933, c. 300, §21.)

In order to warrant interference by a court in action of directors of a corporation in refusing to declare a dividend, it must be shown that they not only acted in bad faith but also that there were surplus profits to divide which could be separated from necessary working capital without detriment to interests of corporation. Schmitt v. E., 199M382, 272NW277. See Dun. Dig. 2072 (81).

Where holding company was organized and until his death conducted by testator and settlor of trust, fact that he took all increases of capital as income is inadmissible to show that his trustee and life tenant could do the same, the trust instrument (the will) limiting her to income. Clarke's Will, 204M574, 284NW876. See Dun. Dig. 2084a.

Where profits clearly warrant payment of a dividend, and condition of business is such that payment would be proper, stockholders cannot be cut off by a stock dividend when its purpose is wrongfully to keep profits of business within control of those dominating affairs so as to be available to them. Keough v. S., 285NW809. See Dun. Dig. 2072.

It is primarily for corporate directors in their sound discretion to decide on whether or not dividends should be declared, but court may determine amount of and require payment of dividends on suit by minority stockholders if it appears that directors have acted fraudulently, unjustly, or unreasonably so as to impair rights of complaining stockholders to their just proportion of corporate profits. Id. See Dun. Dig. 2072.

Purchase by a corporation of its own stock. 15Minn LawRev1.

Declaration of dividends—cumulative and non-cumulative preferred shares. 22MinnLawRev676.

(2).

Where it appears that directors have acted in good faith and have not been guilty of oppressive or unjust action, they will not be compelled to declare a stock dividend. Schmitt v. E., 199M382, 272NW277. See Dun. Dig. 2072(81).

(6).

Creditors' rights where corporation purchases its own shares. 20MinnLawRev422.

7492-22. Liability of shareholders and directors for dividends unlawfully paid, or for corporate assets otherwise unlawfully distributed.

I. If any dividend be paid in violation of Section 21 of this Act, or if any other unlawful distribution be made to shareholders,

(a) Every shareholder who received any such dividend or any such distribution shall be individually liable to the corporation in an amount equal to the amount so received by him. Any number of shareholders may be sued in the same action.

(b) The directors who wilfully or negligently voted in favor thereof shall be jointly and severally liable to the corporation in an amount equal to the dividend so paid and the distribution so made. A director shall not be held to have been negligent within the meaning of this section if he exercised that diligence and care which an ordinarily prudent man would exercise under similar circumstances, nor if he relied and acted in good faith upon a profit and loss statement of the corporation represented to him to be correct by the president or other officer of the corporation having charge of or supervision of its accounts or certified to be correct by a public accountant or firm of public accountants selected with reasonable care. Any director against whom a claim is asserted pursuant thereto, except in case of participation in a deliberate fraud shall be entitled to contribution from other directors who are liable, pro rata according to the number of such directors.

II. A corporation shall not be entitled to recover under the provisions hereof an amount greater than the aggregate of the dividends unlawfully paid and other unlawful distributions.

III. No action shall be maintained against a director or a shareholder under the provisions of this section unless commenced within three years from the date on which such dividend payment or other distribution was made. (Act Apr. 18, 1933, c. 300, §22.)

In representative suit by stockholder against majority stockholders section 9277 did not make it erroneous to add by amendment several counts in conversion to a complaint alleging fraud and conspiracy by majority resulting in illegal accumulation of surplus, excessive salaries, and mismanagement of a subsidiary, and ultra vires investment of income in bonds. Keough v. S., 285NW809. See Dun. Dig. 2074.

Majority stockholders cannot, in effect, give away corporate property against interests of minority. Id. See Dun. Dig. 2074.

Courts are not prone to interfere with corporate salaries, but a court will interfere and reduce salaries which cause unreasonable and excessive payments to be made over objection of unsalaried group of stockholders. Id. See Dun. Dig. 2074.

Liability of stockholders to refund dividends paid out of capital. 16MinnLawRev706.

7492-23. By-laws.

I. The shareholders may make and alter by-laws, not inconsistent with law or the articles of incorporation, for the government of the corporation, the conduct of its affairs, the management of its property and business, and the transfer of its shares.

II. Authority to make and alter by-laws may be vested by the articles of incorporation in the board of directors subject to the power of the shareholders to change or repeal such by-laws; provided, however, the board shall not make or alter any by-law fixing their number, qualifications, classifications or term of office; provided further that the first board of directors, without such authority in the articles, shall adopt by-laws which shall remain effective until and except as legally amended. (Act Apr. 18, 1933, c. 300, §23.)

7492-24. Shareholders' meeting; quorum.

I. Meetings of the shareholders may be held at the registered office of the corporation or at any place within or without the state designated in the by-laws or by the board of directors pursuant to authority in the by-laws, or by written consent of all the shareholders entitled to vote thereat.

II. Shareholders shall hold a meeting each calendar year, known as the annual meeting, at which they shall elect directors, and may transact any other business; provided, however, that no business with respect to which special notice is required shall be transacted unless such notice shall have been given. When the annual meeting is not held, or the directors are not elected thereat, directors may be elected at a special meeting held for that purpose, and it shall be the duty of the president, vice-president or secretary, upon demand of any shareholder entitled to vote, to call such special meeting.

III. Special meeting of the shareholders may be called for any purpose or purposes, at any time by the president, by the board of directors or any two or more members thereof, or by such other officers or persons as the by-laws may authorize, or in the manner hereinafter provided, by one or more shareholders holding not less than one-tenth of the voting power of the shareholders. Upon request in writing by registered mail or delivered in person to the president, vice-president or secretary, by any person or persons entitled to call a meeting of shareholders, it shall be the duty of such officer forthwith to cause notice to be given to the shareholders entitled to vote, of a meeting to be held at such time as such officer may fix, not less than ten nor more than sixty days after the receipt of such request. If such notice shall not be given within seven days after delivery or the date of mailing of such request, the person or persons requesting the meeting may fix the time of meeting and give notice in the manner provided by law or the by-laws.

IV. If any meeting of the shareholders be adjourned to another time or place, no notice as to such adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken, unless otherwise provided in the by-laws.

V. Written notice of each meeting of shareholders, stating the time and place, and in case of special meeting the purpose, shall be given in the manner provided in the by-laws, by the secretary or other person charged with that duty, to each shareholder entitled to vote at such meeting.

VI. Notice of the time, place and purpose of any meeting of shareholders, whether required by this Act, the articles or the by-laws, may be waived in writing by any shareholder. Such waiver may be given before or after the meeting, and shall be filed with the secretary or entered upon the records of the meeting.

VII. Unless otherwise provided in the articles of incorporation, the presence in person or by proxy of the holders of a majority of the shares entitled to vote at the meeting shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting may be adjourned from time to time. The shareholders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough shareholders to leave less than a quorum. (Act Apr. 18, 1933, c. 300, §24.)

7492-25. Voting rights.

I. Unless the articles otherwise provided, every shareholder of record, or his legal representatives, at the date fixed for the determination of the persons entitled to vote at a meeting of shareholders, or, if no date has been fixed, then at the date of the meeting, shall be entitled at such meeting to one vote for each share standing in his name on the books of the corporation.

II. Subject to any provisions of the articles or by-laws, the board of directors may fix a time, not exceeding forty days preceding the date of any meeting of shareholders, as a record date for the determination of the shareholders entitled to notice of and to vote at such meeting, and in such case only shareholders of record on the date so fixed, or their legal representatives, shall be entitled to notice of and to vote at such meeting, notwithstanding any transfer of any shares on the books of the corporation after any record date so fixed. The board of directors may close the books of the corporation against transfers of shares during the whole or any part of such period.

III. If notice in writing is given by any shareholder to the president or secretary of a corporation not less than twenty-four hours before the time fixed for holding a meeting for the election of directors that he intends to cumulate his votes in such election, each shareholder shall have the right to multiply the num-

ber of votes to which he may be entitled by the number of directors to be elected, and he may cast all such votes for one candidate or distribute them among any two or more candidates. In such case it shall be the duty of the presiding officer upon the convening of the meeting to announce that such notice has been given. If the articles of incorporation expressly provide that there shall be no cumulative voting, the provisions of this subdivision shall be inapplicable to such corporation.

IV. A shareholder may cast his vote in person or through proxy. The appointment of a proxy shall be in writing filed with the secretary at or before the meeting. The authority of a proxy, if not coupled with an interest, may be terminated at will. Unless otherwise provided in the appointment, the proxy's authority shall cease eleven months after the appointment. A termination of a proxy's authority by act of the shareholder shall be ineffective until written notice of the termination has been given to the secretary. Unless otherwise provided therein, and appointment filed with the secretary shall have the effect of revoking all appointments of prior date.

V. If a shareholder shall appoint two or more persons to act as proxies, and if the instrument shall not otherwise provide, then a majority of such persons present at the meeting, or if only one shall be present then that one, shall have and may exercise all of the powers conferred by such instrument upon all of the persons so appointed; and if such proxies be equally divided as to the right and manner of voting in any particular case, the vote shall be divided equally among the proxies.

VI. A person or persons holding shares in a representative or fiduciary capacity may vote the same in person or by proxy. General or discretionary power may be conferred on such proxy. Where shares are held jointly by three or more representatives or fiduciaries, the will of the majority of them shall control the manner of voting or the giving of a proxy, unless the instrument or order appointing them otherwise directs. Where in any case the representatives or fiduciaries are equally divided upon the manner of voting the shares jointly held by them, any court of competent jurisdiction may, upon petition filed by any of them or by any beneficiary, appoint an additional person to act with them in determining the manner in which such shares shall be voted upon the particular questions as to which they are divided.

VII. A proxy's authority shall not be revoked by the death or incapacity of the maker unless, before the vote is cast or the authority is exercised, written notice of such death or incapacity is given to the corporation.

VIII. A transferee of pledged shares shall be regarded by the corporation as the owner thereof unless the instrument of transfer discloses the pledge. A person whose shares are transferred on the books of the corporation as a disclosed pledge shall be entitled to vote unless in the instrument of transfer the pledgor shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent such shares and vote thereon.

IX. A corporation owning shares in another corporation whether domestic or foreign, may vote the same by its president or by proxy appointed by him unless some other person, by resolution of its board of directors, shall be appointed to vote such shares in which case such person shall be entitled to vote upon the production of a certified copy of such resolution.

X. A corporation shall not vote any shares of its own issue belonging to it, nor shall any such shares be counted in calculating the total voting power of all shareholders of such corporation at any given time.

XI. Any action which, under any provisions of this Act or the articles of incorporation, may be taken at a meeting of the shareholders, may be taken without a meeting if authorized by a writing signed by all of the holders of shares who would be entitled to a notice of a meeting for such purpose. Whenever a certificate in respect of any such action is required by this Act to be filed in the office of the Secretary of State, the officers signing the same shall state therein that the action was effected in the manner aforesaid.

XII. The articles of incorporation may confer upon the creditors of the corporation, or upon a class or classes thereof, the right to vote to the extent and subject to the limitations stated therein. (Act Apr. 18, 1933, c. 300, §25.)

Cumulative voting at elections of directors. 21Minn LawRev351.

7492-26. Voting trusts.

I. Shares of stock in any corporation may be transferred to a trustee or trustees, pursuant to written agreement, for the purpose of conferring on such trustee or trustees the right to vote and otherwise represent such shares for a period not exceeding fifteen years, except that in case such agreement is made in connection with an indebtedness of the corporation such voting trust may extend throughout the period of such indebtedness, all in the manner and upon the conditions in such agreement stated. Unless otherwise specified therein, such voting trust may be terminated at any time by the holders of a majority in interest of the beneficial interests thereunder.

II. A duplicate of the voting trust agreement shall be filed in the registered office of the corporation and shall there be open to inspection by any shareholder, and by any holder of any beneficial interest under such agreement, and by the agents of either, in like manner and upon such conditions as the books of the corporation are open to inspection by a shareholder.

III. Unless otherwise provided in such agreement, (a) the trustee may vote in person or by proxy; (b) if there are two or more trustees, the manner of voting shall be determined as provided in subdivision VI of Section 25 of this Act; (c) vacancies among the trustees shall be filled by the remaining trustees; and (d) a trustee shall incur no personal liability except for his own neglect or malfeasance. (Act Apr. 18, 1933, c. 300, §26.)

7492-27. Directors.

I. The business of a corporation shall be managed by a board of at least three directors, who need not be shareholders unless the articles of incorporation or by-laws so require. A director shall hold office for the term for which he was named or elected and until his successor is elected and qualified, unless removed as provided in Section 28 of this Act.

II. Except as otherwise provided in the articles and in paragraph (b) of subdivision IV of this section, directors, other than those constituting the first board, shall be elected by the shareholders.

III. The number, qualifications, term of office, manner of election, time and place of meeting, and the powers and duties of the directors, may, subject to the provisions of this Act, be prescribed by the articles or by-laws, provided that the term of a director shall not be longer than five years.

IV. Except as otherwise prescribed in the articles or by-laws:

(a) A director shall be elected for a term of one year;

(b) Vacancies in the board of directors shall be filled by the remaining members of the board, though less than a quorum, and each person so elected shall be a director until his successor is elected by the shareholders who may make such election at their next annual meeting or at any special meeting duly called for that purpose;

(c) Meetings of the board of directors may be held at such place, whether in this State or elsewhere, as a majority of the members of the board may from time to time appoint;

(d) Notice shall be given to each director of the time and place of each meeting of the board but any director may, in writing, either before

or after the meeting, waive notice thereof; and, without notice, any director by his attendance at and participation in the action taken at any meeting, shall be deemed to have waived notice;

(e) Until provision has been made by by-law for calling meetings of the board, meetings may be called by any member thereof by giving to each of the other members written notice of the time and place of meeting, mailed at least ten days before the time of meeting.

(f) A majority of the board of directors shall be necessary to constitute a quorum for the transaction of business, unless the by-laws provide that a different number shall constitute a quorum, which in no case shall be less than one-third of the entire number of directors, nor less than two; and the acts of a majority of the directors present at a meeting at which a quorum is present shall be the acts of the board of directors;

(g) Any action which might be taken at a meeting of the board of directors, may be taken without a meeting if done in writing signed by all of the directors;

(h) The board of directors may, by unanimous affirmative action of the entire board, designate two or more of their number to constitute an executive committee, which, to the extent determined by unanimous affirmative action of the entire board, shall have and exercise the authority of the board in the management of the business of the corporation. Any such executive committee shall act only in the interval between meetings of the board, and shall be subject at all times to the control and direction of the board. (Act Apr. 18, 1933, c. 300, §27.)

See notes under §7459.

Where one person owns practically all stock in two mercantile corporations, and is the president and sole manager of one corporation which executes, by him as president, a guaranty of credit in behalf of other corporation, upon strength of which plaintiff sells goods to latter corporation, there is warrant for finding an authorized and valid guaranty. Stromberg-Carlson T. Mfg. Co. v. G., 193M255, 258NW314. See Dun. Dig. 2007.

An assignment of rentals, made individually by president of corporation, who owned substantially all stock, was binding upon corporation. Prudential Ins. Co. v. A., 195M583, 264NW576. See Dun. Dig. 1969(46).

Although directors of a corporation occupy a fiduciary relationship toward stockholders thereof, declaration of a dividend rests in their sound discretion and they will not be compelled to declare one unless they have acted fraudulently, oppressively, unreasonably, or unjustly. Schmitt v. E., 199M382, 272NW277. See Dun. Dig. 2072 (81).

Where it appears that directors have acted in good faith and have not been guilty of oppressive or unjust action, they will not be compelled to declare a stock dividend. Id.

As between members of a close corporation a promotor and director is not conclusively presumed to have had knowledge of division of stock by dominating managing member of former partnership, no rights of third parties being involved. Keough v. S., 285NW809. See Dun. Dig. 2120.

Relation of director to individual stockholder from whom he purchases shares of the corporation. 14Minn LawRev530.

7492-28. Removal of directors.

I. The entire board of directors or any individual director may be removed from office, with or without cause, by a vote of shareholders holding a majority of the shares entitled to vote at an election of directors; provided, in the case of a corporation having cumulative voting, unless the entire board be removed, no individual director shall be removed in case the votes of a sufficient number of shares are cast against his removal, which if then cumulatively voted at an election of the full board would be sufficient to elect him.

II. In case the board or any one or more directors be so removed, new directors may be elected at the same meeting. In the case of a corporation having cumulative voting, if such election is held at the same meeting, the notice of intention to cumulate votes provided for in subdivision III of Section 25 of this Act may be given at any time prior to the voting at such election, and in such case announcement of the giving of such notice shall be made prior to said voting and said cumulative voting provisions shall be applicable. (Act Apr. 18, 1933, c. 300, §28.)

7492-29. Officers and agents.

I. The board of directors shall elect a president, a secretary, and a treasurer, and may appoint such other officers and agents as they may deem necessary, for such terms, if any, as may be prescribed in the by-laws. The president shall be a director, but shall hold office until his successor is elected notwithstanding an earlier termination of his office as director. No one of the other officers need be a director. A vice-president who is not a director shall not succeed to the office of president. Any two of the offices except those of president and vice-president may be held by the same person.

II. All officers shall respectively have such authority and perform such duties in the management of the business of the corporation, as may be prescribed in the by-laws, or, in the absence of controlling provisions in the by-laws, as may be determined by the board of directors.

III. Any officer may be removed by the board of directors with or without cause. Such removal, however, shall be without prejudice to the contract rights of the person so removed. (Act Apr. 18, 1933, c. 300, §29.)

Evidence held to sustain finding that money advanced to manager of corporation was a loan to the corporation, and not to the manager or another corporation which sent a note to the lender under an agreement to pay the debt of the first corporation. Jackson v. E., 194M404, 260NW880. See Dun. Dig. 2118.

Evidence was properly admitted of other sales of stock with the same provision, for repurchase on demand, made with the knowledge and sanction of the president and officials of defendant. Thomsen v. U., 198M137, 269NW 109. See Dun. Dig. 2112a.

Where individual in business organizes a corporation to take it over, transferring all his assets, subject to his liabilities and obligations, corporation becomes obligated to fulfill written contract of individual whereby he employed a superintendent for business for a term of years, and fact that corporation assumed employment contract may be proven by parol. Statute of frauds is not applicable. McGahn v. C., 198M328, 269NW830. See Dun. Dig. 1977.

Minority stockholders in order to prevail upon a court to interfere in action of directors of a corporation in paying one of its officers a claimed excessive salary must show that pressive action. Schmitt v. E., 199M382, 272 NW277. See Dun. Dig. 2096(43).

Evidence held not to establish ratification, acquiescence or estoppel of corporation with respect to corporate note executed by officer in his own interest. Swenson v. G., 200M354, 274NW222. See Dun. Dig. 2116.

Officers of a corporation may contract with it, but such contracts are viewed with suspicion by courts and will be scrutinized closely and set aside if not perfectly fair, and beneficial to the corporation, and officers are held to those rules of fairness and good faith which courts of equity impose upon trustees. Id. See Dun. Dig. 2118(37, 38), 2119.

A note executed by an officer of a corporation and payable to himself is presumptively invalid, but such presumption may be rebutted by proof that it was made in business and for use and benefit of corporation. Id.

A corporation is not chargeable with notice when character or circumstances of agent's knowledge are such as to make it improbable that he would communicate it to his principal, as when he is dealing with corporation in his own interest, or where for any reason his interest is adverse. Id.

A corporation is liable under rule of respondent superior for deceit of its president in sale and purchase of its corporate stock by uneducated widow reposing confidence in the president, who was reputed to be a lawyer of ability and integrity. Scheele v. W., 200M554, 274NW673. See Dun. Dig. 2112a.

Where corporate entity was under sole control of defendant and subservient to his will, there is no room for legal fiction of separate corporate entity or for distinction between defendant's acts as officer of corporation and his acts as an independent natural person. Walsh v. M., 201M58, 275NW377. See Dun. Dig. 1969, 2115.

Corporation is charged with officer's knowledge with respect to transaction entered into by him under general authority. Lake Park Development Co. v. P., 201M 396, 276NW651. See Dun. Dig. 2119.

It is sufficient to show that acts done by corporate officer were within authority granted, and it is not nec-

essary to show such authority with respect to each act. Id. See Dun. Dig. 2117.

Where authority of officer of corporation is not conferred by formal action, it may be established by evidence other than records of corporation. Id. See Dun. Dig. 2117.

Where all the stock of a securities holding company is owned by a trustee who has in consequence complete control of company, latter is but another self for trustee, and its action in respect to dividends will be considered that of the trustee. Clarke's Will, 204M574, 284NW876. See Dun. Dig. 2113.

In action against corporation for an accounting of salary, evidence held to sustain finding that check of corporation to an attorney charged partly against plaintiff was charged falsely and was fraudulent. Keough v. S., 285NW809. See Dun. Dig. 2121.

In action against corporation for an accounting of salary, a check drawn to complainant and endorsed in complainant's name followed by bookkeeper's initials and deposited to credit of the corporation was fraudulent in absence of explanation, amount for which check was drawn, representing, according to corporate books, balance due complainant for undrawn salary remaining at time he left employment. Id. See Dun. Dig. 2121.

In action against corporation for an accounting of salary evidence held insufficient to sustain burden of proof of showing fraud in reduction of salary for last year in which plaintiff worked. Id. See Dun. Dig. 2121.

Ratification by directors and stockholders of corporate salaries and disbursements can only be made with full and complete knowledge of all material facts. Id. See Dun. Dig. 2116.

Where two corporations have an interlocking and common management, and one of them procures property of a third party by fraud, other corporation is charged with notice, and, if it takes property or its proceeds, is chargeable with value thereof. Penn Anthracite Mining Co. v. C., 287NW15. See Dun. Dig. 2119.

Evidence held not to show that deceased officer and employee was overpaid on claims asserted. Wentz v. G., 287NW113. See Dun. Dig. 2121.

Liability of promoter on contracts made by him with third parties. 13MinnLawRev495.

7492-30. Relation of directors and officers to corporation.—Officers and directors shall discharge the duties of their respective positions in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions. (Act Apr. 18, 1933, c. 300, §30.)

An allegation of business loss, without more, leaves no basis upon which to build liability against officers and majority stockholders in a cause founded upon fraud and misappropriation of corporate assets. Rogers v. D., 196 M16, 264NW225. See Dun. Dig. 2113.

A director or officer does not stand in a fiduciary relation to a stockholder in respect of his stock, and has same right as any other stockholder to buy stock from or sell stock to another stockholder. Id. See Dun. Dig. 2113(2).

Where president of a corporation deposited, in name of his wife, funds of corporation, purposing thereby to pay his personal debt to her, corporation was not divested of its property in deposit, and bank could offset it on a past-due debt from corporation to bank. Skolnick v. G., 196M318, 265NW44. See Dun. Dig. 2113(98).

An officer of a corporation may be authorized to use its corporate powers and assets for his individual benefit by direct act or acquiesence of all stockholders. Lake Park Development Co. v. P., 201M396, 276NW651. See Dun. Dig. 2114.

Officer does not have authority to use corporate property to pay his personal obligation unless all stockholders consent, and action will lie by corporation to recover property from one by whom it is so received. Id. See Dun. Dig. 2116.

Where stockholders consented and acquiesced in act of officer, case of corporation suing third person is not strengthened by fact that officer used corporate name and organization to hinder and delay, if not defraud, his creditors. Id. See Dun. Dig. 2113a.

Where corporation is used by an individual as an instrument of fraud, or to hinder and delay and defraud creditors, or for other wrongful purposes, courts will go as far as necessary in disregarding corporate entity in order to accomplish justice. Id. See Dun. Dig. 1969.

Where stockholders of a corporation sold their stock to another corporation with option of purchaser to cancel upon payment of any decrease in current assets of corporation, and contract was canceled and settlement made whereby purchasing corporation paid certain sums of money to original stockholders, receiver of corporation had no right of action as for money had and received against stockholders, in absence of any claim of fraud or mismanagement. Rodgers v. D., 202M128, 277NW 393. See Dun. Dig. 2065.

7492-31. Loans to officers, directors and shareholders.—No corporation shall lend any of its assets to any officer or director of the corporation, nor shall any corporation lend any of its assets to a shareholder on the security of its shares. If any such loan be made, the officers and directors who make such loan, or assent thereto, shall be jointly and severally liable for repayment or return thereof. No corporation shall take as security for any debt a lien upon its shares unless such lien shall be taken to secure a debt previously contracted. (Act Apr. 18, 1933, c. 300, §31.)

7492-32. Registered office; changes; penalty.

I. Every corporation shall maintain an office in this State to be known as its registered office.

II. After incorporation, a change of the location of the registered office from that designated in the articles of incorporation may be made from time to time by the board of directors, without amending the articles, provided that, on or before the day that such change is to become effective a certificate of such change and of the location and post-office address of the new registered office shall be filed with the Secretary of State.

III. If the effect of any change shall be to designate a place in a county other than that in which the registered office has theretofore been located, (a) the articles of incorporation, or a certified copy thereof, shall be filed by the Secretary of State for record in the office of the register of deeds of the county in which the new registered office is located; and (b) such certificate of change of location shall be recorded by the Secretary of State and by him be filed for record in the offices of the register of deeds of the counties from and to which such change of location of the registered office is effected. For such purposes the corporation shall pay to the Secretary of State like fees for himself and the register of deeds as provided in Section 6 of this Act.

IV. If a corporation carries on business without complying with the requirements of subdivisions I and III of this section, it shall forfeit to the State $25.00 for each day during which it so carries on business, not exceeding, however, an aggregate forfeiture of $500.00. (Act Apr. 18, 1933, c. 300, §32.)

If Secretary of State after examination discovers that a motor freight corporation has removed its office from the place registered, and has not registered a new office, it is his duty to certify matter to Attorney General for purpose of legal action with respect as to forfeitures. Op. Atty. Gen. (385a-2), June 30, 1936.

7492-33. Corporate books and records; right of inspection; penalties.

I. Every corporation shall keep at its registered office, or at such other place or places within the United States as the board of directors may determine, a share register giving the names and addresses of the shareholders, the number and classes of shares held by each, and the dates on which the certificates therefor were issued.

II. Every corporation shall keep at its registered office originals or copies of:

(a) Records of all proceedings of shareholders and directors

(b) Its by-laws and all amendments thereto; and,

(c) Reports made to shareholders or any of them within the next preceding three years.

III. Every corporation shall keep open to public inspection at its registered office a statement of the names and post-office addresses of its principal officers; provided, that the presence in such office during usual business hours of any one of such officers shall excuse compliance with this subdivision.

IV. Every corporation shall keep appropriate and complete books of account.

V. Every shareholder and every holder of a voting trust certificate shall have a right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, and at the place or places where usually kept or at such other place as the court may order, the share register, books of account and records of the proceedings of the shareholders and directors, and to make extracts therefrom.

VI. A corporation shall forfeit to the State $50.00 for each day it neglects to keep any or all of the books or records as required by subdivisions I, II, III, and IV of this section, not exceeding however an aggregate forfeiture of $500.00. (Act Apr. 18, 1933, c. 300, §33.)

7492-34. Information to shareholders and creditors.

I. Upon request by a shareholder, a corporation shall furnish to him a statement of profit and loss for its last annual accounting period, setting forth separately the amount of all dividends paid from paid-in surplus during such year, and a balance sheet containing a summary of the assets and liabilities as of the closing date of such year, the originals of which, to be retained by the corporation, shall be certified by the president or a vice-president and the treasurer or an assistant treasurer or a public accountant or a firm of public accountants.

II. Upon written demand of any creditor, the corporation shall within thirty days furnish to him a statement of all dividends paid, and the number and purchase price of its shares bought by it, within three years preceding such demand.

III. Upon written demand therefor by any shareholder or creditor, the corporation shall within thirty days furnish to him a brief description of all property or services received or agreed to be received by the corporation as consideration for shares allotted within three years prior to such demand, together with the valuation of such property or services as stated under the provisions of Section 14 of this Act.

IV. Upon wilful failure to comply, in reasonable detail, with any such demand by a creditor, the indebtedness of the corporation to such creditor shall, at his election, become immediately due and payable.

V. With respect to any shareholder or creditor making demand under subdivisions II or III of this section, the time from such demand and until compliance therewith by the corporation shall not be computed as a part of the period of limitation for the commencement of an action under Sections 14, 15, 21, or 22 of this Act. Any statement furnished by a corporation which is false in any substantial matter, or which does not give in reasonable detail the information demanded, shall not constitute compliance with such demand. With respect to any shareholder or creditor who has relied upon any such false statement furnished by a corporation to him or to another, the period of limitation shall not commence until he has learned or ought to have learned of the falsity of the statement. (Act Apr. 18, 1933, c. 300, §34.)

Members of a nonstock co-operative marketing corporation have right at common law to inspect books, records and papers of corporation in proper cases and under reasonable circumstances. State v. St. Cloud Milk Producers' Ass'n., 200M1, 273NW603. See Dun. Dig. 2070.

7492-35. Voluntary transfer of corporate assets.—A corporation may, by action taken at any meeting of its board of directors, sell, lease, exchange or otherwise dispose of all or substantially all of its property and assets, including its good will, upon such terms and conditions and for such considerations, which may be money, shares, bonds, or other instruments for the payment of money or other property, as its board of directors deems expedient, when and as authorized by the vote of holders of shares entitling them to exercise at least two-thirds of the voting power on such proposal or the vote of such other proportion, not less than a majority, or vote by classes, as the articles may require, at a shareholders' meeting called for that purpose, or when authorized upon the written consent of the holders of such shares. Notice of any such meetings shall be given to all shareholders of record whether or not they shall be entitled to vote thereat. (Act Apr. 18, 1933, c. 300, §35.)

Where plaintiff entered into contract with a corporation to furnish extracts, corporation to take over all labels and dies on plaintiff's hands at termination of contract, and corporation sold all of its business and assets to another corporation, and new corporation informed plaintiff that it wanted to continue business with him on same terms as old corporation, and business was so continued for three years, new corporation was bound by obligation of old corporation to pay for all dies, labels, etc., on hand when it terminated relationship with plaintiff. *Zieve v. H., 198M580, 270NW581. See Dun. Dig. 1991.*

Power of majority stockholders to authorize the sale of all of the corporate property. 14MinnLawRev58.

7492-36. Amendments of articles of incorporation.

I. A corporation may amend its articles of incorporation in the manner herein provided, so as to include or omit any provision which it would be lawful to include in or omit from original articles at the time the amendment is made, or so as to extend its duration for a further definite time or perpetually.

II. Prior to the allotment of any shares, amended articles to supersede the original articles may be executed and acknowledged by all the incorporators and filed and recorded as provided in Sections 5 and 6 of this Act with respect to original articles.

III. After allotment of any shares:

(a) Amendment of the articles may be made at any meeting of the shareholders, provided notice of proposal to amend, stating the nature of such proposal, shall have been mailed to each shareholder entitled to vote thereon, at least ten days prior to such meeting, or by written consent of such shareholders given as provided by subdivision XI of Section 25 of this Act.

(b) Except as hereinafter in this section provided, an amendment may be adopted only if it receives either

(1) The affirmative vote of the holders of two-thirds of the voting power of all shareholders entitled under the articles to vote, or such larger or smaller vote not less than a majority as the articles may require; or

(2) If not otherwise provided by the articles, the affirmative vote of the holders of a majority of the voting power of all shareholders entitled under the articles to vote and does not receive the negative vote of the holders of more than one-fourth of the voting power of all shareholders entitled to vote. (As amended Apr. 5, 1935, c. 117, §6.)

(c) If an amendment would adversely affect the rights of the holders of shares of any class, then in addition to the vote required by subdivision III (b) of this section, the holders of each class of shares so affected by the amendment shall be entitled to vote as a class upon such amendment, whether or not by the terms of the articles such class is entitled to vote; and such amendment shall be adopted only if it receives as to each class so affected by the amendment either

(1) The affirmative vote of the holders of two-thirds of the shares of such class, or such larger or smaller vote thereof not less than a majority as the articles may require; or

(2) If not otherwise provided by the articles, the affirmative vote of the holders of a majority of the shares of such class and does not receive the negative vote of the holders of more than one-fourth of the shares of such class. (As amended Apr. 5, 1935, c. 117, §7.)

(d) If an amendment would make any substantial change in the purpose or purposes for which the corporation was organized, then the holders of each class of the shares shall be entitled to vote as a class upon such amendment, whether by the terms of the articles such class is entitled to vote or not; and such amendment shall be adopted only if it receives as to each class either

(1) The affirmative vote of the holders of two-thirds of the shares of such class, or such larger vote as the articles may require; or

(2) If not otherwise provided by the articles, the affirmative vote of the holders of a majority of the

shares of such class and does not receive the negative vote of the holders of more than one-fourth of the shares of such class. (As amended Apr. 5, 1935, c. 117, §8.)

IV. After an amendment has been adopted by the shareholders, articles of amendment setting forth the amendment and the manner of adoption thereof shall be signed and acknowledged by the president or vice-president and by the secretary or assistant secretary, and filed for record with the Secretary of State. If they conform to law, he shall, when all fees and charges therefor have been paid as required by law, record the same, and thereupon the amendment shall be effective. (Act Apr. 18, 1933, c. 300, §36; Apr. 5, 1935, c. 117, §§6-8.)

See notes under §§7472, 7844.

A corporation may amend its articles so as to limit number of shares of stock that any one stockholder may hold. Op. Atty. Gen. (92a-1), May 17, 1939.

A business corporation can not be converted into a charitable corporation by amendment of articles. Op. Atty. Gen. (102), Sept. 1, 1939.

(1).

Corporations may not by amendment of their articles shorten their corporate duration. Op. Atty. Gen., Feb. 9, 1934.

7492-37. Provisions relating to certain amendments.

I. If the total authorized number of shares is increased or decreased the articles of amendment shall also state:

(a) The total number of shares, including those previously authorized, which the corporation will thenceforth be authorized to have;

(b) The number of shares having a par value and the par value thereof, and the number of *shares without par value, and, if the shares* are divided into more than one class, a statement of the number of shares in each class.

II. If shares having a par value are changed into an equal or different number of shares without par value, the amount of stated capital represented by shares without par value allotted to replace outstanding shares having a par value shall be the amount of the aggregate par value of such outstanding shares.

III. If shares without par value are changed into an equal or different number of shares having a par value, the shares having a par value allotted to replace outstanding shares without par value shall be fully paid for, and the stated capital of the corporation shall not thereby be decreased and shall be increased by the difference, if any, between the par value of the shares so allotted and the stated capital represented by the shares without par value so to be replaced.

IV. If shares without par value are changed into a different number of the same class or of any other class or classes of shares without par value, the stated capital of the corporation shall not thereby be affected. (Act Apr. 18, 1933, c. 300, §37.)

7492-38. Reduction of Stated Capital.

I. The stated capital of a corporation may be reduced to an amount not less than the par value of its shares having par value then outstanding by a resolution adopted by the vote of the holders of a majority in interest of the shares entitled to vote thereon, at a meeting of the shareholders called for such purpose, or by such greater vote as the articles of incorporation may require; provided, however, that, without the prior affirmative vote of a majority in interest of each class of stock entitled to a preference upon liquidation, in addition to the vote above required, the stated capital shall not be reduced below an amount equal to the sum of the par value of all outstanding shares having a par value and the aggregate amount to which outstanding shares without par value are entitled upon involuntary liquidation in preference to shares of another class or classes, but in no event shall the stated capital be reduced to an amount less than the par value of all outstanding shares having a par value.

II. Following the adoption of a resolution reducing the stated capital, articles of reduction of stated capital shall be executed and filed for record in the form and manner required by Section 36 for the execution and filing of articles of amendment, and, subject to the provisions of subdivision IV hereof, upon *the recording thereof by the Secretary of State* the reduction of stated capital shall become effective.

III. No part of the surplus created by such reduction shall be distributed to the shareholders in any form unless the fair value of the assets of the corporation remaining after such distribution shall be at least equal to the aggregate of its liabilities and of its stated capital as so reduced. If any distribution is made in violation hereof, the directors and shareholders shall be liable to the corporation to the extent in the manner and subject to the conditions and limitations stated in Section 22 of this Act.

IV. A resolution reducing the stated capital of a corporation may be adopted at a meeting at which an amendment of its articles is adopted and such reduction may be conditioned upon such amendment becoming effective and in such event such reduction shall not become effective until articles of amendment shall have been duly filed for record as provided in Section 36 of this Act and then only upon the filing for record of articles of reduction with the Secretary of State as provided in subdivision II of this section.

V. The stated capital of a corporation shall never be reduced to an amount less than $1,000.00. (Act Apr. 18, 1933, c. 300, §38.)

7492-39. Rights of shareholders not assenting to certain corporate action.

I. If a corporation has given notice to shareholders of a proposal to amend the articles of incorporation, which proposed amendment would substantially change the corporate purposes or would extend the duration of the corporation, a shareholder may, at any time prior to the date of the meeting at which such proposed amendment is to be voted upon, file a written objection to such amendment in the office of the secretary or president of the corporation and demand payment for his shares; provided, that such demand shall be of no force and effect if such shareholder votes in favor of said amendment, or at any time consents thereto in writing, or if the proposed amendment be not in fact effected. (As amended Apr. 18, 1935, c. 212, §1.)

II. If, after such a demand by a shareholder, the corporation and the shareholder cannot agree upon the fair cash value of the shares at the time such amendment was authorized, such value shall be determined by three disinterested appraisers, one of whom shall be named by the shareholder, another by the corporation and the third by the two thus chosen. The determination of a majority of the appraisers in good faith made shall be final, and if the amount so determined is not paid by the corporation within thirty days after it is made, such amount may be recovered in an action by the shareholder against the corporation. The corporation shall not be required to make payment of such amount except upon transfer to it of the shares for which such payment was demanded and upon surrender of the certificate or certificates evidencing the same.

III. A shareholder shall not be entitled to payment for his shares under the provisions of this section unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities exclusive of stated capital.

IV. This section shall not apply to a proposed amendment extending the duration of a corporation organized prior to the effective date of this Act, which has accepted and come under the provisions of this Act, if the original or last renewed period of duration of such corporation, as the case may be, was for the maximum period of duration permitted such corporation by the statutes under which it was or-

ganized or under which it renewed its duration. For the purpose of this section, where the term of such incorporation or renewal is one year or less short of such maximum period, it shall be construed to be for such maximum period. (Act Apr. 18, 1933, c. 300, §39; Apr. 18, 1935, c. 212, §2.)

Sec. 3 of Act Apr. 18, 1935, cited, provides that the act shall take effect from its passage.

Section 2, c. 212, Laws 1935, adding subdivision 4 to §39, c. 300, Laws 1933, violates §33, art. 4 of constitution, classification of corporations in said subdivision 4 being arbitrary and without any reasonable basis. Wm. Warnock Co. v. H., 200M196, 273NW710. See Dun. Dig. 1997. (4).

General laws providing for extension of corporate existence do not confer contract rights to corporations organized thereunder to have their existence extended in same manner and on same conditions as when organized as power to alter or modify general law in that respect should be regarded as reserved to state. Wm. Warnock Co. v. H., 200M196, 273NW710. See Dun. Dig. 1997.

7492-40. Consolidation and merger authorized.—Two or more corporations, except corporations formed for the purpose of carrying on the business of a railroad may merge into one of the constituent corporations or consolidate into a new corporation, in accordance with the provisions of Sections 41 to 44 of this Act. The consolidation of corporations formed for the purpose of carrying on the business of a railroad shall continue to be governed by the provisions of Sections 7506 to 7511, inclusive, Mason's Minnesota Statutes of 1927.

II. One or more domestic corporations formed under this Act, or which have accepted and come under this Act, except corporations formed for the purpose of carrying on the business of a railroad, and one or more foreign corporations with authority to carry on any business for the conduct of which a corporation might be organized under this Act may be

(a) merged into one of such domestic corporations, or

(b) consolidated into a new corporation to be formed under this Act, provided, such foreign corporations are authorized by the laws of the respective states or countries under which they were formed to effect such merger or consolidation. Any such merger or consolidation shall be effected as to such domestic corporations in accordance with and subject to the provisions of Sections 41 to 44 of this Act. The consolidated or surviving corporation shall in all respects be subject to the provisions of Sections 42, 43 and 44 of this Act, and shall have only such powers and authority as a corporation formed under this Act may have. Any such merger or consolidation shall be effected as to such foreign corporations in accordance with the applicable laws of the respective states or countries under which they were formed and in accordance with the provisions of subdivisions I, III, IV and V of Section 41 of this Act. The consolidated or surviving corporation shall be subject, as to the rights of dissenting shareholders of the constituent foreign corporations, to the applicable laws of the respective states or countries under which such foreign corporations were formed. (Apr. 18, 1933, c. 300, §40; Apr. 5, 1935, c. 117, §9; Apr. 5, 1937, c. 150, §1.)

7492-41. Procedure of consolidation or merger.

I. The directors, or a majority of them, of each of the corporations to be consolidated or merged, shall enter into an agreement signed by them, prescribing the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, and stating such other facts as are applicable among those required or permitted by Section 3 of this Act to be stated in articles of incorporation, and the manner and basis of converting the shares of each of the constituent corporations into the shares of the consolidated or surviving corporation (whether into the same or a different number of shares of the consolidated or surviving corporation and whether with or without par value) with such other details and provisions as are deemed necessary or desirable. The agreement shall further state the amount of stated capital with which the consolidated or surviving corporation will begin business.

II. Said agreement shall be submitted for consideration to the shareholders of record of each corporation at a meeting, notice of the time, place and object of which shall be mailed at least two weeks before the meeting to each shareholder of record, whether entitled to vote or not, at his last post-office address as shown by the records of the secretary of the corporation. At such meeting, or an adjournment thereof, said agreement shall be considered and a vote by ballot taken for the adoption or rejection of the same. If the votes of shareholders of each corporation holding stock in such corporation entitling them to exercise at least two-thirds of the voting power thereof, or such other proportion of the voting power, not less than one-half, as may be prescribed by the articles of incorporation, shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the secretary or assistant secretary of each corporation.

III. The agreement so adopted and certified shall be signed by the president or vice-president and secretary or assistant secretary of each corporation and acknowledged on behalf of the corporation by such officers.

IV. The agreement so adopted, certified and acknowledged, shall be filed for record with the Secretary of State. If the same conforms to law, he shall, when the fees and charges provided in subdivision V of this section have been paid, record the same, and issue a certificate of incorporation or merger, as the case may be. Upon the issuance of such certificate of incorporation the corporate existence of the consolidated corporation shall begin, and upon the issuance of such certificate of merger the merger shall be effective. The certificate of incorporation, or the certificate of merger, and the agreement bearing the endorsement of the fact and time of delivery thereof to the Secretary of State, or a copy of such agreement certified by him, shall be filed by the Secretary of State for record in the office of the register of deeds of the counties in which the corporate parties to the agreement have their registered offices, for which service and purpose there shall be paid to the Secretary of State like fees for himself and the registers of deeds as provided in Section 6 of this Act.

V. Before the Secretary of State shall record any agreement of consolidation or merger, there shall be paid to the State Treasurer the same fees as are required on incorporation, less the aggregate amount of fees theretofore paid to the State Treasurer in respect of the authorized shares of the constituent corporations. (Act Apr. 18, 1933, c. 300, §41.)

7492-42. Effect of consolidation or merger.—Upon the issuance of the certificate of incorporation or merger, as provided by Section 41 of this Act:

(a) The separate existence of the constituent corporations, or of all except the one into which the constituent corporations have merged, as the case may be, shall cease, unless the agreement of consolidation or merger expressly provides for the continuance of the corporate existence and identity of one or more of the constituent corporations, in which case the corporate existence and identity thereof shall continue in the consolidated or surviving corporation, as the case may be.

(b) All the property, assets, rights, privileges, powers, franchises and immunities of each of said constituent corporations so consolidated or merged shall vest in the consolidated or surviving corporation, as the case may be.

(c) All debts, liabilities and obligations of the constituent corporations shall become the debts, liabilities and obligations of the consolidated or surviving corporation, as the case may be. (Act Apr. 18, 1933, c. 300, §42.)

7492-43. Rights of dissenting shareholders.

I. When a corporation has become a party to a consolidation or merger agreement, as hereinbefore provided, any shareholder of such corporation who has not assented thereto in writing, and who did not vote in favor of such consolidation or merger, or who did not have the right to vote thereon, may, at any time within twenty days after such authorization was given, object thereto in writing and demand payment for his shares and have the fair cash value thereof determined as provided in Section 39 hereof, the relevant provisions of which section shall be in all respects applicable. The liability of such corporation to such dissenting shareholder for the fair cash value of the shares so agreed upon or awarded shall also be a liability of the consolidated or surviving corporation, as the case may be.

II. Those shareholders of the constituent corporations who do not object in writing and demand payment for their shares pursuant to the provisions of subdivision I of this section shall be deemed to have assented to the consolidation or merger, as the case may be, on the terms specified in the agreement of consolidation or merger. (Act Apr. 18, 1933, c. 300, §43.)

7492-44. Additional provisions relating to consolidation or merger.

I. The liabilities of the constituent corporations or of their shareholders, directors, or officers shall not be affected nor shall the rights of creditors or of any persons dealing with such corporations be impaired by the consolidation or merger, and any claim existing or action or proceeding pending by or against any of such constituent corporations may be prosecuted to judgment as if such consolidation or merger had not taken place, or the consolidated or surviving corporation may be proceeded against or substituted in its place.

II. The stated capital of a consolidated or surviving corporation at the time it begins business shall be at least equal to the aggregate par value of the shares having par value to be distributed pursuant to the agreement of consolidation or merger, plus the amount of the stated capital designated by such agreement in respect of shares without par value to be so distributed. If any shares without par value to be so distributed shall be entitled to a preference upon liquidation, the amount of stated capital in respect of such shares shall not be less than the aggregate amount to which such shares would be entitled upon involuntary liquidation in preference to shares of another class or classes, without the prior affirmative vote or written consent of a majority in interest of all persons to whom such shares are to be distributed.

III. If, in connection with a consolidation or merger, there be a reduction of the aggregate stated capital of the constituent corporations, no part of any surplus thereby created shall be distributed to the shareholders of the consolidated or surviving corporation unless the fair value of the assets of the consolidated or surviving corporation remaining after such distribution at least equals the aggregate of its liabilities and its stated capital.

IV. No distribution other than of shares of stock of the consolidated or surviving corporation shall be made to the shareholders of the constituent corporations or any of them unless after such distribution the fair value of the assets of such consolidated or surviving corporation shall at least equal the sum of its liabilities and its stated capital.

V. If any distribution is made in violation of subdivisions III or IV of this section, the directors and shareholders shall be liable to the corporation to the extent, in the manner and subject to the conditions and limitations stated in Section 22 of this Act.

VI. Whenever a conveyance, assignment, transfer or any act, deed or instrument is necessary or appropriate to evidence the vesting of property or rights in the consolidated or surviving corporation the officers of the respective constituent corporations shall execute, acknowledge and deliver such deeds or instruments and do such acts as may be necessary or appropriate in the premises. For such purposes the existence, capacity and authority of the constituent corporations and their respective officers and directors shall be deemed to be continued notwithstanding such consolidation or merger. (Act Apr. 18, 1933, c. 300, §44.)

7492-45. Proceedings for dissolution.—A corporation may be wound up and dissolved either voluntarily or involuntarily. If the proceedings are voluntary, they may be conducted either out of court or subject to the supervision of the court. If involuntary, they shall be subject to the supervision of the court. (Act Apr. 18, 1933, c. 300, §45.)

Dissolution proceedings for a cooperative association must be affected pursuant to §§8015 to 8019, as §7492-45, et seq., relates only to corporations coming under business corporation act. Op. Atty. Gen. (93a-10), Mar. 7, 1938.

Disregarding the corporate entity in de facto dissolution. 15MinnLawRev210.

7492-46. Voluntary proceedings for dissolution.

I. Voluntary proceedings for dissolution may be instituted whenever a resolution therefor is adopted by the holders of at least two-thirds of the voting power of all shareholders at a shareholders' meeting duly called for that purpose.

II. The resolution may provide that the affairs of the corporation shall be wound up out of court, in which case the resolution shall designate a trustee or trustees to conduct the winding up, and may provide a method for filling vacancies in the office of trustee; but such appointment shall not be operative until a certificate, setting forth the resolution and the manner of adoption thereof, signed and acknowledged by the president or vice-president and by the secretary or assistant secretary, shall be filed for record with the Secretary of State.

III. If a vacancy occurs in the office of trustee, it may be filled by resolution adopted by the holders of a majority of the voting power represented at a meeting of shareholders. Such meeting may be called by the remaining trustee or trustees, if any, and if none then in the manner provided in subdivision III of Section 24 of this Act.

IV. Unless the resolution to dissolve otherwise provides, the trustee or trustees may be removed, with or without cause, by the holders of a majority of the voting power of the shareholders at a meeting called for that purpose.

V. The resolution to dissolve may provide that the affairs of the corporation shall be wound up under the supervision of the court, in which case the resolution shall authorize certain directors or shareholders to sign and present a petition to the court praying that the corporation be wound up and dissolved under the supervision of the court.

VI. Where a corporation is being wound up and dissolved out of court, the trustee, or if there be more than one then a majority of the trustees, may by petition apply to the court for a receiver and to have the proceedings continued under the supervision of the court and thereafter the proceedings shall continue as if originally instituted subject to the supervision of the court. (Act Apr. 18, 1933, c. 300, §46.)

Corporations may not by amendment of their articles shorten their corporate duration. Op. Atty. Gen., Feb. 9, 1934.

A certificate instituting voluntary dissolution of corporation whose term of corporate existence has expired by limitations may not be received for filing in office of secretary of state. Op. Atty. Gen. (92a-29), Feb. 20, 1939.

7492-47. Winding up out-of-court.

I. Except as otherwise provided in the resolution for dissolution, the trustee or trustees appointed by the shareholders to conduct a winding up out of court shall, as speedily as practicable after his or their appointment has become operative as provided in Section 46, proceed:

(a) To collect all sums due or owing to the corporation,

(b) To sell and convert into cash all corporate assets,

(c) To collect any amounts remaining unpaid on subscriptions to shares, and

(d) To pay all debts and liabilities of the corporation according to their respective priorities.

II. Any property remaining after discharging the debts and liabilities of the corporation shall be distributed by the trustee or trustees to the shareholders according to their respective rights and preferences.

III. Nothing in this section shall interfere with a reorganizaiton pursuant to the provisions of Section 54 of this Act. (Act Apr. 18, 1933, c. 300, §47.)

Right of preferred shareholders to be paid dividends in arrears out of capital assets before payment to holders of common stock. 16MinnLawRev213.

7492-48. Grounds for involuntary dissolution.

A corporation may be dissolved by involuntary proceedings in the discretion of the court when it is made to appear:

(a) That the corporate assets are insufficient to pay when due all just demands for which the corporation is liable; or

(b) That the objects of the corporation have wholly failed or are entirely abandoned or their accomplishment is impracticable; or

(c) That the directors or those in control of the corporation have been guilty of fraud or mismanagement, or of abuse of authority or of persistent unfairness toward minority shareholders; or

(d) That there is internal dissension and that two or more factions of the shareholders in the corporation are so deadlocked that its business cannot longer be conducted with advantage to its shareholders; or

(e) That the period for which the corporation was formed has terminated without extension. (Act Apr. 18, 1933, c. 300, §48.)

7492-49. Who may institute involuntary proceedings.

I. A petition for involuntary dissolution of a corporation may be filed by:

(a) A shareholder or

(b) A judgment creditor after return unsatisfied of an execution on his judgment.

II. The commencement of a proceeding for dissolution out of court shall not affect the right of any qualified person to petition for involuntary proceedings for dissolution. (Act Apr. 18, 1933, c. 300, §49.)

7492-50. Appointment of receivers.

I. Upon the filing of a petition by a corporation for voluntary liquidation, or by the trustee or trustees as authorized in subdivision VI of Section 46 of this Act, the court may appoint a liquidating receiver or receivers.

II. Upon the filing of a petition for involuntary dissolution, the court shall fix a time and place for hearing thereon and order such notice thereof to be given as it may deem proper. At the time and place so fixed the court shall hear the evidence of all parties interested and, if any ground specified in the complaint is sustained, may in its discretion appoint a liquidating receiver or receivers.

III. Upon the filing of any such petition, the court shall have the ordinary powers of a court of equity to appoint a temporary receiver or receivers. (Act Apr. 18, 1933, c. 300, §50.)

7492-51. Duties and powers of trustees and receivers.

I. The receiver or receivers, appointed as provided in Section 50 of this Act shall, after giving such bond as the court may require for the faithful performance of his or their duties, proceed with the liquidation of the affairs of the corporation in such manner as the court shall direct.

II. Trustees or receivers in dissolution proceedings shall have full authority to enforce within or without the State any and all causes of action which the creditors or shareholders or any class thereof may have against officers, directors, shareholders or any one else, and to enforce, defend, compromise, compound and settle claims in favor of or against the corporation upon such terms as they shall deem best; but if the proceeding is subject to the supervision of the court, no such compromise, composition or settlement shall be valid unless approved by the court.

III. Such trustees or receivers may call meetings of the shareholders in the manner the directors might have done, or, if the proceeding is subject to the supervision of the court, in such manner as the court may direct. (Act Apr. 18, 1933, c. 300, §51.)

7492-52. Effect of dissolution proceedings.—Upon adoption of a resolution for dissolution, or upon a finding by the court of the existence of grounds for involuntary dissolution, the authority and duties of the directors and officers of the corporation shall cease, except insofar as may be necessary to preserve the corporate assets, or insofar as they may be continued by the trustee or receiver, or as may be necessary for the calling of meetings of the shareholders. (Act Apr. 18, 1933, c. 300, §52.)

7492-53. Claims against corporations in dissolution subject to court supervision.

I. In a proceeding for dissolution subject to court supervision, the court shall make an order limiting the time for creditors to present claims against the corporation, and fixing the time and place of hearing thereon.

II. The time so limited shall not be more than one year nor less than six months, unless it shall appear by affidavit that there are no claims, in which case the limitation may be three months. For cause shown, and upon notice to the receiver or receivers, the court in its discretion may receive, hear and allow a claim filed within eighteen months after the day on which the order to present claims was entered if an order of dissolution shall not have been entered before such claim is filed.

III. Three weeks published notice of such order to present claims shall be given, and a copy thereof shall be mailed to each creditor shown by the books of the corporation or known to the receiver at the address of such creditor appearing on such books or known to the receiver.

IV. All claims, whether due, not due, or contingent, which are not presented within the time fixed by the court shall be forever barred from participation in any assets of such corporation at any time in the possession or under the control of the receiver or receivers, whether or not distributed to creditors or shareholders; provided that contingent claims which do not become absolute and capable of liquidation before the order of dissolution, need not be so presented or allowed.

V. Claims presented shall be itemized, and show the security, if any, held therefor, and be verified by an affidavit of the claimant or his agent or attorney showing the balance due, that no payments have been made thereon that are not credited, and that there are no offsets thereto known to the affiant.

VI. Any claim may be pleaded as an offset or counterclaim in any action brought against the claimant by the receiver or receivers, except in an action

for the balance due upon a subscription for or contract to purchase shares.

VII. If a claim presented be contingent or not due, the particulars thereof shall be stated. If contingent claims are presented, the court may require such provision to be made as it may deem adequate for payment thereof if and when due, and no distribution to shareholders shall be made until such order shall have been made and complied with. (Act Apr. 18, 1933, c. 300, §53.)

7492-54. Compromise arrangements; reorganizations; approval and effect.

I. When a compromise or arrangement is proposed between a corporation and its creditors or any class of them, or between the corporation and its shareholders or any class of them, or between the corporation and both creditors and shareholders or any class or classes of them, the court may, upon the application of the corporation or of a liquidating trustee or receiver thereof, order a meeting of the creditors or class of creditors, or of the shareholders or class of shareholders, as the case may be, to be called in such manner as the court may direct.

II. If the majority in number representing three-fourths in value of the creditors or class of creditors, or if the shareholders or class of shareholders holding three-fourths of the voting power of all shareholders or of the class of shareholders, as the case may be, agree to any compromise or arrangement or to a reorganization of the corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court, be binding on all the creditors or class of creditors, and on all the shareholders or class of shareholders, as the case may be, and also on the corporation and its liquidating trustee or receiver, if any.

III. If the articles of incorporation so provide, the corporation shall not be subject to the provisions of this section. (Act Apr. 18, 1933, c. 300, §54.)

7492-55. Order or certificate of dissolution; filing; omitted assets.

I. When a corporation has been completely wound up, the court, if the proceeding is subject to the supervision of the court, shall make an order adjudging the corporation to be dissolved; and if the proceeding is out of court, the trustee or trustees shall sign and acknowledge a certificate stating that the corporation has been completely wound up and is dissolved.

II. The order or certificate of dissolution shall be filed for record with the Secretary of State and thereupon the corporate existence shall terminate.

III. The title to any assets omitted from the winding up shall vest in the trustee or trustees, or receiver or receivers, for the benefit of the persons entitled thereto and shall be administered and distributed accordingly. (Act Apr. 18, 1933, c. 300, §55.)

7492-56. Action to terminate corporate existence.

I. Whenever the public interest may require, the attorney general may bring an action against a corporation to terminate its corporate existence upon the ground that:

(a) The corporate franchise was procured through fraud practiced upon the state; or

(b) The corporation should not have been formed under this Act; or

(c) The corporation was formed without a substantial compliance with the conditions prescribed by this Act as precedent or essential to incorporation; or

(d) The corporation has offended against any provision of the statutes regulating corporations or has abused or usurped corporate privileges or powers; or

(e) The corporation has knowingly and persistently violated any provision of law; or

(f) The corporation has done or omitted any act which amounts to a surrender of its corporate franchise, has failed to exercise or has discontinued its corporate privileges, or has abandoned the corporate enterprise.

II. If the ground for the action is an act which the corporation has done or omitted to do, and correction can be made by amendment to its articles, or otherwise, then such action shall not be instituted unless the Attorney General shall give the corporation written notice of the act done or omitted to be done, and the corporation shall fail to institute proceedings to correct the same within thirty days thereafter.

III. If the court adjudges that the existence of the corporation be terminated, it may appoint a receiver of the corporation's property and make distribution thereof among its creditors and shareholders. The Attorney General shall cause a copy of the judgment terminating the corporate existence to be filed for record with the Secretary of State and in the office of the register of deeds of the county in which the registered office of the corporation was located. (Act Apr. 18, 1933, c. 300, §56.)

7492-57. Monopolies and restraint of trade.—Nothing in this Act shall be construed to authorize a corporation to do any act in violation of the common law or the statutes of this State or of the United States with respect to monopolies and illegal restraint of trade. (Act Apr. 18, 1933, c. 300, §57.)

7492-58. Constitutionality.—The invalidity of any part of this Act shall not affect the validity of any other part thereof which can be given effect without such invalid part. (Act Apr. 18, 1933, c. 300, §58.)

7492-59. Name of Act.—This Act may be cited as the Minnesota Business Corporation Act. (Act Apr. 18, 1933, c. 300, §59.)

7492-60. Reservation of right to alter, amend or repeal.—The State hereby fully reserves the right to alter, amend or repeal the several provisions of this Act and all corporations formed or coming under this Act are subject to such reserved right. (Act Apr. 18, 1933, c. 300, §60.)

Section 2, c. 212, Laws 1935, adding subdivision 4 to §39, c. 300, Laws 1933 [§7492-39], violates §33, art. 4, of constitution, classification of corporations in said subdivision 4 being arbitrary and without any reasonable basis. Wm. Warnock Co. v. H., 273NW710. See Dun. Dig. 1997.

7492-61. Application of this Act to existing corporations; election not to come under its provisions; acceptance notwithstanding such election.

I. This Act shall not apply to corporations in existence at the time it takes effect; but every such corporation formed under the laws of Minnesota, if formed for a purpose or purposes for which a corporation might be formed under this Act, may accept and come under this Act, and every such corporation shall be conclusively presumed to have accepted and come under this Act unless, within the year after this Act takes effect, the corporation shall signify its election not to accept or be bound by the provisions of this Act.

II. Such election shall be effective only if made by resolution of the stockholders adopted by a majority vote of all stockholders then entitled to vote and voting at an annual meeting or at a special meeting duly called for that purpose, and if a copy of the resolution, certified by the president or vice-president, and the secretary or assistant secretary, shall be filed with the Secretary of State and if a copy thereof, duly certified by the Secretary of State, shall be filed for record in the office of the register of deeds of the county in which the corporation's principal place of business is located, together with the payment of $5.00 to the Secretary of State as a filing fee and of the lawful recording fee to the

register of deeds; all within the one year period in subdivision I of this section provided.

III. Whether or not a corporation eligible to accept the provisions of this Act has elected not to accept, under subdivision II of this section, it may, at any time accept and come under the provisions of this Act by resolution adopted, certified, and filed, with the payment of fees, in the same manner as in Subdivision II of this section provided for election not to accept. (As amended Apr. 5, 1935, c. 117, §10.)

IV. The Secretary of State, upon the payment of the $5.00 as a filing fee, shall record each resolution of election not to accept filed on or before March 1, 1936, and each resolution of acceptance whenever filed, if the same conforms to the requirements of this section.

V. Upon acceptance of the provisions of this Act, whether by resolution as in subdivision III of this section provided or by failure within the one year period to elect not to accept, all provisions of this Act shall apply to all accepting corporations as fully as though such corporations had been formed hereunder, except as hereinafter in this section otherwise provided.

VI. The principal place of business of the accepting corporation shall become its registered office. If its certificate of incorporation or any amendment thereof does not contain a statement of the location and post-office address of such principal place of business, the accepting corporation shall, upon coming under this Act, file for record with the Secretary of State a certificate stating the location and post-office address of its registered office.

VII. The stated capital of the accepting corporation shall be a sum equal to the aggregate of the following amounts:

(a) The aggregate par value of all shares having par value outstanding at the time it comes under this Act.

(b) The aggregate consideration received by the corporation for all shares without par value issued by it prior to the time it comes under this Act, less such part of such consideration as has been received as paid-in surplus, and less the aggregate purchase price of all its shares without par value repurchased by the corporation prior to the time this Act becomes effective.

VIII. The surplus of the accepting corporation at the time it comes under this Act, shall be determined as provided by subdivision I of section 21 of this Act; but the whole of such surplus shall be deemed earned surplus.

IX. The duration of the accepting corporation shall not be in anywise altered by its coming under this Act. Any extension of its duration for a further definite time or perpetually shall be by amendment of its articles of incorporation made at any meeting of the shareholders, provided notice of proposal to amend, stating the nature of such proposal, shall have been mailed to all shareholders whether entitled to vote thereon or not, at least ten days prior to such meeting, if such proposal be adopted by the vote of the holders of two-thirds of the voting power of all shareholders entitled under the articles to vote. A shareholder who did not vote in favor of or consent in writing to such amendment whether entitled to vote thereon or not, shall have the rights and remedies provided by Section 39 of this Act. The provisions of Section 36, subdivision IV of this Act shall apply to amendments under this subdivision.

X. All provisions of the certificate of incorporation of an accepting corporation which might lawfully be included in articles of incorporation under the provisions of this Act shall remain in full force, notwithstanding such provisions would not be required by this Act to be included in articles of incorporation. Any provision of the certificate of incorporation which might not lawfully be included in articles of incorporation under this Act shall, when the corporation comes under this Act, cease to be effective for any purpose. (Act Apr. 18, 1933, c. 300, §61; Apr. 5, 1935, c. 117, §§10, 11; Jan. 18, 1936, Ex. Ses., c. 53.)

A majority vote of all stockholders, both preferred and common, was all that was necessary to elect not to be bound under §7492-61a. Muller v. T., 197M608, 268NW 204. See Dun. Dig. 1997.

Provision that, unless an existing corporation signifies within one year after act took effect, its election not to come in thereunder, it shall be conclusively presumed to have accepted same, is valid and effective. Wm. Warnock Co. v. H., 200M196, 273NW710. See Dun. Dig. 1997.

Renewal pursuant to curative act of corporate existence after expiration thereof is of same force and effect as if renewed prior thereto and, although taken subsequent to April 19th, last date for filing election of noncompliance with business corporation act, subjects corporation to Minnesota Business Corporation Act. Op. Atty. Gen. (92a-9), May 3, 1934.

Laws 1935, c. 44, was not repealed by Laws 1935, c. 117, the first extending the time for rejections and the other relating only to matter of acceptance. Op. Atty. Gen. (92a-27), Apr. 26, 1935.

IX.

Cooperative wishing to avail itself of provision of Laws 1939, c. 51, authorizing it to qualify under this act may comply without two-thirds vote requirement of this act. Op. Atty. Gen. (93a-2), June 22, 1939.

7492-61a. Corporations to be bound by acts.— Every corporation formed for business purposes prior to the passage of Laws 1933, Chapter 300, which did not file an acceptance of the terms of said act nor a refusal to accept or be bound by the provisions thereof prior to one year after the passage thereof and which shall not since April 18, 1934, have amended its articles of incorporation so as to extend the period of its duration, may file a refusal to accept or be bound by the provisions of said act at any time prior to May 1, 1935, with the same effect as if said refusal had been filed prior to one year after the passage of said act; provided, that any such corporation which shall not file said refusal to accept or be bound by the provisions of said act on or prior to May 1, 1935, shall be conclusively presumed to be and to have been bound by the provisions of said act at all times after one year from the passage of said Laws 1933, Chapter 300, and all acts and proceedings of any such corporation taken or had under the provisions of said Laws 1933, Chapter 300, from and after the period of one year after the passage of said act shall be and the same are hereby declared legal and valid. (Act Mar. 13, 1935, c. 44, §1.)

The title of Act Mar. 13, 1935, cited, is as follows: "An act relating to corporations."

Order of court appointing receiver for corporations coming under this provision, could not be collaterally attacked in receiver's action to enforce doubt liability of stockholders as the court had jurisdiction of the corporations and the subject-matter; however, the receiver had the right to bring such an action. Badger v. H., (USCCA8), 88F(2d)208.

This section was not repealed by §7492-65. Muller v. T., 197M608, 268NW204.

Majority of all stockholders, both common and preferred, was all that was necessary to elect not to be bound under this section. Id. See Dun. Dig. 1997.

This act is valid. Id.

Power of majority stockholders under constitution. 35 MichLawRev626.

7492-62. Laws not to apply to corporations formed or coming under this Act; laws amended.

I. The provisions of Mason's Minnesota Statutes of 1927, Sections 7453, 7454, 7457-12, 7457-13, 7457-14, 7457-15, 7457-16, 7457-17, 7457-18, 7458, 7459, 7460, 7461, 7462, 7464, 7465, 7466, 7467, 7468, 7469, 7470, 7470-1, 7470-2, 7470-3, 7470-5, 7470-6, 7470-7, 7470-8, 7470-9, 7470-10, 7470-11, 7471, 7472, 7477, 7478, 7479, 7480, 7481, 7483, 7484, 7489, 7491, 7518, 7522, 7776, 7778, 8015, 8016, 8017, 8019, 8022, 8023, 8024, 8025, 8026, 8027, 8028, 8029, 8030, 8031, as amended, shall not apply to corporations formed under this Act; nor shall they apply to any existing corporation after it comes under this Act in accordance with the provisions of Section 61

of this Act. (Act Apr. 18, 1933, c. 300, §62(I); Apr. 5, 1935, c. 117, §12.)

Sec. 62(II) amends §7443, ante.
Sec. 62(III) amends §7447-1, ante.
Sec. 62(IV) amends §7455, ante.
Sec. 62(V) amends §7463, ante.
Sec. 63 repeals §§7435, 7440, 7775, 7777, ante.
Sec. 64 provides that the act shall take effect from its passage.

Badger v. H., (USCCA8), 88F(2d)208; note under §7492-61a.

7492–65. Who may come under act.—Any corporation organized under or possessing a charter granted by a special act or acts of the Legislature of the State or Territory of Minnesota, which accepts and comes under this Act, shall be and remain subject to and shall not thereafter by amendment become divested of the duties, obligations and liabilities to the State or public imposed by such special act or acts or by the charter so possessed which would not be imposed on it if organized under this Act; but such corporation by accepting and coming under this Act shall thereby forfeit and surrender all rights, privileges, immunities, and franchises which it may have by reason of such special act or acts or by the charter so possessed, to the extent that such rights, privileges, immunities, and franchises could not be possessed by a corporation organized under this act, provided that nothing contained in this section shall be construed so as to deny to a corporation organized under or possessing a charter granted by such special act or acts which accepts and comes under this Act any right, privilege or power possessed by a corporation organized under this Act. (Act Apr. 5, 1935, c. 117, §13.)

Sec. 14 of Act Apr. 5, 1935, cited, provides that the act shall take effect from its passage.

The title of Act Apr. 5, 1935, c. 117, enumerates the various sections of Laws 1933, c. 300, which are amended, but makes no reference to the addition of this section as section 65 of the former act.

Muller v. T., 197M608, 268NW204; note under §7492-61a.

7492–69. Certain corporations legalized and acts validated.—Every domestic corporation in this state of the nature of a business corporation within the meaning of Laws 1933, Chapter 300, which shall have heretofore caused its articles of incorporation to be filed in the office of the secretary of state of this state, recorded in the office of the register of deeds of the proper county, published as required by law and paid the fees provided by law at the time of its organization, and has had an office and transacted business in the state for more than ten years last past, is hereby in all things legalized for the period of duration set forth in its said articles of incorporation; provided that where the articles of incorporation of any such corporation provide for a period of duration in excess of the period permitted by law at the time of the organization of such corporation, such corporation shall, within six months from the passage and approval of this act, pay into the state treasury the fees required by law to be paid in case of renewal of its corporate existence for such excess period; provided further, that without payment of such additional fees the corporate existence of any such corporation is hereby legalized for the maximum period of duration permitted by law at the time it was organized. (Act Apr. 24, 1935, c. 248, §1.)

7492–69a. Application of act.—This act shall not apply to any corporation the charter of which has been declared forfeited by the final judgment of any court of competent jurisdiction of this state, nor to any corporation as to which there has been commenced any action or proceeding in any of the courts of this state for the forfeiture of its charter or for the appointment of a liquidating receiver or receivers therefor, which said action or proceeding has not been settled or compromised, nor shall this act affect any action or proceeding now pending in any of the courts of this state in relation to any corporation coming within the provisions of Section 1 of this act. (Act Apr. 24, 1935, c. 248, §2.)

7492–69b. Renewal of corporate existence of expired corporations.—Any corporation heretofore organized under the laws of this state, of the kind which might be formed under or accept and come under Laws of 1933, Chapter 300 [§§7492-1 to 7492-62], whose period of duration has expired less than 20 years prior to the passage of this act and the same has not been renewed and such corporation has continued to transact its business, may, by a majority vote of the voting power of the shareholders of such corporation, renew its corporate existence from the date of the expiration for a further definite term or perpetually from and after the term of its expired period of duration with the same force and effect as if renewed prior to the expiration of its term of existence, by taking the same proceedings and by paying into the state treasury the same incorporation fees as now provided by law for the renewal of the corporate existence of such corporations in cases where such renewal is made before the end of its period of duration, provided that in so doing such corporation shall be deemed to have elected to accept and be bound by the provisions of Laws 1933, Chapter 300 [§§7492-1 to 7492-62], as the same now is or may be amended. (Jan. 21, 1936, Ex. Ses., c. 59, §1.)

For similar act covering later period, see Laws 1937, c. 242, amended by Act July 14, 1937, Sp. Ses., c. 25.
Renewal of corporate existence. Laws 1939, c. 51.

7492-69c. Same—time for proceedings.—Such proceedings to obtain such extension shall be taken within one year after the approval of this act. (Jan. 21, *1936, Ex. Ses., c. 59, §2.)*

7492–69d. Same—relation back—validation of corporate acts.—When such proceedings are taken within such period of time, such proceedings shall relate back to the date of the expiration of such original corporate period, as fixed by its articles of incorporation or by statutory limitation, and when such period is extended as provided by this act, any and all corporate acts and contracts done and performed, made and entered into after the expiration of said original period, shall be and each is hereby declared to be legal and valid. (Jan. 21, 1936, Ex. Ses., c. 59, §3.)

7492–69e. Same—corporations whose charters have been forfeited.—This act shall not apply to any corporation, the charter of which has been declared forfeited by the final judgment of any court of competent jurisdiction of this state or to any corporation as to which there is pending any action or proceeding in any of the courts of this state, for the forfeiture of its charter, nor shall this act affect any action or proceeding now pending in any of the courts of this state in relation to any corporation described in Section 1 of this act [§7492-63]. (Jan. 21, 1936, Ex. Ses., c. 59, §4.)

7492–69f. Same—stockholders' remedy under business corporation act.—The provisions of Laws 1933, Chapter 300, Section 39 [§7492-39], shall apply as to rights and remedies of stockholders of such corporations who do not assent to such renewal; provided, that in any case where action is commenced to recover the amount of the value of stock owned by any such non-assenting stockholder, the court may in its discretion, in any order for judgment therefor, require that such amount be paid in one payment or in installments at stated intervals as to the court may seem just and proper, consistent with the best welfare of said non-assenting stockholder, and the ability of said corporation to make such payment or payments. (Jan. 21, 1936, Ex. Ses., c. 59, §5.)

7492–69g. Reorganization of dissolved corporations.—That the creditors, stockholders, or both, of any Minnesota corporation organized and existing in

this state prior to the passage of Chapter 300 of the session laws of Minnesota for the year 1933 which corporations were ordered dissolved by any district court of this state prior to the passage of said Chapter 300 of the Session Laws of 1933 [§§7492-1 to 7492-62] and which were in the hands of a receiver at the time of the passage thereof are hereby authorized to reorganize under and pursuant to Section 54 of said Chapter 300 [§7492-54.] (Jan. 24, 1936, Ex. Ses., c. 84, §1.)

7492–69h. Same—acts legalized.—That any such corporation whose creditors, stockholders, or both, have heretofore voted for a reorganization thereof under any plan submitted to and approved by the district court having jurisdiction over the liquidation, and received a certificate from the Secretary of State recognizing such reorganization, are hereby in all things legalized and validated and all titles to the properties and assets of such corporations real and personal conveyed and transferred by such orders of reorganization of such corporations shall be deemed legal and duly vested in such reorganized corporations as against any claim of invalidity based upon any irregularity in the voting for such reorganization, the failure to conduct such voting by classes of the creditors, stockholders, or both, of such corporations or upon the claim that certain of such creditors, stockholders, or both, may be entitled to preference by reason of stockholders' double liability accruing under former laws of the State of Minnesota. (Jan. 24, 1936, Ex. Ses., c. 84, §2.)

7492–69i. Same—limitation of action to question validity of reorganization.—Any corporations which have complied with the foregoing shall be deemed to have met the requirements of Section 54, Chapter 300 of the Session Laws of Minnesota for the year 1933 [§7492-54], and no action shall be maintained against any such corporations upon the claim of a failure to comply therewith unless such action be brought within 30 days after the time for appeal from the order of reorganization has expired. (Jan. 24, 1936, Ex. Ses., c. 84, §3.)

7492–69j. Same—separability clause.—The provisions of this act shall be construed to be severable and the invalidity of any part hereof shall not affect the validity of the remainder hereof. (Jan. 24, 1936, Ex. Ses., c. 84, §4.)

7492–69k. Same—effective date.—This act shall take effect and shall be in force from and after its passage. (Jan. 24, 1936, Ex. Ses., c. 84, §5.)

7492–69l. Renewal of Corporations having word "trust" in name.—Any corporation heretofore organized under Revised Laws of the State of Minnesota, 1905, Chapter 58, and amendments thereto, whose corporate name at the time of incorporation included the word "trust" in combination with other words, and which has continued to do business in this state under said corporate name for a period of at least 25 years since its incorporation, and whose period of duration has not expired at the time of the passage of this act, and which has accepted and come under, or shall hereafter accept and come under the provisions of Laws 1933, Chapter 300 [§§7492-1 to 7492-62] as amended, may renew its corporate existence with the same corporate name from the date of the expiration of its period of duration for an additional period not exceeding 30 years from and after the time of its expired period of duration, by taking the same proceedings and by paying into the state treasury the same incorporation fees as now provided by law for the renewal of the corporate existence of such corporations in cases where such renewal is made before the end of its period of duration. (Jan. 27, 1936, Ex. Ses., c. 97, §1.)

7492–69m. Same—corporations whose charters have been forfeited.—This act shall not apply to any corporation the charter of which has been declared forfeited by the final judgment of any court of competent jurisdiction of this state, nor to any corporation as to which there is pending any action or proceeding in any of the courts of this state for the forfeiture of its charter, nor shall this act affect any action or proceeding now pending in any of the courts of this state in relation to any corporation described in Section 1 [§7492-65] of this act. (Jan. 27, 1936, Ex. Ses., c. 97, §2.)

7492–69n. Same—Inconsistent acts.—All acts or parts of acts now in effect inconsistent with the provisions of this act are hereby superseded, modified or amended to conform to and give full force and effect to the provisions of this act. (Jan. 27, 1936, Ex. Ses., c. 97, §3.)

UNIFORM STOCK TRANSFER ACT

The Uniform Stock Transfer Act has been adopted by: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Virginia, Washington, Wisconsin.

7492-71. How title to certificates and shares may be transferred.—Title to a certificate and to the shares represented thereby can be transferred only,

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable although the charter of articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent. (Act Apr. 20, 1933, c. 331, §1.)

In action for breach of contract to honor stock purchase warrants issued by corporation complaint alleging refusal to deliver stock was not rendered demurrable by allegation of willingness of plaintiff to accept at the rate of 4 shares for one, $2.50 par value stock in lieu of $10.00 par value stock embraced in the contract, the corporation having reduced the par value from $10.00 to $2.50. Tripp v. N., (CCA8), 100F(2d)188.

The evidence sustains verdict that defendant sold certain of its shares of stock with the provision that, at any time plaintiff demanded, it would be repurchased at par, that plaintiff before suit demanded performance of such provision, and that defendant refused so to do. Thomsen v. U., 198M137, 269NW109. See Dun. Dig. 2041.

Evidence was properly admitted of other sales of stock with the same provision, for repurchase on demand, made with the knowledge and sanction of the president and officials of defendant. Id.

Law of situs of a stock certificate at time of its transfer determines rights of parties to it. American Surety Co. v. C., 200M566, 275NW1. See Dun. Dig. 2043.

Stock certificates are not negotiable at common law and are made negotiable only by operation of Uniform Stock Transfer Act. Id.

An agreement concerning corporate stock requiring monthly payment of installments and delivery of stock as paid for held a contract of sale and not merely an option. Johnson v. K., 285NW715. See Dun. Dig. 8500a.

Agreement not to sue on former contract constituted a good consideration for a contract to purchase corporate stock in installments. Id. See Dun. Dig. 1750.

Uniform stock transfer act. 23MinnLawRev484.

7492-72. Powers of those lacking full legal capacity and of fiduciaries not enlarged.—Nothing in this act shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fidu-

ciary, to make a valid indorsement, assignment or power of attorney. (Act Apr. 20, 1933, c. 331, §2.)

7492-73. Corporation not forbidden to treat registered holder as owner.—Nothing in this act shall be construed as forbidding a corporation,

(a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(b) To hold liable for calls and assessments a person registered on its books as the owner of shares. (Act Apr. 20, 1933, c. 331, §3.)

7492-74. Title derived from certificate extinguishes title derived from a separate document.—The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document. (Act Apr. 20, 1933, c. 331, §4.)

7492-75. Who may deliver a certificate.—The delivery of a certificate to transfer title in accordance with the provisions of Section 1, is effectual, except as provided in Section 7, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title. (Act Apr. 20, 1933, c. 331, §5.)

7492-76. Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity or lack of consideration or authority.—The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in Section 7, though the indorser or transferor,

(a) was induced by fraud, duress or mistake, to make the indorsement or delivery, or

(b) has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or

(c) has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or

(d) has received no consideration. (Act Apr. 20, 1933, c. 331, §6.)

7492-77. Rescission of transfer.—If the indorsement or delivery of a certificate,

(a) was procured by fraud or duress, or

(b) was made under such mistake as to make the indorsement or delivery inequitable; or

If the delivery of a certificate was made

(c) without authority from the owner, or

(d) after the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless:

(1) The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or

(2) The injured person has elected to waive the injury, or has been guilty or laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it. (Act Apr. 20, 1933, c. 331, §7.)

Where officer of corporation selling its own stock agrees without authority to repurchase, buyer is entitled to recover quasi ex contractu money he paid for stock. Seifert v. U., 191M362, 254NW273. See Dun. Dig. 1724, 2115.

Measure of damages in an action for fraud in sale of corporate securities. 23MinnLawRev205.

7492-78. Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession.—Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby. (Act Apr. 20, 1933, c. 331, §8.)

Owner of lost certificate who secured duplicate certificate upon filing proof of ownership and bond with transfer agent, held not liable to surety reserving right to secure its discharge "in the absence or default of the principal," which purchased and surrendered lost certificate upon its reappearance in absence of proof by surety that holder of lost certificate had title thereto so that principal on bond was liable to indemnify transfer agent on failure to acquire and surrender it to transfer agent. American Surety Co. v. C., 200M566, 275NW1. See Dun. Dig. 1896, 2036.

Evidence that holder of lost certificate was innocent purchaser for value without notice held insufficient to establish title of holder under common-law rule which applied in absence of proof of law of situs of lost certificate at time of its transfer to prior holders. Id. See Dun. Dig. 2036.

7492-79. Delivery of unindorsed certificate imposes obligation to indorse.—The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. (Act Apr. 20, 1933, c. 331, §9.)

7492-80. Ineffectual attempt to transfer amounts to a promise to transfer.—An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts. (Act Apr. 20, 1933, c. 331, §10.)

7492-81. Warranties on sale of certificate.—A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants

(a) That the certificate is genuine.

(b) That he has a legal right to transfer it, and

(c) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim. (Act Apr. 20, 1933, c. 331, §11.)

The sale of stock not authorized by registration in accordance with Blue Sky Laws is a fraudulent representation of compliance with the law. Shepard v. C., (DC-Minn), 24FSupp682.

7492-82. No warranty implied from accepting payment of a debt.—A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby. (Act Apr. 20, 1933, c. 331, §12.)

7492-83. No attachment or levy upon shares unless certificate surrender or transfer enjoined.—No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it. (Act Apr. 20, 1933, c. 331, §13.)

Situs of corporate stock under the Uniform Stock Transfer Act for purposes of attachment. 23MinnLaw Rev381.

7492-84. Creditor's remedies to reach certificate.—A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process. (Act Apr. 20, 1933, c. 331, §14.)

7492-85. There shall be no lien or restriction unless indicated on certificate.—There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any by-laws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate. (Act Apr. 20, 1933, c. 331, §15.)

7492-86. Alteration of certificate does not divest title to shares.—The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby. (Act Apr. 20, 1933, c. 331, §16.)

7492-87. Lost or destroyed certificate.—Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issue of a new certificate under an order of the court as provided in this section, shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate. (Act Apr. 20, 1933, c. 331, §17.)

A corporation is obliged to issue a new certificate to one who proves his ownership to a certificate which has been lost or stolen when an indemnity bond is furnished, presumption that holder of a lost certificate is owner thereof being rebutted by filing of such bond and proof with issuing corporation, and if lost certificate is later presented, corporation should withhold recognition of it, and should refer defense of any suit to obligors on bond, and if corporation honors lost certificate without consent of surety and principal, or without judicial determination of title to certificate, then it cannot deny right of holder of duplicate to share in corporation, nor seek indemnity against obligors unless it can prove that holder of lost certificate had good title to it and that corporation was bound to honor it. American Surety Co. v. C., 200M566, 275NW1. See Dun. Dig. 2036.

At common law owner of a lost certificate was estopped to assert his title where, because of negligence or misplaced trust, he clothed with indicia of ownership one who sold it to an innocent purchaser, but owner of stock certificate was not estopped from asserting his title against bona fide purchaser where certificate had been lost or stolen from him. Id. See Dun. Dig. 2043.

7492-88. Rule for cases not provided for by this Act.—In any case not provided for by this act, the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. (Act Apr. 20, 1933, c. 331, §18.)

This act is not authority for transfer without endorsement of a certificate of stock payable to bearer and not to any particular person as owner. American Surety Co. v. C., 200M566, 275NW1. See Dun. Dig. 2043.

Where situs of stock certificate at time of transfer is in another jurisdiction and no proof is made at trial as to law of that jurisdiction, common-law rule applies. Id.

7492-89. Interpretation shall give effect to purpose of uniformity.—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it. (Act Apr. 20, 1933, c. 331, §19.)

7492-90. Definition of indorsement.—A certificate is indorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered. (Act Apr. 20, 1933, c. 331, §20.)

7492-91. Definition of person appearing to be the owner of certificate.—The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect. (Act Apr. 20, 1933, c. 331, §21.)

7492-92. Other definitions.—(1) In this act, unless the context or subject matter otherwise requires—

"Certificate" means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" means a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"State" includes state, territory, district and insular possession of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not. (Act Apr. 20, 1933, c. 331, §22.)

If transfer act is in effect at situs, it will be applied to certificates of corporation domiciled in jurisdictions where that act is in force, but common-law rule applies in any case, whether or not uniform stock transfer act is in effect in situs at time of transfer, to stock certificates issued by a corporation organized in a state where that act has not been adopted. American Surety Co. v. C., 200M566, 275NW1. See Dun. Dig. 2043.

7492-93. Act does not apply to existing certificates.—The provisions of this act apply only to certificates issued after the taking effect of this act. (Act Apr. 20, 1933, c. 331, §23.)

7492-94. Inconsistent legislation repealed.—All acts or parts of acts inconsistent with this act are hereby repealed. (Act Apr. 20, 1933, c. 331, §24.)

7492-95. Time when the act takes effect.—This act shall take effect on the first day of July, one thousand nine hundred and thirty-three. (Act Apr. 20, 1933, c. 331, §25.)

7492-96. Name of act.—This Act may be cited as the Uniform Stock Transfer Act. (Act Apr. 20, 1933, c. 331, §26.)

FOREIGN CORPORATIONS

7493. [Repealed.]

Repealed Apr. 20, 1935, c. 200, §§27, 30, effective Mar. 1, 1936. See §§7495-27, 7495-30, post.

Anderson v. C., 193M443, 258NW743; note under §7494.

Requirement that foreign corporation doing business in the state shall submit to the jurisdiction of its courts is not an unreasonable burden on interstate commerce. 171M87, 314NW12.

A foreign corporation is doing business in the state when its business is such in character and extent as to warrant the inference that it has subjected itself to the jurisdiction and laws of the state. 171M87, 214NW12.

The established policy in this state permits the suing of transitory actions against foreign corporations, regardless of where the cause of action arose, if they may be reached by process. 171M87, 214NW12.

Service upon a foreign railroad company doing business in the state must be had in the manner provided by statute. 176M415, 223NW674.

This section held without application in an action by stockholders of a foreign corporation which has forfeited its charter for the appointment of a receiver and the marshaling of assets and distribution thereof. Lind v. J., 183M239, 236NW317. See Dun. Dig. 2187.

Foreign corporation in purchasing hay held to be doing business in the state. Massee v. C., 184M196, 238NW 327. See Dun. Dig. 2187(58).

One purchasing hay for a foreign corporation for years held an agent upon whom service of summons could be had. Massee v. C., 184M196, 238NW327. See Dun. Dig. 7814(98).

On motion to set aside service of summons, burden of showing that defendant was not present in Minnesota so as to be subject to service of process was upon the defendant. Massee v. C., 184M196, 238NW327.

Numerous unequivocal documents showing that business was that of corporation held to control against testimony of president that he was but transacting his personal business in name of corporation. E. C. Vogt, Inc. v. G., 185M442, 242NW338. See Dun. Dig. 1730a, 3204b.

Purchase and management of several rent producing pieces of real estate constituted "transaction of business," in state. E. C. Vogt, Inc. v. G., 185M442, 242NW 338. See Dun. Dig. 2187.

Where jurisdiction is obtained by state court by attachment or seizure of property of defendant located in state, under valid state law, or where defendant is doing business in state in such a way as to have subjected itself to local jurisdiction, and service of process is made upon an authorized agent there located, question then is not strictly one of initial jurisdiction, but is whether prosecution of suit will so unreasonably interfere with interstate commerce that state court has no right to proceed, and should not be permitted to proceed, further therein. Gloeser v. D., 192M376, 256NW666. See Dun. Dig. 2187, 7814.

Fact that plaintiff is a resident of state in which suit is brought has weight in determining whether suit will unreasonably interfere with interstate commerce, but can generally have no bearing on question of whether defendant corporation was present and doing such business in state as to have subjected itself to jurisdiction of state court. Id. See Dun. Dig. 2187.

General agency maintaining its own office and acting for many steamship companies was not agent of particular company upon whom service of summons could be had, such agency selling tickets but not issuing them. Id. See Dun. Dig. 2187, 7814.

Sections 7493-7495 should receive a strict construction. Flakne v. M., 198M465, 270NW566. See Dun. Dig. 2188.

Policy of state has been to encourage and protect foreign corporations and individuals who make loans and invest money here. Id. See Dun. Dig. 2189.

Foreign corporations licensed to do a life insurance business in this state could invest funds received from policyholders in mortgages and securities as incidental to and part of business of life insurance. Id.

Listing of name of foreign corporation in telephone book does not in and of itself, constitute doing business within the state. Op. Atty. Gen., July 10, 1929.

Appointment of local receiver to marshal and distribute assets of foreign corporation within the state. 16Minn LawRev204.

Jurisdiction of a court to interfere with the internal affairs of a foreign corporation. 18MinnLawRev192.

7494. [Repealed.]

Repealed Apr. 20, 1935, c. 200, §§27, 30, effective Mar. 1, 1936. See §§7495-27, 7495-30, post.

Lind v. J., 183M239, 236NW317; note under §7493.

Gloeser v. D., 192M376, 256NW666; note under §7493.

The Secretary of State, to the extent of the agency granted him by power of attorney filed hereunder, is the duly authorized agent of corporation appointing him for the purpose of receiving service of process. Flour City Ornamental Iron Co. v. G., (USDC-Minn), 21FSupp 112.

Repeal of this section did not vitiate power of attorney previously filed appointing Secretary of State agent to accept service of foreign corporation withdrawing from business within the state. Id.

In suit against a foreign corporation, formerly doing business in the state, involving controversy arising out of business done in Minnesota prior to its withdrawal, service of process on Secretary of State, pursuant to power of attorney filed by such corporation at the time of its withdrawal under this section was valid, though this section was repealed at the time of such service. Id.

License provided for in §§7493, 7494, is not license prescribed by §3996-11, and where a cause of action arises against a foreign corporation while it was licensed to do a brokerage business under §3996-11 and had appointed chairman of securities commission its agent to receive service, it could not be served with process under §7494 where its license to transact business as a foreign corporation was not granted until after cause arose. Anderson v. C., 193M443, 258NW743. See Dun. Dig. 7814.

A listing in a telephone directory does not constitute doing business. Garber v. B., 285NW723. See Dun. Dig. 2188.

That a parent corporation prepared and circulated consolidated balance and earnings statements, showing separate identity, stock ownership and earnings of two corporations does not show that subsidiary was agent or that parent was conducting subsidiary's business. Id. See Dun. Dig. 2188.

If there is a presumption after six years' absence from state of continuance of agency between a parent and subsidiary corporation, standing alone it does not establish jurisdiction of absent parent, since both doing business and presence of an authorized agent in state at time of service of process is necessary. Id. See Dun. Dig. 2188.

Parent foreign corporation of a subsidiary foreign corporation is not doing business in the state by reason of fact that subsidiary is doing business in state, where subsidiary maintains corporate separation from and does not stand in relation of agent to parent. Id. See Dun. Dig. 2188.

Absent consent, state courts may exercise jurisdiction over a foreign corporation if it is doing business in state at time service of summons, but not after it has ceased doing business and withdrawn from state. Id. See Dun. Dig. 2188.

A foreign corporation after it has once entered a state is not bound to remain there, but may withdraw at will. Id. See Dun. Dig. 2188.

Where a foreign corporation does business in state without being licensed or having appointed an official agent for service of process as required by statute, and service of process is not attempted on state official required to be appointed such agent, no question is presented of estoppel to deny such appointment or that doing business in state under circumstances should be deemed such an appointment. Id. See Dun. Dig. 2187.

Service not having been attempted on commissioner of securities or secretary of state as agent for service of process, question of their agency to accept service of process is not in the case so as to affect validity of attempted service upon an alleged agent, doing business in state. Id. See Dun. Dig. 2188.

Purpose of rule that presumption of continuance of an agency once shown to have existed is to attribute to a party responsibility for acts of his alleged agent where another has justifiably acted in reliance on such an agency, and it is doubtful whether agency of an officer or agent of a foreign corporation will be presumed to continue after lapse of six years during which corporation was absent from state. Id. See Dun. Dig. 2188.

7495. [Repealed.]

Repealed Apr. 20, 1935, c. 200, §§27, 30, effective Mar. 1, 1936. See §§7495-27, 7495-30, post.

Contract of foreign corporation to give advertising service, held interstate, and corporation was entitled to sue thereon without compliance with statute. 179M 457, 229NW580.

Where suit is brought against a foreign corporation, whether licensed to do business or not, it has right to defend and interpose a counterclaim, or to meet and defend by cross-complaint and facts shown thereunder. Flakne v. M., 198M465, 270NW566. See Dun. Dig. 2187.

Mortgages taken and contracts entered into by foreign corporations not licensed to do business in this state are not void, and only result is that corporation cannot sue or maintain any action in court to enforce same. Id. See Dun. Dig. 2188.

A foreclosure by advertisement is not a suit or proceeding in court, and a foreign corporation may so foreclose a mortgage held by it even if it has no license to do business in state. Id. See Dun. Dig. 2189.

This section was repealed by Laws 1935, c. 200, and entire subject of foreign corporation doing business in this state is now governed by §7495-1 et seq., and the exception "engaged only in the business of loaning money or investing in securities in this state", which appeared in repealed section, does not appear in current law. Op. Atty. Gen. (92c), August 10, 1939.

7495–1. Definitions.—As used in this act, unless the context otherwise requires: "corporation" shall mean a corporation formed for profit; "domestic corporation" shall mean a corporation formed under the laws of this state; "foreign corporation" shall mean a corporation not formed under the laws of this state but shall not include corporations, which under the constitution and statutes of the United States may transact business in this state without first obtaining a certificate of authority so to do and shall not include insurance companies as the same are defined by Mason's Minnesota Statutes of 1927, Sections 3312 and 3314; "address" shall include the name of the postoffice, street and number if any, or name of building and room or office number therein when customarily used as part of a mailing address; "process" shall mean all statutory notices and demands required or permitted to be served on natural persons or corporations, including the summons in a civil action, and all process which may be issued in any action or proceeding in any court; "articles of incorporation" shall mean the original articles of incorporation, all articles or certificates of amendment thereof, articles of consolidation or merger, and certificates filed or issued in connection with reductions of stated capital. (Act Apr. 20, 1935, c. 200, §1.)

National and state banks organized under laws of other states are not foreign corporations within meaning of this act. Op. Atty. Gen. (92c), June 6, 1935.

Corporation of District of Columbia operating as a federal agency may transact its corporate business as such in Minnesota without qualifying under this act. Op. Atty. Gen. (92c), Sept. 30, 1935.

7495–2. Foreign corporations must have certificate of authority.—No foreign corporation shall transact business in this state unless it holds a certificate of authority so to do; and no foreign corporation whose certificate of authority shall have been revoked or cancelled pursuant to the provisions of this act shall be entitled to obtain a certificate of authority except in accordance with the provisions of Section 19 of this act. (Act Apr. 20, 1935, c. 200, §2.)

Where a foreign corporation took a real estate mortgage while duly licensed to do business in this state, it could foreclose mortgage by advertisement after license expired. Young v. P., 196M403, 265NW278. See Dun. Dig. 2187.

Foreign corporations licensed to do a life insurance business in this state could invest funds received from policyholders in mortgages and securities as incidental to and part of business of life insurance. Flakne v. M., 198M465, 270NW566. See Dun. Dig. 2189.

Mortgages taken and contracts entered into by foreign corporations not licensed to do business in this state are not void, and only result is that corporation cannot sue or maintain any action in court to enforce same. Id.

Foreign corporation dealing in motor vehicles could not be granted a license to sell vehicles in the state under §2686 until it has complied with this section. Op. Atty. Gen. (632a-8), June 10, 1935.

7495–3. Foreign corporations not to do banking business.—No foreign corporation shall transact in this state the business which only a bank, trust company or building and loan association may transact in this state. (Act Apr. 20, 1935, c. 200, §3.)

The exception "engaged only in the business of loaning money or investing in securities in this state", which appeared in the repealed §7495 does not appear in current law. Op. Atty. Gen. (92c), August 10, 1939.

7495–4. Names of corporations.—(a) No certificate of authority shall be issued to a foreign corporation the name of which would be prohibited to a corporation which might then be formed under the provisions of Laws 1933, Chapter 300; provided, that if the name of such corporation does not end with the word "Corporation" or the word "Incorporated", or the abbreviation "Inc.", or does not contain the word "Company", or the abbreviation "Co.", not immediately preceded by the word "and" or the character "&", a certificate of authority may be issued to it if it agrees in its application for a certificate of authority to add at the end of its name the word "Incorporated", or the abbreviation "Inc." in transacting business within this state. The name of such corporation may contain the word "co-operative" if it is a co-operative corporation generally similar to the kind which might then be organized under the laws of this state.

(b) Nothing in this section shall abrogate or limit the law as to unfair competition or unfair practices nor derogate from the common law, the principles of equity, the statutes of this state or of the United States with respect to the right to acquire and protect trade names.

(c) If a foreign corporation does business in this state under a name prohibited by this section, the courts of this state having equity jurisdiction may, upon the application of the state or of any person, unincorporated association or corporation interested or affected, enjoin such foreign corporation from doing business in this state under such name whether or not a certificate of authority shall have been issued to such foreign corporation. (Act Apr. 20, 1935, c. 200, §4.)

7495–5. Requisites of application.—(a) In order to procure a certificate of authority to transact business in this state, a foreign corporation shall make application therefor to the secretary of state which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is organized;

(2) If the name of the corporation does not end with the word "Corporation", or the word "Incorporated" or the abbreviation "Inc.", or does not contain the word "Company" or the abbreviation "Co." not immediately preceded by the word "and" or the character "&", then the name of the corporation with the word or abbreviation which it agrees to add thereto for use in this state;

(3) The date of its incorporation and the period of its duration;

(4) The address of its principal office in the state or country under the laws of which it is organized;

(5) The address of its proposed registered office in this state and the name of its proposed registered agent in this state;

(6) That it irrevocably consents to the service of process upon it as set forth in section 13, of this act, or any amendment thereto;

(7) The names and respective addresses of its directors and officers;

(8) A statement of the aggregate number of shares having par value and of shares without par value which it shall have authority to issue, itemized by classes and series;

(9) A statement of the aggregate number of its issued or allotted shares having par value and of shares without par value, itemized by classes and series; and

(10) A statement that the officers executing the application have been duly authorized so to do by the board of directors of the corporation.

(b) Such application shall be made on forms prescribed and furnished by the secretary of state, and

shall be executed, acknowledged and verified by its president or a vice-president, and by its secretary or an assistant secretary, and delivered to the secretary of state with authenticated copies of its articles of incorporation. (Act Apr. 20, 1935, c. 200, §5.)

7495–6. Initial license fee to be $50.—At the time of making application for a certificate of authority the foreign corporation making such application shall pay to the state treasurer the sum of $50.00 as an initial license fee. (Act Apr. 20, 1935, c. 200, §6.)

Reconstruction Finance Corporation Mortgage Company is a federal agency which is entitled to a certificate of authority without payment of license fee imposed by this section. Op. Atty. Gen. (92c), Oct. 3, 1935.

7495–7. Secretary of state to issue certificate.—(a) If the application be according to law, the secretary of state, when all fees and charges have been paid as required by law, shall file in his office the application and the copy of the articles of incorporation, and shall issue and record a certificate of authority to transact business in this state.

(b) The certificate of authority shall contain the name of the corporation, the state or country of organization, the period of duration of its corporate existence, the address of its registered office in this state and a statement that it is authorized to transact business in this state.

(c) The secretary of state shall thereupon transmit such certificate of authority, together with a fee of one dollar, to the register of deeds of the county in which the registered office of the corporation in this state is situated. The register of deeds shall thereupon record such certificate for such fee. (Act Apr. 20, 1935, c. 200, §7.)

7495–8. Same powers as domestic corporation.—After the issuance of a certificate of authority by the secretary of state and until cancellation or revocation thereof or issuance of a certificate of withdrawal, the corporation shall possess within this state the same rights and privileges that a domestic corporation would possess if organized for the purposes set forth in the articles of incorporation of such foreign corporation pursuant to which its certificate of authority is issued, and shall be subject to the laws of this state. (Act Apr. 20, 1935, c. 200, §8.)

7495–9. Must have office and agent.—Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(a) A registered office which shall be in a county where it has its principal place of business in this state, or if it has no place of business in this state then in any county where it does or proposes to do business;

(b) A registered agent, which agent may be either an individual, resident in this state, whose business office is identical with such registered office, or a corporation having a business office identical with such registered office. (Act Apr. 20, 1935, c. 200, §9.)

7495–10. Same; changes.—A foreign corporation may from time to time change the location and address of its registered office. It may revoke the appointment of a registered agent provided it shall at the same time file an appointment of a new registered agent. It shall appoint a new registered agent in case of vacancy in the office, whether by death, resignation or otherwise, or because of the disqualification or incapacity of its registered agent. Such changes may be made by filing in the office of the secretary of state a statement setting forth:

(a) The name of the corporation;

(b) The address of its registered office;

(c) If the address of its registered office is to be changed, the address to which the registered office is to be changed;

(d) The name of its then registered agent;

(e) If its registered agent is to be changed, the name of its successor registered agent; and

(f) That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed, acknowledged and verified by its president or a vice-president, and by its secretary or an assistant secretary. (Act Apr. 20, 1935, c. 200, §10.)

7495–11. Corporation to file notice of changes.—Each foreign corporation authorized to transact business in this state, whenever its articles of incorporation are amended, whenever its stated capital shall be reduced, or whenever it shall be a party to a statutory merger or consolidation, shall forthwith file in the office of the secretary of state a copy of such amendment or articles of merger or consolidation duly authenticated by the proper officer of the state or country under the laws of which such corporation is organized, or a copy of the instrument with reference to such reduction of stated capital required to be filed or recorded in a public office in the state or country under the laws of which such corporation is organized, duly authenticated by the proper public officer as the case may be. (Act Apr. 11, 1935, c. 200, §11.)

7495–12. Certificate of changes to be recorded.—If a foreign corporation changes the address of its registered office, or changes its name, or changes the duration of its corporate existence, the secretary of state, after instruments with reference to such change shall have been filed in his office, and when all fees and charges have been paid as required by law, shall issue and record an amended certificate of authority, and shall thereupon transmit such certificate, together with a fee of one dollar, to the register of deeds of the county in which the registered office of the corporation in this state is situated. The register of deeds shall thereupon record such certificate for such fee. If the address of its registered office has been changed from one county to another county, then a certified copy of such certificate, together with a fee of one dollar, shall be transmitted by the secretary of state to the register of deeds of the county to which such registered office is changed, and such register of deeds shall thereupon record such certificate for such fee. (Act Apr. 20, 1935, c. 200, §12.)

7495–13. Service of process.—(a) A foreign corporation shall be subject to service of process as follows:

(1) By service thereof on its registered agent.

(2) Whenever any foreign corporation authorized to transact business in this state shall fail to appoint or maintain in this state a registered agent upon whom service of process may be had, or whenever any such registered agent cannot be found at its registered office in this state as shown by the return of the sheriff of the county in which such registered office is situated, or whenever any corporation shall have withdrawn from this state, or whenever the certificate of authority of any foreign corporation shall have been revoked or cancelled, then, and in every such case, service may be made by delivering to and leaving with the secretary of state, or with any deputy or clerk in the corporation department of his office, three copies thereof and a fee of three dollars; provided that after a foreign corporation shall have withdrawn from the state, pursuant to section 16 of this act, or any amendment thereof, service upon such corporation may be made pursuant to the provisions of this section only when based upon a liability or obligation of such corporation incurred within this state or arising out of any business done in this state by such corporation prior to the issuance of a certificate of withdrawal.

(b) In case of service of process upon the secretary of state, he shall immediately cause one copy of such process to be forwarded by registered mail addressed to the corporation so served at its principal office in the state or country under the laws of which

it is organized, and one copy thereof to the agent of such corporation at its registered office in this state, as such addresses appear in the records of the secretary of state; provided, that if the corporation shall have withdrawn from the state in the manner provided by this act, then one copy shall be sent to the address designated for such purpose in the application for withdrawal, instead of the registered office in this state.

(c) If any summons is so served upon the secretary of state, the corporation so served shall have 30 days in which to answer the complaint.

(d) Nothing herein contained shall limit or affect the right to serve any process upon a foreign corporation in any other manner now or hereafter permitted by law.

(e) The secretary of state shall keep a record of all processes served upon him under this section and shall record therein the time of such service and his action with reference thereto. (Act Apr. 20, 1935, c. 200, §13.)

The formal withdrawal and departure from the state of a nonresident corporation licensed to do business here as a foreign corporation and as a dealer in securities tolled the statute, notwithstanding that defendant was amenable to process by service upon Commissioner of Securities as to its security business and upon Secretary of State as to actions arising out of business transacted under its license to do business. Stern v. N., (DC-Minn), 25FSupp948.

Secretary of state has no statutory duty to accept service of process on foreign corporation not licensed to do business in state. Op. Atty. Gen. (385a-3), June 13, 1939.

(d). Secretary of State may receive service of process for foreign corporation appointing him as its agent for that purpose though statute under which such appointment was made has been repealed. Flour City Ornamental Iron Co. v. G., (USDC-Minn), 21FSupp112.

7495–14. Must file report with secretary of state.— (a) Between January 1 and April 1, in each year after 1935, every foreign corporation which holds a certificate of authority shall make and file with the secretary of state a report for the next preceding calendar year, setting forth:

(1) The name of the corporation and the state or country under the laws of which it is organized;

(2) If the name of the corporation does not end with the word "Corporation" or the word "Incorporated", or the abbreviation "Inc.", or does not contain the word "Company" or the abbreviation "Co.", not immediately preceded by the word "and" or the character "&", then the name of the corporation with the word or abbreviation which it has agreed to add thereto for use in this state;

(3) The date of its incorporation and the period of its duration;

(4) The address of its principal office in the state or country under the laws of which it is organized;

(5) The address of its registered office in this state and the name of its registered agent at such address;

(6) The names and respective addresses of its directors and officers;

(7) A statement of the aggregate number of shares having par value and of shares without par value which it has authority to issue, itemized by classes and series;

(8) A statement of the aggregate number of its issued or allotted shares having par value and of shares without par value, itemized by classes and series;

(9) A statement expressing in dollars (1) the value of all the property owned by the corporation wherever located, and (2) the value of all its property located within this state;

(10) A statement expressing in dollars (1) the gross receipts of the corporation in such calendar year derived from its business operations wherever transacted, and (2) the gross receipts of the corporation in such calendar year derived from its business operations transacted in whole or in part within this state; and

(11) Such additional information as may be necessary or appropriate to enable the secretary of state to determine the additional license fee, if any, payable by such corporation.

The information required by clauses seven to nine of this subdivision shall be given as of the close of the next preceding calendar year.

(b) If all the property of the corporation at the close of the next preceding calendar year was located in this state and all its business in such calendar year was transacted within this state, or if the corporation shall have paid a license fee to the state of Minnesota on the total amount of its issued or allotted shares, the corporation may so state in its report and omit the statements required by clauses (9) and (10), subdivision (a) of this section.

(c) Such annual report shall be made on forms prescribed by the Secretary of State, in two separable parts, one part setting forth the facts required by clauses (1) to (8), and the other part the facts required by clauses (9), (10) and (11), of subdivision (a) of this section, such report shall be executed, acknowledged and verified by the president or vice-president and by the treasurer, an assistant treasurer, secretary or an assistant secretary of the corporation, or, if the corporation is in the hands of a receiver or trustee, such report shall be executed on behalf of the corporation and verified by such receiver or trustee.

(d) If the secretary of state finds that such annual report conforms to the requirements of this act, he shall file the same. If he finds that it does not so conform he shall return the same by mail to the corporation, in which event the provisions of section 17 of this act, relating to failure to file such report within the period hereinabove required, shall not apply if such report is made to conform to the requirements of this act and is filed with the secretary of state within 30 days from such return of the report by the secretary of state to the corporation.

(e) It shall be unlawful for the secretary of state or any other public official or employee to divulge or otherwise make known in any manner any of the particulars with reference to the value of the property owned by such corporation or the amount of the gross receipts of such corporation set forth or disclosed as a part of any annual report. Nothing herein shall be construed to prohibit the inspection of the full reports by officials and employees of this state in the performance of their duties with respect to license fees due from the corporation making such report. Any person violating any of the prohibitions of this subdivision shall be guilty of a gross misdemeanor. (Act Apr. 20, 1935, c. 200, §14.)

A foreign corporation organized and operating as a federal agency is not required to make and file with annual report. Op. Atty. Gen. (92c), June 4, 1936.

(8).

Treasury stock held to be "issued or allotted shares". Op. Atty. Gen. (92a-24), March 28, 1939.

7495–15. Secretary of state to fix license fee.— The secretary of state shall ascertain the license fee which under then existing laws a domestic corporation then organized would be required to pay if it had authorized shares of the same kind and amount as the issued or allotted shares of such foreign corporation shown by such filed report. Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the property of such corporation located in this state and the gross receipts of the corporation derived from its business transacted within this state, and the denominator of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and the denominator of such fraction shall be determined from the annual report filed by such corporation. From the product of such mulitplication there shall be deducted the aggregate amount of license fees theretofore paid by such corporation, and the

remainder, if any, shall be the amount of additional license fee to be paid by such corporation. The secretary of state shall enter the amount of any such additional license fee with the name of the corporation in a record to be kept by him, and shall mail a notice of the amount of such additional license fee to such corporation at its registered office in this state. Such additional license fee shall be paid by such corporation to the state treasurer within 30 days after the mailing by the secretary of state of such notice. When paid, the state treasurer shall file a duplicate receipt therefor with the secretary of state. (Act Apr. 20, 1935, c. 200, §15.)

Where charter of foreign corporation expired in 1930, it having paid a total of $5,460 in license fees up to that time, and it thereafter renewed its corporate existence and paid therefor a license fee of $3,425, the amount deductible is $3,425 and not $8,885. Op. Atty. Gen. (92c), May 3, 1939.

7495–16. Withdrawal from state.—(a) If a foreign corporation holding a certificate of authority desires to withdraw, it shall file with the secretary of state an application for withdrawal.

(b) The application for withdrawal shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is organized;

(2) That it has no property located in this state and has ceased to transact business therein;

(3) That its board of directors has duly determined to surrender its authority to transact business in this state;

(4) That it revokes the authority of its registered agent in this state to accept service of process;

(5) The address to which the secretary of state shall mail a copy of any process against the corporation that may be served upon him;

(6) That it will pay to the state treasurer the amount of any additional license fees properly found by the secretary of state to be then due from such corporation; and

(7) Such additional information as may be required or demanded by the secretary of state to enable him to determine the additional license fees, if any, payable by such corporation, the determination thereof to be made in the manner provided by section 15 of this act, except that in computing such additional license fee, the amount to be used as the value of the property of the corporation located within this state shall be the highest amount or value of such property at any time in the calendar year in which the application for withdrawal is filed.

(c) The application for withdrawal shall be executed, acknowledged and verified on behalf of the corporation by its president or vice-president, and by its secretary or an assistant secretary, or, if the corporation is in the hands of a receiver or trustee, by such receiver or trustee.

(d) Such applications for withdrawal shall be delivered to the secretary of state. Upon receipt thereof he shall examine the same, and if he finds that it conforms to the provisions of this act he shall, when all license fees, filing fees and other charges have been paid as required by law, file the same in his office and shall issue and record a certificate of withdrawal, and shall thereupon transmit such certificate, together *with a fee of one dollar, to the register of deeds of* the county in which the registered office of the corporation in this state is situated, and the register of deeds shall record such certificate for such fee. Upon the issuance of such certificate, the authority of the corporation to transact business in this state shall cease. (Act Apr. 20, 1935, c. 200, §16.)

7495–17. Revocation of license.—(a) The certificate of authority of a foreign corporation to transact business in this state shall be revoked by the secretary of state if it fails:

(1) To pay any fee due under the provisions of this act;

(2) To designate a registered agent when a vacancy occurs in that office, or when the appointed registered agent becomes disqualified or incapacitated;

(3) To file amendments to its articles of incorporation, articles of reduction of stated capital, or articles of merger or consolidation, as required in section 11 of this act; or

(4) To file an annual report.

(b) When the secretary of state shall find that any such default has occurred, he shall give notice by registered mail to such corporation at its registered office in this state that such default exists and that its certificate of authority will be revoked unless such default shall be cured within 30 days after the mailing of such notice.

(c) The secretary of state shall revoke the certificate of authority of such corporation to do business in this state if such default shall not be cured within such period of 30 days; provided that for good cause shown the secretary of state may enlarge said period from time to time, but the aggregate of such enlargements shall not exceed three months.

(d) Upon revoking such certificate of authority, the secretary of state shall:

(1) Issue a certificate of revocation in duplicate;

(2) Transmit one of such certificates to the register of deeds of the county in which the registered office of the corporation in this state is situated, and the register of deeds shall record the same without any fee therefor;

(3) Mail to such corporation at its principal office in the state or county under the laws of which it is organized a notice of such revocation accompanied by one such certificate and mail to such corporation at its registered office in this state a notice of such revocation.

(e) Upon the issuance of such certificate or revocation, the authority of the corporation to transact business in this state shall cease. (Act Apr. 20, 1935, c. 200, §17.)

A foreign corporation which did not requalify as required by §7495-22 before March 1, 1936, was automatically excluded from doing business in the state, but was not liable for penalties provided by §7495-20(c) in absence of proceeding by state to cancel right to do business and to fix penalty. Op. Atty. Gen. (92c), Jan. 28, 1937.

7495–18. Attorney general to bring action.—(a) Whenever the public interest may require, the attorney general shall bring an action against a foreign corporation to cancel its certificate of authority to transact business in this state upon the ground that:

(1) The certificate of authority was procured through fraud practised upon the state;

(2) The certificate of authority should not have been issued to the corporation under this act;

(3) The certificate of authority was procured without a substantial compliance with the conditions prescribed by this act as precedent or essential to its issuance;

(4) The corporation has offended against any provisions of the statutes regulating corporations, or has abused or usurped corporate privileges or powers;

(5) The corporation is knowingly and persistently violating any provision of law; or

(6) The corporation has done or omitted any act which amounts to a surrender of its certificate of authority.

(b) If the ground for the action is an act which the corporation has done or omitted to do, and it appears probable that correction can be made, then such action shall not be instituted, unless the attorney general shall give notice to such corporation by registered mail at its registered office in this state that such default or violation exists, and that an action to cancel its certificate of authority will be begun unless such default shall be cured or such violation discontinued within 30 days after the mailing of such notice. Such action shall be begun by the attorney general if such default shall not be cured, or such violation discontinued, within such period of 30 days; provided that for good cause shown the attorney general may enlarge said period from time to time, but the aggregate of such enlargements shall not exceed three months.

(c) The attorney general shall cause two certified copies of the judgment cancelling a certificate of authority to be delivered to the secretary of state. The secretary of state shall file one copy in his office, and shall transmit the other copy to the register of deeds of the county in which the registered office of the corporation in this state is situated. The register of deeds shall record the same without any fee therefor. (Act Apr. 20, 1935, c. 200, §18.)

7495–19. Application for reinstatement.—(a) Any foreign corporation whose certificate of authority to do business in this state shall have been revoked or cancelled may file with the secretary of state an application for reinstatement. Such application shall be on forms prescribed by the secretary of state, shall contain all the matters required to be set forth in an original application for a certificate of authority, and such other pertinent information as may be required by the secretary of state.

(b) If the certificate of authority was revoked by the secretary of state pursuant to section 17 of this act, the corporation shall pay to the state treasurer $100.00 before it may be reinstated.

(c) If the certificate of authority was cancelled by a judgment pursuant to section 18 of this act, the corporation shall pay to the state treasurer $500.00 before it may be reinstated.

(d) Upon the filing of such application and upon payment of all penalties, fees and charges required by law, not including, however, an initial license fee or additional license fees to the extent that the same have theretofore been paid by such corporation, the secretary of state shall reinstate the license of such corporation, and shall issue and record a certificate of reinstatement and shall transmit such certificate, together with a fee of one dollar, to the register of deeds of the county in which the registered office of the corporation in this state is situated. The register of deeds shall record such certificate for such fee. (Act Apr. 20, 1935, c. 200, §19.)

7495–20. Foreign corporation may not maintain action unless licensed.—(a) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain an action in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall an action be maintained in any court by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in this state until a certificate of authority to transact business in this state shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets; provided that if such assignee shall be a purchaser without actual notice of such violation by the corporation, recovery may be had to an amount not greater than the purchase price; and provided further that this section shall not be construed to alter the rules applicable to a holder in due course of a negotiable instrument.

(b) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state does not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action in any court of this state.

(c) Any foreign corporation which transacts business in this state without a certificate of authority shall forfeit and pay to this state a penalty not exceeding $1000.00 and an additional penalty not exceeding $100.00 for each month or fraction thereof during which it shall continue to transact business in this state without a certificate of authority therefor. Such penalties may be recovered in the district court of any county in which such foreign corporation has done business or has property or has a place of business, by an action in the name of the state brought by the attorney general. (Act Apr. 20, 1935, c. 200, §20.)

Foreign corporation not within purview of any state statute may voluntarily submit to the jurisdiction of the courts of the state. Flour City Ornamental Iron Co. v. G., (USDC-Minn), 21FSupp112.

Where suit is brought against a foreign corporation, whether licensed to do business or not, it has right to defend and interpose a counterclaim or to meet and defend by cross-complaint and facts shown thereunder. Flakne v. M., 198M465, 270NW566. See Dun. Dig. 2188.

A foreclosure by advertisement is not a suit or proceeding in court, and a foreign corporation may so foreclose a mortgage held by it even if it has no license to do business in state. Id. See Dun. Dig. 2189.

(c).

A foreign corporation which did not requalify as required by §7495-22 before March 1, 1936, was automatically excluded from doing business in the state, but was not liable for penalties provided by §7495-20(c) in absence of proceeding by state to cancel right to do business and to fix penalty. Op. Atty. Gen. (92c), Jan. 28, 1937.

7495–21. Fees.—(a) The secretary of state shall charge and receive the following fees for the following services:

(1) For filing an application for a certificate of authority, five dollars;

(2) For filing an annual report, five dollars;

(3) For filing articles of amendment or an instrument evidencing a reduction of stated capital, or a merger or consolidation, two dollars;

(4) For filing application for withdrawal and final report, five dollars;

(5) For filing a change of address of registered office or revocation or change of appointment of a registered agent, one dollar;

(6) For filing an application for reinstatement of a certificate of authority, five dollars;

(7) For issuing any certificate pursuant to the provisions of this act, two dollars.

(b) In addition thereto, in each instance in which he is required by this act to transmit a certificate to a register of deeds for record, the secretary of state shall charge and receive one dollar for recording such certificate with the register of deeds. (Act Apr. 20, 1935, c. 200, §21.)

7495–22. Applicable to present corporations.—(a) Except as in this section otherwise provided, this act shall be applicable to all foreign corporations heretofore or hereafter transacting business in this state.

(b) Licenses to foreign corporations to do business in this state existing on the effective date of this act shall continue in full force and effect until March 1, 1936, and shall then terminate without further act.

(c) Any foreign corporation, which on the effective date of this act holds a valid license to do business in this state, may at any time prior to March 1, 1936, deliver to the secretary of state the instruments which it would be required under the provisions of this act to deliver to him if such corporation were then originally applying for a certificate of authority to transact business in this state, omitting, however, any of such instruments already on file or of record in the office of the secretary of state. If all of such instruments would, according to law, entitle such foreign corporation, upon payment of all fees and charges required by law, to a certificate of authority to transact business in this state, the secretary of state, without requiring payment of an initial license fee, shall file in his office all such instruments as are not already filed there, shall issue and record a certificate of authority, and shall transmit the same to the register of deeds of the county in which the registered office of such corporation in this state is situated, together with a fee of one dollar, and the register of deeds shall record the same for such fee. Upon issuance of such certificate of authority such foreign corporation shall possess the same rights and privileges that a foreign corporation originally obtaining a similar certificate of authority would possess under this act.

(d) Any foreign corporation licensed to transact business in this state when this act becomes effective, which thereafter obtains a certificate of authority

pursuant to the provisions of this section may continue to transact business in this state pursuant to such certificate of authority using the name under which it is, on the effective date of this act, licensed to transact business in this state, whether or not the use of such name is in violation of the provisions of section 4 of this act.

(e) Nothing herein contained shall be construed to exempt such foreign corporation from the obligation of making annual reports and paying additional license fees in accordance with the provisions of this act.

(f) In computing any additional license fees for such corporation there shall be credited all license fees paid by such corporation to this state under this act and under any prior laws relating to the admission of foreign corporations to do business in this state. (Act Apr. 20, 1935, c. 200, §22.)

A foreign corporation which did not requalify as required by §7495-22 before March 1, 1936, was automatically excluded from doing business in the state, but was not liable for penalties provided by §7495-20(c) in absence of proceeding by state to cancel right to do business and to fix penalty. Op. Atty. Gen. (92c), Jan. 28, 1937.

7495–23. Prima facie effect of certificates.—(a) Any certificate issued by the secretary of state pursuant to the provisions of this act, and copies of such certificates certified by him, shall be prima facie evidence of the matters stated therein and, except certificates issued pursuant to paragraph (b) of this section, may be recorded in the office of the register of deeds of any county in this state.

(b) A certificate of the secretary of state to the effect that a foreign corporation is not authorized to transact business in this state shall be prima facie evidence of the facts therein stated. (Act Apr. 20, 1935, c. 200, §23.)

7495–24. Provisions severable.—The invalidity of any part of this act shall not affect the validity of any other part thereof which can be given effect without such invalid part. (Act Apr. 20, 1935, c. 200, §24.)

7495–25. Minnesota Foreign Corporation Act.—This act may be cited as the Minnesota Foreign Corporation Act. (Act Apr. 20, 1935, c. 200, §25.)

7495–26. May amend act.—The state hereby fully reserves the right to alter, amend or repeal the several provisions of this act, and all rights and privileges granted or extended hereunder shall be subject to such reserved right. (Act Apr. 20, 1935, c. 200, §26.)

7495–27. Laws repealed.—Mason's Minnesota Statutes of 1927, sections 7493, 7494 and 7495 are hereby repealed, reserving to the state, however, all rights to recover fines for violations thereof occurring prior to the effective date of this section and reserving all rights of parties to any action pending in this state at the effective date of this section. (Act Apr. 20, 1935, c. 200, §27.)

7495–28. Not to do business under former laws.—No foreign corporation shall hereafter be licensed to do business in this state pursuant to the provisions of Mason's Minnesota Statutes of 1927, Sections 7493, 7494, or 7495. (Act Apr. 20, 1935, c. 200, §28.)

7495–29. Appropriation.—There is hereby appropriated to the secretary of state out of any moneys in the revenue fund of the state treasury, available forthwith, the sum of $2000.00, or so much thereof as may be required during the current biennium to administer this act. (Act Apr. 20, 1935, c. 200, §29.)

7495–30. Date effective.—This act shall take effect from and after its passage except that section 27 of this act shall take effect March 1, 1936. (Act Apr. 20, 1935, c. 200, §30.)

PUBLIC SERVICE CORPORATIONS IN GENERAL

7501-11. Sale and lease of air rights.—That before any air rights over or affecting the property or easements of any railway company or other public utility company are leased, sold, acquired or used, application shall be made to the Board of Railroad and Warehouse Commissioners for permission to acquire or use such rights and the said Board of Railroad and Warehouse Commissioners is hereby authorized to hear said application and to determine whether or not such permission shall be granted. Provided, however, that in all cases where said air rights are within the corporate limits of cities of the first class, said rights shall only be acquired, held or used with the consent of the common council or other governing body of such city. (Act Apr. 21, 1931, c. 300.)

RAILROAD CORPORATIONS

7502. Right of way over state lands.

Railroad taking possession of land for spur tracks and station grounds under this section, held to have acquired an equitable title as against a subsequent purchaser from the state, though the patent to the railroad company misdescribed the land. 179M110, 228NW548.

7503. Plat—Payment—Conveyance—Reservation of minerals—New right of way.

Railroad taking possession of land for spur tracks and station grounds under this section held to have acquired an equitable title as against a subsequent purchaser from the state, though the patent to the railroad company misdescribed the land. 179M110, 228NW548.

7513. Mortgages and deeds of trust.

One holding claim upon which a tort action has been commenced against a receiver of a railway company, is not entitled to share ahead of the mortgage lien-holders in the residue remaining from a sale of the railway property. 177M584, 225NW919.

7517. Record—Notice.

Gen. St. 1878, c. 34, §§71-73, held not to render the record of a railroad mortgage applicable to after-acquired property. 33F(2d)512.

7518. Preferred and special stock and income certificates.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62.

7522. Unpaid and fictitious stock.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62.

7524. Connection with other roads.

There was no authority and no public necessity for the condemnation of an easement for an electric power line through Jay Cooke State Park. 177M343, 225 NW164.

7526. Power to acquire property.

In condemning upland abutting on river for railroad bridge, railroad was liable to power company owning such abutting land for damages to its riparian rights, and power company was not liable for damages to piers of the bridge from construction of a dam, where the railroad constructed the bridge without acquiring abutting land and by trespassing upon the riparian rights of the power company. Pike Rapids Power Co. v. M., (CCA 8), 99F(2d)902.

A public service corporation authorized to condemn private property for public purposes may take riparian rights upon making just compensation, and a condemnation by a railroad of the upland abutting upon water embraces, without mention in the description, all incidental riparian rights appurtenant to the estate. Id.

7535. Right of eminent domain in certain cases.

There was no authority and no public necessity for the condemnation of an easement for an electric power line through Jay Cooke State Park. 177M343, 225NW164.

7536. Use of public roads—Restriction.

Movement of grain separator over highway, held "ordinary travel," and whether power company was negligent in permitting sagging wire and whether plaintiff, a farmer, was guilty of contributory negligence in attempting to raise the wire to permit the passage of the separator, held questions for the jury. Interstate Power Co. v. T., (CCA8), 51F(2d)964.

Compliance with this section by power company does not as matter of law absolve it from negligence. 179M 46, 228NW342.

One using high tension wires in transmission of electric power must exercise ordinary care to prevent injury to others; and this means diligence commensurate with dangers reasonably to be apprehended. Faribault v. N., 188M514, 247NW680. See Dun. Dig. 2996(29).

If one maintains high tension wires in such manner that in exercise of reasonable care he should anticipate injury is likely to result to another, he is liable though he could not have anticipated particular injury which did occur. Id. See Dun. Dig. 2996.

Whether power company was negligent as to house mover who came into contact with live electric wire held for jury. Id.

Section does not prevent finding of actual negligence in power company where house mover was killed by coming in contact with overhead wire. Id.

In action for death by electrocution, evidence held to justify finding that insulation on wire was in normal condition and sufficient to withstand more than 115 volts and that power company contracting to supply 115 volts was negligent in permitting current of 2300 volts. Baumann v. I., 190M468, 252NW222. See Dun. Dig. 2996.

Evidence held to sustain finding that one electrocuted by coming in contact with insulated wire was not guilty of contributory negligence. Id.

Doctrine of res ipsa loquitor applies where one was killed by coming in contact with properly insulated wire to which defendant power company had contracted to supply 115 volts. Id. See Dun. Dig. 2996(31).

Law requires that those dealing in electricity should be held accountable to all whose likelihood of injury could reasonably be foreseen, and res ipsa loquitur rule may be applied. Anderson v. E., 197M144, 266NW702. See Dun. Dig. 2996.

In action by farmer coming into contact with uninsulated electric wire, negligence and contributory negligence were for jury. Id.

In action for death of one electrocuted while attaching a sign to a village power pole, negligence of village could be found in failure to properly warn deceased of danger to which he was exposed in hanging sign, due to proximity of high tension line. Theisen v. M., 200M515, 274NW617. See Dun. Dig. 2996f.

Measurements did not demonstrate that plaintiff's injury was not caused by being swept off a load of hay upon which he was riding by a telephone wire of defendant, negligently permitted to hang unreasonably low over plaintiff's indrive. Nelson v. G., 201M198, 275NW612. See Dun. Dig. 9594.

In action against power company to recover money paid in connection with contract for extension of power line, evidence held insufficient to show oral modification of written contract to effect that money paid would be returned with interest within ten years. Slawson v. N., 201M313, 276NW275. See Dun. Dig. 2996d.

Power company was not bound to anticipate or foresee that a boy would make material alterations in loose wire peculiar and personal to his own purpose and as so changed to use it as a means of ascending pole, thereby enabling him to come into contact with high tension wires nearly twenty-one feet above ground. Keep v. O., 201M475, 277NW213. See Dun. Dig. 2996.

Evidence held not to warrant finding that place where defendant maintained its power line was playground for children, same being in location used for raising of cultivated crops at time of plaintiff's injury and used for pasture purposes. Id.

Those who transmit high voltage electricity are required to exercise a degree of care to guard against injury commensurate with the danger to be apprehended but are not insurers against injury. Id.

Jury could find that power company was guilty of negligence in so maintaining a light mast that it could be pulled into contact with a high power line by any curious person pulling on cable that supported arm. Ekdahl v. M., 203M374, 281NW517. See Dun. Dig. 2996.

In transmitting a high voltage current of electricity care commensurate with danger of its escape is required. Id. See Dun. Dig. 2996(29).

Whether electric power pole with mast arm and cable, within easy reach of youth of 15 years of age, was an alluring attraction or attractive nuisance, nuisance consisting in concealed death dealing danger of cable contacting high voltage transmission wire, held for jury. Id. See Dun. Dig. 6989.

In action for injuries to one touching cable supporting street lamp, testimony that certain guy wires on pole had insulators should have been stricken, but was harmless since it did show that those who erected pole had some desire to prevent deadly current from escaping. Schorr v. M., 203M384, 281NW523. See Dun. Dig. 3241.

A boy who ran to aid of another boy who had disconnected cable supporting street lamp following his cry for help was not guilty of contributory negligence where his object in touching cable was only for purpose of saving defendant's property from injury. Id. See Dun. Dig. 7025.

In action for damages for personal injuries to a boy burned by electricity when taking hold of a cable which came in contact with a high power line, court properly permitted plaintiff to show customary practice of insulating non-current metallic wires on power poles that came within reach of person standing on the ground. Id. See Dun. Dig. 7049.

It is the uncompensated duty of a telephone company to properly trim trees which interfere with its wires, and city should not undertake this work at its own expense. Op. Atty. Gen., Feb. 24, 1931.

A reservation by dedicator of streets of exclusive right to lay and operate mains, wires, poles, and pipes, is void and of no effect. Op. Atty. Gen., Nov. 21, 1931.

County is under no obligation to pay telephone company for temporarily removing pole line from right of way of county road under construction. Op. Atty. Gen., July 26, 1932.

Reservation in deed of street of exclusive right to use for waterworks system is absolutely void. Op. Atty. Gen., Aug. 22, 1933.

A power or light company may construct and maintain their lines along public highways of a township without first obtaining a permit from the township and without paying for the privilege, though town board may make reasonable regulations as to location of lines. Op. Atty. Gen. (624c-14), June 7, 1935.

One village council may bind subsequent councils to either grant extension of electric franchise or pay portion of cost of white way constructed by a private utility. Op. Atty. Gen. (707b-14), Oct. 31, 1936.

Procedural effect of res ipsa loquitur. 20MinnLawRev 241.

Permit from governmental subdivision is not a condition precedent to installation of electric light or power lines upon public highways, except in cities and villages, and county commissioner cannot require that poles be placed on line 32 feet from center line of road where that would cause cross-arms to extend over private property. Op. Atty. Gen. (624c-14), July 30, 1937.

Township may vacate township road which has been rendered useless for public travel by reason of construction of a state highway without becoming liable for damages to a power company maintaining a line on such road. Op. Atty. Gen. (624c-14), Jan. 27, 1939.

Section empowers rural electrification project to trim and cut trees up to property line, but right of property owner should not be unnecessarily infringed upon. Op. Atty. Gen. (98a-28), April 4, 1939.

Village may enforce reasonable regulations requiring public service corporation to change location of poles in a street. Op. Atty. Gen. (98a-12), June 5, 1939.

County was liable to telephone company for negligence of its employees in setting fire to poles while burning weeds on county aid road. Op. Atty. Gen., (125a-29), June 30, 1939.

TELEGRAPH AND TELEPHONE COMPANIES

7548. Liability for damages.

Interstate business of telegraph and telephone companies comes under the federal law regulating commerce. (Mason's Code, Title 49, chap. 1.) 173M424, 217NW486.

BOOM COMPANIES

7552. Corporations for driving logs, etc.

The Pigeon River company had power to improve the Pigeon River and to charge tolls for the use of the river as improved in the floatation of logs, the exercise of such power not being violative of federal statutes or treaties with Great Britain. Pigeon River L. S. & B. Co. v. C., 291US138, 54SCR361, rev'g 63F(2d)467. Jurisdiction noted 54SCR55. See Dun. Dig. 10155.

CEMETERY ASSOCIATIONS

7557. Existing and new cemeteries, how governed.

Laws 1931, c. 46, legalizes incorporations under G. S. 1894, title 2, c. 34.

Renewal of existence of certain cemetery associations. Laws 1939, c. 177.

Cemetery association is authorized to make and dispose of wooden and concrete vaults to its lot owners exclusively within its own cemetery, not for purpose of financial gain or profit, but solely as a means to render service owed as a cemetery organization. State v. Lakewood Cemetery, 197M501, 267NW510. See Dun. Dig. 1386.

A body lawfully buried cannot be disinterred and removed without the consent of the persons entitled to the possession thereof. Op. Atty. Gen., July 17, 1931.

Cemetery association may not be incorporated under §7834 but must be incorporated under §7557. Op. Atty. Gen. (93b-40), Apr. 19, 1937.

7558. Cemetery associations.—A corporation or association may be formed for the purpose of procuring and holding or selling lands or lots exclusively for the purpose of 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. It may also sell and convey cemetery lots or sell and convey real or personal property lawfully acquired by such association or corporation but not needed for cemetery purposes. Such corporation may be formed by three or more persons who shall execute and verify the certificate or articles of incorporation as required in the matter of the formation of other corporations under the provisions of this chapter. Such certificate of incorporation shall be filed for record in the office of the register of deeds of the county wherein such cemetery is situated and thereupon such association

shall become a corporation. All cemeteries hereafter started or established except cemeteries established by religious corporations are hereby declared to be public cemeteries within the provisions of this act.

Any cemetery lands and property or public burial ground now or hereafter owned or controlled by any town, village or city of this state may be transferred by such town, village or city, by deed or otherwise, to any cemetery association or corporation formed or organized under the terms of this act or heretofore existing, and such transfer may be with or without condition as shall be determined by such town, village or city as the case may be; such town, city or village may as a part of such transaction enter into contract or agreement with such cemetery association providing for the management and manner of maintaining, keeping and caring for such cemetery, for the sale of lots or lands therein and for such other matters in relation to the care and control thereof as shall be deemed advisable by such town, village or city.

Any cemetery lands or property now or hereafter owned by any religious corporation existing under the laws of this state may be transferred to any cemetery association now in existence or hereafter formed under the laws of this state without any express consideration; and, in such case, the articles of incorporation of such cemetery association may provide for the appointment of its directors or trustees by the board of directors of such religious corporation or by some specified officer thereof, or may be amended to so provide. Any such cemetery association so affiliated with a religious corporation by such a provision in its articles may also provide for the acquisition of other cemetery properties within the State of Minnesota wherein bodies of persons of the same religious faith exclusively are to be buried. (R. L. '05, §2936; '11, c. 385, §1; G. S. '13, §6276; Apr. 8, 1931, c. 119, §1.)

Laws 1931, c. 119, amends this section "by adding thereto a paragraph reading as" above. The amendment, however, sets out the entire section as set forth above.

Cemetery association is authorized to make and dispose of wooden and concrete vaults to its lot owners exclusively within its own cemetery, not for purpose of financial gain or profit, but solely as a means to render service owed as a cemetery organization. State v. Lakewood Cemetery, 197M501, 267NW510. See Dun. Dig. 1386.

7558-1. Certain cemetery associations granted perpetual successions.—In all cases where an attempt has been made in good faith by the citizens or residents of any county or counties in this state to organize a cemetery association pursuant to the laws of this state, and where articles of incorporation have been executed and filed in the office of the register of deeds of such county, prior to the first day of January, 1909, and where the period of duration has been limited and has since expired, and has not been renewed prior to such expiration, and where such association has in good faith entered upon the work of acquiring and maintaining a cemetery and has actually purchased or acquired property for such purpose, which property has ever since been used and maintained as a public cemetery, the association so attempted to be formed is hereby declared to be a duly incorporated public cemetery and body politic, with all the rights, powers and privileges now conferred by law upon public cemetery associations, and such cemetery associations hereby legalized shall have perpetual succession. (Act Apr. 8, 1939, c. 177, §1.)

7558-2. Same—Limitations of act.—This act shall not apply to cemetery associations in counties containing a city of more than 50,000 inhabitants. (Act Apr. 8, 1939, c. 177, §2.)

7559. Officers of cemetery associations to make reports.—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. Such actuary shall also report to the adjutant general, the burial of any veteran of the Civil war, Spanish-American War, China Relief Expedition, Philippine Insurrection, Mexican Border Service, and World War, stating the name of such deceased veteran and the location of his grave in the cemetery by lot number. (R. L. '05, §2937; G. S. '13, §6277; Mar. 8, 1933, c. 65.)

§7561-1. [Superseded.]

Act Mar 20, 1935, c. 56, §1. Superseded by §7561-2.

7561-2. Land may be conveyed to cemetery associations in certain cases.—Whenever any land situated within any town or village in this state, which land heretofore and prior to 1870 has been devoted to and used by the public without restriction as a cemetery, the governing body of the town or village, wherein such lands are situated, is hereby authorized to convey such lands to any cemetery association, organized for the purpose of acquiring said lands for cemetery purposes, upon such terms as such governing body may deem advisable. (Mar. 2, 1937, c. 45, §1.)

Sec. 2 of Act Mar. 2, 1937, cited, provides that the Act shall take effect from its passage.

7561-3 to 7561-7. [Repealed Mar. 18, 1939, c. 71.]

7562. Sale of lots.

Speaking generally, a village cannot remove bodies from a cemetery plot owned by it on account of failure to pay purchase price. Op. Atty. Gen. (870j), Jan. 3, 1936.

Act of Apr. 14, 1937, c. 207.

Body may not be removed without consent of nearest of kin, notwithstanding lot has not been paid for. Op. Atty. Gen. (870d), July 12, 1939.

7569. Lots inalienable—Conveyance.

Town may sell blocks of cemetery lots to fraternal organization which in turn resells them individually without profit to its members. Op. Atty. Gen. (870f), Dec. 13, 1938.

7581. [Repealed.]

Repealed Mar. 29, 1935, c. 72, §196, post §8992-196, effective July 1, 1935, 12:01 a. m.

See §8992-26.

As a matter of practice relatives of deceased person, if any, are permitted to be buried in property which has reverted to association for want of a descendant. Op. Atty. Gen. (870d), July 12, 1939.

7594-1. Permanent care and improvement fund—Etc.

Fund may be used for "drainage" of cemetery. Op. Atty. Gen. (870k), Sept. 28, 1938.

7594-9. Same—Investment of funds.

Fund in hands of county treasurer is permanent and may not be withdrawn or invested except in accordance with provisions of act. Op. Atty. Gen. (870k), Oct. 15, 1935.

7610. Cemetery associations permitted to amend articles of incorporation.—The board of trustees of any cemetery association, organized under the laws of this state which has established and is now maintaining a public cemetery in this state may, by resolution duly adopted by at least a two-thirds vote of its members at any authorized meeting of said board, amend its certificate or articles of incorporation in any or all of the following particulars;

(1) By providing for a board of associates, the number composing such board, the time and manner of their election and by whom they shall be elected, their term of office, their powers and duties and for the division of such board into classes, if it is so desired, with respect to the time for which they shall severally hold office.

(2) By specifying the names and addresses of the members of the first board of associates and their term of office.

(3) By providing that the management of the affairs of the said association may be vested in a board of not more than nine trustees and that such trustees may be divided into classes in respect to the time for which they shall severally hold office, or, if it is so stated, that only one trustee need be elected each year.

(4) By providing the time and manner of election of the trustees and specifying whether such trustees shall be elected by the owners of lots in the cemetery of such association, either from among themselves or from among the board of associates, or by the existing trustees from among lot owners or from among a board of associates, or by the board of associates from their own number or from the retiring trustees.

(5) By providing that any vacancy in the board of trustees, caused by death, resignation or otherwise, may be filled by the board of trustees for the unexpired term.

(6) By specifying the names and addresses of the first board of trustees and the time for which they shall severally hold office.

(7) By providing that the trustees may elect officers of the association and that the duties of such officers may be defined by the by-laws.

(8) By providing that the trustees may adopt by-laws and promulgate rules and regulations with respect to the cemetery of such association.

(9) By providing that the duration of the association shall be perpetual or for a fixed period of time.

(10) By any other lawful provision defining and regulating the power or business of such association and the powers and duties of its officers, trustees, associates and lot owners. (As amended Feb. 17, 1939, c. 21.)

Cemetery association is authorized to make and dispose of wooden and concrete vaults to its lot owners exclusively within its own cemetery, not for purpose of financial gain or profit, but solely as a means to render service owed as a cemetery organization. State v. Lakewood Cemetery, 197M501, 267NW510.

7614. Permanent care and improvement fund—Etc.

Where during bank holiday as a condition to continuing in business a bank reorganized and questionable securities were removed from assets and transferred to a trustee who made distribution but had on hand a substantial sum in unclaimed dividends, commissioner of banks had no official duty to perform in regard thereto, unclaimed dividends being in hands of a trustee appointed under a trust agreement and subject to supervision of district court under §8100, and not being subject to §7614, and not dormant or abandoned within meaning of §7658-21, the pertinent statute being §7306, requiring payment of unclaimed dividends into court for benefit of persons entitled thereto. Op. Atty. Gen. (29B-14), August 21, 1939.

7617. Principal to remain inviolate and to be invested in certain securities.

Cemetery association is authorized to make and dispose of wooden and concrete vaults to its lot owners exclusively within its own cemetery, not for purpose of financial gain or profit, but solely as a means to render service owed as a cemetery organization. State v. Lakewood Cemetery, 197M501, 267NW510. See Dun. Dig. 1386.

PRIVATE CEMETERIES

7625. Plat and record.

County board has authority to set aside part of poor farm for burial ground for poor. Op. Atty. Gen., May 17, 1933.

FINANCIAL CORPORATIONS

GENERAL PROVISIONS

7635. Financial corporations defined.

State v. Crookston Trust Co., 203M512, 282NW138; note under §7732.

Definition of building and loan association has not been changed. Minn. Bldg. & Loan Ass'n v. C., 182M452, 234NW872. See Dun. Dig. 1163(32).

A state bank had no authority to become a depositary to hold bonds issued by a hospital association, and to issue certificates of deposit to the bondholders, and original certificates of deposit and transfers thereof in books to be kept for that purpose. Op. Atty. Gen., Sept. 16, 1930.

Neither a foreign corporation duly authorized to conduct a safe deposit business nor a domestic corporation, unless a bank or trust company, can conduct a safe deposit business within the state. Op. Atty. Gen., July 6, 1931.

Trust companies are not banks within the meaning of §2394-5, exempting banks from income tax. Op. Atty. Gen. (531d), June 20, 1934.

7636. Bank and savings bank defined—Control of examiner.

A cooperative association could not be organized on a membership basis to accept sums of money for safekeeping and to grant members privilege of withdrawing deposits at any time. Op. Atty. Gen., May 31, 1933.

7637. Word "bank" not to be used unless inspection permitted.

The First Bank Stock Corporation and the Northwest Bancorporation are not "banks" or "mortgage loan companies" within statutes providing for method of taxation of banks. Op. Atty. Gen., Aug. 29, 1930.

7641. Voluntary liquidation. [Repealed Mar. 23, 1939, c. 74, §1, post §7699-31.]

Voluntary liquidation of banks and trust companies. Laws 1939, c. 74, §§2-4.

Transfer of all or a part of assets of a bank to another does not ipso facto dissolve that bank or forfeit its charter, and cessation of business either with or without approval of the commissioner of banks does not of itself terminate corporate existence, but there must be an adjudication to that effect either by judicial sentence or sovereign power. Op. Atty. Gen. (29a-14), August 22, 1939.

7642. Unclaimed dividends on liquidation.

This action covers voluntary as well as judicial liquidation of a financial corporation and requires deposit in treasury of state of unpaid claim, and district court has no jurisdiction to make an order requiring payment of claim. Op. Atty. Gen., Dec. 27, 1933.

7646. Examiner's certificate.

Commissioner of banks may refuse to approve articles of incorporation and name of bank prior to hearing before state securities commission on petition for issuance of bank charter. Op. Atty. Gen., Feb. 21, 1933.

A bank which has transferred all its deposits to another bank may not terminate its existence by merely filing amendment to articles of incorporation shortening term of charter, but should apply to district court for an order of dissolution and obtain certificate from commissioner of banks, that deposit liabilities have been either paid or secured in a manner satisfactory to him. Op. Atty. Gen. (29a-6), July 24, 1936.

7647. By-laws to be filed with examiner.

This section contemplates approval of original by-laws or amendments by the superintendent of banks. Op. Atty. Gen. (29a-13), June 2, 1937.

7651. Trust Companies given power to establish savings department.—No individual, co-partnership 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 bank or safe deposit and trust companies respectively, shall in any manner display or make use of any sign, symbol, token, letterhead, 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 provision are authorized to do; nor shall any such individual, co-partnership or corporation use the words "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. Except that a state bank, or trust company, regularly incorporated and authorized to do business under the laws of this state, may establish and maintain a savings department under the supervision of the superintendent of banks, and may solicit and receive deposits in said savings department and advertise the same as such, and every such trust company having a savings department may use in its name or title in addition to the word "trust," the words "savings" or savings bank." Savings deposits received by any such trust company using the words "Savings" or "Savings Bank" in its name or title shall be invested only in authorized securities as defined by law and such trust company shall keep

on hand, at all times, such securities as deposits in savings banks may be invested in to an amount at least equal to the amount of such deposits and these securities shall be the representative of and the fund for, applicable first and exclusively to the payments of, such savings deposits. Deposits received by such trust company subject to its right to require notice of withdrawal evidenced by pass books shall be deemed savings deposits.

Provided, That any old line life insurance company which does not in any manner display or make use of any sign, symbol, token, letterhead, card, circular or advertisement representing or indicating that it is authorized to transact any business which a savings bank, safe deposit or trust company usually does and which does not attempt to do any such business; and which uses the word "trust" in its name in combination with other words in such a manner that it is apparent that such company is not either a savings bank, safe deposit or trust company and does not attempt to do any of the business which a savings bank, safe deposit or trust company usually does, shall not be prohibited by this act from so using such word "trust" in its name.

Every individual, co-partnership 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. (R. L. '05, §2978; '09, c. 178, §1; G. S. '13, §6340; '15, c. 236, §1; Mar. 21, 1929, c. 77, §1.)

State v. Crookston Trust Co., 203M512, 282NW138; note under §7732.

Neither a foreign corporation duly authorized to conduct a safe deposit business nor a domestic corporation, unless a bank or trust company, can conduct a safe deposit business within the state. Op. Atty. Gen., July 6, 1931.

7656. Financial institutions to file articles with superintendent of banks.

If industrial thrift company is permitted to purchase its own stock and hold it as treasury stock, such company must deduct amount of such stock from its paid-in capital for advertising purposes. Op. Atty. Gen., Jan. 19, 1933.

A bank which has transferred all its deposits to another bank may not terminate its existence by merely filing amendment to articles of incorporation shortening term of charter, but should apply to district court for an order of dissolution and obtain certificate from commissioner of banks that deposit liabilities have been either paid or secured in a manner satisfactory to him. Op. Atty. Gen. (29a-6), July 24, 1936.

7657. Advertisements of financial institutions.—No such financial institution shall directly, indirectly or by inference of any kind, display, represent, hold out or otherwise advertise as its capital, resources, assets or financial strength or ability or availability therefor any capital, resources or assets of any other financial institution or institutions, whether or not such other financial institution or institutions are in any way connected with such financial institution through or by way of a holding company or other corporation or similar structure; nor shall any such financial institution, the capital stock of which is in whole or in part controlled or owned by any such holding company, other corporation or similar structure, display, represent, hold out or otherwise advertise that it is affiliated with or has any other connection with such company, corporation or similar structure other than that which truly and actually exists; and no such financial institution shall advertise as its capital any amount other or greater than the amount of actual paid-in capital, which it shall have at the time of the appearance of such advertisement, and no such financial institution shall advertise in any way the aggregate or individual responsibility or financial worth of its stockholders, or in any manner seek to convey the impression that the financial resources of its stockholders above the limit provided by law are available for the purpose of meeting its liabilities. ('11, c. 323, §2; G. S. '13, §6346; '25, c. 169; Apr. 25, 1931, c. 380.)

7658-1. Definitions.—For the purpose of this act the term "corporation" shall be construed to mean any bank, savings bank, trust company, insurance company, or building and loan association organized under the laws of this State; and the term "agency" shall be construed to mean the Federal Home Loan Bank of the district of which this State is a part, or of an adjoining district if convenience shall so require, or other financial corporation, association or agency created by any Act of Congress. (Act Mar. 20, 1933, c. 101, §1.)

National mortgage association organized under Title 3 of National Housing Act is a financial corporation, association or agency, created by act of Congress within meaning of this section. Op. Atty. Gen. (616e-2), Dec. 28, 1934.

Insurance companies domiciled in Minnesota can invest funds in federal savings and loan associations. Op. Atty. Gen. (249a-12), April 13, 1939.

7658-2. May become members of Federal Home Loan Bank System, etc.—Any corporation is hereby empowered and authorized to become a member of, or stockholder in any such agency and to that end to purchase stock in or securities of or deposit money with such agency and/or to comply with any other conditions of membership or credit; to borrow money from such agency upon such rates of interest, not exceeding the contract rate of interest in this State, and upon such terms and conditions as may be agreed upon by such corporation and such agency for the purpose of making loans, paying withdrawals, paying maturities, paying debts, and for any other purpose not inconsistent with objects of the corporation; and provided further that the aggregate amount of the indebtedness, so incurred by such corporation, which shall be outstanding at any time shall not exceed twenty-five per centum of the then total assets of the corporation; to assign, pledge and hypothecate its bonds, mortgages or other assets, and in the case of building and loan association, to repledge with such agency the shares of stock in such association which any owner thereof may have pledged as collateral security, without obtaining the consent thereunto of such owner, as security for the repayment of the indebtedness so created by such corporation and as evidenced by its note or other evidence of indebtedness given for such borrowed money; and to do any and all things which shall or may be necessary or convenient in order to comply with and to obtain the benefits of the provisions of any Act of Congress creating such agency, or any amendments thereto. (Act Mar. 20, 1933, c. 101, §2.)

State banks may borrow money on proposed reconstruction finance corporation capital notes and debentures. Op. Atty. Gen., Aug. 12, 1933.

Money borrowed by state bank on reconstruction finance corporation debenture may be considered as additional capital. Id.

Building and loan association may accept bonds issued by home owners' loan corporation in satisfaction of mortgages. Id.

Insurance company may issue capital notes not to exceed 25% of total assets of company. Op. Atty. Gen., Sept. 26, 1933.

7658-3. Banks, etc., to come under provisions of National Housing Act.—Pursuant to such regulations as the commissioner of banks of the state of Minnesota finds to be necessary and proper, banks, savings banks, mutual savings banks, building and loan associations and savings and loan associations, trust companies, trust companies acting as fiduciaries, and other banking institutions subject to the supervision of the commissioner of banks are authorized:

(a) To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are insured by the Federal Housing Administrator, and to obtain such insurance.

(b) To make such loans secured by mortgages on real property which the Federal Housing Administrator has insured or made a commitment to insure and to obtain such insurance. (Mar. 15, 1935, c. 49, §1; Mar. 23, 1937, c. 88, §1.)

(b).
Federal housing administration mortgages are legal investments for savings banks, subject to such regulations as commissioner of banks may see fit to adopt. Op. Atty. Gen. (30-E), August 29, 1939.

7658–4. Laws prescribing type of security not to apply.—No law in this state prescribing the nature, amount or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made shall be deemed to apply to loans, advances of credit or purchases made pursuant to the foregoing paragraphs (a) and (b).

(a) Such institutions may invest in notes or bonds secured by mortgage or trust deed insured pursuant to Section 1 (b) above, [7658-3 (b)] and in securities issued by national mortgage associations.

(b) The notes, bonds and other securities herein made eligible for investment may be used wherever, by statute, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund, is required to be maintained consisting of designated securities. (Mar. 15, 1935, c. 49, §2; Mar. 23, 1937, c. 88, §2.)

Trust agreements or participating certificates secured by first mortgages insured by federal housing administration may be deposited with a lawful corporate trustee and can be accepted as collateral security for county deposit. Op. Atty. Gen. (140f-11), Jan. 18, 1937.

National Housing Act loans are restricted to 25% of capital and surplus, in view of §7677. Op. Atty. Gen. (5331), Mar. 18, 1937.

National Housing Administration first mortgages insured under Title II of the National Housing Act may be accepted as collateral security for state deposits. Op. Atty. Gen. (140f-7), May 11, 1937.

While mortgages of Federal Housing Administration are not authorized securities in fullest sense of that term because not expressly mentioned in §7714, they may be deposited as guarantee fund with commissioner of banks under H. F. 596, if passed by 1939 legislature, on the authority of §7658-4, which is self sufficient. Op. Atty. Gen. (29a-19), Feb. 17, 1939.

F. H. A. mortgages are made eligible by §7658-4 for purposes of §7771. Op. Atty. Gen. (29a), March 29, 1939.

(b).
Surplus reserve village bond funds may be invested in mortgages on real property which federal housing administrator has insured pursuant to National Housing Act. Op. Atty. Gen. (476a-8), May 18, 1937.

7658–5. [Repealed.]

Act Mar. 15, 1935, c. 49, §3. Repealed Mar. 23, 1937, c. 89, §2.

7658–5a. Certain loan companies may insure shares. [Repealed Apr. 21, 1939, c. 391, §51.]

7658–6. Definitions.—The term "banking institution," as used in this Act shall be construed to mean any bank, trust company, bank and trust company, or mutual savings bank, which is now or may hereafter be organized under the laws of the State. (Act Apr. 29, 1935, c. 319, §1.)

7658–7. Banking institutions may take advantage of Federal Banking Act.—Any banking institution now or hereafter organized under the laws of this State is hereby empowered, on the authority of its board of directors, or a majority thereof, to enter into such contracts, incur such obligations and generally to do and perform any and all such acts and things whatsoever as may be necessary or appropriate in order to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights or privileges, which may at any time be available or enure to banking institutions or to their depositors, creditors, stockholders, receivers or liquidators, by virtue of those provisions of Section 8 of the Federal "Banking Acts of 1933" (Sec. 12B of the Federal Reserve Act, as amended [Mason's U. S. Code Anno., title 12, §264]), which establish the Federal Deposit Insurance Corporation and provide for the insurance of deposits, or of any other provisions of that or of any other Act or Resolution of Congress to aid, regulate or safeguard banking institutions and their depositors, including any amendments of the same or any substitutions therefor; and, to subscribe for and acquire any stock, debentures, bonds or other types of securities of the Federal Deposit Insurance Corporation and to comply with the lawful regulations and requirements from time to time issued or made by such Corporation. (Act Apr. 29, 1935, c. 319, §2.)

7658–8. Right of subrogation.—Whenever any banking institution shall have been closed, and said Federal Deposit Insurance Corporation shall have paid or made available for payment the insured deposit liabilities of such closed institution, the Corporation, whether or not it has or shall thereafter become a liquidating agent of such closed institution as hereinafter provided, shall be subrogated by operation of law with like force and effect as if the closed institution were a national bank, to all rights of the owners of such deposits against such closed banking institution in the same manner and to the same extent as now or hereafter necessary to enable the Federal Deposit Insurance Corporation under Federal Law to make insurance payments available to depositors of closed insured banks; provided, that the rights of depositors and other creditors of such closed institution shall be determined in accordance with the laws of this state. The Commissioner of Banks may in his discretion in the event of the closing of any banking institution by reason of inability to meet the demands of its depositors, the deposits of which banking institution are to any extent insured by said Corporation, tender to said Corporation the appointment as liquidating agent of such banking institution, and if the Corporation accepts such appointment it shall have and possess all the powers and privileges provided by the laws of this state with respect to a special deputy examiner of the Banking Division of the Department of Commerce in the management and liquidation of such institution, and be subject to all of the duties of such special deputy examiner; Provided, that nothing herein contained shall be construed as a surrender of the right of the Commissioner of Banks to liquidate banking institutions under his supervision pursuant to the statute in such case made and provided; Provided, further, that the Commissioner of Banks is hereby authorized and empowered to waive the filing of a bond by said Corporation as such special deputy examiner. (Apr. 29, 1935, c. 319, §3; Apr. 29, 1937, c. 404, §1.)

F. D. I. C. may act as receiver for banks. Laws 1939, c. 301.

7658–9. Commissioner may accept examinations and reports of corporation.—The Commissioner of Banks is authorized to accept in his discretion in lieu of any examination authorized by the laws of this state to be conducted by his department of a banking institution the examination that may have been made of same within a reasonable period by the Federal Deposit Insurance Corporation provided a copy of said examination is furnished to said Commissioner of Banks. Said Commissioner of Banks may also, in his discretion, accept any report relative to the condition of a banking institution which may have been obtained by said Corporation within a reasonable period, in lieu of a report authorized by the laws of this State to be required of such institution by his department, provided a copy of such report is furnished to said Commissioner of Banks.

Said Commissioner of Banks may furnish to said Corporation, or to any official or examiner thereof, a copy or copies of any or all examinations made of any such banking institutions any deposits of which are insured by said Corporation and of any or all reports made by same, and shall give access to and disclose to said Corporation or any official or examiner thereof any and all information possessed by the office of said Commissioner of Banks with reference to the conditions or affairs of any such insured institution.

Nothing in this Section shall be construed to limit the duty of any banking institution in this State, deposits in which are to any extent insured under the

provisions of Section 8 of the "Banking Act of 1933" (Section 12B of the Federal Reserve Act, as amended [Mason's U. S. Code Anno., title 12, §264]) or of any amendment of or substitution for the same, to comply with the provisions of said Act, its amendments or substitutions, or requirements of said Corporation relative to examinations and reports, nor to limit the powers of the Commissioner of Banks with reference to examinations and reports under any law of this state. (Act Apr. 29, 1935, c. 319, §4.)

7658-10. Commissioner of Banks may borrow money.—With respect to any banking institution, which is now or may hereafter be closed on account of inability to meet the demands of its depositors or by action of the Commissioner of Banks or of a court or by action of its directors or in the event of its insolvency or suspension, the Commissioner of Banks may borrow from said Corporation and furnish any part or all of the assets of said institution to said Corporation as security for a loan from same. The order of a court of record of competent jurisdiction shall be first obtained approving such loan. Said Commissioner of Banks upon the order of a court of record of competent jurisdiction, may sell to said Corporation any part or all of the assets of such institution.

The provisions of this Section shall not be construed to limit the power of any banking institution, or the Commissioner of Banks to pledge or sell assets in accordance with any other law of this State. (Act Apr. 29, 1935, c. 319, §5.)

7658-11. Provisions severable.—The validity of any provision or part of this Act shall not be dependent upon any other provision or part thereof. If any provision or part thereof should for any reason be held unconstitutional or invalid such decision shall not affect the validity of any of the remaining provisions or parts of this Act. (Act Apr. 29, 1935, c. 319, §6.)

7658-12. Repeal.—All laws or parts of laws in conflict herewith are hereby repealed. (Act Apr. 29, 1935, c. 319, §7.)

7658-21. Certain deposits assumed to be abandoned.—Whenever any person who shall have on deposit or otherwise with any banking institution any fund, funds or property of any kind, and shall not have dealt therewith for a period of twenty years by adding to or withdrawing therefrom, or in any other manner, and shall not have asserted any claim to such fund, funds or property for such period, shall be presumed to have abandoned the same. (Apr. 22, 1937, c. 358, §1.)

Where during bank holiday as a condition to continuing in business a bank reorganized and questionable securities were removed from assets and transferred to a trustee who made distribution but had on hand a substantial sum in unclaimed dividends, commissioner of banks had no official duty to perform in regard thereto, unclaimed dividends being in hands of a trustee appointed under a trust agreement and subject to supervision of district court under §8100, and not being subject to §7614, and not dormant or abandoned within meaning of §7658-21, the pertinent statute being §7306 requiring payment of unclaimed dividends into court for benefit of persons entitled thereto. Op. Atty. Gen. (29B-14), August 21, 1939.

7658-22. Banks to notify attorney general.—(a) It shall be the duty of every banking institution which holds on deposit or otherwise any such fund, funds or property of any kind, known by such banking institution to have been abandoned, as above set forth, to inform the Attorney General of such fact within thirty days after it becomes known to such banking institution.

(b) The cashier or managing officer of every banking institution shall, within thirty days after the first of January, annually return to the Secretary of State a sworn statement in duplicate showing the names of persons who have left on deposit or otherwise any fund, funds or property of the value of ten dollars ($10.00), or more, and have abandoned the same as above set forth unless such person is known to such officer to be living. Such statement shall show the amount of such deposit, including interest, or the value and nature of such property, and the depositor's or owner's last known place of residence or business. Such subscribing officer shall certify that said report is a complete and correct statement of such unclaimed funds and property to the best of his knowledge, after diligent inquiry. The duplicate copy of such report shall be delivered by the Secretary of State to the Attorney General immediately upon its receipt.

(c) The cashier or managing officer of every banking institution shall, within thirty days after the first day of January, every five years commencing January 1, 1938, return to the Secretary of State, a sworn statement showing the names of persons who have left on deposit or otherwise any fund, funds or property of the value of ten dollars ($10.00), or more, and have not dealt with respect thereto for a period of ten years by adding to or withdrawing therefrom, or asserting any claim to such fund, funds or property for such period. Such statement shall show the amount of such deposit, including interest, or the value and nature of such property and the depositor's or owner's last known place of residence or business; such subscribing officer shall certify that said report is a complete and correct statement of all such unclaimed funds and property to the best of his knowledge, after diligent inquiry.

(d) The Secretary of State shall have the aforementioned reports permanently bound with an alphabetical index of the depositors, or owners, with an appropriate reference to the bound reports, and such bound reports and index shall be open to public inspection.

(e) *A copy of the reports required by paragraphs* (c) and (b), together with a notice directed to whom it may concern, stating that such deposits or property have been unclaimed for a period of ten or twenty years, as the case may be, and requesting all persons having knowledge or information relative to the whereabouts of such depositors or other possible claimants to give such information to the subscribing officer, shall be displayed in a prominent place in such bank for a period of thirty days from the date of the filing of such report. (Apr. 22, 1937, c. 358, §2.)

7658-23. Funds to be turned over to the State of Minnesota, notice.—(a) If, upon investigation, the Attorney General shall conclude or have reason to believe that any fund, funds or other property have been abandoned as above set forth, he shall institute proper proceedings under the provisions of this act, to have such funds or property turned over to the Treasurer of the State of Minnesota by filing a petition under oath in the name of the State of Minnesota in the District Court of Ramsey County, stating the name and last known place of residence or business of the depositor or owner of such funds or property and that the owner or depositor has abandoned the same, and the names and residence of other persons whether members of such depositor's or owner's family or otherwise of whom inquiry may be made, whether or not such owner or depositor is a citizen of the United States, and if not, of what country he is a citizen or native and containing a schedule of the amount of such deposit including interest or the value and nature of such property, and praying that such property may be taken possession of by the Treasurer of the State of Minnesota.

(b) The court may thereupon issue a warrant directed to the sheriff or his deputy, which may run throughout the state, commanding him to take possession of the deposit including interest or such other property as it may be, and hold it subject to the Order of the Court and make return of said warrant as soon as may be with his doings thereon with a statement of the amount of such deposit including interest or a schedule of the property so taken. He shall receive such fees for serving the warrant as the court allows,

but not more than those established by law for similar service upon a writ of attachment.

(c) Upon the return of such warrant, the court may issue a notice reciting the substance of the petition warrant and officer's return, which shall be addressed to such depositor or owner and the banking institution having such deposit or other property, and to all persons who claim an interest in said deposit or property, and to all whom it may concern, citing them to appear at a time and place named and show cause why such deposit or property named in the return of the sheriff should not be paid to the Treasurer of the State of Minnesota, and shall serve a copy of such notice upon each person named in said petition in the same manner as provided for the service of summons in a civil action at least thirty days before the return day of said notice.

(d) The return day of said notice shall be not less than thirty nor more than sixty days after its date. The court shall order said notice to be published once in each of three successive weeks in one or more newspapers within the county wherein such banking institution is located and to be posted in a prominent place in such banking institution and in the event the banking institution has been or is being liquidated that the notice be posted in three public places within the county in which said bank was located, and a copy to be mailed to the last known address of such depositor or owner. In all cases where such depositor or owner is not a citizen of the United States, then a copy of such notice shall be ordered by the court to be served within said time by mail on the consular representative of the foreign country of which said depositor or owner is a citizen, if there be one in this state, otherwise on the Secretary of State, who shall forward the same to the chief diplomatic representatives of such country at Washington. The court may order other and further notice to be given within or without the state.

(e) The owner or depositor and the baking institution having such deposit or other property or any person who claims an interest in the deposit or any of the property may appear and show cause why the prayer of the petition should not be granted. The court may after hearing dismiss the petition and order the deposit or property in possession of the officer to be returned to the person entitled thereto, or in case it finds there is no person entitled thereto it shall find that the same has been abandoned and order the deposit or the property or the percentage thereof remaining after liquidation turned over to the Treasurer of the State of Minnesota. If the court orders the deposit turned over to the State of Minnesota the same shall be credited to the General Revenue Fund or if other property, the Treasurer shall sell the same at the best price obtainable, and such fund or the proceeds of the property sold by the Treasurer may be used as other revenue deposited to the General Revenue Fund of the state. (Apr. 22, 1937, c. 358, §3.)

Statute imposes no duty upon the banking division of department of commerce, but duties are imposed upon attorney general, secretary of state, and banks. Op. Atty. Gen. (29a-12), Nov. 13, 1937.

7658-24. Owners may reclaim deposits.—If at any time after such deposit or property has been turned over to the State Treasurer the depositor or owner of such property appears, or an administrator, executor, assignee in insolvency or trustee in bankruptcy of said depositor or owner is appointed, such depositor or owner, administrators, executor, assignee or trustee may apply to the court in which said petition was heard to determine whether such petitioner is entitled to such deposit or property and the court shall thereupon make such determination and if the court determines that the petitioner is entitled to said deposit or property the court shall make an order for the payment of such money or the proceeds of the property sold as the case may be to the petitioner. In case there is no funds in the State Treasury out of which said payment can be made, the State Treasurer shall so notify the State Auditor and it shall be the duty of the State Auditor of the state to recommend an appropriation in writing by the state legislature, if in session, or, if not in session then to the next legislature, for the repayment or reimbursement of said money to the person found entitled thereto by said court. The petitioner shall serve a copy of his petition for the determination of the ownership of said funds upon the Attorney General of the state at least twenty days before the date of hearing on said petition and the Attorney General shall appear at said hearing in behalf of the state. (Apr. 22, 1937, c. 358, §4.)

7658-25. Violations of act.—Any banking institution which shall violate any of the provisions of this act shall forfeit to the state interest in the amount of 15% per annum upon all such deposits in the custody of said institution as come within this act. This section shall not apply to banking institutions which have been or are being liquidated. (Apr. 22, 1937, c. 358, §5.)

7658-26. Definitions.—"Person" as used in this act shall include partnerships, associations and corporations, as well as a natural person, and the term "banking institution" as used in this act shall include every state bank, national bank, trust company and other banking institution within this state, including institutions that have been or are being liquidated. "Managing Officer" as used in this act shall include in the case of a banking institution in the process of liquidation the person acting as its agent, receiver, conservator, or liquidator, and in the case of a banking institution the liquidation of which has been completed the commissioner of banks of the state of Minnesota in the case of state institutions and the comptroller of the currency of the United States in the case of federal institutions. (Apr. 22, 1937, c. 358, §6.)

7658-27. Provisions severable.—If any provision hereof is found unconstitutional, such determination shall not affect the validity of the remaining provisions not clearly dependent thereon. (Apr. 22, 1937, c. 358, §7.)

BANKS

7659. How graded—Prepayment.

Legislature may authorize existing state banks to issue preferred stock only with the consent of all the stockholders, but may authorize state banks hereafter organized to issue such stock. Op. Atty. Gen., Mar. 31, 1933.

Bank charter cannot limit amount of stock which may be held by one person. Op. Atty. Gen., June 2, 1933.

7660. Special powers.

State v. Crookston Trust Co., 203M512, 282NW138; note under §7732.

A bank has no power to pledge any of its assets to secure the repayment of the deposits, except as given by the statutes. 174M286, 219NW163.

Where an unauthorized pledge of assets is made by bank and it becomes insolvent, receiver may recover assets pledged, or damages, if they have been converted. 174M286, 219NW163.

Where a person steals a certificate of deposit and forges the payee's indorsement thereon and cashes it at the bank which in turn delivers it to the issuing bank and receives the amount thereof, both banks are liable to the payee in an action for conversion. Moler v. S., 176M459, 223NW780.

The rule that a bank must know the signature of its customer has a direct reference to the ordinary depositor having a checking account, and is not applicable to the indorsement of a certificate of deposit by the payee therein. Moler v. S., 176M459, 223NW780.

A state bank in the exercise of the usual and influential powers belonging to the banking business may receive special deposits. Hurley v. M., 185M76, 239NW 769. See Dun. Dig. 786b.

Where plaintiff purchased stock of a corporation and put up stock of another corporation as collateral assigned in blank and a stock seller sold collateral to corporation issuing stock and received check payable to plaintiff and forged plaintiff's name to check, checks could not be recovered by plaintiff from corporation issuing them or from bank honoring them where he took no action for four years either to notify maker of check or bank of forgery. Theelke v. N., 192M330, 256NW236. See Dun. Dig. 787a, 999.

A contract between banks by which one, in consideration of its promise to pay all liabilities of other which is in failing circumstances, takes a note of embarrassed bank for total amount of its liabilities and to secure which receives in pledge all assets of other bank, is valid and binding and not contrary to banking laws of state. First State Bank & Trust Co. v. F., 193M414, 258NW593. See Dun. Dig. 767.

There is no law prohibiting banks making float charges on state checks. Op. Atty. Gen. (29a-17), July 18, 1935.

7661. Application.

See §§7661-1 to 7661-4, post.

7661-1. Banks may be organized as trust company.—Hereafter state banks which may be organized in the manner now provided by law may be organized with the additional authority to exercise the fiduciary powers and privileges set out in Mason's Minnesota Statutes of 1927, Section 7663, provided that the capital of any such bank shall not be less than $50,000 if its principal place of business is to be located in a municipality of less than 25,000 inhabitants, and that the capital of any such bank shall not be less than $75,000 if its principal place of business is to be located in a municipality of 25,000 or more but less than 100,000 inhabitants, and that the capital of any such bank shall not be less than $100,000 if its principal place of business is to be located in a municipality of 100,000 or more but less than 200,000 inhabitants, and that the capital of any such bank shall not be less than $200,000 if its principal place of business is to be located in a municipality of 200,000 or more inhabitants. (Act Apr. 20, 1931, c. 267, §1.)

7661-2. Corporate names.—Any such bank may be organized with a corporate name which may include the words "trust" or "trust company," in addition to the word "bank" or other words now permitted by law, and the word "state" shall not be a required part of the corporate name of any such state bank. (Act Apr. 20, 1931, c. 267, §2.)

7661-3. To purchase authorized securities.—No state bank hereafter organized with authority to exercise fiduciary powers pursuant to the provisions of this act, the corporate name of which contains the words "trust" or "trust company," shall transact any banking or trust company business until it shall have invested in and assigned, transferred to, and deposited with the Commissioner of Banks the authorized securities described in and required by Mason's Minnesota Statutes of 1927, Section 7662, relating to the authorization of existing state banks to exercise such fiduciary powers, and until the Commissioner of Banks has issued the certificate provided by Mason's Minnesota Statutes of 1927, Section 7646, and a certificate stating that such bank is qualified to exercise the fiduciary powers set forth in Mason's Minnesota Statutes of 1927, Section 7663. (Act Apr. 20, 1931, c. 267, §3.)

7661-4. May carry on banking and trust company business.—After the application of the corporation shall have been favorably acted on by the Department of Commerce in compliance with Mason's Minnesota Statutes of 1927, Section 53-30, and upon compliance with the terms hereof and the issuance of such certificates, such bank may commence the transaction of banking and trust company business and may exercise, in addition to all the powers and privileges conferred by law on state banks, the powers and privileges set forth in Mason's Minnesota Statutes of 1927, Section 7663, and such bank shall thereafter comply with and be subject to all of the provisions of law relating to state banks exercising such fiduciary powers and privileges. (Act Apr. 20, 1931, c. 267, §4.)

7663. Powers and duties.

Where a bank, through an extended course of dealing has become the agent of another bank for the collection of checks forwarded to it, it cannot arbitrarily and without notice refuse to accept for collection a check, and is liable for loss resulting from failure to present it for payment. 172M204, 214NW922.

A bank is liable to the owner of trust funds deposited with it by the trustee in his individual name, if, with actual or constructive notice of the trust character of the funds, it applies such funds upon a past-due indebtedness owing by the trustee personally to the bank. Wegerslev v. M., 184M393, 238NW792. See Dun. Dig. 787 (58).

It was not ultra vires for bank to assume payment of mortgage by extension agreement made to protect security held by it. Nippolt v. F., 186M325, 243NW136. See Dun. Dig. 767.

Where, by extension agreement, bank has agreed to pay mortgage for purpose of protecting other security, on payment of mortgage note, it is entitled to assignment of note and mortgage. Nippolt v. F., 186 M325, 243NW136.

Bank, in absence of statutory authority, cannot pledge its assets to secure depositors or its bonding company. Henton v. R., 194M524, 261NW8. See Dun. Dig. 767 (70).

No testamentary trustee may lawfully lend trust funds to himself, and this applies to a bank. Id. See Dun. Dig. 783.

Where president of a corporation deposited in name of his wife, funds of corporation, purposing thereby to pay his personal debt to her, corporation was not divested of its property in deposit, and bank could offset it on a past-due debt from corporation to bank. Skolnick v. G., 196M318, 265NW44. See Dun. Dig. 787.

Bank's right to apply deposit on indebtedness was not lost by its agreement, for most part a mere receipt, to repay money to named depositor, who never got title to money. Id.

Statutory enumeration of powers which a banking corporation may exercise excludes all other modes of banking. First Minneapolis Trust Co., 202M187, 277NW 899. See Dun. Dig. 767.

A bank may take out life insurance on its officers, but Commissioner of Banks has a right to hold a bank within reasonable limitations. Op. Atty. Gen., Feb. 6, 1931.

Bank holiday does not prohibit banks collecting taxes from transmitting them to county treasurer. Op. Atty. Gen., Mar. 7, 1933.

Commissioner of finance has authority to authorize state banks to issue cashiers' checks with the consent of the depositor for the purposes mentioned in the orders of the secretary of the treasury of the United States, under strict regulations which will insure that they will be later redeemable at their face value. Op. Atty. Gen., Mar. 8, 1933.

A state bank not having fiduciary powers granted by this section is without power to act as broker of securities, but one having such powers may act as broker. Op. Atty. Gen., Aug. 1, 1933.

Depositary is not required to furnish bond as security for funds of Firemen's Relief Association. Op. Atty. Gen. (198b-2), Jan. 7, 1933.

Effect of merger or consolidation on right of corporation to qualify as executor. 15MinnLawRev816.

Assignment of bank account. 22MinnLawRev1044. (7).

Laws 1935, c. 174. Banks may invest in capital stock of any Agricultural Credit Corporation entitled to discount at Federal Intermediate Banks. See §7677-1.

7664. To keep record of trust accounts.

One entrusting funds to trust department of a state bank, which failed to keep the fund intact, was entitled to a preferred claim. Benson v. A., 185M541, 241NW 794. See Dun. Dig. 786b, 842d.

7669. Stock list—Filing—Effect of transfer, Liability, Acceptance, etc.

Minnesota State Bank of Amboy v. T., 184M179, 238 NW53; note under §7684.

Purchaser of bank stock, failing to rescind for fraudulent representation, held not entitled to rescind as against the Commissioner of Banks after failure of bank. 179M284, 229NW130.

Cancellation of stock denied as working prejudice to creditors. 179M161, 228NW603.

Liability of stockholders in state banks. Bank of Dassel v. M., 183M127, 235NW914. See Dun. Dig. 803(11).

A bona fide transferor of stock is not liable for the debts of the bank incurred after the transfer. He is liable for those existing at the time of the transfer and not afterwards paid. Bank of Dassel v. M., 183M127, 235NW914. See Dun. Dig. 803(11).

Liability of the bank stockholder making a transfer on November 23, 1925, continued to and included November 23, 1926. Bank of Dassel v. M., 183M127, 235NW914. See Dun. Dig. 803(11).

Where at request of her father, an officer of a bank, and to aid bank, defendant gave her promissory note to bank and bank issued to her its shares of capital stock for agreed price thereof, pursuant to an understanding that bank would sell stock and apply it on note, that bank would not sell note, nor require her to pay it, and stock was held by father for her, and part thereof sold and applied on note, and the note was renewed from time to time for a period of ten years, note was not an accommodation note, but was given for value, she being estopped from claiming that either note in suit is an accommodation note. Searing v. H., 193M391, 258NW588. See Dun. Dig. 969, 976.

Double liability of a stockholder in a state bank is a claim arising on contract, but is contingent until an as-

sessment is made by commissioner of banks, and if a contingent claim becomes absolute within time limited by probate court for filing of claim, it must be presented within that time or be barred. Flewell, 201M407, 276NW 732. See Dun. Dig. 795.

Effect of prior payment of assessment on stockholders double liability. 15MinnLawRev233.

7671. Dividends—Surplus.—At the end of each dividend period after deducting all necessary expenses, losses, interest and taxes due or levied, 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. (As amended Mar. 4, 1939, c. 38.)

Bank charter may not be amended so as to limit return on stock to 6% interest. Op. Atty. Gen., June 2, 1933.

7674. Reports to public examiner.

179M217, 228NW926; notes under §5325.

7675. Books to be kept.

In an action for fraud, where the value of the assets of a financial corporation at a given time is in issue, its record books and history, both before and after the time in question, may be examined and received as bearing upon such value at the time of the transaction involved. Watson v. G., 183M233, 236NW213. See Dun. Dig. 3247.

An expert accountant, after examination of books and records and with the books in evidence, may testify to and present in evidence summaries and computations made by him therefrom. The foundation for such evidence is within the discretion of the court. Watson v. G., 183M233, 236NW213. See Dun. Dig. 3329.

The record books of banks and financial corporations, subject to the supervision of the superintendent of banks, when shown to be the regular record books of such a corporation, are admissible in evidence without further proof of the correctness of the entries therein. Watson v. G., 183M233, 236NW213. See Dun. Dig. 3346.

7676. Shall not lend on or purchase its own stock.

Where at request of her father, an officer of a bank, and to aid bank, defendant gave her promissory note to bank and bank issued to her its shares of capital stock for agreed price thereof, pursuant to an understanding that bank would sell stock and apply it on note, that bank would not sell note, nor require her to pay it, and stock was held by father for her, and part thereof sold and applied on note, and the note was renewed from time to time for a period of ten years, note was not an accommodation note, but was given for value, she being estopped from claiming that either note in suit is an accommodation note. Searing v. H., 193M391, 258NW588. See Dun. Dig. 969, 976.

Where a state bank ceases to do business, pledging certain assets to another bank which assumes its liabilities, and proceeds to liquidate, and, after its stockholders have authorized dissolution, declared a liquidating dividend of $30 a share upon its capital stock, receiver of an insolvent corporation, owner of shares of such bank stock, is entitled to receive such dividend and bank may not set off debts due from corporation to bank at time receiver was appointed and when bank ceased to function as a bank. Rockwood v. F., 195M64, 261NW697. See Dun. Dig. 771.

A state bank has no statutory lien upon shares of stock therein owned by a stockholder who is indebted to bank which equity will enforce by set-off or counterclaim. Id. See Dun. Dig. 772.

State bank has no lien on a stockholder's stock for his indebtedness to bank. Op. Atty. Gen. (520), August 22, 1939.

7677. Restrictions upon total liability of individuals to bank—first mortgage security—liability of officers—discounts authorized—excess liability—penalty and civil liability.—The total liabilities to it, as principal, surety, or endorser of any person, corporation, or copartnership, including the liabilities of the several members thereof, shall never exceed fifteen (15) per cent of its capital actually paid in cash and of its actual surplus fund. Provided that for the purposes of this section the members of a family living together in one household shall be regarded as one person and the total liabilities of the members of such family shall be limited as herein provided. Provided, however, that loans not exceeding 25 per cent of such capital and surplus made upon first mortgage security on improved real estate in the State of Minnesota or in an adjoining state within 20 miles of the place where the bank is located, shall not constitute a liability of the maker of the notes secured by such mortgages within the meaning of the foregoing provision limiting liability, but shall be an actual liability of such maker; provided, that such mortgage loans be limited to, and in no case to exceed forty (40) per cent of the cash value of the security covered by such mortgage; provided further, that commercial paper actually owned by the person negotiating the same not exceeding 15 per cent of the capital stock and surplus taken from any one person, shall not constitute a liability within the meaning of this Act, but shall be an actual liability of the maker. 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 the section, viz.:

1. Bonds, orders, warrants or other evidences of indebtedness of the United States, of federal land banks, of this State or of any county, town, village, or school district in this State, or of the bonds of any other state in the United States, or bonds and obligations of the Federal Home Loan Banks established by Act of Congress known as the Federal Home Loan Bank Act, approved July 23, 1932, and Act amendatory thereto, and in bonds and obligations of the Home Owners' Loan Corporation established by Act of Congress known as the Home Owners' Loan Act of 1933, and Acts amendatory thereto, in exchange for mortgages on homes, or contracts for deed, and/or real estate held by it.

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 alll 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 certificate of the railroad and warehouse commission declaring the warehouse issuing the same to be fireproof.

Whenever a bank shall allow any person, co-partnership or corporation to become indebted to it, directly or indirectly, in excess of the amount, exclusive of interest, permitted by the laws of this State, the officer or employe of such bank wilfully permitting or approving such loan shall be guilty of a gross misdemeanor and in addition thereto shall be personally liable to the bank for the amount of such loan in excess of the statutory limit. (R. L. '05, §2993; '07, c. 156; '11, c. 160, §1; G. S. '13, §6358; '19, c. 103, §1; '27, c. 258, §1; Feb. 7, 1931, c. 9, §1; Jan. 9, 1934, Ex. Ses., c. 70.)

Claim of insolvent bank against insolvent and nonresident directors for making excessive loans, held not shown to be barred by limitations; and such liability may be set off against liability of the bank to the directors for satisfying liability of the bank on a depository bond. Andresen v. Thompson, (DC-Minn), 56F(2d) 642. See Dun. Dig. 5656, 7613.

Applies to actual loans and does not include guaranty of paper assigned to bank, without other consideration, to make good depleted or questionable assets. State v. Flowers, 187M493, 245NW834. See Dun. Dig. 773a.

National Housing Act loans under §7658-4 are restricted to 25% of capital and surplus. Op. Atty. Gen. (5331), Mar. 18, 1937.

7677–1. Authorized investments for state banks.—Any bank organized under the laws of this state is authorized to invest not to exceed ten per cent of its capital in the capital stock of any Agricultural Credit Corporation organized under the laws of this

state, and entitled to discount privileges with any Federal Intermediate Bank organized under the laws of the United States of America. (Act Apr. 15, 1935, c. 174.)

7678. Contracts, how made.

Where bank receives deposit without condition or restriction and credits it to depositor's checking account, relationship of debtor and creditor is created. H. Lang & Co. v. N., (DC-Minn), 22FSupp689.

Powers of national banks. 172M310, 215NW213.

A cashier of a bank has implied power to indorse negotiable paper in the ordinary transaction of its business. 174M471, 219NW757.

Where all the stock of a corporation is owned by its three directors, they are estopped from questioning the validity of a deed for want of a formal resolution authorizing its execution and delivery, they having given authority informally. 176M411, 223NW624.

In the absence of by-laws defining or limiting the duties of a vice president, he may act as president in the absence of the latter. 176M411, 223NW624.

Allegation that corporations "made and entered into" certain contracts was good as against demurrer. 176M 529, 224NW149.

Transaction whereby president gave his note, guaranteed by the bank, in exchange for a certificate of deposit, held a transaction of the bank and it was liable on the note. 178M476, 227NW659.

Bank whose vice president gave note on settlement of an action against the bank was estopped to question the settlement, and the validity of the note after having stood by for three years. Nelson v. C., 185M449, 241NW 585. See Dun. Dig. 779c.

Vice president of bank upon settlement of an action against the bank made by vice president and attorneys had authority to give note as part of settlement, though not signed by cashier. Nelson v. C., 185M449, 241NW585. See Dun. Dig. 777c.

There being no limitation of power shown, cashier of a state bank has authority to execute a contract in behalf of bank for preservation or protection of its securities. Bankers' Life Co. v. F., 188M349, 247NW239. See Dun. Dig. 778.

Where officer, in active charge of bank, is sole representative of bank in a transaction with others, his knowledge of facts is chargeable to bank, even if he has a personal interest, adverse to the bank. People's State Bank of Jordan v. R., 189M348, 249NW325.

Where officer of bank had misappropriated funds from account of a depositor for which misappropriation bank was liable, bank was entitled to credit for moneys restored by such officer to account of such depositor. Id.

A naked promise, made in a casual conversation by cashier of bank, to do a favor for a customer and debtor of bank, not made in bank or in connection with any business of bank, or any business transaction, and not involving any duty owing by bank to such customer, does not impose any obligation or liability on bank and does not sustain any defense of fraud to an accommodation note therefore given to bank and thereafter renewed. First Nat. Bank v. F., 191M318, 254NW8. See Dun. Dig. 778, 1724, 2115.

That a bank conducting an insurance agency was permitted to remit net premiums collected by it to insurer monthly did not amount to an extension of credit generally by principal to agent so as to make agent only a general debtor to his principal instead of a trustee. Minneapolis Fire & Marine Ins. Co. v. B., 193M14, 257NW510. See Dun. Dig. 786b.

Where a guardian embezzled funds of his ward and paid them to a bank, all representatives of latter supposing that he was using his own funds and having no reason to think otherwise, guardian cannot recover fund from bank in absence of a showing that recovery is necessary to protect ward from loss, primary liability in such case being upon guardian and his sureties. Galloway v. S., 193M104, 258NW10. See Dun. Dig. 783, 4103, 4122.

Evidence held conclusive that mortgagee bank had no contract under which money deposited by mortgagor in bank could be appropriated to payment of unpaid delinquent taxes after defendant bid in mortgaged premises for full amount of debt. Business Women's Holding Co. v. F., 194M171, 259NW812. See Dun. Dig. 780.

Relationship between bank and safety deposit box renter is not that of bailor and bailee, but it is that of lessor and lessee. Wells v. C., 194M275, 206NW520. See Dun. Dig. 3967.

Bank was estopped to deny authority of its president to act for it in making a compromise with a debtor where the president had conducted all transactions over a long period with reference to the matter. Mulligan v. F., 194 M451, 260NW630. See Dun. Dig. 777b.

That plaintiff bank failed to pay savings accounts of another which, in a contract between plaintiff bank and other bank, plaintiff had agreed to pay, was a material and substantial breach by plaintiff of such contract and was a defense to a suit brought by the plaintiff against individual defendants who had guaranteed to plaintiff to pay a certain deficiency which might arise in the liquidation of certain bills receivable sold and transferred to plaintiff. State Bank of Monticello v. L., 198M98, 268 NW918. See Dun. Dig. 768b.

Evidence did not require finding that there was a novation substituting plaintiff bank as debtor and releasing bank taken over from liability on savings accounts. Id. See Dun. Dig. 7237.

Notice to city treasurer by a depositary of a reduction in interest rate was notice to city of such reduction in rate. City of Minneapolis v. F., 198M280, 269NW521. See Dun. Dig. 2698.

Where depositary relation is not for any fixed term, depositary may, by notice to depositor, reduce interest rate or terminate payment of interest on deposited funds. Id.

Trust deposit is valid unless disaffirmed by depositor in his lifetime or set aside for fraud or incompetency. Coughlin v. F., 199M102, 272NW166. See Dun. Dig. 9886a.

A partnership was not liable on a note signed in its name by one of partners and given to bank in payment of partner's individual obligation, to bank's knowledge, though one of partners was a director and member of examining and discount committee of bank. First State Bank v. R., 202M350, 278NW523. See Dun. Dig. 7363.

Depositor making overdraft could not escape liability to bank because cashier wrongfully failed to charge her account with certain checks drawn for a number of months. Mendota State Bank v. R., 203M409, 281NW767. See Dun. Dig. 781.

7679. May hold real estate—Restrictions.—Such bank may purchase, hold and convey real estate for the following purposes:

1. Such as shall be necessary for the convenient transaction of its business, including with its banking office other apartments to rent as a source of income, which investment shall not exceed forty per centum of its paid-in capital stock and permanent surplus.

2. Such as is acquired through foreclosure of any mortgage given to it in good faith by way of security for loans made or money due to such bank.

3. Such as is conveyed to it in satisfaction of debts previously contracted in good faith in the course of its dealings.

4. Such as it acquires by sale on execution or judgment of any court in its favor.

It shall not purchase, hold or convey real estate in any other case or for any other purpose whatever. No real estate acquired in the cases contemplated in the second, third and fourth subsections above shall be held for a longer period than five years, unless such time has been extended by certificate of the commissioner of banks. (R. L. '05, §2995; G. S. '13, §6360; '19, c. 85, §1; '21, c. 258, §1; Mar. 9, 1929, c. 54.)

7680. Cash reserve in banks.—It shall always keep a reserve equal to fifteen per centum (15%) of its demandable liabilities and five per centum (5%) of its time deposits if located in a reserve city, if not located in a reserve city it shall always keep a reserve equal to twelve per centum (12%) of its demandable liabilities and five per centum (5%) of its time deposits; which shall be in cash and balance due from solvent banks. No bank shall act as reserve agent for another without the approval of the commissioner of banks if its capital and surplus is less than twenty-five thousand dollars. 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. The term "Reserve City" as used herein shall be taken to mean such cities as are designated as reserve cities by act of congress or other federal authority. (R. L. '05, §2996; G. S. '13, §6361; '15, c. 362, §1; Mar. 27, 1931, c. 93.)

State v. Crookston Trust Co., 203M512, 282NW138; note under §7732.

7681-1. Assessment on stockholders to make good impairment of capital; enforcement.—The directors of any bank or trust company receiving notice from the Commissioner of Banks to make good an impairment of capital shall fix the time when the assessment made at the stockholders' meeting shall become due and payable, which time shall be not less than 15 days nor more than 30 days after such assessment is levied. Notice of such assessment shall be mailed to each

stockholder at his office address as shown by the stock books of such bank or trust company.

If any stockholder shall fail to pay in cash the amount of the assessment against his stock for a period of 30 days after the same shall become due and payable, the directors of said bank or trust company shall sell the same at public sale upon 10 days' notice, to be given by posting copies of such notice of sale in three public places in the city, town or community where such bank or trust company is located, or at private sale, after giving the stockholder 10 days written notice by registered mail addressed to his post office address as shown by the stock books of such bank or trust company.

Upon sale of any stock as herein provided, the purchaser shall forthwith become liable for and shall pay in cash the amount of the assessment thereon. (Act Apr. 18, 1939, c. 302.)

7682. Insolvent banks—Examiner to take charge.

The action of the receiver of a bank in bringing suit on a note given to the bank as accommodation under agreement by the bank to indemnify the maker, held to constitute a breach of the contract of indemnity. Kaercher v. Citizens' Nat. Bank, (CCA8), 57F(2d)58. See Dun. Dig. 4335.

The receiver of an insolvent bank stands in no better position than the bank stood as a going concern. Kaercher v. Citizens' Nat. Bank, (CCA8), 57F(2d)58. See Dun. Dig. 802, 823.

Commissioner of banks was authorized to enforce the individual liability of stockholders, and to that end attach property held in trust for stockholder. 172M83, 214NW771.

Notes and securities executed to a bank to deceive examiner by making an appearance of assets, could be collected by receiver representing creditors, though probably not enforcible by the bank itself. 177M529, 225NW891.

Transfer by insolvent bank to another bank of all its assets, the transferee assuming liability for all deposits shown by the books, held not an assignment contemplated by this section, and transferee was not liable in an action for damages for a judgment for attorney's fees against the transferor. 181M1, 231NW407.

The exclusive power to liquidate insolvent state banks is placed in the commissioner of banks, and where he has attempted to exercise such power the district court is without jurisdiction to appoint a receiver for such banks in proceedings brought by a judgment creditor to enforce the "double" liability of shareholders. Northwestern Fuel Co. v. L., 182M276, 234NW304. See Dun. Dig. 824b.

A deposit in a bank becomes due so as to be available as a set-off when the bank fails. First Nat. Bank of Windom v. C., 184M635, 240NW662. See Dun. Dig. 787 (59).

In absence of imminent danger of loss, or need for summary relief, a receiver should not be appointed for solvent corporation on petition of minority stockholders. Rule applied to banking corporation in voluntary liquidation and without creditors. Zwick v. S., 186M308, 243NW140. See Dun. Dig. 2138.

Bank does not cease to exist as corporation merely by transferring all of its assets to another bank which assumes its deposits and bills payable, but such bank may be liquidated by commissioner of banks and its stockholders assessed for amount necessary to pay its creditors. Bank of Litchfield v. M., 191M308, 253NW764. See Dun. Dig. 824b.

A contract between banks by which one, in consideration of its promise to pay all liabilities of other which is in failing circumstances, takes a note of embarrassed bank for total amount of its liabilities and to secure which receives in pledge all assets of other bank, is valid and binding and not contrary to banking laws of state. First State Bank & Trust Co. v. F., 193M414, 258 NW593. See Dun. Dig. 767.

A mortgage running to a receiver of a national bank is subject to tax in all cases where the mortgage would be taxable if it ran to the bank before receivership. Op. Atty. Gen., Mar. 17, 1931.

Set-off of obligation. 22MinnLawRev1046.

7683. District Court may appoint receiver from the officers or directors of a bank.—At any time after a period of three years shall have elapsed, after the Commissioner of Banks shall have taken possession of the business and property of an insolvent bank or trust company, a majority of the creditors in number and amount may petition the court for the appointment of a committee of three competent persons, residents of the county, named by them, the court may make such appointment, and any officer or member of the board of directors of the insolvent bank or trust company may be appointed as members of said committee if residents of the county. All rights and duties of the Commissioner of Banks shall then devolve upon the said committee. (R. L. '05, §2999; G. S. '13, §6364; Apr. 17, 1933, c. 310, §1.)

7683-1. Committee to furnish bonds.—The committee herein provided for shall furnish adequate bond to be approved by the district court for the faithful performance of their duties. (Act Apr. 17, 1933, c. 310, §2.)

7683-2. Commissioner to be discharged as liquidator.—Upon such order of the court the Commissioner of Banks of the State of Minnesota shall be discharged as statutory liquidator of such banks and released from any further liability thereunder. (Act Apr. 17, 1933, c. 310, §3.)

Sec. 4 of Act Apr. 17, 1933, cited, provides that the act shall take effect from its passage.

7684. Stock unpaid or impaired.

Assessment of stockholders under this section constitutes a bank asset, and it cannot be applied in discharge of the superadded or constitutional double liability of stockholders. Minnesota State Bank of Amboy v. T., 184M179, 238NW53. See Dun. Dig. 824e.

Constitutional double liability of stockholders of bank is for benefit of creditors, and bank has no authority over the fund created by its enforcement. Minnesota State Bank of Amboy v. T., 184M179, 238NW53. See Dun. Dig. 824e, 2080(45).

Statute of limitations against constitutional double liability of stockholders in a state bank begins to run when bank closes its doors and ceases to function as a bank, either because of being taken over by commissioner of banks, or because of absorption by another bank with approval of commissioner. Liquidation of Peoples State Bank, 197M479, 267NW482. See Dun. Dig. 802.

7685. Reorganization.

Act does not contemplate finding of insolvency by reason of declaration of emergency by directors of bank, and contingent liability of stockholders for debts of bank does not become absolute. Op. Atty. Gen., Mar. 10, 1933.

State banks must bear expenses incident to reorganization and such expense money belongs to the state and is a preferred claim against the bank in which it is deposited in case of liquidation. Op. Atty. Gen., Apr. 4, 1933.

A depositor who is indebted to a bank is entitled to set off the amount to his credit against his indebtedness whether the bank be in liquidation or under the reorganization law. Op. Atty. Gen., Apr. 11, 1933.

Commissioner of banks may allow an individual bank to raise the restrictions against the withdrawals on checking accounts but leave those restrictions against time deposits providing the board of directors pass a resolution to that effect. Op. Atty. Gen., Apr. 17, 1933.

Depositors who have not signed depositors' agreements do not have a preference under bank reorganization law, and this applies to estate of decedent. Op. Atty. Gen., July 12, 1933.

2.

Bank under reorganization is analogous to bank in liquidation with regard to offset against depositors. Op. Atty. Gen., Apr. 11, 1933.

Bank may not adopt plan of reorganization without written approval of commissioner. Op. Atty. Gen., May 2, 1933.

Endorsers and guarantors may invoke principal of offsets against bank, but a contingent obligation cannot be basis for offset. Op. Atty. Gen., May 3, 1933.

When jurisdiction of commissioner has been invoked by involuntary proceedings under §7688, he is without authority to liquidate bank under this act. Op. Atty. Gen., May 15, 1933.

A bank having resolved to reorganize under this act may not thereafter abandon such plans and go into voluntary liquidation under same chapter. Op. Atty. Gen., May 16, 1933.

2(b).

Commissioner may allow an individual bank to raise restrictions against withdrawals on checking accounts but *leave those restrictions against time deposits.* Op. Atty. Gen., Apr. 17, 1933.

3.

Borrower of bank has right to offset deposits for full amount of note. Op. Atty. Gen., Apr. 11, 1933.

Depositors' meeting should not be called on Good Friday. Op. Atty. Gen., Apr. 12, 1933.

4(c).

Depositors who have not signed depositors' agreements do not have a preference under bank reorganization law, and this applies to estate of decedent. Op. Atty. Gen., July 12, 1933.

5.

Deposits of county money in bank in trust on restricted basis is not protected by collateral which became deposited prior to bank holiday. Op. Atty. Gen., Apr. 20, 1933.

6.
There can be no enforcement of stockholders' liability unless bank is, in fact, insolvent. Op. Atty. Gen., May 16, 1933.

8.
Accounts in name of individuals held to represent deposits of association organized for relief of poor, and therefore exempt from operation of act. Op. Atty. Gen., May 8, 1933.

7687. Delinquent financial institutions—Etc.

The exclusive power to liquidate insolvent state banks is placed in the commisioner of banks, and where he has attempted to exercise such power the district court is without jurisdiction to appoint a receiver for such banks in proceedings brought by a judgment creditor to enforce the "double" liability of shareholders. Northwestern Fuel Co. v. L., 182M276, 234NW304. See Dun. Dig. 824b.

Procedure where bank's capital is impaired. Laws 1939, c. 302.

7688. Violation of charter, etc.—Examiner to take charge.

American State Bank of Minneapolis v. J., 184M498, 239NW144; note under §7689.

A contract between banks by which one, in consideration of its promise to pay all liabilities of other which is in failing circumstances, takes a note of embarrassed bank for total amount of its liabilities and to secure which receives in pledge all assets of other bank, is valid and binding and not contrary to banking laws of state. First State Bank & Trust Co. v. F., 193M414, 258NW593. See Dun. Dig. 767.

Commissioner of banks is endowed with discretion as to whether or not he will take possession of a bank and his determination is quasi judicial, and he is not, under circumstances alleged, personally liable to a depositor who may have deposited money in a bank while it was insolvent. Alchele Bros. v. S., 194M291, 260NW290. See Dun. Dig. 789.

When jurisdiction of commissioner has been invoked by involuntary proceedings, he is without authority to liquidate bank under Laws 1933, c. 55. Op. Atty. Gen., May 15, 1933.

7689. Liquidation and distribution of closed banks.—The commissioner of banks shall collect all debts due and all claims belonging to such bank, and upon the order of the district court may sell or compound all bad or doubtful debts, and on like order may sell all the real and personal property of such bank on such terms as the court shall direct, and may, if necessary to pay the debts of such bank, enforce the individual liability of the stockholders. The commissioner of banks may under his hand appoint one or more special deputy examiners as agents to assist him in the duty of liquidation and distribution, the certificate of appointment to be filed in the office of the commissioner of banks and a certified copy in the office of the secretary of state and also the clerk of the district court of the county in which the principal office of such bank was located. The commissioner of banks may from time to time authorize any such special deputy examiner to perform such duties connected with such liquidation and distribution as the commissioner of banks may deem proper. The commissioner of banks may procure such expert assistance as may be necessary in the liquidation and distribution of the assets of such bank and may retain such of its officers or employes as he may deem necessary and upon his request in writing the attorney general shall employ a special attorney to act as counsel in all matters relating to the liquidation of each bank, which appointment shall be made according to the provisions of the statutes regulating the employment by the attorney general of special attorneys for state boards and officers, and the payment of such attorney shall be from the proceeds of the assets of the bank with whose liquidation he becomes thereby connected. The commissioner of banks shall require from each special deputy examiner such security for the faithful discharge of his duties as he may deem proper. The commissioner of banks shall cause notice to be given by advertisement in a legal newspaper in the city or village where such bank is located, or, if none in such city or village, then in the county, weekly for five (5) consecutive weeks, calling on all persons who may have claims against such bank to present the same to the commissioner of banks, and make legal proof thereof at a place and within a time not earlier than one week after the last day of publication, which time and place shall be specified in said notice. The commissioner of banks shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank. If the commissioner of banks doubts the justice and validity of any claim he may reject the same and serve notice of such rejection upon the claimant, either by mail or personally. An affidavit of the service of such notice made according to law shall be filed with the commissioner of banks. An action upon a claim so rejected must be brought within sixty days after such service and the filing of proof thereof. The venue of such action shall be in the county in which such bank is located, and such action shall be brought jointly against the bank and the commissioner of banks as statutory liquidator of said bank. Any person having a claim against such bank and not presented and filed within the time fixed in the notice to creditors may present the same and the commissioner of banks shall allow or reject the same in whole or in part as hereinbefore provided, and suit on such rejected claim not filed within the time fixed by the notice shall be brought within thirty days after the service and filing of proof of such rejection. Any claim not filed within the time fixed in the notice to creditors but received and filed as by this section provided and duly allowed, shall participate and share in such dividends only as shall be paid from the proceeds of those assets remaining undistributed at the time of filing of such claim. No interest shall be allowed or paid on any deposit or other claim from and after the closing of the bank and the taking over of the same by the commissioner of banks for purposes of liquidation. Upon taking possession of the property and assets of such bank the commissioner of banks shall make an inventory of the assets of such bank in duplicate, one to be filed in the office of the commissioner of banks and one in the office of the clerk of district court of the county in which the principal office of such bank was located. Upon the expiration of the time fixed for the presentation of claims, the commissioner of banks shall make in duplicate a complete list of the claims presented, including and specifying such claims as have been rejected by him, one such list to be filed in his office and one in the office of said clerk of district court. Such inventory and list of claims shall be open at all reasonable times to inspection. The compensation of the special deputy examiners and the other employes and assistants of the commissioner of banks, except legal counsel, and all expenses of supervision and liquidation hall be fixed by the commissioner of banks, subject to the approval of the district court of the county in which said bank is located, after notice fixing the time and place when the commissioner of banks will hear and fix the amount of all such expenses, and the amount so fixed and the compensation of legal counsel as fixed by the attorney general, shall be paid upon the certificates of the commissioner of banks and the attorney general respectively, out of the funds of such bank in the hands of the commissioner of banks. The moneys collected by the commissioner of banks shall be from time to time deposited in one or more state banks or trust companies, and, in case of a suspension or insolvency of the depository, such deposits shall be preferred before all of the deposits. At any time after the expiration of a date fixed for the presentation of claims the commissioner of banks may, out of the funds remaining in hands after the payments of expenses, declare one or more dividends, and after the expiration of one year from the first publication of notice to creditors he may declare a final dividend, such dividends to be paid to such persons and in such amounts and upon such notice as may be directed by the said district court. Objections to any claim not rejected by the commissioner of banks may be made by any party interested by filing a copy of such

objections with the commissioner of banks, who shall present the same to the district court at the time of the next application to declare a dividend. Whenever any such bank of whose property and business the commissioner of banks has taken possession as aforesaid, deems itself aggrieved thereby it may at any time within ten days after such taking possession apply to the district court of the county in which such bank is located to enjoin further proceedings, and said court, after citing the commissioner of banks to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties in determining the facts, may, upon the merits, dismiss such application or enjoin the commissioner of banks from further proceedings and direct him to surrender such business and property to such bank. Whenever the commissioner of banks shall have paid each and every depositor and creditor of such bank (not including stockholders) whose claim or claims as such creditor or depositor shall have been duly approved and allowed, the full amount of such claims, and shall have made proper provision for unclaimed and unpaid deposits or dividends and shall have paid all the expenses of the liquidation, the commissioner of banks shall call a meeting of the stockholders of such corporation by giving notice thereof for ten days by publishing such notice in one or more newspapers of the county where the bank is located. At such meeting the stockholders shall determine whether the commissioner of banks shall be continued as liquidator and shall wind up the affairs of such bank, or whether an agent or agents shall be elected for that purpose, and in so determining the said stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock shall be necessary to a determination. In case it is determined to continue the liquidation under the commissioner of banks he shall complete the liquidation of the affairs of such corporation, and after paying the expenses thereof, if there are proceeds of liquidation as yet undistributed he shall reimburse those stockholders who paid their stock assessments pursuant to the order for assessment to the extent that each has paid, and if the proceeds are insufficient to reimburse such paying stockholders in full, then in just proportion. Any proceeds remaining undistributed after such paying stockholders have been reimbursed as by this act provided shall be distributed among all the stockholders in proportion to their several holdings of stock in such manner and upon such notice as may be directed by the district court. In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary to a choice. Such agent or agents shall execute and file with the commissioner of banks a bond to the state of Minnesota, in such amount with such sureties and in such form as shall be approved by the commissioner of banks, conditioned for the faithful performance of all the duties of his or their trust, and thereupon the commissioner of banks shall transfer and deliver to such agent or agents all the undivided or uncollected or other assets of such corporation then remaining in his hands, and upon such transfer and delivery, the said commissioner of banks, shall be discharged from any and all further liability to such bank and its creditors. Such agent or agents shall convert the assets coming into his or their possession into cash and shall account for and make distribution of the property of such bank as is herein provided in the case of distribution by the commissioner of banks, except that the expenses thereof shall be subject to the direction and control of the said district court. In case of the death, removal or refusal to act of any such agent or agents, the stockholders, on the same notice as that after which they were elected and in the same way, may elect a successor who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected.

Dividends on deposits and other claims unclaimed up to the time of the application of the commissioner of banks for authority to pay a final dividend shall in just proportion be paid to other depositors and creditors who have duly filed their claims and who are entitled to participate in such final dividend. Final dividends unclaimed shall after the expiration of one year from the date of the court order authorizing the payment of the final dividend be paid to the State Treasurer and by him credited to the general revenue fund. Section 2. All acts or parts of acts inconsistent herewith are hereby repealed. ('09, c. 179, §3; G. S. '13, §6370; Apr. 8, 1933, c. 168.)

The debtor of an insolvent bank when sued by its receiver, cannot set off his liability as a surety for the bank upon a depository bond. 172M80, 214NW792.

City did not have a preferred claim against an insolvent bank in which it had made deposits in excess of collateral securities deposited by depository bank under §1973-1. 172M324, 215NW174.

Where an unauthorized pledge of assets is made by bank and it becomes insolvent, receiver may recover assets pledged, or damages, if they have been converted. 174M286, 219NW163.

Purchaser of a bank draft, a cashier's check or a certified check becomes a general creditor of the bank and is not entitled to a preference. 174M500, 219NW863.

A fund left in a bank in escrow for the agreed specific purpose of being paid over to a third person upon completion of a land sale is a trust fund and the owner of such fund is entitled to recover it as a preference from a receiver of the bank, where there has been at all times an amount sufficient to cover the trust fund. 175M88, 220NW168.

Commingled fund as trust fund entitled to preference on insolvency of bank. 175M336, 221NW236.

Money deposited in a bank without authority of the one for whom it was deposited constituted a trust fund and not merely a debt. 176M108, 222NW576.

Where depositor gives check to bank requesting sum to be remitted to another person, the transaction is equivalent to payment in cash to bank for special purpose. 176M384, 223NW622.

County to whose credit taxpayers had deposited money held entitled to preference. 176M594, 224NW159.

Where bank mailed unaccepted time certificate of deposit instead of crediting proceeds of conveyance to checking account, owner of the money was entitled to preferred claim. Emerson v. V., 176M584, 224NW239.

Deposit by treasurer of village for a specific purpose, held not a special one entitling treasurer to preference. 177M51, 224NW258.

Where bank, acting as collection agent only receives and accepts a payment of a check, held by it for collection, checks on itself drawn by its own depositors, which checks are good and are duly debited, it stands in the same position as if it has received payment in cash, and a preference is created. 178M64, 225NW916.

General deposit held not preferred claim. 180M342, 230NW817.

Deposit of village money held to create a trust entitling village to preferred claim. 180M418, 230NW889.

Depositor was not entitled to preference over general creditors where he drew check and bank charged his account and drew cashier's check, which was in course of clearance at time of going into liquidation. County of Lincoln v. F., 182M291, 234NW449. See Dun. Dig. 824d.

The deposit by an agent in his bank of moneys received as rents from his principal's property held not to create a trust under the circumstances stated in the opinion. Lambrecht v. M., 182M442, 234NW869. See Dun. Dig. 824d, 2159.

Where bank deeded realty to a company to have it execute and deliver a mortgage to plaintiff, and plaintiff's money went to the bank which used it, plaintiff had a valid claim against the commissioner of banks who had taken over the bank for liquidation, and this liability was not affected by extension of time to the mortgagor. Agricultural Credit Corp. v. S., 184M68, 237 NW823. See Dun. Dig. 824d.

Section is not unconstitutional as attempt to delegate judicial power to the commissioner of banks, and does not confer such power. American State Bank of Minneapolis v. J., 184M498, 239NW144. See Dun. Dig. 824d.

This law is not unconstitutional as an attempt to deprive a bank or its stockholders of property without due process of law. Americaan State Bank of Minneapolis v J., 184M498, 239NW144. See Dun. Dig. 824d.

The deposit of money by a guardian in his name as such, unless there be special circumstances making it otherwise, is a general deposit. Ottawa Banking & Trust Co. v. C., 185M22, 239NW666. See Dun. Dig. 786b (54).

Evidence sustains finding that receiver of an insolvent corporation made a special deposit of receivership funds in the bank under an agreement that such deposit should remain intact to pay the dividends to be declared in re-

ceivership. Hurley v. M., 185M56, 239NW769. See Dun. Dig. 786b.

Where president of bank knowing it is hopelessly insolvent accepts a deposit, the fraud avoids implied contract by which relationship of debtor and creditor would ordinarily arise. Forsythe v. F., 185M255, 241NW66. See Dun. Dig. 780.

Mere insolvency of a bank coupled with fact that bank officials have good reasons to know of such insolvency does not make a deposit a trust fund. Forsythe v. F., 185M255, 241NW66. See Dun. Dig. 786b.

One entrusting funds to trust department of a state bank, which failed to keep the fund intact, was entitled to a preferred claim. Benson v. A., 185M541, 241NW794. See Dun. Dig. 786b, 842d.

Funds deposited in state bank by guardian of mentally incapacitated and permanently disabled world war veteran were funds of United States and entitled to preference. Anderson v. O., 186M396, 243NW398.

State is entitled to interest on preferred claims against insolvent bank in favor of surety claiming through subrogation. American Surety Co. v. P., 186M588, 244NW 74. See Dun. Dig. 824d.

Preferred claims against an insolvent bank should include interest if fund is sufficient. American Surety Co. v. P., 186M588, 244NW74. See Dun. Dig. 824d.

Interest to which state is entitled on preferred claims against insolvent bank is that provided by deposit contract. American Surety Co. v. P., 186M588, 244NW74. See Dun. Dig. 2524, 4881.

Purchaser of draft from bank held not entitled to preference over other general creditors. Paul v. F., 187 M411, 245NW832. See Dun. Dig. 824d.

Money deposited by clerk of court for benefit of heirs in condemnation proceedings, held special deposit entitled to preference on insolvency of bank. Luiten v. P., 189M365, 249NW420. See Dun. Dig. 786b.

A resolution of directors of corporation that its account with bank shall be a special account to take care of running expenses of plaintiff's business, agreed to by president of bank, does not change general deposit account to a special account, it appearing that deposits were made and checks were issued against said account to carry on plaintiff's business in precisely same manner after resolution as had been done prior thereto. Vining Co-Operative Creamery Ass'n v. P., 192M68, 255 NW252. See Dun. Dig. 824d.

Where a bank receives and debits its depositors' checks same as so much cash in clearing similar items with another bank, giving such other bank its draft with an agreement that it was not to operate as payment until actually presented to and paid by drawee, thereby augmenting its assets, a trust arises in favor of draft holder authorizing invocation of the "trust fund" theory. First Nat. Bank v. B., 192M90, 255NW482. See Dun. Dig. 824d.

If direction for an accumulation is not a condition precedent to vesting of gift, provision for accumulation does not render gifts invalid, but where accumulation is a condition precedent to vesting of gift in charity, and period of accumulations transgresses rule against remoteness, gift is void ab initio. City of Canby v. B., 192 M571, 257NW520. See Dun. Dig. 786b.

If one person pays money to another, it depends upon manifested intention of parties whether a trust or a debt is created. If intention is that money shall be kept or used as a separate fund for benefit of payer or a third person, a trust is created. Id.

Even if bank did not have charter power to become insurance agent, it would still remain a trustee of premiums of insurance collected by it as an agent. Minneapolis Fire & Marine Ins Co. v. B., 193M14, 257NW510. See Dun. Dig. 786b.

That a bank conducting an insurance agency was permitted to remit net premiums collected by it to insurer monthly did not amount to an extension of credit generally by principal to agent so as to make agent only a general debtor to his principal instead of a trustee. Id.

The rule that, if a trustee makes a general deposit of trust funds in a bank, no preference can be allowed beneficiary after bank's insolvency, does not apply where bank itself was the trustee. Id.

Burden is on commissioner sued for preferred claim to both allege and prove that claim is barred by this section, and such defense cannot be first raised on appeal. Bethesda Old People's Home v. B., 193M589, 259NW384. See Dun. Dig 782.

A bank in which a check drawn on another bank is deposited is only a collecting agent, and such agency is revoked where bank goes into hands of commissioner before check is collected, and commissioner has no authority to collect the check, and having done so the money does not become an asset of the bank but belongs to the depositor, who is entitled to a preferred claim, which he does not lose through election of remedy by filing only general claims under advice of the department. Id. See Dun. Dig. 782.

Where guardian keeps funds of his wards in a bank, of which he is an active officer, in time certificates of deposit, savings and checking accounts, without bonds or security required by order of probate court being given, bank becomes trustee ex maleficio of funds and claim of present guardian against bank is entitled to a preference. Schendel v. P., 194M162, 259NW692. See Dun. Dig. 780.

Where bank qualified as testamentary trustee and commingled trust funds with funds and assets of bank, it became a trustee ex maleficio and trustee appointed as successor was rightfully allowed a preference. Henton v. R., 194M524, 261NW8. See Dun. Dig. 783.

Where a state bank ceases to do business, pledging certain assets to another bank which assumes its liabilities, and proceeds to liquidate, and, after its stockholders have authorized dissolution, declared a liquidating dividend of $30 a share upon its capital stock, receiver of an insolvent corporation, owner of shares of such bank stock, is entitled to receive such dividend and bank may not set off debts due from corporation to bank at time receiver was appointed and when bank ceased to function as a bank. Rockwood v. F., 195M64, 261NW 697. See Dun. Dig. 824d.

Commissioner of banks, when he makes a contract to convey land as authorized by court, is bound thereby. State Bank of Good Thunder v. B., 195M243, 262NW561. See Dun. Dig. 824b.

Statute of limitations against constitutional double liability of stockholders in a state bank begins to run when bank closes its doors and ceases to function as a bank, either because of being taken over by commissioner of banks, or because of absorption by another bank with approval of commissioner. Liquidation of Peoples State Bank, 197M479, 267NW482. See Dun. Dig. 802.

After all depositors and creditors have been paid in full, and all expenses paid, commissioner has no further duty to perform with respect to liquidation, unless the stockholders at proper meeting called select him as their agent for further liquidation. Op. Atty. Gen. (29b-7), Jan. 9, 1937.

Pledgee is proper party to bring action on bills payable pledged by band. Op. Atty. Gen., May 22, 1929.

Members of depositors' committee are not entitled to compensation for services. Op. Atty. Gen., Feb. 11, 1933.

Expense of reorganization under Laws 1933, c. 55, is preferred claim. Op. Atty. Gen., Apr. 4, 1933.

Money received by industrial commission from Spellman Fund under §3183-18½ belongs to state, and is preferred claim against depositary. Op. Atty. Gen., Apr. 8, 1933.

Certificate of deposit held not a preferred claim against closed bank. Op. Atty. Gen., Apr. 10, 1933.

Holders of drafts issued in payment of cash letters which did not clear prior to closing of bank are only general creditors and are not entitled to preference. Op. Atty. Gen., June 7, 1933.

Late claimants are not entitled to share in dividends already paid. Op. Atty. Gen., June 14, 1933.

Claims based on duress issued on payment of cash letters which did not clear prior to closing of bank are preferred. Op. Atty. Gen., June 28, reversing June 7, 1933.

Depositors and creditors of an insolvent bank closed prior to Laws 1933, c. 168, are entitled to interest if there is sufficient money therefor, and, as to banks similarly situated, late claimants may be paid in full if sufficient assets exist. Op. Atty. Gen. (29b-6), Sept. 30, 1937.

Tracing trust funds. 13MinnLawRev39.

Effect of fact that debt to or from bank is not due at the time of insolvency. 14MinnLawRev385.

Bank's liability for misappropriation by fiduciary of fiduciary funds in bank. 17MinnLawRev405.

Right of single endorser to setoff deposit against note held by insolvent bank. 18MinnLawRev37.

7690. Banks in possession of Commissioner of Banks or in liquidation—powers of Commissioner—Certificates.—That in all cases where the commissioner of banks of this state has taken possession of the property and business of any bank, or any such bank is in the process of liquidation by him, pursuant to the laws of this state, such commissioner of banks may in the name of any such bank or in his own name as commissioner of banks of the state of Minnesota, for the use of any such bank, bring and carry to an end all necessary actions in the proper courts to reduce the assets of any such bank to money and to protect the property and rights of any such bank, and to that end may in the name of any such bank or in his own name as commissioner of banks, execute all bonds and other papers necessary to carry on any such actions, and may in the name of any such bank, satisfy, discharge and assign by written instrument, any and all real estate and chattel mortgages and all other liens held by any such bank and may in the name of any such bank foreclose by advertisement in the manner provided by the laws of this state, any real estate mortgage held by any such bank and to execute in the name of any such bank to the attorney employed to foreclose any such mortgage by advertisement the power of attorney required by the laws of

this state in case of foreclosure of mortgages by advertisement. Such commissioner of banks prior to any sale under such foreclosure proceedings shall file for record in the office of the register of deeds of the county where any land affected by any such foreclosure sale is situated, a certificate under his hand as such commissioner of banks, stating therein the corporate name of the bank affected; its principal place of business; that as such commissioner of banks he has taken possession of the property and business of such bank under the laws of the state and the date of such taking possession thereof; that such bank is in process of liquidation by him, pursuant to the laws of this state if such be the fact. A like certificate shall filed for record by such commissioner of banks in the office where any such mortgage or lien is recorded. Such certificate, or a duly certified copy thereof, shall be prima facie evidence of the facts therein set forth. Only one such certificate need be filed as hereinbefore provided by this section for each bank in liquidation. All foreclosure proceedings heretofore conducted, whether such certificate was filed for record as to each such foreclosure or not, are hereby validated if one such certificate has been so filed as to each bank in liquidation.

A like certificate shall be filed by such commissioner of banks in the office of the clerk of the district court in any county where any action or proceeding affecting any such bank or its property shall be brought in any court, in the name of any such bank or in the name of such commissioner of banks, for its use prior to the entry of judgment therein or the entry of any final order in any such proceeding, and such certificate, or duly certified copy thereof, shall be prima facie evidence of the facts therein set forth.

That where such commissioner of banks has heretofore taken possession of the property and business of any such bank or the same is in process of liquidation by the commissioner of banks, pursuant to the laws of this state, and actions have been heretofore brought in the name of any such bank or in the name of such commissioner of banks for the use of any such bank in any court of the state, all such actions and all orders and judgments that have heretofore been entered therein or may hereafter be entered therein be and the same are hereby in all things validated on the filing of the certificate hereinbefore provided for in the court wherein any such action or proceeding is or has been pending.

This act shall not affect any action now pending in any court in this state, affecting any such action or judgment. (G. S. '13, §6371; '13, c. 447, §1; Feb. 2, 1933, c. 10, §1.)

Commissioner of banks may lease vacant bank building *to government without order of court.* Op. Atty. Gen., June 6, 1933.

7690-1. Reorganization plans of insolvent banks.

Action of commissioner in approving a reorganization agreement under this act is not conclusive upon creditors who do not assent thereto. 174M36, 218NW238.

The commissioner of bank is given practically entire control over liquidation of state banks and to represent and act for the bank, its stockholders and all its creditors. 174M36, 218NW238.

This act is valid. 174M36, 218NW238.

This section does not impair obligation of contract made after it went into effect. 174M36, 218NW238.

Constitutional as to depositors becoming such after passage of act, and is without application to preexisting depositors except those whose surrendered certificates of deposit before the statute took effect and took new certificates after such effective date. 180M113, 230NW267.

A bank having resolved to reorganize under Laws 1933, c. 55, may not thereafter abandon such plans and go into voluntary liquidation under same chapter. Op. Atty. Gen., May 16, 1933.

There can be no enforcement of stockholders' liability unless bank is, in fact, insolvent. Op. Atty. Gen., May 16, 1933.

Closed bank may be reorganized under this act by procedures substantially as with new bank except as to capital and surplus. Op. Atty. Gen. (29b-14), Aug. 27, 1935.

7690-5. Bank directors may suspend business.—Whenever the board of directors of a bank organized and existing by virtue of the laws of the State of Minnesota by resolution determine that it is unsafe and inexpedient for said bank to continue in business, it shall be lawful for said board to suspend temporarily the business of said bank for a period of not more than 15 days. The board of directors shall thereupon immediately present to the commissioner of banks a plan of reorganization calculated to put said bank in a safe condition and for continuing said bank as a going institution. The Commissioner of Banks shall forwith make an investigation of the assets and liabilities of said bank and determine its financial condition and whether said plan is for the best interests of the depositors. Upon approval in writing by the Commissioner of Banks of said plan, the same shall become effective when assented to in writing by the owners of not less than 90% of the total amount of desposits and unsecured claims of such bank, provided that by the total amount of deposits and unsecured claims is meant the total thereof after excluding therefrom all deposits mentioned in Section 3 of this Act and deposits that may not be legally reduced without an order of Court, or otherwise, and provided that the Commissioner of Banks is satisfied that the stockholders have made such contribution to the assets of the bank as the Commissioner of Banks may deem just and equitable. Thereafter, all other depositors and unsecured creditors shall be subject to such agreement and plan to the same extent and with the same effect as if they had joined in the execution thereof and had consented thereto; and the claims of such persons shall be thereafter treated in all respects the same as if they had joined in the execution of said agreement and consented thereto. That whenever under such an agreement and plan there has been a reduction of the amount or value of deposits and unsecured claims, if during the two years following the date of such agreement there shall be an increase in the total value of the assets and securities owned by the bank at the time of such agreement or in assets and securities substituted therefor, which increase is more than 5% of the value at the time of such agreement such surplus increase shall be redistributed to the holders of such deposits and unsecured claims, or their assigns which were reduced. Provided, that nothing contained in any such agreement shall be construed to release any stockholder of any such bank from liability upon his stock nor as releasing any person or corporation as surety or otherwise to any depositor and any such agreement purporting to release any such stockholder or person or corporation liable as surety shall be void. All remedies provided by law for enforcing stockholders' liability or the liability of any surety are hereby preserved. (Act Feb. 28, 1933, c. 39, §1.)

When assets of bank were set aside under depositors' agreement made for purpose of conserving assets of bank and to insure continued operation of bank and trust certificates were issued by trustee appointed by court, liability of bank to depositors ceased and obligations created under certificates were only those of trustee, and bank was not liable for alleged breach of contract by discontinuing operations as a bank several years later. Spreiter v. N., 201M340, 276NW242. See Dun. Dig. 824e.

7690-6. No business to be transacted during suspension.—During said period of suspension, no banking business shall be transacted by the suspended bank, and no other banking institution having knowledge of such suspension shall honor drafts, checks, or other items of exchange drawn by or on such suspended bank. (Act Feb. 28, 1933, c. 39, §2.)

7690-7. Exceptions.—Deposits of the United States, of the State of Minnesota, and of the counties, cities, villages, boroughs, townships and school districts of said state are exempt from the operation of this act. (Act. Feb. 28, 1933, c. 39, §3.)

7690-8. Effective until January 15, 1935.—This act shall take effect and be in force from and after its

passage until January 15th, 1935; provided that it is hereby declared as legislative intent that an emergency exists under the police power of the state, and that at any time prior to said date of January 15, 1935, the Governor may make, and file in the office of the Secretary of State, an order suspending and rendering inoperative all of the provisions of this act, and thereupon this act and all of the provisions thereof shall be in all matters suspended and inoperative, except as to those banks that may then have been reorganized under the provisions of this act. (Act Feb. 28, 1933, c. 39, §4.)

7690-9. Provisions separable.—If any section, subsection, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not effect the validity of the remaining portions of this act. (Act Feb. 28, 1933, c. 39, §5.)

7690-10. Definitions.—Wherever used in this act the following words or phrases shall be deemed to have the following meaning, namely:

"Bank"—shall mean any state bank, savings bank or trust company doing a banking business under the laws of this State.

"Period of Reorganization"—shall mean the thirty day or additional sixty or one hundred and eighty day periods or such shorter time as the Commissioner of Banks may determine during which the bank is in process of reorganization.

"Reorganized Bank"—shall mean any bank reorganized under the provisions of this Act from and after the date the plan of reorganization is declared effective by the Commissioner of Banks. (Act Mar. 3, 1933, c. 55, §1; Apr. 15, 1933, c. 277, §1.)

Act is constitutional. Timmer v. H., 194M586, 261NW 457. See Dun. Dig. 1628, 1644.

A creditor of a state bank has no constitutional right to insist upon a particular form or method of liquidation, nor has he a vested right to demand liquidation at hands of any particular official. Id. See Dun. Dig. 1642, 1644.

7690-11. Bank may be declared to be in process of reorganization.—Whenever the Board of Directors or Trustees of any bank shall have adopted a resolution declaring an emergency to exist in the affairs of said bank rendering it advisable to invoke the provisions of this Act, the Commissioner of Banks, having first given his written approval of such action, may declare said bank to be in process of reorganization for a period of thirty days thereafter subject to the right of the Commissioner of Banks if he deems such action to be for the best interests of the debtors and creditors of such bank to—

(a) Extend the period of reorganization for a further period of not to exceed sixty (60) additional days; provided, however, that during the year of 1933 only, the Commissioner of Banks, if he deems it necessary, may extend the period of reorganization for not more than one hundred and eighty (180) days from and after the end of said sixty (60) day period;

(b) Terminate the period of reorganization and declare the same at an end.

During said period of reorganization said bank shall remain open and be operated by the directors and officers thereof but under the supervision of the Commissioner of Banks and shall carry on its operations subject to such rules and regulations and restrictions as the Commissioner of Banks shall approve as being for the best interests of the debtors and creditors of such institution, including the right to prohibit or limit withdrawal of funds on deposit, but all such rules, regulations or restrictions as applied to any one bank shall be general in character and shall apply equally to all deposits or claims of a similar class of said bank. During such period of reorganization all the remedies at law or in equity of any creditor or stockholder for the enforcement of any claim against such bank shall be suspended and the statute of limitations against such claims or rights shall be tolled during said period.

The reorganization of said bank not having been effected prior to the expiration of said period of reorganization as originally declared or extended, the Commissioner of Banks in his discretion may take possession of the property and business of said bank and proceed to liquidate the same in accordance with the statutes relating thereto. (Act Mar. 3, 1933, c. 55, §2; Apr. 15, 1933, c. 277, §2.)

Commissioner of banks has wide discretionary power and control of liquidation of state banks, and his acts represent bank as an entity as well as its stockholders and all of its creditors. Timmer v. H., 194M586, 261NW 456. See Dun. Dig. 824b.

Action of the commissioner in approving a reorganization agreement is not conclusive upon creditors who do not assent thereto, and such creditors may contest reorganization agreement in any appropriate action brought to recover upon their claims, and may litigate all questions which could have been raised on hearing before commissioner. Id. See Dun. Dig. 824e.

7690-12. Reorganization.—During said period of reorganization said bank may be reorganized in accordance with a written plan approved in writing by the Commissioner of Banks and by the owners of not less than sixty-six and two-thirds per cent. (66-2/3 %) of the total amount of deposits of, or unsecured liquidated claims against said bank after deducting from said deposits or unsecured liquidated claims any legal off-sets thereto, deposits entitled to priority of payment, deposits or claims which cannot be reduced without an order of the Court, and deposits of the United States, of the State of Minnesota, and of the counties, cities, villages, boroughs, townships and school districts of said state.

Upon such approval being obtained the Commissioner of Banks shall declare the plan of reorganization effective as of a date to be fixed in said declaration. Those depositors and unsecured creditors not approving such plan shall nevertheless be subject to the plan and bound thereby to the same extent and with the same effect as if they had approved it. (Act Mar. 3, 1933, c. 55, §3, Apr. 15, 1933, c. 277, §3.)

Non-assenting stockholder or creditor is bound by plans for reorganization when approved by commissioner of banking and owners of 66 2/3% of outstanding deposits and unsecured claims. Op. Atty. Gen., May 18, 1933.

Depositor's agreement must be filed in district court if agreement so provides. Op. Atty. Gen., Aug. 8, 1933.

7690-13. Provisions of reorganization.—Such plan of reorganization may contain any or all of the following provisions:

(a) placing in the hands of a liquidating agent or agents, corporate or individual, of the non-liquid assets of the bank to be held and liquidated for the benefit of the creditors of the bank existing at the beginning of the period of reorganization in accordance with their respective rights and priorities, if any, and thereafter for the benefit of the reorganized bank. Said liquidating agent or agents shall be appointed and act under the jurisdiction of, and report to, the District Court of the County wherein said bank is located. The expenses of said liquidating agent or agents shall be paid from the assets in its, his or their possession.

(b) reducing the amount of the debtor liability of the reorganized bank to depositors and unsecured creditors existing at the begining of the period of reorganization to a sum equivalent to the then market value of the assets of the bank carried forward into the reorganized bank and, with the written consent of the depositor or unsecured creditor, limiting the time and method of withdrawal thereof.

(c) providing that the deposit liabilities of the reorganized bank (i. e., those of old depositors carried forward as liabilities of the reorganized bank by way of reduced deposit liability and deposits arising during the period of and

after reorganization) may have priority of payment over the claims of the old depositors and unsecured creditors existing at the beginning of the period of reorganization to the extent that the claims of said old depositors or unsecured creditors have been transferred to the assets in the hands of the liquidating agent or agents, and not carried forward as a liability under the plan of reorganization against the reorganized bank. (Act Mar. 3, 1933, c. 55, §4; Apr. 15, 1933, c. 277, §4.)

Under depositors' reduction agreement providing for an exchange of "notes or assets" between a reorganized bank and a trustee holding assets that were considered uncollectible at time of reorganizing, a bank building owned and occupied by bank at time of reorganization, but later vacated, was not an asset eligible for exchange. Empire State Bank v. H., 193M207, 258NW145. See Dun. Dig. 824e(63).

Assurance of bank directors that depositor signing waiver would be paid in full was but a promise which could not be used as a basis for an action in deceit. Carney v. F., 196M1, 263NW901. See Dun. Dig. 824e.

A trust agreement between depositors and a bank by which they accepted a proportionate interest in trust assets charged off by bank, in consideration of acquitting bank of 50 per cent of deposit liability, is valid, though bank had authority to exchange assets. Holm v. M., 197 M384, 267NW201. See Dun. Dig. 824e.

(b).

Under depositor's agreement providing for payment of "25% in one year," such amount could be paid prior to lapse of one year. Op. Atty. Gen., Nov. 21, 1933.

7690-14. May receive deposits under certain conditions.—During the period of reorganization the bank may, with the approval of the Commissioner of Banks, receive non-interest-bearing deposits. All deposits so made shall be segregated from the other assets of the bank and retained as cash, or deposited in the Federal Reserve Bank of Minneapolis; shall be utilized solely for the purpose of repaying deposits so made and shall be deemed a trust fund therefor. Deposits made other than in cash shall be received for collection only and shall be treated as a deposit only when and as said bank shall actually have received the cash therefor. (Act Mar. 3, 1933, c. 55, §5; Mar. 17, 1933, c. 92; Apr. 15, 1933, c. 277, §5.)

Sec. 13 of Act Apr. 15, 1933, cited, repeals Laws 1933, c. 92, which amended Laws 1933, c. 41(55) §5, which is again amended by §5 of this act.

Act Mar. 17, 1933, cited, purports to amend "Laws 1933, chapter 41, §5." The act relating to the subject matter of the amendment is chapter 55 of Laws 1933. Act Mar. 17, 1933, was repealed by Act Apr. 15, 1933, c. 277, §13. Sec. 5 of the latter act amended this section to read as above.

7690-15. Commissioner may levy assessment.—Whenever it appears to the Commissioner of Banks wise or advisable in order to effectuate the reorganization of any bank under this Act, said Commissioner of Banks may levy an assessment payable forthwith upon the stockholders thereof, pro-rata, according to the capital stock held by each at such amount as he deems necessary, not exceeding their liability under the Consitution. (Act Mar. 3, 1933, c. 55, §6, Apr. 15, 1933, c. 277, §6.)

7690-16. May sell stock upon failure to pay assessment.—On failure of any stockholder to pay said assessment the Commissioner of Banks may order the Board of Directors of said bank to sell, and the latter shall thereupon sell the stock of said stockholder at public or private sale on ten days published notice in a newspaper in the county. (Act Mar. 3, 1933, c. 55, §7; Apr. 15, 1933, c. 277, §7.)

7690-17. Exemptions.—Deposits of the United States, of the State of Minnesota, and of the counties, cities, villages, boroughs, townships, school districts of said state and deposits of banks in liquidation held by the Commissioner of Banks and deposits of corporations and associations organized for the relief of the poor and/or the unemployed are exempt from the operation of this Act. (Act Mar. 3, 1933, c. 55, §8; Apr. 15, 1933, c. 277, §8.)

Funds in hands of Firemen's Relief Association are not public funds to extent that they are a preferred claim against bank and required to be paid over without restrictions or deduction by bank opened after bank holiday. Op. Atty. Gen., June 1, 1933.

7690-18. Not to relieve stockholders of constitutional liability.—Nothing in this Act shall be construed as, nor shall any reorganization plan or agreement contain any provision, releasing any stockholder of the bank from his liability upon his stock, nor as releasing any person or corporation as surety or otherwise to any depositor, and any such agreement purporting to release any such stockholder or person or corporation liable as surety shall be void. All remedies provided by law for enforcing stockholders' liability or the liability of any surety are, except as herein expressly provided to the contrary, preserved. (Act Mar. 3, 1933, c. 55, §9; Apr. 15, 1933, c. 277, §9.)

7690-18a. Expense of reorganization to be paid by bank.—All expense of the Commissioner of Banks incidental to the reorganization, reopening and/or supervision of banks under the provisions of this Act and Acts amendatory thereto, shall be paid by those banks so reorganized, reopened and/or supervised or attempting reorganization. The Commissioner of Banks may from time to time demand from each such bank reimbursement and payment of such expenses, and the demanded sum shall be paid within ten days after demand therefor. On receipt of such sums, the Commissioner of Banks shall credit the same to a fund in his department to be known as "Reorganization Revolving Fund," which fund shall be examined by the public examiner annually, and out of such fund the Commissioner of Banks shall liquidate the expenses so incurred. (Act Mar. 3, 1933, c. 55, §10; Apr. 15, 1933, c. 277, §10.)

7690-19. Effective until January 15, 1935.—This Act shall take effect and be in force from and after its passage until January 15, 1935, and it is hereby declared as legislative intent that an emergency exists under the police power of the state, rendering the passage of this Act necessary and advisable. (Act Mar. 3, 1933, c. 55, §11; Apr. 15, 1933, c. 277, §11.)

7690-20. Provisions separable.—If any section, sub-section, clause or phrase of this Act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Act. (Act Mar. 3, 1933, c. 55, §12; Apr. 15, 1933, c. 277, §12.)

7690-21. Commissioner of banks may borrow money in certain cases.—The Commissioner of Banks, for the benefit of any bank, savings bank, trust company or building and loan association which is in process of liquidation by said Commissioner, is authorized to borrow money and to issue evidence of indebtedness therefor and to secure the repayment of the same by the mortgage, pledge, transfer in trust or hypothecation of any or all of the property of such bank, savings bank, trust company or building and loan association, whether real, personal or mixed, and whether or not such property is subject to a prior mortgage, pledge or hypothecation. Such loans may be obtained for the purposes of facilitating liquidation, protecting or preserving the assets in his charge, expediting the making of distributions and payment of dividends to depositors and other creditors, providing for the expenses of administration and liquidation and aiding in the reopening or reorganization of such bank, savings bank, trust company or building and loan association, or its merger or consolidation with another bank, savings bank, trust company or building and loan association, or the sale of all of its assets.

The Commissioner of Banks shall be under no personal obligation to repay any such loans so made and shall have power to take any and all action necessary or proper to consummate such loan and to provide for the repayment thereof. (Act Jan. 10, 1933, c. 3, §1.)

Commisioner of banks may release vacant bank building to government without order of court. Op. Atty. Gen., June 6, 1933.

Examiner in charge of liquidation may sign examiner's name, including affidavits incident to borrowing of money from Reconstruction Finance Corporation. Op. Atty. Gen., Jan. 22, 1934.

7690-22. Inconsistent acts repealed.—All laws or parts of laws inconsistent or in conflict herewith are hereby repealed. (Act Jan. 10, 1933, c. 3, §2.)

7690-23. Certain Proclamation validated.—That certain proclamation made by the Lieutenant Governor of the State of Minnesota, acting in the absence of its Governor from the State at 8 o'clock A. M. on March 4, 1933, by which there was declared and proclaimed a temporary banking holiday mandatory for all banks in Minnesota, including state, national and private banks, savings banks and trust companies, is hereby in all respects ratified and confirmed and declared to be in all respects valid, and any and all action in compliance therewith taken by such banks and trust companies is hereby legalized and declared valid. (Act Mar. 6, 1933, c. 56, §1.)

7690-24. Bank holiday legalized.—The Fourth day of March, 1933, is hereby declared to have been a banking holiday for all banks in Minnesota, including state and national banks, savings banks and trust companies, and to the extent that any such bank, savings bank or trust company has refrained from the transaction of any banking business on said day, such action is hereby in all respects legalized and declared valid. (Act Mar. 6, 1933, c. 56, §2.)

7690-25. Banking holiday declared.—A Banking holiday is hereby declared in the State of Minnesota commencing as of the 6th day of March, 1933, and ending when and as the Governor of the State shall have by proclamation so declared. During such banking holiday all banks, state and national, savings banks and trust companies shall refrain from any banking business. (Act Mar. 6, 1933, c. 56, §3.)

7690-26. Banks prohibited from transacting business.—By proclamation of the Governor, all state banks, savings banks or trust companies shall refrain from transacting any banking business on any day on which national banks shall be prohibited by Federal law or proclamation from transacting business. (Act Mar. 6, 1933, c. 56, §4.)

7690-27. Effective on passage.—This Act shall be deemed effective from and after its passage. (Act Mar. 6, 1933, c. 56, §5.)

7690-28. Resumption of banking business—rules and regulations.—Whenever any banking holiday, as such, shall have existed in this state and shall have been duly terminated, any bank, savings bank and trust company shall resume business under such rules, regulations and restrictions as the Commissioner of Banks may prescribe, which rules, regulations and restrictions may vary as to different banks, savings banks and trust companies and may contain any or all of the following amongst other provisions:

(1) Prohibit or limit the withdrawal of currency or money by depositors in such banks, savings banks or trust companies or any of them.

(2) Authorize any bank, savings bank or trust company to join with other banks, state and/or national, in forming an association for the issuance by said associations of secured certificates of indebtedness, to acquire such certificates of indebtedness for transaction of its business and to pledge from time to time any of its assets as security for any certificates so issued and acquired by it and to the extent necessary therefor any such bank, savings bank or trust company is hereby authorized and empowered by and with the approval of the Commissioner of Banks to so pledge any of its assets for such purpose.

(3) Authorize any bank to issue its own secured evidences of indebtedness and pledge any of its assets as security therefor and to the extent necessary therefor any such bank is hereby authorized and empowered by and with the approval of the Commissioner of Banks to so pledge any of its assets for such purpose.

(4) Any such rules, regulations or restrictions or any authorization given thereunder may be terminated or changed by the Commissioner of Banks from time to time and new rules, regulations or restrictions or authorizations made subject to like power to change. (Act Mar. 6, 1933, c. 57, §1.)

7690-29. Provisions separable.—If any section, subsection, clause or phrase of this Act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Act. (Act Mar. 6, 1933, c. 57, §2.)

7690-30. Effective on passage and terminable by proclamation.—This Act shall take effect from and after its passage and shall terminate when and as the Governor by proclamation shall have declared the emergency which renders the passage of this Act necessary ended, but in no event shall the powers herein conferred exist beyond January 15th, 1935. Upon termination of this Act any bank may continue to operate hereunder for such reasonable time and to such extent as may be necessary to liquidate said collateral so deposited by it and to pay said certificates of indebtedness. (Act Mar. 6, 1933, c. 57, §3.)

7690-31. Federal Deposit Insurance Corporations as receiver of state banks having insured deposits.—That the Federal Deposit Insurance Corporation created by Section 12B of the Federal Reserve Act, as amended [Mason's U. S. Code Ann., 12:264], upon appointment by Commissioner of Banks, is hereby authorized and empowered to act without bond as receiver or liquidator of any banking institution, the deposits in which are to any extent insured by said Corporation, and which shall have been closed on account of inability to meet the demands of its depositors.

Notwithstanding any other provision of law the appropriate State authority, having the right to appoint a receiver or liquidator of a banking institution, may in the event of such closing tender to said Corporation the appointment as receiver or liquidator of such banking institution, and if the Corporation accepts said appointment, the Corporation shall have and possess all the powers and privileges provided by the laws of this State with respect to a receiver or liquidator respectively of a banking institution, its depositors and other creditors. (Act Apr. 18, 1939, c. 301.)

7692. Consolidation, when authorized.

Where at request of her father, an officer of a bank, and to aid bank, defendant gave her promissory note to bank and bank issued to her its shares of capital stock for agreed price thereof, pursuant to an understanding that bank would sell stock and apply it on note, that bank would not sell note, nor require her to pay it, and stock was held by father for her, and part thereof sold and applied on note, and the note was renewed from time to time for a period of ten years, note was not an accommodation note, but was given for value, she being estopped from claiming that either note in suit is an accommodation note. Searing v. H., 193M162, 258NW588. See Dun. Dig. 969, 976.

7693. Branch banks prohibited.

The inhabitants of a community having no local bank might install a depository service, providing it is their own agency and not the agency of a bank or banks. Op. Atty. Gen., Mar. 25, 1931.

7694. Liquidation. [Repealed Mar. 23, 1939, c. 74, §1, post §7699-31.]

Voluntary liquidation of banks and trust companies. Laws 1939, c. 74, §§2-4.

Act is constitutional. Paul v. F., 187M411, 245NW832. See Dun. Dig. 824e.

Where a state bank ceases to do business, pledging certain assets to another bank which assumes its liabilities, and proceeds to liquidate, and, after its stock-

holders have authorized dissolution, declared a liquidating dividend of $30 a share upon its capital stock, receiver of an insolvent corporation, owner of shares of such bank stock, is entitled to receive such dividend and bank may not set off debts due from corporation to bank at time receiver was appointed and when bank ceased to function as a bank. Rockwood v. F., 195M64, 261NW 697. See Dun. Dig. 767.

7697. Clearing houses.

Act, relating to "clearing house associations." Laws 1933, c. 58.

7697-1. Banks may form clearing house associations.—Any bank, savings bank or trust company may join with any other bank, state or national, or group of banks, state or national, doing business in this State, in the forming of an association called herein a "Clearing House Association." (Act Mar. 6, 1933, c. 58, §1.)

7697-2. Powers and purposes.—Any Clearing House Association formed under the provisions of this Act—

(1) shall be a non-profit making corporation without corporate stock, and shall have power to sue and be sued in its own name.

(2) may issue non-interest bearing certificates of indebtedness secured by collateral furnished by its member banks. Such certificates of indebtedness shall be the liability solely of the Clearing House Association and redeemable or payable from its assets or the collateral so deposited with or held by or for it. May be made non-transferable thirty (30) days after issuance and shall be accepted by all member banks at par for deposit. Any certificates so deposited shall, in the absence of a contrary agreement between the depositor and the bank, be repaid in like certificates.

(3) may enter into any agreement under the terms of which the collateral so deposited with or held by it may be placed in the hands of a third party banking institution or trust company, state or national, to be held by such third party for the benefit of the holders of all of the outstanding certificates of indebtedness of said Clearing House Association without priority one over the other. Such agreement may contain provisions for the substitution of other collateral of at least equal value.

(4) to adopt such rules and regulations as may be necessary or advisable for the conduct of its business, and change and modify any rules or regulations so made, provided no such change or modification shall affect the rights of the holder of any then outstanding certificate of indebtedness. (Act Mar. 6, 1933, c. 58, §2.)

7697-3. Articles of Association.—The Association shall come into being upon signing of the agreement of association by the members thereof. A duplicate original of the Articles of Association or Agreement of said Clearing House Association and of all rules and regulations thereof or any changes or modifications therein, duly certified by the officers of said Association, shall be filed with the Secretary of State within fifteen days after the same becomes effective and no other filing or publication thereof shall be necessary. (Act Mar. 6, 1933, c. 58, §3.)

7697-4. Exempt from operation of blue sky laws.—Certificates of indebtedness issued by a Clearing House Association formed hereunder shall be exempt from the regulations and jurisdiction of the Department of Commerce, Securities Division, or of any Blue Sky Law, so-called. (Act Mar. 6, 1933, c. 58, §4.)

7697-5. Provisions separable.—If any section, subsection, clause or phrase of this Act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Act. (Act Mar. 6, 1933, c. 58, §5.)

7697-6. Effective at once.—This Act shall take effect from and after its passage, and the powers herein conferred upon any bank, savings bank or trust company to so enter such an Association shall terminate on the 15th day of January, 1935, provided, however, that the governor may, by proclamation, terminate the powers herein conferred on any earlier date, when and if, in his judgment the emergency, making the passage of this Act necessary, ceases to exist. Upon the termination of the powers herein conferred by lapse of time or by proclamation of the governor, no such Clearing House Association shall thereafter issue any further certificates of indebtedness, and shall cease all operations save and except such as are necessary for the retirement and payment of all the then outstanding certificates of indebtedness of said Association. (Act Mar. 6. 1933, c. 58, §6.)

7697-7. Banks may issue notes or debentures.—With the approval of the Commissioner of Banks any banking institution may at any time through action of its Board of Directors and without requiring any action of its stockholders issue and sell its capital notes or debentures. Such capital notes or debentures shall be subordinate and subject to the claims of depositors and may be subordinated and subjected to the claims of other creditors.

In determining whether the capital of any banking institution is impaired, outstanding capital notes or debentures legally issued by such institution and sold by it to the Reconstruction Finance Corporation, shall not be considered as liabilities of such institutions, but for all other purposes they shall be, and shall be considered as, liabilities of such institution.

No capital notes, or debentures shall be retired or paid by any such institutions, if such retirement or payment would impair the capital of such institution.

Such capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be held individually responsible as such holders for any debts, contracts, or engagements of such institutions, and shall not be held liable for assessments to restore impairments in the capital of such institution. (Act Apr. 29, 1935, c. 305, §1.)

Sec. 2 of Act Apr. 29, 1935, cited, repeals all laws in conflict.

Banks are permitted to issue capital notes or debentures to individuals. Op. Atty. Gen. (844a-2), Dec. 23, 1935.

7697-8. Banks need not give security for deposits.—Notwithstanding any provisions of law of this State requiring security for deposits in any bank or trust company in the form of collateral, surety bond or any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of Section 12B of the Federal Reserve Act, as amended [Mason's U. S. Code Anno., title 12, §264], or any amendments thereto. (Act Apr. 29, 1935, c. 317, §1.)

Sec. 2 of Act Apr. 29, 1935, cited, repeals all inconsistent acts.

See §1973-10.

Federal insurance does not run concurrently with collateral on deposit. Op. Atty. Gen. (140c-3), Aug. 4, 1937.

County board of audit may waive statutory requirement that a depository furnish collateral to extent of $5,000 guaranteed by federal deposit insurance corporation. Op. Atty. Gen. (140f-3), Mar. 22, 1938.

7697-9. Deposits of trust funds.—Any person, firm or corporation appointed by a court of competent jurisdiction as representative of the estate of a deceased person, or as guardian, or any trustee of a fireman's relief association, or any referee, receiver or trustee appointed by a court of record in this state, may deposit the funds coming into his or its possession for safe-keeping and disbursing, unless otherwise directed by the court, in any bank or trust company, however organized, the deposits of which are insured in whole or in part by the federal deposit insurance corporation,

to the extent that the funds so deposited are fully insured. (Apr. 21, 1937, c. 318, §1.)

Sec. 2 of Act Apr. 21, 1937, cited, provides that the Act shall take effect from its passage.

7697-10. Demand deposits defined.—No bank shall, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand; Provided, that nothing herein contained shall be construed as prohibiting the payment of interest in accordance with the terms of any certificate of deposit or other contract entered into in good faith prior to the passage of this act; but no such certificate of deposit or other contract shall be renewed or extended unless it shall be modified to conform to this paragraph, and every bank shall take such action as may be necessary to conform to this paragraph as soon as possible consistently with its contractual obligations. (Apr. 24, 1937, c. 403, §1.)

7697-11. What are demand deposits.—For the purpose of this act all deposits are payable on demand except: (1) Those deposits which are evidenced by a negotiable or non-negotiable instrument which provides on its face that the amount of such deposit is payable:

(a) On a certain date, specified in the instrument, not less than 30 days after the date of the deposit; or

(b) At the expiration of a specified period not less than 30 days after the date of the instrument; or

(c) Upon written notice to be given not less than 30 days before the date of re-payment.

(2) Those deposits which may not be withdrawn within 30 days of the making thereof. (3) Those deposits which may not be withdrawn within 30 days of the giving of notice of an intended withdrawal. (Apr. 24, 1937, c. 403, §2.)

7698. Payment of forged or raised check—Liability to depositor.

Money paid out by bank on forged check may be recovered from bank. Op. Atty. Gen. (29a-11), Dec. 4, 1935.

7699. Same—Notice to depositor.

The exclusive power to liquidate insolvent state banks is placed in the commissioner of banks, and where he has attempted to exercise such power the district court is without jurisdiction to appoint a receiver for such banks in proceedings brought by a judgment creditor to enforce the "double" liability of shareholders. Northwestern Fuel Co. v. L., 182M276, 234NW304. See Dun. Dig. 824b.

7699-1. Bonds or contracts of indemnity of officers and employes of bank.

Op. Atty. Gen., May 15, 1933; note under §7688.

Bank held entitled to recover where its employe acted wrongfully or dishonestly and in bad faith resulting in a money loss. 177M65, 224NW451.

Evidence sustains the finding that notice of loss was given in time to indemnity company, except as to one item. 177M65, 224NW451.

Where indemnity insurance company issued its bond to bank stock holding corporation and one of its affiliates, and defendant president and manager of affiliate transferred mortgage and notes to third person after being directed to satisfy notes and mortgages because of transfer of mortgaged property to bank, and bank sued to quiet title and indemnity company paid bank expenses of suit, indemnity company could not recover amount of attorney's fees from defendant in absence of assignment of bank's cause of action, there being no contractual relations between indemnity company and defendant, and tort not being a wrong against indemnity company. Indemnity Ins. Co. v. M., 191M576, 254NW913. See Dun. Dig. 4805.

Bank may not purchase common stock of casualty company. Op. Atty. Gen. (29a-28), Apr. 24, 1936.

A credit union which is a member of a credit union national association having its principal place of business in another state may not enter into agreement or contract whereby power to act as agent and trustee for purpose of fidelity insurance is delegated to national association. Op. Atty. Gen. (92a-28), Mar. 24, 1937.

Relative to requisites and conditions pertaining to bonds or contract of indemnity for officers and employees, this act would be controlling for credit unions as well as banks. Id.

BANKS AND TRUST COMPANIES

7699-5 Consolidation of state banks or trust companies—when authorized—Procedure.

This act is constitutional. First Minneapolis Trust Co. v. L., 185M121, 240NW459.

7699-9. Same—Corporate existence merged—Rights, powers, obligations, etc.

Validity of this act under state constitution as determined by state supreme court, held binding on federal court. First Trust Co. v. U. S. (USDC-Minn), 15FSupp 634.

Federal court determining applicability of federal tax to original stock issue of company resulting from consolidation of two trust companies, held not bound by state court's construction of this act. Id.

Consolidation of two trust companies, held to result in a new, distinct company, stock issue of which was subject to federal tax as an original issue of stock. Id.

Sureties on bonds securing state deposits held not released by the consolidation or merger of the bank with another bank. 173M406, 217NW360.

Consolidation of two state banks under c. 156, Laws 1925, does not create a novation as to a creditor of one of the banks, who treats the merged bank as his debtor. 173M406, 217NW360.

Consolidated bank is not county depository though both consolidating banks are depositories. Op. Atty. Gen., Oct. 4, 1929.

Where two banks consolidate into a third, a new corporation is created, but the old corporations still exist so far as the creditors, depositors, beneficiaries, etc., of such old corporations are concerned. Op. Atty. Gen., Feb. 11, 1931.

This statute gives double protections in case of merger of state trust company with national bank—the new corporation assumes the liabilities of the merging corporation, and the liability of the stockholders of the merging corporation continues. Op. Atty. Gen., Jan. 24, 1933.

7699-9½. Consolidation of banks and trust companies.—Upon the consolidation of a Trust Company with a National Banking Corporation into a consolidated Banking Corporation as provided by any existing Act of Congress of the United States, the corporate existence of such Trust Company shall be merged into that of the consolidated Banking Corporation to the same extent and with the same effect provided in Section 7699-9, Mason's Statutes of Minnesota for 1927, relating to the consolidation of two or more State Banks or Trust Companies. (Act Apr. 25, 1931, c. 348.)

7699-13½. Rate of interest on savings deposits.—No state bank or trust company shall pay interest on deposits at a greater rate than four per cent per annum, provided that interest at that rate per annum may be credited or paid on savings accounts quarterly or semi-annually, and interest at that rate per annum may be paid on certificates of deposit not oftener than every six months. (Act Apr. 9, 1929, c. 144, §1.)

7699-13½a. Violation a misdemeanor.—Any person or officer of such state bank or trust company who knowingly or wilfully accepts deposits with an agreement or understanding either directly or indirectly on the part of said bank or trust company to pay a larger rate of interest than that herein provided, shall be guilty of a misdemeanor. (Act Apr. 9, 1929, c. 144, §2.)

7699-13½b. Application.—The provisions of this act shall not apply to any existing contract. (Act Apr. 9, 1929, c. 144, §3.)

7699-13½c. Application.—The provisions of this act shall not apply to mutual savings banks. (Act Apr. 9, 1929, c. 144, §4.)

7699-14. Pledges, hypothecations, assignments and transfers of and liens against assets unauthorized—Exceptions.—No bank or trust company shall pledge, hypothecate, assign, transfer or create a lien upon or charge against any of its assets except to the state or to secure public deposits or to secure deposits of postal savings funds, or to secure money borrowed in good faith from other banks or trust companies, or from any financial agency created by an Act of Congress, provided, that this section shall not be con-

strued to permit the use of any assets as security for public deposits other than the securities made eligible by law for that purpose. ('27, c. 257, §1; Apr. 25, 1931, c. 341; Apr. 4, 1933, c. 149, §1; Mar. 4, 1939, c. 46.)

Sec. 2 of Act Apr. 4, 1933, cited, provides that the act shall take effect from its passage.
175M363, 221NW242.

A bank has no power to pledge any of its assets to secure the repayment of the deposits, except as given by the statutes. 174M286, 219NW163.

Where an unauthorized pledge of assets is made by bank and it becomes insolvent, receiver may recover assets pledged, or damages, if they have been converted. 174M286, 219NW163.

A contract of pledge of collateral securities to secure any indebtedness or obligation owing from foreign bank to Minnesota bank, made and to be performed in Minnesota, is a Minnesota contract and is not ultra vires though forbidden by statute of other state. 175M555, 222NW274.

A contract between banks by which one, in consideration of its promise to pay all liabilities of other which is in failing circumstances, takes a note of embarrassed bank for total amount of its liabilities and to secure which receives in pledge all assets of other bank, is valid and binding and not contrary to banking laws of state. **First State Bank & Trust Co. v. F., 193M414, 258NW593. See Dun. Dig. 767.**

While a state bank may give a bond to secure the government for deposit of postal savings, it may not pledge any portion of its assets. Op. Atty. Gen., May 22, 1931.

A bank cannot pledge a customer's notes to secure public deposits. Op. Atty. Gen., June 11, 1931.

A bank had no legal authority to pledge certificates of deposit, but in view of Laws 1931, c. 296, school district warrants may be pledged to secure public deposits. Op. Atty. Gen., Aug. 18, 1931.

County had no valid claim upon deposited collateral not authorized by laws or approved by county board. Op. Atty. Gen., Apr. 21, 1932.

Moneys of university societies are not public moneys. Op. Atty. Gen., June 12, 1933.

State banks may borrow money on proposed reconstruction finance corporation capital notes and debentures. Op. Atty. Gen., Aug. 12, 1933.

Money borrowed by state bank on reconstruction finance corporation debenture may be considered as additional capital. Id.

Trustees liquidating trust funds created in reorganization of bank may borrow money from the reconstruction finance corporation and pledge assets of trust as collateral to loan. Op. Atty. Gen. (29a-12), Aug. 30, 1934.

State bank may not pledge assets to secure deposit of postal savings funds. Op. Atty. Gen. (29a-12), Jan. 16, 1939.
(3).

Depository for county funds may deposit and assign county warrants as collateral security. Op. Atty. Gen., May 31, 1932.

7699-20. Assessments against stockholders of insolvent banks, etc.

Laws 1927, c. 254, sufficiently safeguards the rights of stockholders of banks. American State Bank of Minneapolis v. J., 184M498, 239NW144. See Dun. Dig. 802.

7699-29. Same—Actions on claims—Filing of claims, etc.

Burden is on commissioner sued for preferred claim to both allege and prove that claim is barred by this section, and such defense cannot be first raised on appeal. Bethesda Old People's Home v. B., 193M589, 259NW384. See Dun. Dig. 782.

7699-31. Voluntary liquidation—Law repealed.—Mason's Minnesota Statutes of 1927, Sections 7641 and 7694, hereby are repealed. (Act Mar. 23, 1939, c. 74, §1.)

7699-32. Same—Banks may liquidate voluntarily.—By a resolution duly adopted by the holders of 75 per cent of its stock, a bank or a trust company, or one acting in the capacity of both a bank and trust company, may go into voluntary liquidation upon filing a certified copy of such resolution with the commissioner of banks, and obtaining the written consent of said commissioner to voluntarily liquidate said bank or trust company.

After the filing of such certified copy of such resolution and obtaining the written consent of said commissioner it shall give eight weeks' published notice in a qualified newspaper in the county of the principal place of business of such bank or trust company to creditors to present their claims and shall file a copy thereof with said commissioner within one week after the first publication thereof, and shall file with said commissioner proof of the publication thereof within ten days after the completion of such published notice.

Upon compliance with the foregoing and upon filing with said commissioner an affidavit that all depositors and all other creditors have been paid in full, the said commissioner, if he finds the facts alleged therein to be true, shall issue his certificate of liquidation and upon the filing for record of said certificate of liquidation, both in the office of the secretary of state and in the office of the register of deeds of the county of the principal place of business of such bank or trust company immediately prior to such corporation's voluntary liquidation, the liquidation of said corporation shall be complete and its corporate existence shall thereupon terminate. (Act Mar. 23, 1939, c. 74, §2.)

7699-33. Same—May secure certificate of liquidation.—Any bank or trust company which has heretofore gone into voluntary liquidation under the laws of this state and which has heretofore complied or may hereafter comply with all the other requirements of section 2 of this act, may upon application to the commissioner of banks secure a certificate of liquidation and upon the filing of same pursuant to section 2 of this act the liquidation of such bank or trust company shall be complete and its corporate existence shall thereupon terminate. (Act Mar. 23, 1939, c. 74, §3.)

7699-34. Same—Title to assets.—The title to any assets omitted from the liquidation of any bank or trust company organized under the laws of this state shall vest in the board of directors of the bank or trust company for the benefit of the persons entitled thereto and shall be administered and distributed accordingly. (Act Mar. 23, 1939, c. 74, §4.)

SAVINGS BANKS

7707. Interest in profits—Vacation of office—Compensation.

Bull v. K., 286NW311.

7711. Deposits by minor or in trust, etc.

Deposit in bank in name of another, held to constitute a gift to the person named. 179M430, 229NW865.

Evidence held to show that deceased in making joint deposit in bank intended to create joint ownership. 179M428, 229NW867.

Evidence held to sustain finding that certificates of deposit made payable to joint owners were intended as gifts. Zigan v. L., 191M538, 254NW810. See Dun. Dig. 4030.

Trust deposit is valid unless disaffirmed by depositor in his lifetime or set aside for fraud or incompetency. Coughlin v. F., 199M102, 272NW166. See Dun. Dig. 9886a.

7714. Authorized securities for savings banks.—
* * * * * *

3. In the legally issued bonds or certificates of indebtedness of any city of this state containing over 50,000 inhabitants, or of any board of any such city, without regard to any debt limits other than those applicable to the issuance thereof; or in the bonds of any county, city, town, village, school, drainage or other district created pursuant to law for public purposes in Minnesota, or in any warrant, order, or interest-bearing obligation, issued by the state, or by any city, city board, village, school district, town or county therein, provided that the net indebtedness of any such municipality or district, as net indebtedness is defined by Revised Laws of 1905, Section 777, and its amendments, shall not exceed ten per cent of its assessed valuation, or in the bonds of any county, city, town, village, school, drainage or other district created pursuant to law for public purposes in Iowa, Wisconsin and North and South Dakota, 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 3500 inhabitants, provided that the total bonded indebtedness of any such municipality or district shall not exceed ten per cent of its assessed valuation. (As amended Apr. 21, 1931, c. 296; Apr. 21, 1933, c. 368.)

4. (a) On notes or bonds secured by mortgages or trust deed on unencumbered real estate in Minnesota, Wisconsin, Iowa, North Dakota, South Dakota, and Montana, worth when improved at least twice and when unimproved at least three times the amount loaned thereon.

(b) In notes or bonds secured by mortgages or trust deed on unencumbered real estate in paragraph (a) where such notes or bonds do not exceed 60 per cent of the appraised value of the security for the same, provided that such notes or bonds are payable in installments aggregating not less than five per cent of the original principal per annum in addition to the interest; or, are payable on a regular amortization basis in equal installments, including principal and interest, such installments to be payable monthly in such amounts that the debt will be fully paid in not to exceed 20 years if the security is non-agricultural real estate, and such installments to be payable annually or semi-annually in such amounts that the debt will be fully paid in not to exceed 25 years if the security is agricultural real estate.

(c) Not more than 50 per cent of the whole amount of the moneys of the bank shall be so loaned and such investments shall be made only on report of a committee directed to investigate the same and report its value, according to the judgment of its members, and its report shall be preserved among the bank's records. (As amended Apr. 4, 1939, c. 141.)

* * * * * *

7. In farm loan bonds issued by any federal land bank, or by a joint stock land bank in the Federal Reserve district in which Minnesota is situated, in accordance with the provisions of an act of Congress of the United States of July 17, 1916, known and designated as "The Federal Farm Loan Act," and acts amendatory thereto, and in bonds and obligations of the Federal Home Loan Banks established by Act of Congress known as the Federal Home Loan Bank Act approved July 22, 1932, and acts amendatory thereto. (As amended Apr. 17, 1933, c. 307.)

* * * * * *

10. In the bonds of any corporation which at the time of such investment is incorporated under the laws of the United States or any state thereof, or the District of Columbia, and transacting the business of supplying electrical energy, or artificial gas, or natural gas purchased from another corporation and supplied in substitution for or in mixture with artificial gas, for light, heat, power and other purposes, or transacting any or all of such business, provided that a least seventy-five per centum of the gross operating revenues of any such corporation are derived from such business and that not more than fifteen per centum of the gross operating revenues are derived from any one kind of business other than supplying electricity or gas or electricity and gas, and provided further that such corporation, if operating outside of Minnesota, is subject to regulation by a public service commission or public utility commissioner or other similar regulatory body duly established by the laws of the United States or the states or state in which such corporation operates, subject to the following conditions:

(a) Such corporation shall have all franchises necessary to operate in the territory in which at least seventy-five per centum of its gross income is earned, which franchises either shall be indeterminate permits or agreements with, or subject to the jurisdiction of, a public service commission or other duly constituted regulatory body, or shall extend at least five years beyond the maturity of such bonds, and such corporation shall file with the Commissioner of banks or make public each year a statement and a report giving the income account covering the previous fiscal year and the balance sheet showing in reasonable detail the assets and liabilities at the end of such fiscal year.

(b) The book value of the outstanding capital stock of such corporation shall at the time of such investment be equal to at least two-thirds of its total funded debt.

(c) Such corporation shall have been in existence for a period of not less than eight fiscal years and at no time within such period of eight fiscal years next preceding the date of such investment shall said corporation have failed to pay promptly and regularly the matured principal and interest of all its indebtedness direct, assumed or guaranteed, but the period of life of the corporation, together with the period of life of any predecessor corporation or corporations from which a substantial portion of its property was acquired by consolidation, merger, purchase or as a successor corporation, shall be considered together in determining the required period.

(d) For a period of five fiscal years next preceding the date of such investment the net earnings of such corporation shall have been each year not less than twice the annual interest charges on its total funded debt applicable to that period, and for such period the gross operating revenues of any such corporation shall have averaged per year not less than one million dollars.

(e) In determining the qualifications of any bond under this subdivision where a corporation shall have acquired its property or any substantial portion thereof within five years immediately preceding the date of such investment by consolidation, merger, purchase or as a successor corporation, the gross operating revenues, net earnings and interest charges of the predecessor or constituent corporations shall be consoliated and adjusted so as to ascertain whether the requirements of paragraph (d) of this subdivision have been complied with.

(f) The gross operating revenues and expenses of a corporation for the purpose of this subdivision shall be respectively the total amount earned from the operation of, and the total expense of maintaining and operating, all property owned and operated or leased and operated by such corporation, as determined by the system of accounts prescribed by the public service commission or public utility commission or other similar regulatory body having jurisdicition in the matter. The gross operating revenues and expenses, as defined above, of subsidiary companies must be included, provided that all the mortgage bonds and a controlling interest in stock or stocks of such subsidiary companies are pledged as part security for the mortgage debt of the principal corporation.

(g) The net earnings of a corporation for the purpose of this subdivision shall be the balance obtained by deducting from its gross operating revenues its operating and maintenance expenses, taxes other than federal and state income taxes, rentals, depreciation and provision for renewals and retirements of the physical assets of the corporation, and by adding to said balance its income from securities and miscellaneous sources, but not, however, to exceed fifteen per centum of said balance. The term "funded debt" shall be construed to mean all interest-bearing debt excepting therefrom unsecured obligations maturing within one year of date of issue.

(h) Such bonds must be part of an original issue of not less than one million dollars and must be mortgage bonds secured by a first or refunding mortgage secured by property owned and operated by the corporation issuing or assuming them, or must be underlying mortgage bonds secured by property owned and operated by the corporation issuing or assuming them, provided that such bonds are to be refunded by a junior mortgage providing for their retirement and provided further that the bonds under such junior mortgage comply with the requirements of this subdivision and that such underlying mortgage either is a closed mortgage or remains open solely for the issuance of additional bonds which are to be pledged under such junior mortgage. The aggregate principal amount of bonds secured by such first or refunding mortgage plus the principal amount of all the underlying out-

standing bonds shall not exceed sixty per centum of the value of the physical property owned as shown by the books of the corporation and subject to the lien of such mortgage or mortgages securing the total mortgage debt, provided that if a refunding mortgage, it must provide for the retirement on or before the date of their maturity of all bonds secured by prior liens on the property. No such savings bank shall loan upon or invest in bonds of such public utility companies in an amount exceeding in the aggregate ten per centum of its deposits and surplus, nor exceeding five per centum thereof in the bonds of any one public utility company. (As amended Apr. 15, 1933, c. 256, §1.)

11. In the bonds of any corporation which at the time of such investment is incorporated under the laws of the United States or any state thereof, or the District of Columbia, and authorized to engage, and engaging, in the business of furnishing telephone service in the United States, provided that such corporation is subject to regulation by the Interstate Commerce Commission or a public service commission or public utility commission or other similar federal or state regulatory body duly established by the laws of the United States or the states or state in which such corporation operates, subject to the following conditions:

(a) Such corporation shall have been in existence for a period of not less than eight fiscal years and at no time within such period of eight fiscal years next preceding the date of such investment shall said corporation have failed to pay promptly and regularly the matured principal and interest of all its indebtedness direct, assumed or guaranteed, but the period of life of the corporation, together with the period of life of any predecessor corporation or corporations from which a substantial portion of its property was acquired by consolidation, merger, purchase or as a successor corporation, shall be considered together in determining the required period; and such corporation shall file with the Commissioner of banks or make public in each year a statement and a report giving the income account covering the previous fiscal year and the balance sheet showing in reasonable detail the assets and liabilities at the end of such fiscal year.

(b) The book value of the outstanding capital stock of such corporation shall at the time of such investment be equal to at least two-thirds of its total funded debt.

(c) For a period of five fiscal years next preceding the date of such investment the net earnings of such corporation shall have been each year not less than twice the annual interest charges on its total funded debt applicable to that period, and for such period the gross operating revenues of any such corporation shall have averaged per year not less than five million dollars.

(d) In determining the qualifications of any bond under this subdivision where a corporation shall have acquired its property or any substantial portion thereof within five years immediately preceding the date of such investment by consolidation, merger, purchase or as a successor corporation, the gross operating revenues, net earnings and interest charges of the predecessor or constituent corporations shall be consolidated and adjusted so as to ascertain whether the requirements of paragraph (c) of this subdivision have been complied with.

(e) The gross operating revenues and expenses of a corporation for the purpose of this subdivision shall be respectively the total amount earned from the operation of, and the total expense of maintaining and operating, all property owned and operated or leased and operated by such corporation, as determined by the system of accounts prescribed by the Interstate Commerce Commission or the public service commission or public utility commission or other similar federal or state regulatory body having jurisdiction in the matter.

(f) The net earnings of a corporation for the purpose of this subdivision shall be the balance obtained by deducting from its gross operating revenues its operating and maintenance expenses, taxes, other than federal and state income taxes, rentals, depreciation and provision, for renewals and retirements of the physical assets of the corporation, and by adding to said balance its income from securities and miscellaneous sources, but not, however, to exceed fifteen per centum of said balance. The term "funded debt" shall be construed to mean all interest-bearing debt excepting therefrom unsecured obligations maturing within one year of date of issue.

(g) Such bonds must be a part of an original issue or of a subsequent series of bonds of the aggregate amount of not less than five million dollars, both the original issue and the subsequent series being protected by the same mortgage provisions, and must be secured by a first or refunding mortgage, and the aggregate principal amount of bonds secured by such first or refunding mortgage plus the principal amount of all the underlying outstanding bonds shall not exceed sixty per centum of the value of the property, real and personal, owned absolutely as shown by the books of the corporation and subject to the lien of such mortgage, provided that if a refunding mortgage, it must provide for the retirement of all bonds secured by prior liens on the property. Not more than thirty-three and one-third per centum of the property constituting the specific security for such bonds may consist of stock or unsecured obligations of affiliated or other telephone companies, or both. No such savings banks shall loan upon or invest in bonds of such telephone companies in an amount exceeding in the aggregate ten per centum of its deposits and surplus, nor exceeding five per centum thereof in the bonds of any one telephone company. (Added by Act Apr. 15, 1933, c. 256, §2.)

12(a). In bonds and obligations of the Federal Home Loan Banks established by Act of Congress known as the Federal Home Loan Bank Act, approved July 23, 1932, and Acts amendatory thereto, and in bonds and obligations of the Home Owners' Loan Corporation established by Act of Congress known as the Home Owners' Loan Act of 1933, and Acts amendatory thereto. (Added Jan. 6, 1934, Ex. Ses., c. 50, §1.)

(b) Certificates of Deposits of any bank or trust company, however organized, the deposits of which are insured in whole or in part by the Federal Deposit Insurance Corporation, to the extent that such certificates of deposits are fully insured. (Added Mar. 31, 1939, c. 105.)

13. (a) The district court, upon petition of a trustee under a will or other instrument may, if the trust does not otherwise provide, authorize the trustee to invest the income or principal of the trust fund in policies of life or endowment insurance or annuity contracts, issued by a life insurance company duly authorized to transact business in the state, on the life of any beneficiary of the trust or on the life of any person in whose life such beneficiary has an insurable interest.

(b) The probate court, upon the application of a guardian, may authorize him to invest income or principal of the estate of his ward in policies of life or endowment insurance or annuity contracts, issued by a life insurance company duly authorized to transact business in the state, on the life of the ward or on the life of a person in whose life the ward has an insurable interest. (Added Apr. 22, 1939, c. 409.)

Sec. 2 of Act Jan. 6, 1934, cited, provides that the act shall take effect from its passage.

Investments by guardiants, see §8992-135.

An executor has no general or implied authority to invest or loan money of estate; and, if it is desirable to do either, it should be done only under authority of probate court; otherwise he is directly responsible for money invested or loaned. Marchildon v. M., 188M38, 246NW676. See Dun. Dig. 3571.

A corporate trustee must, in absence of specific directions, invest in securities which statute authorizes and does not have any discretion to invest in securities not

so authorized. First Minneapolis Trust Co., 202M187, 277 NW899. See Dun. Dig. 9931.

It is duty of a corporate trustee, where trust instrument directs mode of investment of trust funds, to comply with directions. Id.

Where a will creating a trust authorizes trustees to invest in securities, and it appears that word "securities" is used to comprehend corporate stocks, trustees are authorized to invest funds in corporate stocks. Id.

A bank had no legal authority to pledge certificates of deposit, but in view of Laws 1931, c. 296, school district warrants may be pledged to secure public deposits. Op. Atty. Gen., Aug. 18, 1931.

This section should be considered in determining what securities may be lawfully accepted by a village in pledge as collateral security for deposit of village moneys. Op. Atty. Gen., Dec. 2, 1931.

Depositary of city and school district could deposit bonds of city as collateral for city and district. Op. Atty. Gen., Feb. 2, 1933.

Notes secured by mortgages on village real estate may not be deposited as collateral by village depositary. Op. Atty. Gen., Feb. 4, 1933.

Legislature may anticipate issuance of securities by making them "authorized securities." Op. Atty. Gen., Feb. 28, 1933.

Bonds as security for township funds, classified. Op. Atty. Gen., May 5, 1933.

Clauses relating to regulation by public service commission relate to regulation of rates and charges alone and not of issuance of securities. Op. Atty. Gen., July 14, 1933.

United States treasury notes are authorized security in lieu of depositary bonds, but it is question of fact whether "South Park Commissioners, Improvement, Chicago, Ill.," bonds, qualify. Op. Atty. Gen., Aug. 2, 1933.

Water, light, power and building commission of a village may not invest surplus funds in outstanding village warrants. Op. Atty. Gen. (469b-6), Sept. 19, 1935.

Mortgages of national housing act are not authorized security within §7727. Op. Atty. Gen. (140d-5), Nov. 14, 1935.

Mortgages of national housing act are not authorized security. Op. Atty. Gen. (616e-2), Dec. 24, 1935.

Industrial bonds are not qualified to secure public deposits, and qualification of mortgages or railroad bonds are questions of fact. Op. Atty. Gen. (450d-1), Feb. 13, 1936.

Highway fund revenue warrants of state of Colorado may not be regarded as bonds of state within meaning of section. Op. Atty. Gen. (140f-7), Jan. 22, 1937.

Federal farm mortgage bonds may be deposited as collateral for city funds. Op. Atty. Gen. (59a-22), May 3, 1938.

While mortgages of Federal Housing Administration are not authorized securities in fullest sense of that term because not expressly mentioned in §7714, they may be deposited as guarantee fund with commissioner of banks under H. F. No. 696, if passed by 1939 legislature, on the authority of §7658-4, which is self sufficient. Op. Atty. Gen. (29a-19), Feb. 17, 1939.

Federal housing administration mortgages are legal investments for savings banks, subject to such regulations as commissioner of banks may see fit to adopt. Op. Atty. Gen. (30-E), August 29, 1939.

(1).

U. S. government savings bonds marked on their face "not transferable" are not eligible as collateral from a bank to secure deposits of county funds. Op. Atty. Gen. (140a), March 1, 1939.

(3).

A registered participating certificate representing ownership of an undivided interest in a bond of the city of St. Paul and other interest bearing securities are "authorized securities." Op. Atty. Gen. (616d-8), Oct. 12 1934.

Sewer certificates of indebtedness payable only out of a fund to be raised by special assessment are authorized investments for banks. Op. Atty. Gen. (476a-4), Sept. 30, 1937.

Bonds issued by county to refund outstanding drainage ditch bonds were eligible as security for deposit of county, city, village, town and school district fund. Op. Atty. Gen. (140f), June 10, 1939.

(4).

Amended. Laws 1939, c. 141.

Guardianship funds may not be invested in paid up stock of a building and loan association operating under supervision of Banking Division of State of Minnesota. Op. Atty. Gen. (346d), March 1, 1939.

A participating first mortgage trust certificate held to be within class of authorized investments of a testamentary trustee. Bowden v. C., 194M113, 259NW815. See Dun. Dig. 9931.

(6).

Bonds of Twin City Rapid Transit Company may not be deposited as security for public deposit. Op. Atty. Gen. (140f-1), Nov. 18, 1935.

Trust agreements or participating certificates secured by first mortgages insured by federal housing administration may be deposited with a lawful corporate trustee and can be accepted as collateral security for county deposit. Op. Atty. Gen. (140f-11), Jan. 18, 1937.

(7).

Bonds of home owner's loan corporation and bonds of federal land bank may be purchased for investment trust funds and funds of guardians, executors, etc., but only under authority from probate court. Op. Atty. Gen., Dec. 2, 1933.

(11).

Mortgage need not cover all property of corporation. Op. Atty. Gen., July 14, 1933.

See §§2517-7, 6452-5, ante.

For certificates of indebtedness payable from Red Lake Game Preserve Fund, see Laws 1929, c. 258, ante §5620-5.

Bonds of the City of Cleveland, Ohio, might qualify as collateral under §1973-1, as amended by Laws 1929, c. 370. Op. Atty. Gen., Feb. 10, 1930.

(12).

Amended. Laws 1939, c. 105.

Note.—Federal Home Loan Bank Act was passed July 22, 1932, and not on July 23, 1932, as indicated in this subdivision.

(13).

Added. Laws 1939, c. 409.

7717. Repayment—Interest—Surplus, etc.

Bull v. K., 286NW311.

A savings bank in relation to funds on deposit is liable to its depositors for want of ordinary care only, and a savings bank, as a matter of law, held not guilty of negligence in paying depositor's money on a forged order accompanied by the depositor's passbook. 177M 243, 225NW100.

7722. Violation of law—Proceedings.

Approval given agreement and extension of time for liquidation of assets of state savings bank of St. Paul. Op. Atty. Gen. (29b-7), July 8, 1935.

TRUST COMPANIES

7726. Trust companies to comply with section 7680.

Federal Farm Loan Act (Mason's U. S. Code 12, §§ 803, 807) does not enlarge powers of state trust companies. 180M319, 230NW797.

Trust companies may engage in banking business only upon compliance with section 3997. Op. Atty. Gen. (29a-30), Jan. 23, 1937.

Trust company may not engage in banking business except upon permission of department of commerce. Op. Atty. Gen. (29a-30), July 8, 1937.

7727. National banks may act as trustees when.

A national bank, when acting as a fiduciary, must act in conformity to laws of state in which it is located. First Minneapolis Trust Co., 202M187, 277NW899. See Dun. Dig. 3564c.

Securities deposited with commissioner of banks by national bank desiring to act in a fiduciary capacity must be redeposited with state treasurer. Op. Atty. Gen., Jan. 13, 1934.

"Capital" includes preferred stock. Id.

7728. Capital of trust companies.—The capital of every trust company hereafter organized having its principal place of business in any city of less than 25,000 inhabitants shall not be less than $50,000.00; the capital of every trust company hereafter organized having its principal place of business in a city of more than 25,000 inhabitants and less than 100,000 inhabitants shall not be less than $75,000.00; the capital of every trust company hereafter organized having its principal place of business in a city of more than 100,000 and less than 200,000 inhabitants shall be not less than $100,000.00; and the capital of every trust company hereafter organized having its principal place of business in a city of more than 200,000 inhabitants shall be not less than $200,000.00; but the capital stock of any trust company shall not be in excess of $2,000,000.00. No trust company hereafter organized shall transact any business until all of its authorized capital stock has been paid in, in cash, or, if such authorized capital be more than $200,000.00, until at least $200,000.00 thereof has been paid in, in cash, and at least 50 per cent of the capital of all trust companies of less than $200,000.00 and 25 per cent of the capital of all trust companies of $200,000.00 or more hereafter organized has been invested in one or more of the first, second, third and fourth classes of authorized securities and railroad bonds as described by that statute, and also in the farm loan bonds issued by the federal land banks duly assigned and transferred to and deposited with the state treasurer, or, of its capital stock be more than $200,000.00, until at least one-fourth thereof has been so invested, assigned, transferred and deposited. The state treasurer shall submit the

securities deposited to the commissioner of banks, who shall carefully examine the securities offered for deposit and ascertain that they comply with all the provisions of law applicable thereto. Upon receipt of an order of the commissioner of banks, the state treasurer shall issue his receipt therefor. 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 upon approval and order of the commissioner of banks.

If the securities comply with the law, the commissioner of banks shall issue his certificate of authorization for the trust company to commence business.

The capital stock of any trust company may be reduced with the approval of the commissioner of banks, but not below the respective minimum amounts aforesaid, 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 in no event less than $25,000.00; nor shall the liability of any stockholder upon any existing contract be affected thereby.

When two or more trust companies have been or shall hereafter be consolidated under and pursuant to the provisions of Laws 1925, Chapter 156 [§§7699-5 to 7699-11], the capital of the consolidated trust company shall be considered as substituted for the capital of the several trust companies entering into such consolidation and the aggregate of the securities of said trust companies on deposit with the state treasurer, pursuant to the provisions of this section, shall be increased or diminished accordingly; provided, however, that any company may hereafter be organized, with its principal place of business at any place within the State of Minnesota, with a capital of not less than Ten Thousand Dollars ($10,000.00), to be paid in cash, of which fifty per cent (50%) shall be invested in authorized securities and deposited with the State Treasurer as provided in this section. The powers and business of such company so organized shall be to 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 such company so organized may accept and perform any other lawful trust over which any court, either state or federal, has jurisdiction. Such company before entering upon the duties of its trust shall give a corporate surety bond in such sum as such court directs with sufficient surety, conditioned for the faithful performance of its duties. The business of any company so organized shall be limited to the above matters; provided, that such company so organized with a capital stock of $10,000 shall not use the word "trust" in the title or name of such company. (R. L. '05, §3033; '07, c. 225; '11, c. 314, §1; G. S. '13, §6405; '27, c. 323; Apr. 25, 1931, c. 375; Apr. 29, 1935, c. 339.)

First Minneapolis Trust Co., 202M187, 277NW899; note under §7727.

Mortgages of national housing act are not authorized security. Op. Atty. Gen. (140e-5), Nov. 14, 1935.

7731. May act as agent or attorney in fact.

Trust company cannot lawfully transfer and sell securities owned by it to an estate of which it is the trustee. 178M209, 224NW235.

"Held" as used in §7738 construed in the light of this section. 178M215, 226NW696.

Trust companies organized under §§7730 to 7740 may act as brokers of securities. Op. Atty. Gen., Aug. 1, 1933.

7732. May receive deposits of trust and other funds.

Trust company may receive commercial deposits from private parties subject to be withdrawn by check, draft, or order. State v. Crookston Trust Co., 203M512, 282NW 138. See Dun. Dig. 824.

7733. May act as assignee, receiver, executor, etc.

A corporate trustee organized under §§7726-7740, cannot be required to give bond. Butler v. B., 203M555, 282 NW462. See Dun. Dig. 8961.

7733-1. Certain trust companies may assume powers of state banks.—Any trust company organized under the laws of this state, and having a capital of not less than $50,000, may exercise the powers and privileges conferred by this act, in addition to all other powers heretofore granted by law, upon complying with the conditions and requirements herein specified. (Act Mar. 27, 1929, c. 90, §1.)

State v. Crookston Trust Co., 203M512, 282NW138; note under §7732.

Trust companies may engage in banking business only upon compliance with section 3997. Op. Atty. Gen. (29a-30), Jan. 23, 1937.

Trust company may not engage in banking business except upon permission of department of commerce. Op. Atty. Gen. (29a-30), July 8, 1937.

7733-2. Certificates to be amended.—In order to exercise such powers as may be in addition to those heretofore granted, any such trust company may amend its certificate of incorporation so as to assume the additional powers of a state banking corporation. Such amendment shall include the change of the corporate name of the trust company so as to include the words "state bank" therein. (Act Mar. 27, 1929, c. 90, §2.)

7733-3. Department of Commerce to approve certificates.—Amendments to the certificate of incorporation shall be made in accordance with General Statutes 1923, Section 7472, as amended and before becoming effective, such amendments must be approved by the Department of Commerce of the State of Minnesota and such approval endorsed upon the certificate of amendment. (Act Mar. 27, 1929, c. 90, §3.)

7733-4. Application.—In considering the application of a trust company to assume the powers of a state bank, the Department of Commerce shall proceed in the same manner and be governed by the same laws which are now applicable to application for charters for new state banks. (Act Mar. 27, 1929, c. 90 §4.)

7733-5. Powers and duties.—Upon complying with the terms of this act, the trust company shall have all the powers and privileges of a state bank not heretofore granted to trust companies, and shall become subject to and comply with all the provisions of the laws of this state in relation to state banks. (Act Mar. 27, 1929, c. 90, §5.)

7735. Investment of trust funds by corporate trustee—Commingling funds.—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 funds held in any trust capacity in 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. Whether it be the sole trustee or one of two or more co-trustees, it may invest in fractional parts of, as well as in whole, securities, or may commingle funds for investment, provided however that if it invests in fractional parts of securities or commingles funds for investment, all of the fractional parts of such securities, or the whole of the funds so commingled shall be owned and held by such trust company in its several trust capacities, and it shall be liable for the administration thereof in all respects as though separately invested, provided, however, that not more than $5,000.00 (at the cost price of such investments) shall be so invested for any one trust at any one time in fractional parts or as commingled funds for investment, unless the authority to invest in fractional parts or as commingled funds be given

in the order, judgment, decree, will or other written instrument governing such trust. It may, in its discretion, retain and continue any investment and security or securities coming into its possession in any fiduciary capacity. The foregoing shall apply as well whether a corporate trustee is acting alone or with an individual co-trustee. (As amended Apr. 7, 1937, c. 174, §1.)

Trustee under will held to be surcharged with amount paid itself as executor of will for worthless stock, though with consent of beneficiaries and authorization of probate court. Rosenfeldt's Will, 185M425, 241NW573. See Dun. Dig. 9931.

A participating first mortgage trust certificate held to be within class of authorized investments of a testamentary trustee. Bowden v. C., 194M113, 259NW815. See Dun. Dig. 9931.

A trust company has only powers which statutes grant, and grant of power prescribes particular mode or manner of exercise, statute or charter is enabling act not only in regard to power conferred, but also as to mode prescribed for exercising power. First Minneapolis Trust Co., 202M187, 277NW899. See Dun. Dig. 824.

A national bank, when acting as a fiduciary, exercises same powers as a corporate fiduciary organized under laws of state where bank is located. Id. See Dun. Dig. 3561.

Word "may" is mandatory and not directory with respect to investment by trust company acting as fiduciary. Id. See Dun. Dig. 9931.

A corporate trustee must, in absence of specific directions, invest in securities which statute authorized and does not have any discretion to invest in securities not so authorized. Id.

Where a will creating a trust authorizes trustees to invest in securities, and it appears that word "securities" is used to comprehend corporate stocks, trustees are authorized to invest funds in corporate stocks. First National Bank & Trust Co., 202M206, 277NW909. See Dun. Dig. 9931.

It is duty of a corporate trustee, where trust instrument directs mode of investment of trust funds, to comply with directions. Id.

7736. Transfer of trusts to company—Condition.

Beneficiaries held entitled to money and were not obliged to accept real estate tendered by trust company. 178M209, 224NW235.

7738. Trust funds—Investment.

Trust company cannot lawfully transfer and sell securities owned by it to an estate of which it is the trustee. 178M209, 224NW235. See also 178M215, 226NW 696.

A participating first mortgage trust certificate held to be within class of authorized investments of a testamentary trustee. Bowden v. C., 194M113, 259NW815. See Dun. Dig. 9931.

This section relates simply to investment of accumulations and not to primary duty of trustees to invest. First Minneapolis Trust Co., 202M187, 277NW899. See Dun. Dig. 9886b.

It is duty of a corporate trustee to invest accumulations in authorized securities. Id.

7739. Trust accounts to be kept separate.

Beneficiaries held entitled to money and were not obliged to accept real estate tendered by trust company. 178M209, 224NW235.

Trust account must be kept separate by trust companies. Op. Atty. Gen. (457b-5), Mar. 13, 1936.

7740. Dealings and indebtedness prohibited.

State v. Crookston Trust Co., 203M512, 282NW138; note under §7732.

Powers as to guaranty are not enlarged by the Federal Farm Loan Act (Mason's U. S. Code 12, §803, 807.) 180M319, 230NW797.

7741. Powers of court—Annual report.

District court has power, with jurisdiction in personam of trustees and beneficiaries, to settle by order annual accounts of trustees and to direct disposition of trust property. Such orders are in essence judgments, binding as such upon parties and rendering their subject-matter res judicata. That such a judgment is based upon consent of beneficiaries does not lessen its force or effect as a judgment. Melgaard's Will, 200M493, 274NW641. See Dun. Dig. 9893.

SAFE DEPOSIT BUSINESS

7747-1. Definitions.—The words "safe deposit box" or "safe deposit boxes," as used herein, shall mean any box, boxes, safe, safes, safe deposit box, safe deposit boxes, receptacle, receptacles, or any part or parts thereof, contained in burglar-protected vault with steel walls at least one-half inch thick, or a masonry vault lined throughout with steel at least one-half inch thick, or a masonry vault with steel rails or rods embedded in walls at least 12 inches thick, or a vault of non-reinforced concrete or stone at least 18 inches thick, and each vault shall have one or more steel doors, no door being less than one inch thick, and aggregating at least two and one-half inches in thickness exclusive of bolt work and locking device, which may be used for the safekeeping and storage of valuable personal property as herein defined. The words "Valuable personal property," as used herein, shall mean jewelry, plate, money, specie, bullion, stocks, bonds, valuable papers or other personal property of value. (Act Apr. 20, 1933, c. 340, §1.)

7747-2. Safe deposit companies—powers.—Any corporation having an authorized and paid up capital of not less than $50,000 and owning or leasing a vault as described in Section 1, shall have power:

1. To let out or rent as lessor for hire safe deposit boxes in such vault, upon such terms and for such compensation as may be agreed upon by such corporation and the lessee.
2. To take and receive valuable personal property for safekeeping and storage, as bailee for hire, upon such terms and for such compensation as may be agreed upon by such corporation and the bailor; no such corporation shall make any loans or advances upon any valuable personal property so left with it for safekeeping and storage. (Act Apr. 20, 1933, c. 340, §2.)

7747-3. Must be licensed.—No such corporation shall engage in such occupation or business unless licensed so to do. (Act Apr. 20, 1933, c. 340, §3.)

7747-4. Commissioner of banks to grant license.—The Commissioner of Banks may license any such corporation to engage in the occupation or business set forth in Section 2 of this Act, which license shall designate the place or places of business of such corporation, which place or places of business shall be located upon the premises in which such safe deposit boxes are located. It shall be unlawful for any corporation holding such license to engage in such occupation or business upon any premises or in any building other than those designated in such license. (Act Apr. 20, 1933, c. 340, §4.)

7747-5. Corporation to give bonds.—Before any such license shall be issued to a corporation it shall execute and file with the state treasurer a bond to the State of Minnesota in the penal sum of $20,000.00 in such form and with such surety or sureties as shall be approved by the Commissioner of Banks to secure the faithful performance of its contracts of rental or deposit, and such bond shall enure to the benefit of anyone who shall be in any manner damaged by a breach of such contract. No such corporation shall lease any safe deposit box or receive any valuable personal property for safekeeping or for storage until the bond herein provided for shall be on file and in full force. (Act Apr. 20, 1933, c. 340, §5.)

7747-6. Unauthorized action may be enjoined.—Whoever engages in such occupation or business without procuring a license and giving a bond, as required by this Act, except as otherwise authorized by law so to do, shall be punished by a fine of not more than $1,000.00, and may be enjoined by any court having jurisdiction from engaging in such occupation or business, in an equitable action brought by the Attorney General at the relation of any person. (Act Apr. 20, 1933, c. 340, §6.)

7747-7. Shall keep books and records.—Such licensed corporation shall keep books in which shall be entered an account of all its transactions relative to the letting, renting or leasing of its safe deposit boxes, and to the receipt of valuable personal property for safekeeping or storage. (Act Apr. 20, 1933, c. 340, §7.)

7747-8. Licenses must be posted.—Immediately upon the receipt of the license issued by the Commissioner of Banks pursuant to the provisions of this Act, the licensee named therein shall cause such license to be posted and conspicuously displayed in the place of business for which it is issued, so that all persons visiting such place of business may readily see the same. It shall be unlawful for any corporation holding such license to post such license, or permit such license to be posted, upon premises other than those designated therein, or knowingly to deface or destroy any such license. (Act Apr. 20, 1933, c. 340, §8.)

7747-9. Must publish notice.—*Before such corporation* shall engage in such occupation or business, it shall give notice of its license and qualification, and of the amount of the bond given by it by publishing the same forthwith once each week for two consecutive weeks in a legal newspaper published in the county or counties where such place or places of business are located. (Act Apr. 20, 1933, c. 340, §9.)

7747-10. Shall be exempt from liability in certain cases.—When a safe deposit box shall have been hired from any licensed corporation in the name of two or more persons, including husband and wife, with the right of access being given to either, or with access to either or the survivor or survivors of said person, or property is held for safekeeping by any licensed corporation for two or more persons, including husband and wife, with the right of delivery being given to either, or with the right of delivery to either of the survivor or survivors of said persons, any one or more of such persons, whether the other or others be living or not, shall have the right of access to such safe deposit box and the right to remove all, or any part, of the contents thereof, or to have delivered to him or them all, or any part, of the valuable personal property so held for safekeeping; and in case of such access, removal or delivery said corporation shall be exempt from any liability for permitting such access, removal or delivery. (Act Apr. 20, 1933, c. 340, §10.)

7747-11. Corporation to be governed by contract of rental.—No such corporation shall be obliged to ascertain or take notice of any trust or fiduciary relationship which the tenant of a safe deposit box may bear to the contents thereof, but shall be presumed to deal with the tenant of a box in an individual and not in a representative capacity, and shall be protected if it grants access to a box to the lessee, thereof according to the terms of his contract of rental. (Act Apr. 20, 1933, c. 340, §11.)

7747-12. May limit liability.—Any licensed corporation may, in any lease or contract governing or regulating the use of any safe deposit box to or by any customer or customers, *limit its liability as such* lessor or bailee in the following respects:

1. Limit its total liability for any loss by negligence to such maximum amount as may be stipulated.

2. Stipulate that it shall in no event be liable for loss of such valuable property as may be excepted against in such lease or contract. (Act Apr. 20, 1933, c. 340, §12.)

7747-13. Shall be entitled to lien.—Every licensed corporation shall be entitled to the following special remedies in enforcing the liability of depositors and tenants:

1. A warehouseman's lien on property deposited.

2. A sale of the contents of any safe deposit box for the nonpayment of rental. (Act Apr. 20, 1933, c. 340, §13.)

7747-14. Shall send notice of rent due.—If the amount due for the use or rental of any safe deposit box of any licensed corporation shall have remained unpaid for a period of six months, such corporation may, at any time after the expiration of such period, cause to be sent by registered mail addressed to the renter or lessee of such safe deposit box, directed to the address standing on its books, a written notice that, if the amount due for the use or rental of such safe deposit box is not paid within 60 days after the date of the mailing of such notice, it will cause such safe deposit box to be opened in the presence of its president or vice-president or secretary or treasurer or assistant secretary or assistant treasurer or superintendent, and of a notary public not in its employ, and the contents thereof, if any, to be placed in a sealed package by said notary public upon which he shall mark the name of such renter or lessee as given upon its books and the estimated value thereof and that said package so sealed and marked will be placed in one of the general safe deposit boxes of such corporation; upon the expiration of 60 days from date of mailing the notice, as aforesaid and in default of payment within said 60 days of the amount due for the use or rental of such safe deposit box, it may, in the presence of a notary public not in its employ and one of its officers heretofore named, cause such safe deposit box to be opened and the contents thereof, if any, to be removed and sealed by said notary public in a package upon which he shall mark the name of such renter or lessee and also the estimated value of the contents of such safe deposit box and, in the presence of one of its officers heretofore named, such notary public shall place in one of its general safe deposit boxes such package; and the proceedings of such notary public shall be set out in a certificate by him under his official seal, which shall be delivered to such licensed corporation. Such licensed corporation shall have a lien upon the contents of any such safe deposit box, which shall have been removed in the manner provided, for the amount due to it for the use or rental of such safe deposit box, up to the time of such removal of the contents, and for the costs and expenses, if any, incurred in the opening of such safe or box and its repair, or restoration for use; in case the lien of such licensed corporation, for rental and expenses, shall not be paid and discharged within six months from the date of the opening of such safe deposit box and the removal of the contents therefrom, then such licensed corporation may sell, or cause to be sold, at public auction the contents of such safe deposit box, or so much thereof as is required to pay and discharge the lien and expenses of sale, having first cause to be sent by registered mail addressed to the renter or lessee of such safe deposit box, directed to the address standing on its books, a written notice of the time and place of such sale and also giving public notice of the time and place of such sale by advertisement in a legal newspaper published in the county in which the place of business of such licensed corporation is located at least once a week for two successive weeks, and from the proceeds of such sale it may retain for its own use the amount of its lien and the expenses of the sale; the balance of such proceeds of the sale and the contents remaining unsold, if any, being held to be paid over and delivered to those having ownership of the contents of such safe deposit box so sold as aforesaid. (Act Apr. 20, 1933, c. 340, §14.)

7747-15. Provisions separable.—In case any section, provision or part of this Act shall be declared unconstitutional, it shall not in any way effect [Sic] any other section, provision or part thereof. (Act Apr. 20, 1933, c. 340, §15.)

7747-16. Inconsistent acts superseded.—All other Acts or parts of Acts now in effect inconsistent with *the provisions of this Act are hereby superseded, modified* or amended to conform to and give full force and effect to the provisions of this Act. (Act Apr. 20, 1933, c. 340, §16.)

7747-17. Application of act.—This Act shall not be held or construed as limiting, restricting or in any way affecting the operation or management of safe deposit boxes or vaults, or a safe deposit business conducted by any savings bank, or bank of discount and deposit or trust company, but any savings bank, or bank of

discount and deposit or trust company may come under the provisions of this Act by complying with its requirements. (Act Apr. 20, 1933, c. 340, §17.)

LOCAL BUILDING AND LOAN ASSOCIATIONS

GENERAL PROVISIONS

7748, 7748-1, 7748-2, 7749, 7749-1 to 7749-3, 7750 to 7757, 7757-1 to 7758, 7758-1, 7759 to 7770, 7770-1 to 7770-3 [Repealed.]

Repealed Apr. 21, 1939, c. 391, §51, post §7770-61.

ANNOTATIONS UNDER REPEALED SECTIONS

7748. Purpose for which associations may be formed—Existing associations.

Am. 1925, c. 260, §1.

Evidence held to sustain finding that mortgagee was a bona fide building and loan association. Northern Building & Loan Ass'n v. W., 286NW397. See Dun. Dig. 1163.

7748-1, 7748-2.

Act of Apr. 14, 1937, c. 222, §§1, 2.

7749-1. Deemed financial corporations; etc.

Borrowing members from the Hennepin Savings and Loan Association were not stockholders in the true sense of the word, and were not entitled to vote upon a proposition offered to reduce outstanding capital stock and continue the business. Op. Atty. Gen., Dec. 19, 1931.

7749-2. Who may incorporate; etc.

Evidence held to sustain finding that money advanced to manager of corporation was a loan to the corporation, and not to the manager, or another corporation which sent a note to the lender under an agreement to pay the debt of the first corporation. Jackson v. E., 194M404, 260 NW880. See Dun. Dig. 2118.

7750. Security for loans made; etc.

Minn. Bldg. & Loan Ass'n v. C., 182M452, 234NW872.

7751. Accumulation of loan funds; etc.

R. L. '05, §3051; G. S. '13, §6428; '13, c. 482, §1; '15, c. 69, §1; '25, c. 260, §6; Apr. 24, 1929, c. 356; Feb. 9, 1933, c. 44, §1.

7752. Terms of loans.

In action by building and loan association to foreclose a mortgage, evidence held to establish default as against defense that interest payment should have decreased as payments were made on shares and that amount paid as premium should have been deducted from amount due for shares. Northern Building & Loan Ass'n v. W., 286NW 397. See Dun. Dig. 1166.

On foreclosure by a building and loan association 8 years after execution of mortgage, defendants were precluded from objecting to excessiveness of charges for services rendered at time of execution of mortgage because of laches. Id. See Dun. Dig. 1166.

7753. Building and loan association dividends.

R. L. '05, §3053; G. S. '13, §6420; '25, c. 260, §8; Mar. 9, 1934, c. 49.

On foreclosure of mortgage by building and loan association contention that association failed to pay dividends in satisfactory amounts because certain directors stripped association of profits through a "founders' agreement" whereby certain persons agreed to pay operating expenses of association in exchange for an amount not to exceed 2% of its annual assets, was without merit where the "founders" lost money in complying with the agreement. Northern Building & Loan Ass'n v. W., 286NW397. See Dun. Dig. 1166.

7753-1. Reserve fund of building and loan association.

'25, c. 260, §9; Apr. 20, 1934, c. 238; Apr. 14, 1937, c. 224, §1.

7754. Premiums not usury.

Sec. 2 of Act Feb. 9, 1933, cited, provides that the act shall take effect from its passage.

Rates of interest otherwise usurious may be enjoyed by a building and loan association. Minn. Bldg. & Loan Ass'n v. C., 182M452, 234NW872. See Dun. Dig. 1169.

One who has given a mortgage to a building and loan association as security for money loaned to him cannot, when action is brought to foreclose, deny that the mortgagee is a bona fide building and loan association. Northern Building & Loan Ass'n v. W., 286NW397. See Dun. Dig. 1169.

Building and loan associations are exempt from operation of usury statutes. Id. See Dun. Dig. 1169.

7755. Withdrawals.

R. L. '05, §3055; G. S. '13, §6432; '25, c. 260, §20; Apr. 25, 1931, c. 369; Mar. 20, 1933, c. 100.

Where plaintiff's father in 1894 had certificate for two shares of building and loan association stock issued in name of three year old son, and books of association indicated a retirement of such stock in 1903, and child knew of existence of such stock throughout his lifetime, action on certificate, which for some reason remained in hands of father, was barred by limitations in action commenced in 1934, after death of father. Falkenhagen v. M., 202M278, 278NW32. See Dun. Dig.1172.

Withdrawals must be paid in full in the order in which they are filed up to 50% of monthly receipts, and by-law limiting amount of payment, passed after purchase of shares was ineffective. Op. Atty. Gen., Apr. 1, 1930.

While the right of a withdrawing member to be paid in full within the restrictions of this section cannot be affected by a subsequent by-law, the association may enact a by-law to the effect that where there is more than one withdrawal the amount available for payment shall be pro-rated. Op. Atty. Gen., May 7, 1930.

Money borrowed may not be considered part of monthly receipts. Op. Atty. Gen., Feb. 15, 1933.

A building and loan association having applications for withdrawal after having paid out 50% of its monthly receipts, may use remainder for purpose of payment of dividend or making of stock loans or mortgage loans. Op. Atty. Gen., Feb. 15, 1933.

7757. Real estate dealings; etc.

R. L. '05, §3057; G. S. '13, §6434; '19, c. 329, §1; '25, c. 260, §11; Apr. 25, 1931, c. 370.

A building and loan association organized under §7748 et seq., including the amendments of 1919 and 1925, cannot make a loan in the form of an executory contract of sale and have a forfeiture or strict foreclosure on 30 days' notice pursuant to Mason's Minn. Stats., §9576. Minn. Bldg. & Loan Ass'n. v. C., 182M452, 234NW 872. See Dun. Dig. 1166, 10091.

Where executory contract is, in fact, a mortgage, building and loan association, except as specified in this section as amended, has no right to cancel by giving 30 days' notice. Op. Atty. Gen., Mar. 6, 1933.

7757-2. Retirement of stock.

Where plaintiff's father in 1894 had certificate for two shares of building and loan association stock issued in name of three year old son, and books of association indicated a retirement of such stock in 1903, and child knew of existence of such stock throughout his lifetime, action on certificate, which for some reason remained in hands of father, was barred by limitations in action commenced in 1934, after death of father. Falkenhagen v. M., 202M278, 278NW32. See Dun. Dig. 1172.

7758-1. Expenses of building and loan associations.

Act Mar. 20, 1933, c. 102.

Third party contracts entered into before passage of this statute were not contrary to public policy and are valid. Equitable Holding Co. v. E., 202M529, 279NW736. See Dun. Dig. 1163.

GENERAL BUILDING AND LOAN ASSOCIATIONS

LIQUIDATION AND REORGANIZATON OF BUILDING AND LOAN ASSOCIATIONS

7770-1. Building and loan associations may liquidate; etc.

Act Apr. 24, 1929, c. 334, §1.

Borrowing members from the Hennepin Savings and Loan Association were not stockholders in the true sense of the word, and were not entitled to vote upon a proposition offered to reduce outstanding capital stock and continue the business. Op. Atty. Gen., Dec. 19, 1931.

7770-2. Conversion into federal savings and loan association.

Act Jan. 9, 1934, Ex. Ses., c. 77, §1.

Sec. 2 of act Jan. 9, 1934, cited, provides that the act shall take effect from its passage.

7770-3. Federal savings and loan associations may convert themselves into building and loan associations.

Apr. 14, 1937, c. 223, §1.

SAVINGS, BUILDING AND LOAN ACT

7770-11. Savings, building and loan act—Definitions.—This act may be cited as the "Savings, Building and Loan Act," and as used herein:

a. "Savings, building and loan associations" are financial corporations under public control, authorized solely to accumulate funds to be loaned to their members upon their homes or upon other improved real estate and to otherwise carry on, in accordance with law, the business of savings, building and loan associations.

b. A local association is one that confines its field of operation to the county in which is located its principal place of business and to counties immediately contiguous thereto.

c. A state association is one that upon application to the State Securities Commission has been authorized to do business in additional counties.

d. "Association" means a savings, building and loan association subject to the provisions of this act.

e. "Capital" means the aggregate of payments made on shares by members, plus dividends credited to such shares, less redemptions and withdrawals made thereon.

f. "Combination home and business structure" means a building or buildings, including residences for not more than 4 families, which is used in part for business purposes. The residential use of such a building must be substantial and permanent, not

merely transitory. The business use may predominate.

g. "Direct reduction loan" means a loan repayable in consecutive monthly installments, equal or unequal, beginning not later than 60 days after the date of the advance of the loan, sufficient to retire the debt, interest and principal, within 20 years; provided, however, that the initial loan contract shall not provide for any subsequent monthly installment of an amount larger than any previous monthly installment; and, provided further, that in the case of construction loans the first payment shall not be later than 6 months after the date of the first advance. Any such loan is an amortized loan whether interest is computed and adjusted every month or semi-annually.

h. "An unamortized real estate loan" means a real estate loan repayable within 5 years from date, with or without any amortization of principal, but with interest payable at least semi-annually.

i. "Gross income" means the sum for an accounting period of the following:

(1) Operating income.

(2) Real estate income.

(3) All profits actually received during such accounting period from the sale of securities, real estate or other property.

(4) Other non-recurring income.

j. "Home" means a dwelling or a dwelling for not more than 4 families. A property does not cease to be a home because of the incidental use of it for minor business purposes so long as the principal use of the property is for residence purposes. A home on a farm is a home.

k. "Home loan" means a real estate loan when the security is a home property.

l. "Home property" means real estate on which there is located, or will be located pursuant to a home loan, a home or a combination home and business structure.

m. "Impairment of capital" means that the assets of an association do not have an aggregate value (in the judgment of the board of directors or the Commissioner of Banks) equal to the aggregate amount of liabilities of the association to its creditors and members and all other persons.

n. "Insured association" means an association insured by the Federal Savings and Loan Insurance Corporation created under Title IV of the National Housing Act or amendments thereto.

o. "Member" means a person owning one or more shares of stock of an association, evidenced by a share certificate or pass book issued in the name of such person, individually or jointly, or a person borrowing from an association, owning shares of stock, individually or jointly, in conjunction with a loan.

p. "Net earnings" means gross income for an accounting period less the aggregate of the following:

(1) Operating expenses.

(2) Real Estate expenses.

(3) All losses actually sustained during such accounting period from the sale of securities, real estate or other property, or such portion of such losses as shall not have been charged to reserves, pursuant to the provisions of section 24 of this act.

(4) All interest paid on borrowed money.

(5) Other non-recurring charges.

q. "Net earnings available for dividends" means net earnings for an accounting period less amounts transferred to reserve as provided in section 24 of this act.

r. "Operating expenses" means all expenses actually paid by an association during an accounting period, excluding the following:

(1) Real estate expenses.

(2) Interest on borrowed money.

(3) Other non-recurring charges.

That portion of prepaid expenses not apportionable to the period may be excluded from operating expenses, in which event operating expenses for future periods shall include that portion of such prepaid expenses apportionable thereto.

s. "Operating income" means all income actually received by an association during an accounting period, excluding the following:

(1) Real estate income.

(2) Other non-recurring income.

t. "Other improved real estate loan" means a real estate loan when the security is improved real estate other than home property.

u. "Withdrawal value" means the aggregate of payments by a member on a share account, plus dividends credited thereto, less withdrawals made thereon, and the total of full paid share certificates.

v. "Real estate expenses" means all expense actually paid, in connection with the ownership, maintenance and sale of real estate (other than office building or buildings) by an association during an accounting period, excluding capital expenditures and losses on the sale of real estate.

w. "Real estate income" means all income actually received by an association during an accounting period from real estate owned (other than from office building or buildings), excluding profit from sales of real estate.

x. "Real estate loan" or "mortgage loan" or "mortgage" means a loan on the security of real estate evidence by any form of instrument whereby a first lien is created upon such real estate.

y. "The regular lending area" means the county in which the home office of an association is located and the counties of the state, or adjoining states, adjoining or adjacent thereto and any additional areas within a 50-mile radius from the home office.

z. "Stock loan" means a loan on the shares of a member, without other security, in an amount not exceeding ninety per cent of the cash or withdrawal value of such shares. (Act Apr. 21, 1939, c. 391, §1.)

7770-12. Department of banking shall execute laws.—The department of banking shall have charge of the execution of all laws relating to savings, building and loan associations chartered under the laws of Minnesota, and the business thereof. (Act Apr. 21, 1939, c. 391, §2.)

7770-13. Commissioner of banks to appoint building and loan supervisor—Duties.—The commissioner of banks shall appoint, and at pleasure may remove, a building and loan supervisor, whose duties shall be the supervision of all savings, building and loan associations in this state. The building and loan supervisor shall at all times be under the commissioner of banks and shall have such examiners and such assistant examiners assigned to him as are necessary to properly examine the associations under his supervision. (Act Apr. 21, 1939, c. 391, §3.)

7770-14. Commissioner of banks to exercise supervision over building and loan associations—Examinations—Investigations—Witnesses—Requiring reports.—The commissioner of banks shall exercise a constant supervision over the books and affairs of all such associations doing business within the state; and shall examine at least twice each year all of said associations, inspecting and verifying the assets and liabilities of each, and so far investigate the character and value of the assets of each such association as to ascertain with reasonable certainty that the values are correctly carried on its books.

He shall investigate the methods of operation and conduct of such associations and their systems of accounting, to ascertain whether such methods and systems are in accordance with law and sound business principles. He may examine or cause to be examined on oath any of the officers, directors, agents, clerks, customers, or shareholders of any such association touching the affairs and business thereof, and may, in the performance of his official duties, issue or cause to be issued by the examiners, subpoenas, and administer, or cause to be administered by the examiners, oaths; provided, that in case of any refusal

to obey any subpoena issued by him or under his direction, such refusal may at once be reported to the district court of the district in which the association is located, and such court shall enforce obedience to such subpoenas in the manner provided by law for enforcing obedience to subpoenas of said court. In all matters relating to his official duties, the commissioner of banks shall have the same power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, and employees of such associations, and all persons having dealings with or knowledge of the affairs or methods of such associations, shall at all times afford reasonable facilities for such examinations and make such returns and reports to the commissioner of banks as he may require; attend and answer, under oath, his lawful inquiries, produce and exhibit such books, accounts, documents, and property as he may desire to inspect, and in all things aid him in the performance of his duties. (Act Apr. 21, 1939, c. 391, §4.)

7770-15. Communications from commissioner or supervisor to be given to board of directors.—Each official communication from the commissioner of banks or the building and loan supervisor to an association, relating to any examination conducted by the banking department or containing suggestions and recommendations as to the conduct of business of the association shall be submitted by the officer receiving it to the board of directors at the next meeting of said board and noted in the minutes thereof. (Act Apr. 21, 1939, c. 391, §5.)

7770-16. Incorporation of associations.—Seven or more persons may incorporate to form a savings, building and loan association. Such persons shall subscribe and acknowledge articles of incorporation specifying:

(a) The name, the field of operation, the principal place of transacting business. Such name shall distinguish it from other corporations and must include therein the words "savings and loan" or "building and loan," or a combination of these words and end with the word "association," provided that if at any time it is authorized to do business in added territory it shall include in the name the words "a state association" in all advertising or literature.

(b) The period of its duration, which may be perpetual.

(c) The name, occupation and address of each incorporator, and the number of shares of capital subscribed for by him.

(d) In what board its management shall be vested, the date of the annual meeting at which it shall be elected, the names and addresses of those composing the board until the first election and the amount of capital stock subscribed or paid in by each, all of whom shall be residents of the field of operation.

(e) How the capital is to be paid in, and the par value of each share.

(f) The highest amount of indebtedness or liability to which the association shall at any time be subjected.

Such articles may also contain any other lawful provisions defining and regulating the powers of business of the association, its directors, officers, members or shareholders. (Act Apr. 21, 1939, c. 391, §6.)

7770-17. Same—To execute application to securities commission.—The incorporators of any such association proposed to be organized under the laws of this state shall execute and acknowledge an application in writing in the form prescribed by the State Securities Commission and shall file the same in its office, requesting a certificate authorizing the proposed association to transact business at the place, and in the name stated in said application. (Act Apr. 21, 1939, c. 391, §7.)

7770-18. State securities commission to pass on application.—The application of the association shall be submitted to and considered by the State Securities Commission in accordance with provisions of Mason's Minnesota Statutes of 1927, Sections 3997 to 4000 inclusive. After receiving the certificate of authorization from the commissioner of banks the articles of incorporation shall be filed with the Secretary of State, who shall record the same and certify that fact thereon. Such certificate and articles shall be filed for record with the register of deeds of the county of the principal place of business as specified in the certificate.

Every articles 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.

After recording and publication, the articles of incorporation shall be filed with the commissioner of banks together with proof of publication.

Savings, building and loan associations shall be exempt from payment of the filing fee provided by law for payment to the state treasurer before filing any articles of incorporation, renewal or amendment. (Act Apr. 21, 1939, c. 391, §8.)

7770-19. Purposes of association.—Savings, 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 association shall be organized or operated for any such real or nominal purposes otherwise than as herein prescribed. Until otherwise provided by law all existing financial corporations conducting the business of savings and building and loan associations at the time of this act taking effect shall continue to exercise and enjoy all powers and privileges possessed by them under respective articles of incorporation and the laws applicable thereto then in force not inconsistent with the provisions of this act, and shall remain subject to all duties and liabilities to which they were then subject. (Act Apr. 21, 1939, c. 391, §9.)

7770-20. May amend articles and by-laws.—The articles of incorporation of any association now or hereafter organized under the laws of this state may be amended so as to change its corporate name, or so as to change the par value of its shares, or in respect to any other matter which original articles of such association 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, by a majority vote of the shareholders of the association attending the meeting in person or by proxy. Such resolution shall be embraced in a certificate duly executed by its president and secretary, or other presiding or recording officers, under its corporate seal, and approved, filed, recorded and published in the manner prescribed for the execution, approval, filing, recording and publishing of like original articles, provided however if such amendment be made for the purpose of changing the principal place of the business of such association said certificate shall be published, filed and recorded in the office of the register of deeds of the county of such principal place of business immediately prior to such amendment, and shall also be recorded and published in the county where the business is to be carried on after the amendment. (Act Apr. 21, 1939, c. 391, §10.)

7770-21. May not remove office without approval of commissioner of banks.—Without the prior approval of the commissioner of banks no association operating under this act shall move its office from its immediate vicinity. (Act Apr. 21, 1939, c. 391, §11.)

7770-22. Must commence business within six months from date of incorporation.—Any association which shall not commence business within 6 months after the date upon which its corporate existence shall have begun, shall forfeit its corporate existence, un-

less the commissioner of banks before the expiration of such 6 months' period shall have approved the extension of time within which it may commence business, upon a written application stating the reasons for such delay. No such extension shall be granted after the lapse of such 6 months' period. Upon such forfeiture all action taken in connection with the incorporation thereof shall become void. Amounts paid on accounts, less expenditures authorized by law, shall be returned pro rata to the respective investors. (Act Apr. 21, 1939, c. 391, §12.)

7770-23. By-laws—Contents.—The by-laws of every association:

a. shall state the principal place of business where the association is located.

b. shall provide the date and the place of the regular annual meeting of members; the notice, if any, to be given; the manner of calling special meetings, and the notice to be given; and the number of members necessary to constitute a quorum.

c. shall provide for meetings of the board of directors, which meetings shall be held not less frequently than once a month; the place of such meetings; the quorum necessary to conduct a meeting, and for the resignation and removal of directors.

d. shall prescribe the number of directors, their duties and powers, their term of office and how vacancies are to be filled.

e. may provide for an executive committee which shall have the powers of the board of directors between meetings of the board of directors, and shall provide for the time and place of meetings of the executive committee and the quorum necessary.

f. shall provide that the board of directors at their annual meeting, which shall be held within ten days after the annual meeting of the members (1) from their own number shall elect a president, one or more vice presidents, a secretary, and a treasurer, and (2) may elect such additional officers as the board of directors may from time to time determine, and (3) may designate an attorney, provided the offices of secretary and treasurer may be held by the same person.

g. shall state the voting rights of members and the vote necessary to decide an issue.

h. shall prescribe the duties and power of the officers, how vacancies are to be filled, and terms of office.

i. shall prescribe the method whereby written instruments shall be executed, and what officers shall be authorized to sign checks.

j. shall prescribe the method of making loans, the filing of applications, closing of loans, terms of loans, loan expense, insurance on loans, building loans, and may prescribe the maximum loan limit which shall be a fixed percentage of the appraised valuation of the property.

k. shall prescribe the manner in which share certificates shall be signed and delivered; provided that the by-laws shall provide that such share certificates shall be manually signed by an officer or employee of the association designated by the board of directors.

l. shall prescribe how shares may be withdrawn and how shares may be transferred from one person to another.

m. shall set forth the corporate seal of the association, which shall be 2 concentric circles between which shall be the name of the association. The year of incorporation and the name of the state shall, and an emblem may, appear in the center.

n. shall provide for the depositing of the association's funds and shall provide that the board of directors shall name a bank or banks as depository.

o. may provide for the sale or cancellation of delinquent share interests.

p. may contain such other provisions as are not unlawful or inconsistent herewith.

q. may be amended at any time by a majority vote of the members of the association present at an annual or special meeting called for that purpose, the notice of such meeting stating what sections are to be amended. No such amendment to the by-laws shall be effective unless and until the commissioner of banks has given his written approval to such amendment. The members may, at any regular or special meeting called for that purpose, adopt or abolish any or all of the bonus plans provided in section 23 of this act without the approval of the commissioner of banks. (Act Apr. 21, 1939, c. 391, §13.)

7770-24. Rights and privileges of members.—The rights, privileges and powers, and the duties and liabilities of members of an association shall be as fixed by the by-laws and this act. An annual meeting of the members of each association shall be held in the month of December or January, as fixed in the by-laws of such association. Every association shall prepare and publish semi-annually in the months of January and July in a newspaper of general circulation, published in the English language, in the county in which such association is located, and shall deliver to each member upon application therefor, a statement of its financial condition for the previous 6 months' period, in the form prescribed or approved by the commissioner of banks.

All shareholders of record and all borrowers from the association shall be members thereof. Any person, including an adult individual, male or female, single or married, a partnership, association, guardian, trustee and corporation, may be a borrower from the association, provided such person has full legal power to contract for the payment of the loan under the laws of this state. In the determination of all questions requiring action by the members, each shareholder shall be permitted to cast 1 vote for each share or fraction thereof of the withdrawal value of his share account, except only one vote may be cast for each share of stock or fraction thereof owned jointly, and except that an association may in its by-laws limit or determine the number of votes to be cast by each shareholder. Voting may be by proxy, provided the proxy instrument authorizing the proxy to vote shall have been executed in writing by the member within 6 months prior thereto. A majority of all votes cast at any meeting of members shall determine any question, except voluntary liquidation. The members who shall be entitled to vote at any meeting of the members shall be those owning share accounts of record and borrowing members of record at the end of the calendar month next preceding the date of the meeting of members, except those who have ceased to be members. The number of votes of each member shall be determined either by the withdrawal value of his share account, or if a borrower, the number of shares owned on such record date. The association shall not directly or indirectly charge any membership, admission, withdrawal, or any other fee or sum of money in excess of 1 per cent of the par value of each share for the privilege of becoming, remaining, or ceasing to be a member of the association, in addition to reasonable charges upon the making of a loan. The association shall not charge any member any sum of money by way of fine or penalty for any cause except that a reasonable charge may be made against borrowers for defaults or prepayments on loans. (Act Apr. 21, 1939, c. 391, §14.)

7770-25. Rights and privileges of officers and directors.—The rights, privileges and powers, and the duties and liabilities of all directors and officers of an association are to be as fixed by its by-laws and this act. The business of the association shall be managed by a board of directors of not less than 5 nor more than 15 as determined and elected by ballot from among the members by a majority of the votes of the members present and voting at a meeting called for that purpose. Each director of an association whose total assets are less than $300,000 shall actually own in his own name at least $100 withdrawal

value of the accumulated capital stock of the association, and where total assets exceed $300,000 at least $500 withdrawal value of the accumulated capital stock of the association, provided, however, that a director shall qualify as to share ownership if he and another own at least double the said amounts jointly. A director shall cease to be a director when he ceases to be a member, or when the withdrawal value of all shares of the association owned by him jointly or individually aggregate less than the minimum required to be eligible for election as a director, and his office shall automatically become vacant if such ineligibility continues for 30 days or more, provided, no action of the board of directors shall be invalidated through the participation of such director in such action. At the first annual meeting, or at any annual meeting thereafter, the directors may be divided into 3 classes of as nearly equal numbers as possible. If the so-called "stagger" method is used, the term of office of directors of the first class shall expire at the annual meeting next ensuing the first election; of the second class, 1 year thereafter; and of the third class, 2 years thereafter; and at each annual election thereafter directors shall be chosen for a full term of three years to succeed those whose terms expire, provided, however, that if the "stagger" method is not adopted, the term of office of directors or manner of filling vacancies shall be determined in accordance with the articles of incorporation or bylaws of the association. The number of directors within the limits hereinabove specified may be subsequently increased only by vote of the shareholders. If the shareholders fail to elect a director to fill each vacancy created by any such increase, the directors may fill such vacancy by electing a director to serve until the next annual meeting of the members, at which time a director shall be elected to fill the vacancy for the unexpired term for the class of director in which such vacancy exists. Whenever under the provisions hereof the number of directors is changed and vacancies caused by such change are filled, the directors so elected shall be classified in accordance with the provisions hereof, so that each of the 3 classes shall always contain as nearly equal numbers as possible. The existence of such vacancy, however, does not require the calling of a special meeting of members, unless there shall be a written request for such meeting by members holding of record at least ten per cent of the capital of the association. Any vacancy among the directors, not so filled by the members, may be filled by a majority vote of the remaining directors, though less than a quorum, by electing a director to serve until the next annual meeting of the members, at which time a director shall be elected to fill the vacancy for the unexpired term for the class of director in which such vacancy exists, provided, however, that not more than one-third of the board may be filled by the directors in any one year. (Act Apr. 21, 1939, c. 391, §15.)

7770-26. Bonds for officers and employees.—All directors, officers and employees of an association having control of or access to moneys or securities of such association shall, before entering upon the performance of any of their duties, execute their bonds with adequate corporate surety payable to the association as an indemnity for any pecuniary loss the association may sustain of money or other property by or through any fraud, dishonesty, forgery or alteration, larceny, theft, embezzlement, robbery, burglary, hold-up, wrongful or unlawful abstraction, misapplication, misplacement, destruction or misappropriation, or any dishonest or criminal act or omission, or infidelity to duty of or by any such director, officer, employee or agent. Associations which employ collection agents, who for any reason are not covered by a bond as hereinabove required, shall provide for the bonding of each such agent in an amount equal to at least twice the average monthly collections of such agent. Such agents shall be required to make settlement with the association at least monthly. The amounts and form of such bonds and the sufficiency of the surety thereon shall be approved by the board of directors and by the commissioner of banks. In lieu of individual bonds, a blanket bond, protecting the association from loss through any such act or acts on the part of any such officer, director or employee may be obtained upon the approval of the commissioner of banks. (Act Apr. 21, 1939, c. 391, §16.)

7770-27. Records and accounts.—Every association shall open and keep such books and accounts and observe such accounting principles and practices as the commissioner of banks may prescribe or approve, for the purpose of keeping accurate and convenient records of its transactions, and every association refusing or neglecting to so do shall forfeit ten dollars for every day of such neglect or refusal, providing that existing books of account shall be considered compliance herewith until such time as the commissioner of banks may otherwise direct.

Every association shall close its books at the close of business on June 30 and December 31 of each year, which dates are termed in this act "semi-annual closing dates."

No association by any system of accounting or any device of bookkeeping shall either directly or indirectly, enter any of its assets upon its books in the name of any other person, partnership, association, or corporation, or under any title or designation that is not truly descriptive of such assets. The commissioner after a determination of value may order that assets in the aggregate to the extent that such assets have depreciated in value, be charged off, or that a special reserve or reserves equal to such depreciation in value be set up by transfers from undivided profits. The bonds or other interest-bearing obligations purchased by an association shall not be carried on its books at more than the actual cost thereof. An association shall not carry any real estate on its books at a sum in excess of the total amount invested by such association on account of such real estate, including advances, costs and improvements but excluding accrued but uncollected interest. No cost of repairs or cost of restoration of property may be added to the real estate account, except such expenditures as represent permanent improvements.

Every association shall appraise each parcel of real estate at the time of acquisition thereof. The commissioner may require the appraisal of real estate securing loans which are delinquent more than six months. The report of each such appraisal shall be submitted in writing to the board of directors and shall be kept in the records of the association.

Every association shall maintain membership records, which shall show the number of each share certificate issued, the name and address of the member to whom issued, whether the member is a shareholder or a borrowing shareholder, the date of issuance thereof, the name and address of each transferee of each membership certificate, and the date of transfer. (Act Apr. 21, 1939, c. 391, §17.)

7770-28. To audit books annually.—The board of directors or president shall appoint at least once a year from its members an auditing committee, or in lieu thereof, a certified public accountant, who shall examine the financial condition of the association at least semi-annually and make a written report thereof in duplicate, which shall be verified by the president and secretary, and attested by two directors stating in detail assets and liabilities at the close of the preceding semi-annual period. One copy thereof shall be transmitted to the commissioner of banks. The other copy shall be spread upon the minutes of the board and a condensed statement thereof published once by the association in a newspaper of the municipality or county in which is located its principal place of business and proof thereof filed immediately with the commissioner of banks. (Act Apr. 21, 1939, c. 391, §18.)

7770-29. Notices of annual or special meeting.—At least fourteen days prior to any annual meeting and at least seven days prior to any special meeting of shareholders or members, mailed or published notice shall be given to each member, specifying the time, place and purpose thereof; also a notice of any amendment to articles or by-laws, or any resolution or proposition on which action is to be taken. (Act Apr. 21, 1939, c. 391, §19.)

7770-30. Capital.—The capital of an association shall be unlimited and shall consist of the aggregate of payments on share accounts by its members, plus dividends credited to such accounts, less redemptions and withdrawals made thereon. At least $10,000 of its capital shall be subscribed and paid in before such association shall commence business, and the paid in capital shall never be less than $10,000.

The following types of shares may be issued in the discretion of the board of directors:

(a) Full paid shares, when the full par value thereof is paid at the time of issuance, or when the full par value of other types of shares has been paid in thereon, including credited dividends.

(b) Installment shares, on which payments shall be paid as may be fixed by the board of directors.

(c) Optional payment shares, on which, after the first payment has been made, the shareholder may pay any amount at any time desired, subject to such limitations as may be fixed by the board of directors.

(d) Loan stock, when the by-laws provide that a loan is an advance on shares of stock, such shares and the payments thereon shall constitute capital the same as any other shares until such time as the payments are actually withdrawn and applied in reduction of the loan as provided by the contract.

When payments on installment shares or on optional payment shares, together with dividends credited thereon, equal the full par value of shares in the association, such installment or optional payment shares shall be exchangeable for certificates representing full paid shares, at the option of the holder thereof, without costs; provided that transfer to full paid stock shall not be made until such optional or installment share certificate or pass book has been surrendered and full paid certificates issued therefor as herein provided. When payments on shares, or the dividends credited thereon, exceed the par value of such shares, such excess shall not constitute a common creditor liability of the association, but shall be deemed for the purchase of other like shares. Any holder of installment shares or optional payment shares may at any time pay the difference between the amount paid in thereon, including credited dividends, and the full par value of shares in the association and shall, thereupon, be entitled to a certificate representing full paid shares.

The capital shall be accumulated only by payments by members and earnings on shares as provided in this act. The withdrawal value of each share account held by a member shall be the aggregate of payments upon such share account, plus dividends credited thereon, less redemption and withdrawals made. Except as limited by the board of directors from time to time, a member may make payments on share accounts in such amounts and at such times as he may elect. Shares may be issued for cash, or property in which the association is authorized to invest, and, in the absence of fraud in the transaction, the value of the property taken in payment therefor, as determined by the board of directors, shall be conclusive. The members of an association shall not be responsible for any losses which its capital shall not be sufficient to satisfy, and the share accounts shall not be subject to assessment, nor shall the shareholders be liable for any unpaid installments on their share accounts. Dividends shall be declared in accordance with the provisions of this act. No association shall prefer one of its share accounts over any other share account as to the right to participate in dividends as to time or amount, provided, the by-laws may provide that on share accounts of five dollars or less dividends need not be paid. No preference between shareholders shall be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution or winding up of an association. No association shall have power to contract with respect to the capital or participations in the capital in a manner inconsistent with the provisions of this act. (Act Apr. 21, 1939, c. 391, §20.)

7770-31. Share accounts.—Each share account shall be represented by the share account of each shareholder on the books of the association and each shareholder shall receive a pass book containing a share certificate in the form prescribed in this act, and evidencing the withdrawal value of the share account. A separate certificate for a share account, in form prescribed in this act, may be issued in lieu of a pass book, entitled "Shares Certificate." Share accounts may be purchased and held absolutely by, or in trust for, any person, including an adult or minor individual, male or female, single or married, a partnership, association, and corporation. Share accounts shall be transferable only upon the books of the association and upon proper application by the transferee and the acceptance of the transferee as a member upon terms approved by the board of directors. The association may treat a shareholder of record on the books of the association as the owner for all purposes without being affected by any notice to the contrary, unless the association waive in writing its statutory lien in whole or in part in favor of a pledge. (Act Apr. 21, 1939, c. 391, §21.)

7770-32. Share certificates—Form.—The following form of certificate, or some other form approved by the commissioner of banks, evidencing ownership of a full paid share account is hereby prescribed for use by all associations and shall be issued to each such shareholder, which shall be identified by number and bear the date of issuance:

FULL-PAID SHARE CERTIFICATE

No. ....Shares

Par Value $.....Per Share

This certifies that ..... has paid the full par value of $.....per share for .....Full-Paid Shares, and is a member of the undersigned. This certificate is issued and by the acceptance hereof is held subject to all provisions of the laws of the State of Minnesota, the articles of incorporation and by-laws of the undersigned, and is transferable on the books of the undersigned by the holder hereof, in person or by duly authorized attorney, upon surrender of this certificate properly endorsed. The undersigned may treat the holder of record hereof as the owner for all purposes, without being affected by any notice to the contrary, until this certificate is transferred on the books of the undersigned. Certificates will not be transferred unless and until the transferee has made proper application for membership in, and has been accepted as a member of the undersigned.

WITNESS the seal of the undersigned and the signatures of its duly authorized officers, this the..... day of ....., 19.....

.....Association

....

President Secretary

(Corporate Seal)

The following form of certificate, or some other form approved by the commissioner of banks, evidencing ownership of an installment share account is hereby prescribed for use by all associations and shall be issued to each such shareholder, which shall be identified by number and bear the date of issuance:

INSTALLMENT SHARE CERTIFICATE

No. ....Shares
Par Value $.....Per Share

This certifies that ..... has subscribed for and made the initial payment upon .....Installment Shares, and is a member of the undersigned. This certificate is issued and by the acceptance hereof is held subject to all provisions of the laws of the State of Minnesota, the articles of incorporation and by-laws of the undersigned, and is transferable on the books of the undersigned, by the holder hereof, in person or by duly authorized attorney, upon surrender of this certificate properly endorsed. The undersigned may treat the holder of record hereof as the owner for all purposes, without being affected by any notice to the contrary, until this certificate is transferred on the books of the undersigned. Certificates will not be transferred unless and until the transferee has made proper application for membership in, and has been accepted as a member of the undersigned.

WITNESS the seal of the undersigned and the signatures of its duly authorized officers, this the..... day of....., 19.....

.....Association

....
President Secretary
(Corporate Seal)

The following form of certificate, or some other form approved by the commissioner of banks, evidencing ownership of an optional payment share account is hereby prescribed for use by all associations and shall be issued to each such shareholder, which shall be identified by number and bear the date of issuance:

OPTIONAL PAYMENT SHARE CERTIFICATE

No. ....Shares
Par Value $.....Per Share

This certifies that ..... has subscribed for and made the initial payment upon .....Optional Payment Shares, and is a member of the undersigned. This certificate is issued and by the acceptance hereof is held subject to all provisions of the laws of the State of Minnesota, the articles of incorporation and by-laws of the undersigned, and is transferable on the books of the undersigned by the holder hereof, in person or by duly authorized attorney, upon surrender of this certificate properly endorsed. The undersigned may treat the holder of record hereof as the owner for all purposes, without being affected by any notice to the contrary, until this certificate is transferred on the books of the undersigned. Certificates will not be transferred unless and until the transferee has made proper application for membership in, and has been accepted as a member of the undersigned.

WITNESS the seal of the undersigned and the signatures of its duly authorized officers, this the....day of ....., 19.....

.....Association

....
President Secretary
(Corporate Seal)
(Act Apr. 21, 1939, c. 391, §22.)

7770-33. Cash bonuses.—In order to stimulate systematic thrift and to provide regular funds for the financing of homes, the members at a regular or special meeting may adopt the short-term bonus or the long-term bonus, or both the short-term and long-term bonus, prescribed below. The members may adopt the short-term bonus plan by adopting the following resolution and causing 3 copies thereof, certified by the secretary, to be filed with the commissioner of banks:

"RESOLVED, That effective on the next succeeding dividend date, the association shall be obligated to pay a cash bonus on the short-term bonus plan prescribed in the Savings, Building and Loan Act."

The members may adopt the long-term bonus plan by adopting the following resolution:

"RESOLVED, That effective on the next succeeding dividend date, the association shall be obligated to pay a cash bonus on the long-term bonus plan prescribed in the Savings, Building and Loan Act."

The members may adopt both the short-term and long-term bonus plans by adopting the following resolution:

"RESOLVED, That effective on the next succeeding dividend date, the association shall be obligated to pay a cash bonus on both the short-term bonus plan and the long-term bonus plan prescribed in the Savings, Building and Loan Act."

Upon the filing with the commissioner of banks of the required certified copies of any such resolution, the association is authorized to proceed to put such bonus plan into effect on the next succeeding dividend date.

If, after the adoption of the bonus plan, a member desiring a short-term bonus shall agree to make regular monthly payments of any specified amount on a share account until the withdrawal value thereof shall equal 100 times the agreed monthly payment, and if the agreed monthly payments shall be made each and every month thereafter until the withdrawal value thereof shall equal 100 times the agreed monthly payment, without a delay of more than 60 days in the payment of any monthly payment, without any prepayment of more than 12 months, and if during such period no application has been made for withdrawal of any part of such share account, the bonus shall be payable on the date on which the withdrawal value of such share account shall equal or exceed 100 times the agreed monthly payment. The bonus rate on such short-term share account shall be ½ of 1 per cent per annum and the amount of the bonus shall be determined as follows: Divide the dollar amount of each semi-annual dividend declared on such share account by a figure equal to twice the annual rate of per cent of such semi-annual dividend declared. The amount of the bonus is the sum of the quotients obtained.

If, after the adoption of the bonus plan, a member desiring a long-term bonus shall agree to make regular monthly payments of any specified amount on a share account until the withdrawal value thereof shall equal 200 times the agreed monthly payment, and if the agreed monthly payments shall be made each and every month thereafter until the withdrawal value thereof shall equal 200 times the agreed monthly payment, without a delay of more than 60 days in the payment of any monthly payment, and without any prepayment of more than 12 months, and if during such period no application has been made for the withdrawal of any part of such share account, the bonus shall be payable on the date on which the withdrawal value of such share account shall equal or exceed 200 times the agreed monthly payment. The bonus rate of such long-term share account shall be 1 per cent per annum and the amount of the bonus shall be determined as follows: Divide the dollar amount of each semi-annual dividend declared on such share account by a figure equal to the annual rate of per cent of such semi-annual dividend declared. The amount of the bonus is the sum of the quotients obtained.

The members at a regular or special meeting may abolish the bonus plan or plans as to share accounts opened after the date of such action.

Simultaneous with the declaration of each semi-annual dividend after the adoption of a bonus plan or plans, the board of directors shall transfer out of net earnings to an account designated "Bonus Reserve" an amount which, together with existing credits to the bonus reserve, is sufficient to pay the bonus on all share accounts then entitled to participation in the

bonus reserve in accordance with the provisions of this section. The board of directors may transfer any excess in the bonus reserve to the undivided profits account.

The association which has become obligated as provided in this section to pay a cah bonus may advertise the short-term bonus plan and may refer to the bonus rate on such short-term bonus plan as being a bonus of ½ of 1 per cent per annum; and may advertise the long-term bonus plan and may refer to the bonus rate on such long-term plan as being a bonus of 1 per cent per annum. (Act Apr. 21, 1939, c. 391, §23.)

7770-34. Contingent or reserve fund to be accumulated.—Every association shall accumulate a fund to be known as a contingent or reserve fund by setting aside each semi-annual accounting period at least two per cent of its net earnings until the fund shall ultimately be equal to at least five per centum of its accumulated capital or to at least fifty per centum of the book value of all real estate owned by it, whichever amount is the greater or in the case of an insured association the reserve required by the Federal Savings and Loan Insurance Corporation may be considered as meeting the requirements of this section provided such reserve equals or exceeds the amount required herein. Such fund shall not be available for the payment of current expenses so long as the association has undivided profits. It shall not be available for the payment of dividends; but any association may charge against such fund any losses upon investments, whether resulting from depreciation or otherwise, without encroaching upon its undivided profits or its net earnings until the contingent or reserve fund is exhausted. (Act Apr. 21, 1939, c. 391, §24.)

7770-35. Disposition of net earnings.—On each semi-annual closing date, after payment or provision for all expenses and appropriate transfers to reserves, the remainder of net earnings for the half calendar year shall be credited to the undivided profits account.

Every association shall first deduct from gross earnings its operating costs for the same period, if such earnings are sufficient; if not, the balance of the expenses above the earnings shall be carried on the records of the association as "expenses paid", and thereafter deducted from the earliest available net profits. Any remaining balance shall be charged to an account called "permanent expenses" and in the event of voluntary or involuntary liquidation shall be paid by the proportionate deduction from the value of the shares upon the books of the association. The remainder shall be deemed the true book value of said stock. All operating costs shall be paid from its earnings, and no deductions shall be made from stock payments directly or indirectly, save as herein provided. The total of all expenses, whether disbursed or incurred, shall not exceed annually two and one-half per centum of the total amount of all money actually loaned to members on real estate mortgages and contracts for deed at the time of making such deduction, including the dividends duly declared and credited thereon on stock, provided that this limitation shall not apply to associations whose accumulated capital is less than forty thousand dollars, but the annual operating expenses of any such association shall not exceed one thousand dollars. Expenses met by service fees, including membership, shall not be considered as operating costs subject to the limitation of expenses herein provided. (Act Apr. 21, 1939, c. 391, §25.)

7770-36. Dividends.—As of June 30 and December 31 in each year, the board of directors shall declare a dividend payable as of the date said dividend is declared. No dividends shall be declared except dividends payable on said dividend dates unless permission is first obtained from the commissioner of banks. Payments of net earnings to shareholders are dividends and shall not be referred to as interest. Dividends shall be credited to share accounts on the books of the association on the dividend payment date and shall be known as stock dividends unless a shareholder shall have requested and the board of directors shall have agreed to pay dividends on all or part of any share account in cash. Dividends payable in cash shall be paid within 30 days from the date declared. All shareholders shall participate equally in dividends pro rata to the withdrawal value of their respective share accounts; provided that if the by-laws so provide no association shall be required to pay or credit dividends on share accounts of $5 or less. Except as above provided, dividends shall be declared on the withdrawal value of each share account at the beginning of the dividend period, plus payments thereon made during the dividend period (less amounts withdrawn, which for dividend purposes shall be deducted from the latest previous payments thereon) computed at the dividend rate for the time invested, determined as provided below. The date of investment shall be the date of the actual receipt by the association of a payment on a share account, except that the board of directors may fix a date, which shall not be later than the fifteenth of the month, for determining the date of payment. Payments on share accounts, affected by such determination date, received by the association on or before such determination date, shall receive dividends as if made on the first of the month during which such payment was made. (Act Apr. 21, 1939, c. 391, §26.)

7770-37. Withdrawals—Notice.—The holder of unpledged shares may withdraw a part or all of the value thereof upon thirty days' written notice of his intention so to do given to and duly filed with the secretary of the association at any time, but the board of directors may waive such notice. Such notice of withdrawal shall not, however, make such shareholder a creditor of the association but his status shall be and remain that of a shareholder. Such shareholder, until paid, shall be entitled to dividends upon the sum requested to be withdrawn, to the extent of seventy-five per cent of the rate declared and credited upon other shares of the same class. The association shall use at least fifty per cent of its monthly receipts, which shall not include money borrowed, for the purpose of paying withdrawals, but not over fifty per cent of its monthly receipts shall be so used, unless otherwise determined by resolution of the board of directors. Whenever the proportion of receipts applicable to the demands of withdrawing members is not sufficient to pay all such demands within 60 days from the date of application for withdrawal, such application shall be paid out of funds available as hereinafter set forth and shall be liquidated as follows: The applicant first on the list will receive twenty-five per cent of the amount of his application for withdrawal, but in no case less than two hundred dollars, nor more than one thousand dollars, on account, if the funds are available as hereinafter set forth, or if the amount of his application is for less than two hundred dollars, and funds to pay the same are available as hereinafter set forth, his application shall be liquidated in full. For any balance remaining due to the applicant after the aforesaid payment, the application shall be transferred at once to the bottom of the withdrawal list, and no further payments shall be made to said applicant, except as hereinafter set forth, until the said applicant's name has again found its way to the head of the withdrawal list. The second applicant shall be treated in exactly the same manner, and so on. All new applicants shall be placed at the bottom of the list, immediately upon the filing of their respective applications. This method of paying withdrawals shall become obligatory upon all associations upon the passage of this act; and the withdrawal lists as then existing in each association shall be liquidated from that date as provided in this act. In addition to the above, out of the remainder of its monthly receipts the association may use its discretion in meeting on demand at all times all applications for with-

drawal by members whose entire interest in the association amounts to less than one hundred dollars; and may further, in its discretion, pay the sum of not more than one hundred dollars per month to any applicant on the withdrawal list; provided that such payments of one hundred dollars per month shall be made only when emergent circumstances justify the same and only after a thorough investigation of each application has been made. The board of directors shall have full authority to prescribe such rules as may in its discretion be suitable to prevent shareholders from making any simulated or purported transfer of shares in order to expedite their withdrawals, and all rules thus made shall be binding on the members of the association. Whenever the total of applications for withdrawal exceeds sixty per cent of the accumulated capital of any association, the commissioner of banks, if he believes that the condition of the association justifies such an order, may direct that the payment of withdrawals as above provided be discontinued, and that thereafter all withdrawals from said association be paid on a pro rata basis, from time to time, to all persons appearing on the withdrawal list of said association. Said distribution to be made to all persons actually on the withdrawal list on a date not less than ten days previous to the day on which the pro rata distribution checks are issued. (Act Apr. 21, 1939, c. 391, §27.)

7770-38. Retirement of unpledged shares.—The board of directors of any association may retire all unpledged shares of stock in the manner prescribed in its by-laws, and the holders of such shares are paid the full value thereof less all lawful obligations. (Act Apr. 21, 1939, c. 391, §28.)

7770-39. Who may hold certificates.—An association may issue share certificates in the name of any administrator, executor, guardian, trustee or other fiduciary, in trust for a named beneficiary or beneficiaries, provided that this act shall not be construed as granting additional power or authority to any administrator, executor, guardian, trustee or other fiduciary. Any such fiduciary shall have power to vote as a member as though the share certificate were held absolutely, to make payments upon and to withdraw any such account, in whole or in part. The withdrawal value of any such account, and dividends thereon, or other rights relating thereto, may be paid or delivered, in whole or in part, to such fiduciary, without regard to any notice to the contrary so long as such fiduciary is living. The payment or delivery to any such fiduciary or a receipt or acquittance signed by any such fiduciary, to whom any such payment, or any such delivery of rights is made, shall be a valid and sufficient release and the discharge of an association for the payment or delivery so made. Whenever a person holding an account in a fiduciary capacity dies and no written notice of the revocation or termination of the trust relationship shall have been given to an association, the withdrawal value of such account, and dividends thereon, or other rights relating thereto, may, at the option of an association, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries of such trust. The payment or delivery to any such beneficiary or beneficiaries, or a receipt or acquittance signed by any such beneficiary or beneficiaries for any such payment or delivery, shall be a valid and sufficient release and discharge of an association for the payment or delivery so made. (Act Apr. 21, 1939, c. 391, §29.)

7770-40. Shares purchased for minors.—Any shares purchased from an association 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 dividends thereon, shall be paid to him, and his receipt or acquittance in any form shall be sufficient release and discharge of the association for share withdrawal or cancellation on maturity, until a guardian appointed in this state for such minor shall have delivered a certificate of his appointment. (Act Apr. 21, 1939, c. 391, §30.)

7770-41. Advertisement of capital stock.—No association shall advertise as its capital any amount other or greater than the amount of actual paid-in capital at the time of the advertisement. (Act Apr. 21, 1939, c. 391, §31.)

7770-42. Lost, stolen or destroyed certificates.—Upon the filing with an association by a member of record, or his legal representatives, of an affidavit to the effect that the share certificate evidencing his membership in the association has been lost, stolen or destroyed, and that such share certificate has not been pledged or assigned, in whole or in part, such association shall issue a share certificate, marked on the face thereof a duplicate, in the name of such holder of record, evidencing his share balance in the association; provided, however, that the board of directors may in its discretion require such member or his legal representative to furnish a bond to the association in an amount sufficient to indemnify it against any loss which might result from the issuance of such duplicate share certificate. (Act Apr. 21, 1939, c. 391, §32.)

7770-43. Not to issue investment certificates or receive deposits.—No association shall issue, sell, negotiate or advertise for sale, any investment certificate or certificates of indebtedness or receive deposits. No association shall agree to pay a guaranteed rate of interest or fixed amount in dividends upon any share accounts issued by it. (Act Apr. 21, 1939, c. 391, §33.)

7770-44. Grant and limit of powers.—Every association incorporated pursuant to or operating under the provisions of this act shall have all the powers enumerated, authorized and permitted by this act, and such other rights, privileges and powers as may be incidental to or necessary for the accomplishment of the objects and purposes of the association. Every association shall have the following powers:

(a) To sue and be sued, complain and defend, in any court.

(b) To purchase, hold and convey real and personal estate consistent with its objects and powers, and to mortgage, pledge or lease any real or personal estate; and to take property by gift, devise or bequest.

(c) To have a corporate seal, which may be affixed by imprint, facsimile or otherwise.

(d) To appoint officers, agents and employees as its business shall require, and allow them suitable compensation.

(e) To adopt and amend by-laws as provided in this act.

(f) To accept savings and investments as payments on accounts as provided in this act, but this shall apply only to cases where one association assumes the share liabilities of another and sufficient assets are transferred to cover such liabilities.

(g) To make loans to members on the sole security of share accounts. No such loan shall exceed 90 per cent of the withdrawal value of the share accounts owned or otherwise pledged by the borrower. No such loan shall be made when an association has applications for withdrawal which have been on file more than 60 days and not reached for payments.

(h) To make direct reduction or unamortized home loans of any amount and secured by home property, subject to the following limitation: It shall be unlawful for an association, the assets of which do not exceed fifty thousand dollars to make any mortgage loan exceeding five thousand dollars; if its assets exceed fifty thousand dollars but do not exceed one hundred thousand dollars, it shall be unlawful for it to make any mortgage loan exceeding seven thousand five hundred dollars; if its assets exceed one hundred thousand dollars, but do not exceed two

hundred thousand dollars, it shall be unlawful for it to make any mortgage loan exceeding ten thousand dollars; if its assets exceed two hundred thousand dollars but do not exceed five hundred thousand dollars, it shall be unlawful for it to make any mortgage loan exceeding twenty thousand dollars; if its assets exceed five hundred thousand dollars but do not exceed one million dollars, it shall be unlawful for it to make any mortgage loan exceeding thirty thousand dollars; if its assets exceed one million dollars, but do not exceed three million dollars, it shall be unlawful for it to make any mortgage loan exceeding fifty thousand dollars; if its assets exceed three million dollars, it shall be unlawful for it to make any mortgage loan exceeding two and one-half per cent of its total assets. It shall be unlawful for any association to make any loan on vacant lands or on vacant lots unless such lands or lots are to be improved or are included with other improved real estate. All real estate loans shall be subject to the limitation which may be fixed in the by-laws which shall be a fixed percentage of the valuation of the property.

(i) To invest in securities as follows:

(1) Without limit in obligations of or guaranteed as to principal and interest by the United States or this state, or in obligations of political subdivisions of this state.

(2) Without limit in obligations of Federal home loan banks and in obligations of the Federal Savings and Loan Insurance Corporation.

(3) In stock of a Federal home loan bank of which it is eligible to be a member.

(j) Without restriction upon the general powers of the association, provided title to all real estate shall be taken and held in the name of the association and such title shall immediately be recorded in accordance with law, to invest in:

(1) Real estate whereon there is or may be erected a building or buildings for the transaction of the business of the association, from portions of which, not required for its own use, a revenue may be derived by rentals or otherwise. An association may invest in such real estate an amount representing the cost of land and improvements not exceeding five per cent of its net assets. It may, however, invest in such real estate a larger sum with the approval of the commissioner of banks.

(2) Real estate acquired by the association in exchange for real estate owned by the association.

(3) Real estate acquired by the association in connection with salvaging the value of property owned by the association.

(k) To repurchase and redeem share accounts in accordance with the provisions of this act.

(l) To pay a bonus to members in accordance with the provisions of this act and no other bonus.

(m) To dissolve, merge or reorganize in the manner provided in this act.

(n) To borrow money not in excess of 50 per cent of its paid in capital.

In furtherance and not in limitation of the powers hereinbefore conferred the board of directors is expressly authorized:

(1) By resolution approved by a majority of the entire board of directors to appoint and remove members of an executive committee, composed of the president and 2 or more additional directors, which committee shall have and exercise the powers of the board of directors when it is not in session.

(2) By resolution, to appoint such other committees as may be deemed necessary and to fix their duties.

(3) To compensate directors as may be provided in the by-laws.

(4) To fix the salaries or other compensation of officers and employees from time to time, and to delegate to any officers the power to fix the salaries or other compensation of employees. No officer shall be prevented from receiving a salary for his services as such officer by reason of the fact that he is also a director.

(5) To extend leniency and indulgence to borrowing members who are in distress, and generally to compromise and settle any debts and claims but any such leniency shall not affect the contractural [sic] relation unless duly executed by the parties by a written agreement.

(6) To limit from time to time the amounts which may be accepted by the association as payments on share accounts.

(7) To reject any application for membership.

(8) To exercise any and all the powers of the association not expressly reserved by the articles of incorporation to the members. (Act Apr. 21, 1939, c. 391, §34.)

7770-45. Not to deal in real estate.—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. Also in transactions involving the purchase by a shareholder of improved real estate for home purposes, or for the construction of a home, it may when authorized by its by-laws acquire the title thereof, and it may give to such shareholder a contract to convey the same as upon a sale thereof and upon default in the conditions of such contract, the association may terminate the interest of such shareholder pursuant to law. (Act Apr. 21, 1939, c. 391, §35.)

7770-46. Limit of territory.—Every local association by provision in its articles of incorporation or by-laws, shall confine its field of operation exclusively to the county of its principal place of business and those immediately contiguous thereto and any additional area within a 50-mile radius from the home office, and upon failure so to do shall, without any other act or proceedings, forfeit all corporate rights and franchises, except to close its affairs; provided, that any association now or hereafter incorporated, may enlarge its territory by making application to the State Securities Commission in accordance with the provisions of Mason's Minnesota Statutes of 1927, Sections 3997 to 4000, inclusive, the notice of hearing provided for in said sections shall be inserted in a newspaper published at the county seat of each and every county included in such application. If the commission finds on hearing that there is a reasonable public demand for such services, and the commission is satisfied that the association will be safely and properly managed in its enlarged territory the application may be approved; otherwise the application shall be denied in whole or in part. (Act Apr. 21, 1939, c. 391, §36.)

7770-47. Not to fix percentage of incomes.—No association now or hereafter organized under the laws of this state shall hereafter be permitted to pay or agree to pay to any person or corporation an agreed percentage of its share payments or other assets, or make any payment whatsoever, in consideration of the payment by such person or corporation of the expenses of such association either in whole or in part. The intent of this Act is that associations shall pay their actual expenses within the limitations imposed by law, directly to their creditors, and not through the medium of third parties; but this act shall not apply to existing contracts or to payments made or to be made pursuant thereto. No association may hereafter make any operating or management contract, nor shall existing contracts be extended, renewed or transferred. (Act Apr. 21, 1939, c. 391, §37.)

7770-48. May become members of Federal Home Loan Banks.—Any association is hereby empowered and authorized to become a member of, or stockholder in the Federal Home Loan Bank of the district thereof of which this state is a part, or of an adjoining district if convenience shall so require, or other financial corporations, associations or agencies now or hereafter created by Act of Congress, and to that end to purchase stock in or securities of or deposit money therewith, and to comply with any other conditions of membership or credit; to borrow money therefrom upon such rates of interest, not exceeding the contract rate of interest in this state, and upon such terms and conditions as may be agreed upon for the purpose of making loans, paying withdrawals, paying maturities, paying debts, and for any other purpose not inconsistent with the objects of the association; and provided further that the aggregate amount of the indebtedness, so incurred by such association, which shall be outstanding at any time shall not exceed fifty per centum of the then total capital of the association; to assign, pledge, and hypothecate its bonds, mortgages or other assets, and to repledge with such agency the shares of stock in such association which any owner thereof may have pledged as collateral security, without obtaining the consent thereunto of such owner, as security for the repayment of the indebtedness so created by such association and as evidenced by its note or other evidence of indebtedness given for such borrowed money, and to do any and all things which shall or may be necessary or convenient in order to comply with and to obtain the benefits of the provisions of any Act of Congress creating such bank, corporation, association or agency. (Act Apr. 21, 1939, c. 391, §38.)

7770-49. Purposes of association.—Pursuant to such regulations as the commissioner of banks finds to be necessary and proper, and subject to his supervision, such associations are authorized:

(a) To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are insured by the Federal Housing Administrator, and to obtain such insurance.

(b) To make such loans secured by mortgages on real property which the Federal Housing Administrator has insured or made a commitment to insure and to obtain such insurance.

No law in this state prescribing the nature, amount or form of security or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made shall be deemed to apply to loans, advances of credit or purchases made pursuant to the foregoing paragraphs (a) and (b). Such associations may invest in notes or bonds secured by mortgages or trust deed insured pursuant to paragraph (b) above, and in securities issued by National Mortgage Associations. (Act Apr. 21, 1939, c. 391, §39.)

7770-50. May insure shares.—In accordance with such regulations as the commissioner of banks may deem necessary and proper, any such association is hereby authorized and empowered to do all things necessary to obtain, continue, pay for and terminate insurance of its shares with the Federal Savings and Loan Insurance Corporation. (Act Apr. 21, 1939, c. 391, §40.)

7770-51. May convert into a Federal Savings & Loan Association.—Any such association organized and existing under and by virtue of the laws of the State of Minnesota is hereby authorized and empowered, by majority vote of its outstanding capital stock, according to the book value thereof present either in person or by proxy at any meeting of its shareholders duly called for that purpose, to convert itself into a Federal Savings and Loan Association as provided in that certain Act of Congress of the United States known as the "Home Owners' Loan Act of 1933." (Act Apr. 21, 1939, c. 391, §41.)

7770-52. Federal Associations may convert into State Associations.—Any federal savings and loan association may convert itself into a savings, building and loan association under the laws of the State of Minnesota upon the majority vote of its outstanding capital stock according to the book value thereof present either in person or by proxy at a legal meeting called to consider such action pursuant to the laws of the State of Minnesota and such rules and regulations as the commissioner of banks finds necessary and proper. (Act Apr. 21, 1939, c. 391, §42.)

7770-53. Real estate loans.—Real estate loans may be made as authorized by this act, or upon any other loan plan approved by the commissioner of banks. No real estate loan shall be made until a qualified person selected by the board of directors shall have submitted a signed appraisal of the real estate securing such loan, and until approved by the board of directors or a committee authorized by the board. Payments on real estate loans shall be applied first to the payment of interest on the unpaid balance of the loan; next to payment of any insurance premiums, taxes, assessments or other advances paid by the association according to its by-laws or the said mortgage; the remainder to the reduction of the loan or as payments on loan stock where loans are amortized on the semi-annual basis; provided that if the loan is in default in any manner, payments may be applied by the mortgagee in any manner approved by the commissioner. Every such loan shall be evidenced by a non-negotiable note or bond for the amount of the loan 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 borrower that loans shall be fully paid at a definite period upon receipt of the specified number of payments. No officer or director shall directly or indirectly use the funds of the association except in regular association business transactions and all loans to directors, officers or agents shall be acted upon in the absence of the applicant and approved by the unanimous vote of the directors. The note or bond shall specify the amount, rate of interest, terms of repayment, and may contain all other terms of the loan contract. Every real estate loan shall be secured by a mortgage or other instrument constituting a first lien or the full equivalent thereof, upon the real estate securing the loan, according to any lawful or well recognized practice, which is best suited to the transaction. Such mortgage shall provide specifically for full protection to the association with respect to usual insurance risks, taxes, assessments, other governmental levies, maintenance and repairs. It may provide for an assignment of rents, which assignment shall be valid. Every such mortgage or other instrument shall create, and preserve to the association, a first lien, which shall equally secure the original loan and each and every subsequent advance and loan in any amount and for any purpose by the association to such borrower. No subsequent loan to such borrower by any other person shall establish an intervening lien, which shall disturb the first lien of such association as security for every advance and loan made to such borrower. All such mortgages shall be recorded in accordance with the law of this state. An association may pay taxes, assessments, insurance premiums and other similar charges for the protection of its real estate loans. All such payments shall be added to the unpaid balance of the loan and shall

be equally secured by the first lien on the property. An association may require the borrower to pay monthly in advance in addition to interest or interest and principal payment, the equivalent of one-twelfth of the estimated annual taxes, assessments, insurance premiums and other charges upon the real estate securing a loan, or any of such charges, so as to enable the association to pay such charges as they become due from the funds so received. The amount of such monthly charges may be increased or decreased so as to provide reasonably for the payment of the estimated annual taxes, assessments, insurance premiums and other charges. Every association shall keep a record of the status of taxes, assessments, insurance premiums and other charges on all real estate securing its loans and on all real and other property owned by it.

Any association, by agreement with the debtor, may modify the terms of any real estate loan so that such loan shall be an amortized loan, and incident thereto may credit on the debt the withdrawal value of mortgage loan shares or accounts pledged as security for such real estate loan. (Act Apr. 21, 1939, c. 391, §43.)

7770-54. Loans to members.—To secure loans to members an association shall have a lien, without further agreement or pledge, upon all share accounts owned by the borrower. Upon default upon any loan, the association may, after proper notice to, or consent of, the borrower, cancel on its books all or any share accounts owned by the borrower and apply the value of such share accounts in payment on account of the loan. An association may waive its lien in whole or in part by a writing. Any association may take the pledge of a share account or share accounts of the association owned by a member other than the borrower as additional security for any loan secured by a share account or by a share account and real estate, or as additional security for any real estate loan. (Act Apr. 21, 1939, c. 391, §44.)

7770-55. Expenses of loans.—Every association may require borrowing members to pay all reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting or renewing of real estate loans, including appraisal, attorneys', recording and registration fees, abstract expense, title examination, credit report, survey, drawing of papers, loan closing costs, and taxes imposed upon or in connection with the making and recording of any mortgage. Every association may also require borrowing members to pay the cost of all other necessary and incidental services rendered by the association or by others in connection with real estate loans, including the cost of services of inspectors, engineers and architects. Such reasonable initial charges may be collected by the association from the borrower and paid to any persons, including any director, officer, or employee of the association, rendering such services, or paid directly by the borrower. In lieu of such initial charges to cover such expenses and costs, an association may make a reasonable charge, part or all of which may be retained by the association which renders such service, or part or all of which may be paid to others who render such services. No director, officer, or employee of an association shall receive any fee or other compensation of any kind in connection with procuring any loan for an association, except for services actually rendered as above provided. No loan shall be made when the borrower is required to pay to the association or to another person in connection with the loan any unreasonable or unlawful charges or fees. The association shall ascertain the total amount paid by each borrower to it and to every other person for any reason in connection with the making of a loan, and shall on request of borrower furnish a loan settlement statement to each borrower upon the closing of the loan, indicating in detail the charges and fees such borrower has paid or obligated himself to pay to the association or to any other person in connection with such loan. A copy of such statement shall be retained in the records of the association. (Act Apr. 21, 1939, c. 391, §45.)

7770-56. May consolidate with other associations.—Any such association, including an association in process of liquidation, may, with the consent and approval of the commissioner of banks, consolidate with or be taken over by any other association upon such terms as may be authorized by the respective boards of directors after being authorized so to do by a majority vote of their respective shareholders present at any regular or special meeting. (Act Apr. 21, 1939, c. 391, §46.)

7770-57. May liquidate associations.—Any such association by a vote of three-fourths of its outstanding capital stock, according to the book value thereof, at any regular meeting of its shareholders or at any special meeting called for that purpose, of which regular or special meeting at least ten days' written notice specifying the matter to be considered under this section shall have been mailed to each shareholder at his last recorded address, may, with the approval of the commissioner of banks, voluntarily go into liquidation. Before such liquidation shall be carried out, notice of such action to the shareholders and of the approval of the commissioner, if granted, shall be mailed to each shareholder at his last recorded address, and shall be published at least once in a qualified legal newspaper published at the principal place of business of the association, or, if there be no such newspaper there published, then in the newspaper so qualified having the nearest place of publication in the same county and such other notice shall be given as the commissioner of banks may direct. Subject to the approval and under the direction of the commissioner, such liquidation shall be carried out and the affairs of such association shall be closed up according to any lawful plan which the association may adopt, as nearly as may be in accordance with its original plans and objects. By like vote of its capital stock, with the approval of the commissioner of banks, and upon like notice, as hereinbefore provided, any such association, whether taken over by the commissioner of banks or not, may partially liquidate and in connection therewith may reduce its outstanding capital stock, or may retire a portion thereof, or may change the form and terms thereof, all according to such lawful plan as the association may adopt, subject to the approval and under the direction of the commissioner. All acts done and proceedings taken by any association in accordance with the provisions of this section shall be binding upon all the shareholders of the association, whether they voted to authorize the same or not. (Act Apr. 21, 1939, c. 391, §47.)

7770-58. Commissioner of Banks may make loans.—The commissioner of banks, for the benefit of any association which is in process of liquidation by said commissioner, is authorized to borrow money and to issue evidence of indebtedness therefor and to secure the repayment of the same by the mortgage, pledge, transfer in trust or hypothecation of any or all of the property of such association, whether real, personal or mixed, and whether or not such property is subject to a prior mortgage, pledge or hypothecation. Such loans may be obtained for the purpose of facilitating liquidation, protecting or preserving the assets in his charge, expediting the making of distributions and payment of dividends to shareholders and other creditors, providing for the expenses of administration and liquidation and aiding in the reopening or reorganization of such association, or its merger or consolidation with another such association, or the sale of all of its assets.

The commissioner of banks shall be under no personal obligation to repay any such loans so made and shall have power to take any and all action nec-

essary or proper to consummate such loan and to provide for the repayment thereof. (Act Apr. 21, 1939, c. 391, §48.)

7770-59. Insolvent associations.—Insolvent associations shall be liquidated under and pursuant to the statutes relating to the liquidation of insolvent banks. (Act Apr. 21, 1939, c. 391, §49.)

7770-60. Shall pay expenses of examination.—Each such association shall pay into the state treasury for each authorized regular or special examination made at any time by the commissioner of banks of such association a fee to be determined as follows: For each examination a minimum fee of $25 plus an amount equal to 2 cents for each $1,000 of assets in excess of $15,000.

Said fee shall be paid by the association examined within 20 days after a statement of the amount thereof shall have been rendered the association examined by the commissioner of banks, and if not so paid shall bear interest at the rate of six per cent per annum. (Act Apr. 21, 1939, c. 391, §50.)

7770-61. Laws repealed.—Mason's Minnesota Statutes of 1927, Sections 7748, 7749, 7749-1, 7749-2, 7749-3, 7750, 7752, 7754, 7756, 7757-1, 7757-2, 7757-3, 7757-4, 7757-5, 7757-6, 7757-7, 7757-8, 7758, 7759, 7760, 7761, 7762, 7763, 7764, 7765, 7766, 7767, 7768, 7769, and 7770, and Mason's 1938 Minn. Supp., Sections 7658-5a, 7748-1, 7748-2, 7751, 7753, 7753-1, 7755, 7757, 7758-1, 7770-1, 7770-2, and 7770-3, and all other acts and parts of acts inconsistent herewith are hereby repealed. (Act Apr. 21, 1939, c. 391, §51.)

7770-62. Provisions severable.—If any provision of this act shall be held invalid the remainder of this act and the application thereof shall not be affected thereby. (Act Apr. 21, 1939, c. 391, §52.)

CERTAIN INVESTMENT COMPANIES

7771. Investment companies under control of Commissioner of banks.—No person and no co-partnership, association or corporation, whether local or foreign, heretofore organized or which may hereafter be organized, doing business as a so-called investment, loan, thrift, benefit, co-operative, home, securities, trust or guarantee company for the licensing, control and management of which there is no law now in force in this state, and which such persons, co-partnership, association or corporation shall solicit payments to be made to himself or itself either in a lump sum or periodically, or on the installment plan, issuing therefor so-called bonds, debentures, shares, coupons, thrift certificates, certificates of membership or other evidences of obligation or agreement or pretended agreement to return to the holders or owners thereof money or anything of value at some future date, shall solicit or transact any business in this state, unless such person, co-partnership, association or corporation shall at all times keep and maintain a paid up capital or capital and surplus of $100,000, or shall keep on deposit with the commissioner of banks, authorized securities in an amount equal to the cash surrender value of all investment contract liabilities on investment contracts held by residents of this state and shall submit to the commissioner of banks on the first day of each month a verified report in writing which shall set forth the total amount of the cash surrender value of all investment contract liabilities on investment contracts held by residents of this state; such deposit at no time shall be less than $50,000. Every such person, co-partnership, association or corporation, whether local or foreign, which shall be hereafter authorized to do business with an original paid in capital of less than $100,000 shall at all times be required to maintain and keep on deposit with the commissioner of banks authorized securities in an amount equal to the cash surrender value of all investment contract liabilities on investment contracts held by residents of this state; and shall have first complied with the provisions of the 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 7774; provided, however, that existing permits heretofore issued under said section 7774 shall continue in full force and effect. (As amended Apr. 17, 1937, c. 271, §1; Mar. 31, 1939, c. 109.)

Duluth Morris Plan Company comes within provisions of section and gives commissioner of banks power and duty to safeguard rights of those dealing with it. Op. Atty. Gen., Jan. 19, 1933.

Whether Duluth Morris Plan Company may purchase its own stock to hold for resale is a matter resting within discretion of commissioner of banks. Op. Atty. Gen., Jan. 19, 1933.

Citizens Morris Plan Company of Minneapolis, organized and operating pursuant to §7774-25, et seq., is not an investment company within §7771, and is not subject to tax imposed by Laws 1937, Ex. Sess., c. 5, §1 [§2026-5]. Op. Atty. Gen. (53a-27), Oct. 15, 1937.

F. H. A. mortgages are made eligible by §7658-4 for purposes of §7771. Op. Atty. Gen. (29a), March 29, 1939.

No minimum paid in capital is required of investment companies hereafter organized. Op. Atty. Gen. (29a), May 12, 1939.

Deposit of authorized security in lieu of maintaining specified capital requirements is a guaranty fund which must be clear and free of any claim or lien, and it is immaterial that it is borrowed money, though fact that an investment company has jeopardized its responsibility by borrowing might be taken into consideration in determining whether or not it should be licensed. Id.

While mortgages of Federal Housing Administration are not authorized securities in fullest sense of that term because not expressly mentioned in §7714, they may be deposited as guarantee fund with commissioner of banks under Laws 1939, c. 109 amending this section on the authority of §7658-4, which is self sufficient. Op. Atty. Gen. (29a-19), Feb. 17, 1939.

7772. Supervision of commissioner—Powers—Fees.—The persons, co-partnerships, associations and corporations mentioned or enumerated in the foregoing section are hereby put under the supervision of the state commissioner of banks. The powers, authority, privileges and duties conferred upon him for the purpose of examining, supervising, controlling and regulating the action of and for the liquidation of each and every class of financial institutions to the full extent to which he may at any time lawfully exercise them, shall each and all, so far as applicable, be exercised by him personally or by deputy in the examination, supervision, control, regulation and liquidation of the persons, co-partnerships, associations and corporations first hereinbefore mentioned. The fees for examination shall be determined as follows: For each examination a minimum fee of $50.00 plus an amount equal to five cents for each $1,000.00 of assets in excess of $150,000.00, and not exceeding $500,000; a minimum fee or [sic] $75.00, where the assets exceed $500,000 and do not exceed $2,000,000 plus 5 cents on each $1,000 of assets in excess of $150,000; a minimum fee of $100.00, where the assets exceed $2,000,000 and do not exceed $5,000,000, plus 5 cents on each $1,000 of assets in excess of $150,000; a minimum fee of $150.00, where the assets exceed $5,000,000, plus 5 cents on each $1,000 of assets in excess of $150,000 and not exceeding $5,000,000, plus 4 cents on each $1,000 of assets in excess of $5,000,000, and not exceeding $20,000,000, and plus 3 cents on each $1,000 of assets in excess of $20,000,000 and the actual necessary expenses incurred by the state commissioner of banks in and tending toward the performances of its duties and the exercise of its powers herein referred to shall be paid by the persons, co-partnerships, associations and corporations examined and supervised. (As amended Apr. 17, 1937, c. 271, §2.)

Op. Atty. Gen., Jan. 19, 1933; note under §7771.

7774. Plan to be submitted—permit.—The persons, co-partnerships, associations and corporations hereinbefore referred to are hereby required to lay before the commissioner of banks a comprehensive plan of their intended business; and the commissioner of banks shall consider the same and, if he finds that the same contains no feature or essential proposition which is likely to be injurious to or defraud the public, he shall issue a permit for such person or institution to begin business according to such plan; otherwise

such person or institution shall not engage in such business in this state. (As amended Apr. 17, 1937, c. 271, §3.)

Corporation obtaining permit under this section may be released from supervision by commissioner when it no longer solicits payments from general public and ceases to operate in manner outlined by it in its plan. Op. Atty. Gen. (29a-8), Jan. 17, 1939.

CREDIT UNIONS

7774-1. Organization—Definition of.

There is no provision of law for creation of a police relief association similar to the firemen's relief association in cities of the fourth class. Op. Atty. Gen., May 27, 1931.

Credit union may not be designated as city depository nor may city funds be invested in securities thereof. Op. Atty. Gen. (53b), Nov. 21, 1935.

Act does not contemplate organization of an incorporation of credit unions as such. Op. Atty. Gen. (53b), May 8, 1937.

7774-2. By-laws and amendments to be approved.—To amend certificate of organization or by-laws whether at a general or special meeting; proposed amendments shall be fully set forth in the notice of the meeting. Any amendments to the by-laws shall be approved by three-fourths of the members then present, which number shall constitute a quorum. Any and all amendments to the certificate of organization or by-laws must be approved by the Commissioner of Banks, before they become operative. The certificate of organization may be amended by a majority vote of the entire membership of the credit union at a meeting called for that purpose. In case such amendment is adopted the resolution containing a full text thereof and verified by its president and treasurer and approved by the Commissioner of Banks shall be recorded in the office of the register of deeds in the county in which said credit union is located. ('25, c. 206, §1; Apr. 20, 1933, c. 346, §1.)

7774-3. Unlawful use of words "Credit Union."

All credit unions, unless within their definition, are precluded from using words "credit union." Op. Atty. Gen. (53h), Dec. 3, 1936.

A corporation having for its membership a number of credit unions and organized as a service association or corporation may not use the words "credit unions" in its name. Op. Atty. Gen. (53b), May 8, 1937.

7774-4. Powers enumerated.—A credit union shall have the following powers:

(a) To receive the savings of its members either as payment on shares or as deposits (including the right to conduct Christmas Clubs, Vacation Clubs and other such thrift organizations within its membership).

(b) To make loans to members for provident or productive purposes.

(c) To make loans to a cooperative society or other organization having membership in the credit union.

(d) To deposit in state and national banks and trust companies authorized to receive deposits.

(e) To invest in any investment legal for savings banks or for trust funds in the state.

(f) To borrow money as hereinafter indicated.

(g) To adopt and use a common seal and alter the same at pleasure. (As amended Apr. 14, 1937, c. 213, §1.)

Credit unions are corporations which can legally register property under torrens system, which it has acquired through foreclosure or otherwise. Op. Atty. Gen. (53b), May 7, 1935.

(e).

Proposal to amend a section by authorizing investments in shares or deposits of a certain credit union corporation would be invalid as a private or special law. Op. Atty. Gen. 29a-19), Feb. 24, 1937.

7774-5. Membership in.

Family relationship alone is not sufficient to entitle persons to belong to a credit union. Op. Atty. Gen., Dec. 21, 1931.

Members of a cooperative building association have a common bond of association. Op. Atty. Gen. (53b), June 30, 1937.

It is within administrative discretion of commissioner of banks to permit or refuse to permit a state wide credit union of physicians and dentists. Op. Atty. Gen. (53B), Jan. 26, 1939.

7774-7. Fiscal year—meetings.—The fiscal year of all credit unions shall end December 31. General and special meetings may be held in the manner and for the purposes indicated in the by-laws, provided, however, that at least 10 days before any regular meeting and, at least 7 days before any special meeting written notice shall be mailed or handed to each member and in the case of a special meeting the notice shall clearly state the purpose of the meeting and what matters will be considered thereat. At all meetings a member shall have but a single vote whatever his share holdings. There shall be no voting by proxy, provided, however, that any firm, society or corporation having a membership in the credit union may cast its vote by one person upon presentation by him of written authority of such firm, society or corporation. ('25, c. 206, §7; Apr. 20, 1933, c. 346, §2; Apr. 14, 1937, c. 213, §2.)

Notice in trade journal not compliance with requirements. Opp. Atty. Gen. (53b), Nov. 16, 1937.

7774-9. Officers—directors—powers and duties.—At their first meeting and annually thereafter at the first meeting following the annual meeting of members, the directors shall elect from their own number a president, vice-president, treasurer and secretary, of whom the last two named may be the same individual, and the directors may engage such other employees as may be necessary to properly conduct the business of the credit union.

It shall be the duty of the directors to have general management of the affairs of the credit union, particularly:

(a) To act on applications for membership.

(b) To determine interest rates on loans and on deposits.

(c) To fix the amount of the surety bond which shall be required of all officers and employees handling money.

(d) To declare dividends, and to transmit to the members recommended amendments to the by-laws.

(e) To fill vacancies in the board and in the credit committee until successors are chosen and qualify at the next annual meeting.

(f) To determine the maximum individual share holdings, the maximum amount of deposits and the maximum individual loan which can be made with and without security, including liability indirectly as a co-maker, guarantor or endorser.

(g) To have charge of investments other than loans to members.

(h) To fix the salary of the treasurer and other employees, which shall be on a fixed monthly or annual basis in dollars. (Not percentage.)

(i) To designate the bank or banks in which the funds of the credit union shall be deposited.

(j) To authorize the officers of the credit union to borrow money from any source, in a total sum which shall not exceed fifty percent of its assets.

The duties of the officers shall be as determined in the by-laws, except that the treasurer shall be the general manager. No member of the board or of either committee shall, as such, be compensated. (As amended Apr. 14, 1937, c. 213, §3.)

A credit union which is a member of a credit union national association having its principal place of business in another state may not enter into agreement or contract whereby power to act as agent and trustee for purpose of fidelity insurance is delegated to national association. Op. Atty. Gen. (92a-28), Mar. 24, 1937.

Laws 1925, c. 351 (§7699-1 et seq.), relative to requisites and conditions pertaining to bonds of indemnity for officers and employees of state bank, would be controlling for credit union. Id.

7774-10. Credit committee.

State officers and employees may assign earned salary or wages but cannot assign unearned salary or wages. Op. Atty. Gen. (270m-6), June 5, 1935.

7774-11. Supervisory committee.—The supervisory committee shall—

(a) Make an examination of the affairs of the credit union at least semi-annually, in June and December, including an audit of its books and, in the

event said committee feels such action to be necessary, it shall call the members together thereafter and submit to them its report.

(b) Make an annual report of its audits and submit the same at the annual meeting of the members.

(c) By unanimous vote, if it deem such action to be necessary to the proper conduct of the credit union, suspend any officer, director or member of committee and call the members together to act on such suspension. The members at said meeting may by majority vote of those present sustain such suspension and remove such officer permanently or may reinstate said officer.

By majority vote the supervisory committee may call a special meeting of the members to consider any matter submitted to it by said committee. The said committee shall fill vacancies in its own membership until successors are chosen and qualify at the next annual meeting. (As amended Apr. 14, 1937, c. 213, §4.)

7774-17. Reserve funds.—Every credit union shall maintain a reserve fund which shall be used as a reserve against bad loans and other losses and shall not be used to pay expenses of the credit union or otherwise distributed except in case of liquidation. All entrance fees, fines, and each year, before the declaration of a dividend ten per cent of the gross earnings shall be set aside as a reserve fund against said bad loans and other losses until such time as such fund shall equal fifteen per cent of the assets of the credit union, and thereafter there shall be added to such fund at the end of each fiscal year such per cent of the gross earnings as will be required to maintain such fund as herein provided. There shall also be established and at all times maintained a reserve of not less than five per cent of the amount of the deposits; which shall be in cash and balances due from solvent banks. ('25, c. 206, §17; Apr. 20, 1933, c. 346, §3; Apr. 14, 1937, c. 213, §5.)

Commissioner of Banks may take possession of the

A credit union must set aside 20% of its net earnings irrespective of the amount of the reserve fund. Op. Atty. Gen., Dec. 21, 1931.

Credit unions may not collect fines on delinquent payments in addition to interest. Op. Atty. Gen. (92a-28), Jan. 7, 1938.

7774-18. Dividends.—The directors of a credit union may in December of each year declare a dividend from net earnings or accumulated net undivided profits remaining after statutory reserve has been set aside, which dividend shall be paid on all shares outstanding at the end of the fiscal year. Shares withdrawn during the year shall receive no dividend. Shares which become fully paid up during the year shall be entitled to a proportional part of said dividend calculated from the first day of the month following such payment in full. For the purpose of this section shares which become fully paid up by the 10th day of any month may be treated as being paid up from the first day of said month. (As amended Apr. 14, 1937, c. 213, §6.)

Dividends are to be paid only on shares actually owned on Dec. 31st. Op. Atty. Gen. (53b), Nov. 20, 1934.

7774-20. Voluntary dissolution.—The process of voluntary dissolution shall be as follows:

(a) A credit union may be voluntarily liquidated after four-fifths of the entire membership shall have voted such liquidation at a special meeting called by a majority of the board of directors for that purpose, upon thirty days' mailed written notice to each member clearly stating the purpose of such special meeting. By a majority vote of the members present at such meeting, a committee of three members shall be elected to liquidate the credit union.

Vacancies in this committee shall be filled by the remaining members of the committee, acting jointly with the board of directors or by and with the approval of any ten or more shareholders.

(b) Immediately after such meeting and before such committee shall proceed with the liquidation, the officers of the credit union shall file with the Commissioner of Banks a certified copy of the minutes of such meeting, a written statement outlining the plan of liquidation and a verified statement in writing signed by a majority of the officers consenting to such liquidation containing the names and addresses of all officers and directors of the credit union. After the Commissioner of Banks shall by proper examination determine that such credit union is solvent, he shall issue a certificate of approval of the liquidation, which certificate shall be filed with the Register of Deeds in the County where such credit union is located. From and after such special meeting the credit union shall cease to do business except for purposes of liquidation. Before commencing such liquidation such committee shall execute and file with the Commissioner of Banks a bond running to the State of Minnesota for the benefit of the members and creditors of the credit union in such amount and with such sureties and in such form as shall be approved by the Commissioner of Banks conditioned for the faithful performance of all duties of its trust.

(c) Upon filing of such certificate with the Register of Deeds, the credit union shall be deemed dissolved and its corporate existence terminated except for the purpose of discharging its debts, collecting and distributing its assets and doing all other acts required in order to liquidate. The credit union shall have a corporate existence and may sue and be sued.

(d) If the credit union shall not be completely liquidated and its assets discharged within three years after such special meeting of the members, the Commissioner of Banks shall take possession of the books, records and assets and proceed to complete the liquidation in the manner then provided by law for the liquidation of closed banks.

(e) Funds representing unclaimed dividends in liquidation in the hands of such liquidating committee or the Commissioner of Banks for six months after date of final dividend shall be deposited with the State Treasurer who shall within one year thereafter pay over the money so held by him to the persons respectively entitled thereto upon being furnished satisfactory evidence of their right to the same, and at the end of such year the State Treasurer shall credit all residue of such deposit to the General Revenue Fund.

(f) Upon completion of the liquidation by such liquidating committee it shall file with the Commissioner of Banks a verified statement in writing signed by the members of such committee stating that all debts of the credit union, including deposits, have been paid except unclaimed dividends, and if any such, the amount thereof, the names of the persons entitled thereto with their last known addresses, and all books and papers of the credit union shall thereupon be deposited with the Commissioner of Banks. ('25, c. 206, §20; Apr. 20, 1933, c. 346, §4; Apr. 14, 1937, c. 213, §7.)

7774-21. Change of place of business.—A credit union may change its place of business within this state only with the written consent of the Commissioner of Banks. (As amended Apr. 14, 1937, c. 213, §8.)

INDUSTRIAL LOAN AND THRIFT COMPANIES

7774-25. Industrial loan and thrift companies authorized.—It shall be lawful for three or more persons who may desire to form a corporation for the purpose of carrying on primarily the business of loaning money in small amounts to persons within the conditions hereinafter set forth, to organize under this law an industrial loan and thrift company by filing with the Secretary of State and the Register of Deeds of the counties in which such business is to be carried on, a certificate of incorporation, and upon paying the fees and upon compliance with the procedure provided for

the organization and government of ordinary corporations under the laws of this state, and complying with the additional requirements prior to authorization to doing business as set forth in this Act. (Act Apr. 15, 1933, c. 246, §1.)

Section 7042 applies only to certain corporations doing business in cities of the first class and is not applicable to persons doing business in city of Alexandria. Op Atty. Gen. (53a-15), Dec. 11, 1934.

Citizens Morris Plan Company of Minneapolis, organized and operating pursuant to §7774-25, et seq., is not an investment company within §7771, and is not subject to tax imposed by Laws 1937, Ex. Sess., c. 5, §1 [§2026-5]. Op. Atty. Gen. (53a-27), Oct. 15, 1937.

7774-26. Capital stock.—No corporation shall be organized under this law or qualified to do business thereunder with a capital of less than $25,000.00 in cities with less than 50,000 people; $50,000.00 in cities with more than 50,000 people and less than 100,000 people; and $75,000.00 in cities with 100,000 people, or more, according to the last official census; each share of stock shall have a par value of not less than $25.00 per share. No corporation shall begin doing business under this Act and no existing corporation shall be permitted to qualify under this Act in this state unless its capital is fully paid, and unless a surplus of no less than ten per cent of said capital shall have also been fully paid and set up. After the capital of a corporation organized or doing business under this Act shall have been fully paid and a surplus of not less than 10% also fully paid and set up, additional capital stock in any said corporation may be sold at not less than par, provided, however, that there is always maintained a surplus of at least 10% of said capital of said corporation. (Act Apr. 15, 1933, c. 246, §2.)

Authorized capital must be fully issued. Op. Atty. Gen., June 27, 1933.

"Capital" refers to actual capital stock outstanding, which must be "fully" paid. Op. Atty. Gen., Nov. 22, 1933.

7774-27. Must secure certificate from department of commerce.—Any corporation organized under the law of this state, shall, after compliance with the requirements set forth in Sections 1 and 2 of this Act, cause an application in writing to be made to the Department of Commerce of this state for a certificate of authorization, said application to be in such form as is now or may hereafter be required from state banks making applications for charters in this state and at the time of filing such application shall also submit a copy of the by-laws of the corporation, its articles of incorporation and all amendments thereto.

The Department of Commerce shall thereupon make or cause to be made an examination to ascertain whether the assets of such corporation over and above all its liabilities, have an actual value of not less than the par value of all of its capital stock, which shall not be less than the amount prescribed by Section 2 of this Act; and if such facts appear and the by-laws and articles of incorporation and amendments thereto are in accordance with law, the Department of Commerce shall issue a certificate of authorization, authorizing the corporation to transact business as an industrial loan and thrift company as provided in this Act.

This authorization shall then be filed in the same places as specified for the filing of the certificate of incorporation in Section 1 of this Act. Such corporation shall thereupon become an industrial loan and thrift company. (Act Apr. 15, 1933, c. 246, §3.)

Legislature did not intend that banking division of department of commerce exercise any jurisdiction over choice of name. Op. Atty. Gen., May 24, 1933.

Certificate of incorporation need not be submitted to commissioner of banks for approval, nor need there be filed printer's certificate of publication of articles with secretary of state and with commissioner of banks, nor need there be a certified statement of expenses incurred in incorporation, but by-laws must be filed with department of commerce. Id.

7774-28. Special powers.—Industrial loan and thrift companies in addition to the general and usual powers incidental to ordinary corporations in this state, which are not specifically restricted in this law, shall have the following special powers, which powers must be set forth in their articles of incorporation or amendments, thereto, to-wit:

(a) The right to discount or purchase notes, bills of exchange, acceptances or other choses in action.

(b) The right to lend money upon the security of co-makers, personal chattels or other property, exclusive of real estate, for a period not to exceed one year; to deduct in advance one year's interest on such loans at the rate of not in excess of (8%) eight per cent discount per annum; to require as a condition to the making of such a loan that the borrower purchase and pledge with the company as security for the loan a certificate of indebtedness of the company in the same amount as the loan secured thereby, providing for payments in equal weekly, bi-weekly, or monthly installments, with or without interest, extending over substantially the period of the loan, payments thereon not to be construed as payments on the loan secured thereby; to charge for a loan exceeding $50.00 made pursuant to this subdivision, $1.00 for each $50.00, or fraction thereof, loaned, for expenses, including any examination or investigation of the character and circumstances of the borrower, co-maker or security and drawing and taking the acknowledgment of necessary papers, or other expenses incurred in making the loan; provided that no fee collected hereunder shall exceed $10.00; and provided that for a loan exceeding $500.00 one per cent (1%) additional of the amount loaned in excess of $500.00 may be charged for such expenses, not exceeding a total fee of $15.00. If any such loan made pursuant to this subdivision is $50.00 or less, such charge shall not be more than $1.00. No such charge shall be collected unless a loan shall have been made.

(c) To impose a handling charge of five cents (5c) for each default in the payment of $1.00, or fraction thereof, at the time any periodical installment on a certificate of indebtedness assigned as collateral security for the payment of a loan made pursuant to the foregoing provisions becomes due, provided, however, that such handling charge shall not be cumulative; that the aggregate of such handling charges collected in connection with any such loan of $50.00, or less, shall not exceed fifty cents (50c), and that the aggregate of such handling charges collected in connection with any such loan of more than $50.00, shall not exceed one per cent (1%) of such loan and shall in no event exceed $5.00.

(d) The right with the consent of the Department of Commerce of this State to sell and issue for investment or to be pledged as security for a loan made contemporaneously therewith or otherwise, certificates of indebtedness, under any descriptive name, which may bear such interest, if any, as their terms may provide and which may require the payment to the company of such amounts from time to time as their terms may provide, and permit the withdrawal of amounts paid upon the same in whole or in part from time to time, and the credit of amounts thereon upon such conditions as may be set forth therein; and no such certificate of indebtedness shall have a surrender value which is less than the total amount paid to the company therefor.

(e) Upon the maturity of a note, the borrower may, at his option, surrender the certificate of indebtedness pledged to secure the same, in which event, the amounts, if any, paid on said certificate of indebtedness, less such handling charges as are authorized by this Act, shall be applied to reduce the balance owing on said note. (Act Apr. 15, 1933, c. 246, §4.)

Mason's Minn. Stat. §§7774-25 to 7774-35, which permits industrial loan and thrift companies organized thereunder to charge eight per cent interest in advance on loans not to exceed one year, is not special legislation nor does it deny equal protection of law to other money lenders similarly situated because it does not distinguish between different classes of money lenders but applies same rates of interest to those organized under statute as to other lenders under general statutes. Mesaba Loan Co. v. S., 203M589, 282NW823. See Dun. Dig. 1675, 1687.

(b).
Company may deduct in advance one year's interest on loans not in excess of 8% per annum, and installments made by borrower on certificate of indebtedness are not payments on loan so as to result in doubling interest stipulated, and company may not charge an additional 8% interest or any interest on unpaid balance due on certificate of indebtedness purchased by borrower. Op. Atty. Gen. (29a-18), Sept. 21, 1939.
Expression "with or without interest" refers to certificate of indebtedness issued by company, and does not empower company to impress interest on certificate of indebteness, but only to pay it. Id.
(d).
"Consent" should be given only upon compliance with provisions of law relating to regulation of sale of securities. Op. Atty. Gen., May 4, 1933.

7774-29. Limitation of powers.—No industrial loan and thrift company shall have power, however, to do any of the following, to-wit:

(a) To carry commercial or demand banking account; to use the word "bank" or "banking" in its corporate name; to receive savings accounts or deposits or operate as a savings bank.

(b) To have outstanding at any one time certificates of indebtedness, exclusive of those held by the company, as security for loans made by it of more than seven times the sum of the capital, surplus and undivided profits of the company.

(c) To lend money in excess of five per cent of its paid-in capital, surplus and undivided profits to any one person or corporation primarily liable; provided, however, that if marketable collateral be taken as security for a loan, then an industrial loan and thrift company may loan not to exceed ten per cent of its capital, surplus and undivided profits to any one person or corporation primarily liable.

(d) To accept trusts or act as guardian, administrator or judicial trustee in any form.

(e) To deposit any of its funds in any banking corporation, unless such corporation has been designated by vote of a majority of directors or of the executive committee present at a meeting duly called, at which a quorum was in attendance. (Act Apr. 15, 1933, c. 246, §5.)

7774-30. Residence of directors.—At least three-fourths of the Directors of any industrial loan and thrift company shall be residents of the principal city in which an industrial loan and thrift company shall be organized, and every director shall own and hold not less than twenty shares of capital stock of said industrial loan and thrift company, unencumbered. (Act Apr. 15, 1933, c. 246, §6.)

7774-31. Must establish reserve.—All industrial loan and thrift companies shall establish as a reserve against the certificates of indebtedness described in subdivision (d) under Section 4 above, of not less than ten per cent of the amount of indebtedness thus created. Three per cent of this indebtedness shall be in cash in the actual possession of the industrial loan company or on demand deposit in approved banks of this state, and seven per cent of the total indebtedness may be in bonds admissible for investment by mutual savings banks under the laws of this state; provided, however, that such certificates of indebtedness as are issued under authority of subdivision (b) of Section 4 of this Act, and are held by the industrial loan and thrift company as security for its own loans, shall not be considered as an indebtedness for which a reserve must be maintained under this section. (Act Apr. 15, 1933, c. 246, §7.)

7774-32. May pay dividends.—When an industrial loan and thrift company is organized under this Act, or operating thereunder, the Board of Directors may declare a dividend of so much of the net profits of the corporation, after providing for all expenses, reserves, interest and taxes accrued or due from said corporation, as they shall judge expedient, but before any such dividend is declared, not less than one-tenth of the net profits of the industrial loan company of the preceding half year, or for such period as is covered by the dividend, shall be carried to a surplus fund until such surplus shall amount to 20 per cent of its capital stock. (Act Apr. 15, 1933, c. 246, §8.)

7774-33. Commissioner of banks to examine records.—The Commissioner of Banks of this state shall make examinations at least one time each year of each industrial loan and thrift company organized or operating under this Act at which time he will satisfy himself that the corporation is in a solvent condition and is complying with the requirements of this Act and operating according to sound business principles. In order to enforce his actions in this connection, the Commissioner of Banks is hereby vested with the same authority as in his examination and regulation of state banks. The cost of such examinations shall be borne by the corporation and the fees to be charged and paid by the corporation therefor shall be the same as is provided in Mason's Minnesota Statutes of 1927, Section 7772.

The penalties for violation of this Act, or for any wrongdoing in connection therewith, shall be the same as those applied to state banks under the laws of this state. (Act Apr. 15, 1933, c. 246, §9.)

7774-34. Inconsistent acts repealed.—All Acts or parts of Acts in conflict herewith are hereby repealed. Provided, however, that nothing contained herein shall be construed to repeal, modify, change or replace Laws 1913, Chapter 439 as amended by Laws 1915, Chapter 117. (Act Apr. 15, 1933, c. 246, §10.)

7774-35. Provisions separable.—If any section, subsection, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. It is hereby declared that this Act would have been passed irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases are declared unconstitutional or invalid. (Act Apr. 15, 1933, c. 246, §11.)

SMALL LOAN BUSINESS

7774-41. Small loan companies to be licensed.—No person, co-partnership, association, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of $300.00 or less and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this Act and without first obtaining a license from the Commissioner of Banks, hereinafter called the Commissioner. The word "person," when used in this Act, shall include individuals, co-partnerships, associations, and corporations unless the context requires a different meaning. (Act Feb. 15, 1939, c. 12, §1, *Eff.* June 1, 1939.)

Building and Loan, Credit Unions and licensed pawnbrokers exempted. Provisions limited. Laws 1939, c. 22, app. Feb. 18.

Licenses may not issue prior to June 1, 1939 to take effect as of that date. Op. Atty. Gen. (53a-18), March 6, 1939.

There is no authority for covering into state treasury prior to June 1, 1939 of fees and investigation charges tendered by applicants under this act. Id.

7774-42. Application fee.—Application for such license shall be in writing, under oath, and in the form prescribed by the Commissioner, and shall contain the name and the address (both of the residence and place of business) of the applicant, and if the applicant is a co-partnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, where the business is to be conducted and such further information as the Commissioner may require. Such applicant at the time of making such application shall pay to the Commissioner the sum of $50.00 as a fee for investigating the application and the additional sum of $100.00 as an annual license fee for a period

terminating on the last day of the current calendar year; provided, however, that if the application is filed after June 30th in any year such additional sum shall be only $50.00. In addition to the said annual license fee every licensee hereunder shall pay to the Commissioner the actual costs of each examination as provided for in Section 10 of this Act. All monies collected by the Commissioner under this Act shall be turned over by him to the State Treasurer and credited by the Treasurer to the general revenue fund of the state.

Every applicant shall also prove, in form satisfactory to the Commissioner, that he or it has available for the operation of such business at the location specified in the application, liquid assets of at least $15,000. (Act Feb. 15, 1939, c. 12, §2, Eff. June 1, 1939.)

Term "liquid assets" means cash or its equivalent, and does not include a miscellaneous collection of promissory notes in varying amounts given by many borrowers for different terms. Op. Atty. Gen. (53a-18), March 6, 1939.

7774-43. Bond.—The applicant shall also at the same time file with the Commissioner corporate surety bond to be approved by him in which the applicant shall be the obligor, in the sum of $1,000 with one or more sureties to be approved by him whose liability as such sureties need not exceed the said sum in the aggregate. The said bond shall run to the State for the use of the State and of any person or persons who may have cause of action against the obligor of said bond under the provisions of the Act. Such bond shall be conditioned that said obligor will faithfully conform to and abide by the provisions of this Act and of all rules and regulations lawfully made by the Commissioner hereunder, and will pay to the State and to any such person or persons any and all moneys that may become due or owing to the State or to such person or persons from said obligor under and by virtue of the provisions of this Act. (Act Feb. 15, 1939, c. 12, §3, Eff. June 1, 1939.)

7774-44. Commissioner to investigate.—Upon the filing of such application and the payment of such fees and the approval of such bond the Commissioner shall investigate the facts and if he shall find (a) that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a co-partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this Act, and (b) that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, and (c) that the applicant has available for the operation of such business at the specified location liquid assets of at least $15,000 (the foregoing facts being conditions precedent to the issuance of a license under this Act), he shall thereupon issue and deliver a license to the applicant to make loans in accordance with the provisions of this Act at the location specified in the said application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the Commissioner shall not so find he shall not issue such license and he shall notify the applicant of the denial and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the $50.00 investigation fee to cover the costs of investigating the application. The Commissioner shall approve or deny every application for license hereunder within 60 days from the filing thereof with the said fees and the said approved bond.

If the application is denied, the Commissioner shall within 20 days thereafter file in his office a written decision and findings with respect thereto containing the evidence and the reasons supporting the denial, and forthwith serve upon the applicant a copy thereof. (Act Feb. 15, 1939, c. 12, §4, Eff. June 1, 1939.)

7774-45. Form of license—Contents.—Such license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a co-partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Such license shall be kept conspicuously posted in the place of business of the licensee and shall not be transferable or assignable. (Act Feb. 15, 1939, c. 12, §5, Eff. June 1, 1939.)

7774-46. Commissioner may require additional bond.—If the Commissioner shall find at any time that the bond is insecure or exhausted or otherwise doubtful, an additional bond to be approved by him, with one or more sureties to be approved by him and of the character specified in Section 3 of this Act, in the sum of not more than $1,000, shall be filed by the licensee within ten days after written demand upon the licensee by the Commissioner.

Every licensee shall maintain at all times assets of at least $15,000 either in liquid form available for the operation of or actually used in the conduct of such business at the location specified in the license. (Act Feb. 15, 1939, c. 12, §6, Eff. June 1, 1939.)

7774-47. Limitations.—Not more than one place of business shall be maintained under the same license, but the Commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this Act governing an original issuance of a license, for each such new license.

Whenever a licensee shall wish to change his place of business to a street address other than that designated in his license he shall give written notice thereof to the Commissioner who shall investigate the facts and, if he shall find that allowing such licensee to engage in business in such new location will promote the convenience and advantage of the community in which the licensee desires to conduct his business, he shall attach to the license in writing his approval of the change and the date thereof which shall be authority for the operation of such business under such license at such new location; if the Commissioner shall not so find he shall deny the licensee permission so to change the location of his place of business, in the manner specified and subject to the provisions contained in the last paragraph of Section 4 of this Act. No change in the place of business of a licensee to a location outside of the original municipality shall be permitted under the same license. (Act Feb. 15, 1939, c. 12, §7, Eff. June 1, 1939.)

7774-48. Annual license fee.—Every licensee shall, on or before the twentieth day of each December, pay to the Commissioner the sum of $100.00 as an annual license fee for the next succeeding calendar year and shall at the same time file with the Commissioner a bond in the same amount and of the same character as required by Section 3 of this Act. (Act Feb. 15, 1939, c. 12, §8. Eff. June 1, 1939.)

7774-49. Commissioner may revoke license.—The Commissioner shall, upon ten days' notice to the licensee stating the contemplated action and in general the grounds therefor, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he shall find that:

(a) The licensee has failed to pay the annual license fee or to maintain in effect the bond or bonds required under the provisions of the Act or to comply with any demand, ruling, or requirement of the Commissioner lawfully made pursuant to and within the authority of this Act, or that

(b) The Licensee has violated any provision of this Act or any rule or regulation lawfully made by the Commissioner under and within the authority of this Act; or that

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the Commissioner in refusing originally to issue such license.

The Commissioner may, upon three days' notice and a hearing, suspend any license for a period not exceeding 30 days, pending investigation.

The Commissioner may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he shall find that such grounds for revocation or suspension are of general application to all offices, or to more than one office, operated by such licensee, he shall revoke or suspend all of the licenses issued to said licensee or such licenses as such grounds apply to, as the case may be.

Any licensee may surrender any license by delivering to the Commissioner written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

No revocation or suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of the Act, but the Commissioner shall have authority on his own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the Commissioner in refusing originally to issue such license under this Act.

Whenever the Commissioner shall revoke or suspend a license issued pursuant to this Act, he shall forthwith file in his office a written order to that effect and findings with respect thereto containing the evidence and the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof. (Act Feb. 15, 1939, c. 12, §9. Eff. June 1, 1939.)

7774-50. Commissioner may investigate loan companies.—For the purpose of discovering violations of this Act or securing information lawfully required by him hereunder, the Commissioner may at any time, either personally or by a person or persons duly designated by him, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person who shall be engaged in the business described in Section 1 of this Act, whether such person shall act or claim to act as principal or agent, or under or without the authority of this Act. For that purpose the Commissioner and his duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The Commissioner and all persons duly designated by him shall have authority to require the attendance of and to examine under oath all persons whomsoever whose testimony he may require relative to such loans or such business or to the subject matter of any examination, investigation, or hearing.

The Commissioner shall make such an examination of the affairs, business, office, and records of each licensee at least once each year. The actual cost of every examination shall be paid to the Commissioner by every licensee so examined, and the Commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction. (Act Feb. 15, 1939, c. 12, §10. Eff. June 1, 1939.)

7774-51. Books and accounts.—The licensee shall keep and use in his business such books, accounts, and records as will enable the Commissioner to determine whether such licensee is complying with the provisions of ~~this Act~~ and with the rules and regulations lawfully made by the Commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein.

Each licensee shall annually on or before the fifteenth day of March file a report with the Commissioner giving such relevant information as the Commissioner reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the State. Such report shall be made under oath and shall be in the form prescribed by the Commissioner, who shall make and publish annually an analysis and recapitulation of such reports. (Act Feb. 15, 1939, c. 12, §11. Eff. June 1, 1939.)

7774-52. Not to advertise.—No licensee or other person shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action in the amount or of the value of $300.00 or less, at a greater rate of charge than lenders not licensed hereunder would be permitted by law to make, which is false, misleading, or deceptive. The Commissioner may order any licensee to desist from any conduct which he shall find to be a violation of the foregoing provisions.

The Commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in such manner as he may deem necessary to prevent misunderstanding thereof by prospective borrowers.

No licensee shall take a lien upon real estate as security for any loan made under this Act, except such lien as is created by law upon the recording of a judgment.

No licensee shall conduct the business of making loans under this Act within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the Commissioner upon his finding that the character of such other business is such that the granting of such authority would not facilitate evasions of this Act or of the rules and regulations lawfully made hereunder.

No licensee shall transact such business or make any loan provided for by this Act under any other name or at any other place of business than that named in the license.

No licensee shall take any confession of judgment of any power of attorney. No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge, nor any instrument in which blanks are left to be filled in after execution. (Act Feb. 15, 1939, c. 12, §12. Eff. June 1, 1939.)

7774-53. Limitation on loans—Interest charges.—Every licensee hereunder may lend any sum of money not to exceed $300.00 in amount and may contract for, and receive thereon a charge at a rate not exceeding three per cent per month on the unpaid balance of any loan.

No licensee shall induce or permit any borrower to split up or divide any loan. No licensee shall induce or permit any person, nor any husband and wife jointly or severally, to become obligated, directly or contingently or both, under more than one contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of charge than would otherwise be permitted by this section.

No charges on loans made under this Act shall be paid, deducted, or received in advance, or compounded. All charges on loans made under this Act (a) shall be computed and paid only as a percentage per month of the unpaid principal balance or portions

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thereof, and (b) shall be so expressed in every obligation signed by the borrower, and (c) shall be computed on the basis of the number of days actually elapsed, and for the purpose of computations a month shall be any period of 30 consecutive days. In addition to the charges herein provided for no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received.

If any amount other than or in excess of the charge permitted by this Act is charged, contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, charges, or recompense whatsoever. (Act Feb. 15, 1939, c. 12, §13. Eff. June 1, 1939.)

7774-54. Statement — Receipts.— Every licensee shall:

Deliver to the borrower at the time any loan is made a statement (upon which there shall be printed a copy of Section 13 of this Act) in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of charge;

Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made, specifying the amount applied to charges and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of such loan;

Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply such payment first to all charges in full at the agreed rate up to the date of such payment;

Upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "Paid" or "Cancelled," and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given to the licensee by the borrower;

Display prominently in each licensed place of business a full and accurate schedule, to be approved by the Commissioner, of the charges to be made and the method of computing the same. (Act Feb. 15, 1939, c. 12, §14. Eff. June 1, 1939.)

7774-55. Not to loan greater amount.—No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than $300.00. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower, or otherwise, to owe directly or contingently or both to the licensee at any time a sum of more than $300.00 for principal. (Act Feb. 15, 1939, c. 12, §15. Eff. June 1, 1939.)

7774-56. What are loans.—The payment of $300.00 or less in money, credit, goods or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purposes of regulation under this Act be deemed a loan secured by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall for the purposes of regulation under this Act be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable. Such transaction shall be governed by and subject to the provisions of this Act. (Act Feb. 15, 1939, c. 12, §16. Eff. June 1, 1939.)

7774-57. Assignments.—No assignment of or order for payment of any salary, wages, commissions, or other compensation for services earned or to be earned, given to secure any loan made by any licensee under ~~this act,~~ shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution; nor shall any such assignment or order, or any chattel mortgage or other lien on household furniture then in the possession and use of the borrower, be valid unless it is in writing, signed in person by the borrower, nor if the borrower is married unless it is signed in person by both husband and wife, provided that written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of such assignment, order, mortgage, or lien.

Under any such assignment or order for the payment of future salary, wages, commissions, or other compensation for services, given as security for a loan made by any licensee under ~~this Act~~, a sum not to exceed ten per cent of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time for each payment to the borrower of such salary, wages, commissions, or other compensations for services, from the time that a copy of such assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon such loan and a printed copy of ~~Section 17 of this Act~~ is served upon the employer; provided, however, that this section shall not be construed as giving the assignee any greater rights than he has under Mason's Minnesota Statutes of 1927, Section 4136. (Act Feb. 15, 1939, c. 12, §17. Eff. June 1, 1939.)

7774-58. Unlicensed persons not to make loans.—No person except as authorized by this Act, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount or value of $300.00 or less.

The foregoing prohibition shall apply to any person who by any device, subterfuge, or pretense whatsoever shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this Act for any such loan, use, or forbearance of money, goods, or things in action or for any such loan, use, or sale of credit.

No loan of the amount or value of $300.00 or less for which a greater rate of interest, consideration, or charges than is permitted by this Act has been charged, contracted for, or received, wherever made, shall be enforced in this State and every person in anywise participating therein in this State shall be subject to the provisions of this Act, provided that the foregoing shall not apply to loans legally made in any State which then has in effect a regulatory small loan law similar in principle to this Act. (Act Feb. 15, 1939, c. 12, §18. Eff. June 1, 1939.)

7774-59. Violation a gross misdemeanor.—Any person and the several members, officers, directors, agents, and employees thereof, who shall violate or participate in the violation of any of the provisions of Sections 1, 12, 13, 14, 17 or 18 of this Act, shall be guilty of a gross misdemeanor.

Any contract of loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a misdemeanor under this Section, shall be void and the lender shall have no right to collect or receive any principal, interest, or charges whatsoever. (Act Feb. 15, 1939, c. 12, §19. Eff. June 1, 1939.)

7774-60. Limitations of act.—This Act shall not apply to any person doing business under and as permitted by any law of this State or of the United States relating to banks, savings banks, trust companies, industrial loan and thrift companies as authorized by

Laws 1933, Chapter 246. [§§7774-25 to 7774-35.] (Act Feb. 15, 1939, c. 12, §20. Eff. June 1, 1939.)

7774-60a. Limitations of act.—The provisions of Laws 1939, Chapter 12 [§§7774-41 to 7774-67], shall not apply to any person, as defined by said chapter, doing business under and as permitted by any law of this state or of the United States relating to building and loan associations, credit unions, or unlicensed pawnbrokers. (Act Feb. 18, 1939, c. 22. Eff. June 1, 1939.)

7774-61. Commissioner of banks to make regulations.—The Commissioner of Banks is hereby authorized and empowered to make general rules and regulations and specific rulings, demands, and findings for the enforcement of this Act, in addition hereto and not inconsistent herewith. (Act Feb. 15, 1939, c. 12, §21. Eff. June 1, 1939.)

7774-62. Act may be changed.—This Act or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided, however, that such cancellation or alteration shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower. (Act Feb. 15, 1939, c. 12, §22. Eff. June 1, 1939.)

7774-63. Appeals.—Any applicant or licensee may appeal from any decision or order of the commissioner to the district court of the county in which his business is to be or is being conducted under this Act at any time within 20 days after service of the decision or order upon him, by service of a written notice of appeal upon the Commissioner. Upon service of the notice of appeal the Commissioner shall forthwith file with the clerk of the court to which appeal is taken a certified copy of the decision or order under appeal together with the findings of fact upon which it is based. The appellant shall within five days after serving the notice of appeal file the same with proof of service with the clerk of the court to which appeal is taken; and thereupon the court shall have jurisdiction over the appeal and the same shall be entered upon the records of the court. Within 20 days after filing of the notice of appeal with the clerk of court, the appellant shall serve upon the Commissioner a complaint setting forth his cause of action, and within 20 days thereafter the Commissioner shall serve his answer. Thereafter the case shall be tried according to the rules relating to the trial of civil actions so far as the same are applicable.

On appeal the certified findings of fact filed by the Commissioner shall be prima facie evidence of the matters therein stated and the decision or order shall be prima facie lawful and reasonable. The burden of proof upon all issues raised by the appeal shall be on the appellant.

If the court determines that the decision or order appealed from is lawful and reasonable, it shall be affirmed and the decision or order shall be given effect as in this act provided. If the court determines that the decision or order is unlawful or unreasonable, it shall be reversed and the Commissioner shall forthwith issue or reinstate the license which is the subject of the decision or order, and in all cases where the issuance or revocation of a license is not the subject of the decision or order, the Commissioner shall amend his decision or order to conform to the findings and order of the court.

An appeal hereunder shall not stay or supersede the decision or order appealed from unless the court, upon an examination of the decision or order and the return made on the appeal, and after giving the Commissioner notice and opportunity to be heard, so directs.

Any party to an appeal in District Court under the provisions of this Section may appeal to the Supreme Court as in ordinary civil actions.

If an appeal is not taken from an order of the Commissioner according to the provisions of this Section, the decision or order of the Commissioner shall be final and the person affected thereby shall be deemed to have waived the right to have the decision or order or the findings of fact upon which it was based reviewed by a court. (Act Feb. 15, 1939, c. 12, §23. Eff. June 1, 1939.)

7774-64. Acts repealed.—Mason's Minnesota Statutes of 1927, Sections 7042 and 7043, and all acts and parts of acts inconsistent herewith are hereby repealed.

Nothing herein contained shall be so construed as to impair or affect the obligation of any contract of loan, which was lawfully entered into prior to the effective date of this Act. (Act Feb. 15, 1939, c. 12, §24. Eff. June 1, 1939.)

7774-65. Licensee to be responsible.—The licensee hereunder shall at all times be holden and liable to the commissioner for all acts and proceedings taken by his assignees, assigns, endorsees and transferees in enforcing, and as to the method of enforcing, collection of any obligation taken hereunder as fully and to the same extent as though the same were taken by the licensee hereunder. (Act Feb. 15, 1939, c. 12, §25. Eff. June 1, 1939.)

7774-66. Provisions severable.—If any clause, sentence, section, provision, or part of this Act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, affect, or invalidate the remainder of this Act, which shall remain in full force and effect thereafter. (Act Feb. 15, 1939, c. 12, §26. Eff. June 1, 1939.)

7774-67. Effective June 1, 1939.—This act shall take effect from and after June 1, 1939. (Act Feb. 15, 1939, c. 12, §27. Eff. June 1, 1939.)

OTHER CORPORATIONS FOR PROFIT

MANUFACTURING CORPORATIONS

Act legalizing corporations organized under tit. 2, c. 34, G. S. 1894. Laws 1931, c. 46.

7775. [Repealed].

Repealed Apr. 18, 1933, c. 300, §63.

Articles of incorporation held to confine the corporation to an exclusively manufacturing business. 172M394, 215NW521.

7776. Withdrawal of capital—Liability of stockholders.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

FOR MINING AND OTHER PURPOSES

7777. [Repealed].

Repealed Apr. 18, 1933, c. 300, §63.

Paterson v. S., 186M611, 244NW281: note under §7447.

7778. Meetings—Stock in other companies—Fraudulent issue of stock.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

MORTGAGE AND LOAN COMPANIES

7796. Powers.

The First Bank Stock Corporation and the Northwest Bancorporation are not "banks" or "mortgage loan companies" within statutes providing method for taxation of banks. Op. Atty. Gen., Aug. 29, 1930.

CO-OPERATIVE ASSOCIATIONS

7822. Formation—purposes.

Renewal of corporate existence of rural telephone companies. Laws 1939, c. 123.

Independent rural telephone company organized on June 25, 1913, held a de facto corporation and dependents of employe held entitled to compensation. Ebeling v. I., 187M604, 246NW373. See Dun. Dig. 1981.

County may purchase gas and oil from cooperative even though it involves accepting membership. Op. Atty. Gen. (125a-40), Jan. 27, 1936.

Co-operative cannot be formed to practice profession of veterinarian or for the purpose of employing a veterinarian. Op. Atty. Gen. (465), Jan. 12, 1937.

Corporation may not extend its life by resolution, in view of fact that this section was repealed by §7846, but during life of its charter may take benefit of §7835 or §7843. Op. Atty. Gen. (93a-1), Feb. 5, 1937.

A co-operative is liable for negligence, and liability for accidents occurring while directors are on way to attend meeting depends upon whether negligent acts are committed within scope of employer's business. Op. Atty. Gen. (93a-18), Feb. 28, 1939.

Cooperative organized under this section need not file amendments increasing or diminishing capital stock with secretary of state. Op. Atty. Gen. (93a-2), August 3, 1939.

7823. Formation—Rural telephone business—Powers.

Organization of co-operative telephone associations should be pursuant to §§7834 to 7846 rather than §§7823 and 7824. Op. Atty. Gen., Mar. 26, 1934.

Rural telephone companies desiring to incorporate as a co-operative association should do so under §7834, et seq., and not under §7823. Op. Atty. Gen. (93b-33), Apr. 7, 1937.

7824. Same.

Creamery companies organized under §7824 may not file amended articles with secretary of state under §7831. Op. Atty. Gen. (93b-10), Apr. 17, 1937.

7825. Officers—Management.

Chairman of a central organization consisting of five delegate representatives chosen by five cooperative associations has a right to vote as a delegate upon all questions coming before the body for consideration in the absence of a specific provision restricting him to a vote only in case of a tie. Op. Atty. Gen., Jan. 30, 1932.

In absence of specific authority, either by statute or by articles of incorporation or by-laws, board of directors does not possess right to fill vacancy on its own board on resignation of a director. Op. Atty. Gen. (93a-9), Dec. 12, 1934.

7826. Capital—Limit of interest—Shares.

Increase of capital stock beyond $100,000 held invalid. 172M334, 215NW428.

7828. Distribution of profits.

It is for board of directors to determine matter of distribution of profits. Op. Atty. Gen. (93a-35), May 11, 1939.

7831. Officers—by-laws—amendment of articles.—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 shall hold their offices until others shall be chosen and qualified. The association shall make its own by-laws, not inconsistent with the law, and may herein provide for any other officers deemed necessary, and the mode of their selection. It may amend its articles of incorporation at any general stockholders' meeting, or at any special meeting called for that purpose, upon ten days' notice to the stockholders. The amount of capital stock shall be fixed by the articles 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. Within thirty days after the adoption of the amendment increasing or diminishing its capital stock, it shall cause the vote so adopting it to be recorded in the office of the secretary of state. No share shall be issued for less than its par value, and no member shall own shares of a greater par value than one thousand dollars, or be entitled to more than one vote. It may commence business whenever 20 per cent of the authorized stock has been subscribed for and paid in, but no certificate of shares shall be issued to any person until the full amount of such subscription therein has been paid in cash, and no person shall become a shareholder therein except by the consent of the managers. The profits on the earnings of such association shall be distributed to those entitled thereto by its by-laws and in proportions and at the times therein prescribed, which shall be as often as once in twelve months. Every corporation organized under the terms of this act shall, on or before December 30th, in each year, make a report to the state dairy and food commissioner; such report shall contain the name of the corporation, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, its profits and losses. ('07, c. 293, §2; G. S. '13, §6488; Apr. 20, 1933, c. 330, §1.)

Sec. 2 of Act Apr. 20, 1933, cited, repeals all laws in conflict.

Stockholders of a co-operative association, organized prior to the enactment of Laws 1919, c. 382, and which has not elected to come under its provisions, cannot remove officers or directors at a meeting called for that purpose. 178M164, 226NW401.

In absence of any specific authority contained in articles of incorporation or by-laws of co-operative association, board of directors has no legal right to close creamery without consent of stockholders, but if board does close creamery, it does not entitle stockholders to recover value of stock from directors. Op. Atty. Gen., Nov. 14, 1933.

Stockholders may provide for qualifications of officers and directors in articles of incorporation. Op. Atty. Gen. (93a-9), Mar. 6, 1936.

Creamery companies organized under §7824 may not file amended articles with secretary of state under §7831. Op. Atty. Gen. (93b-10), Apr. 17, 1937.

This section is applicable only to cooperatives organized under §7830. Op. Atty. Gen. (93a-2), August 3, 1939.

This section was repealed by §7846. Id.

7833. Rural telephone companies—Place of business, etc.

Any person owning stock whether recorded on books of association or not is entitled to vote at a stockholders' meeting. Op. Atty. Gen., Jan. 15, 1934.

7833–1. Corporate existence of certain co-operative associations renewed.—Any co-operative association organized pursuant to Mason's Minnesota Statutes of 1927, Sections 7822, 7824, 7825, 7826, 7828, 7831, and 7832, whose period of corporate existence has not expired may renew its corporate existence on expiration thereof for a period not exceeding 20 years, any statutory provision to the contrary notwithstanding. (Act Apr. 4, 1935, c. 116, §1.)

Act Mar. 31, 1939, c. 123, permits renewal within 6 months, of charters expiring less than 6 years prior to passage of act.

7833–2. Inconsistent acts repealed.—All acts and parts of acts inconsistent herewith are hereby modified and superseded so far as necessary to render this act effective. (Act Apr. 4, 1935, c. 116, §2.)

SUPPLEMENTARY LAWS

7834. Co-operative associations—who may organize—purpose—powers.—A co-operative association may be formed for the purpose of conducting any agricultural, dairy, marketing, transportation, warehousing, commission, contracting, building, mining, telephone, manufacturing, or any mechanical, mercantile or electrical heat, light or power business, or for all such purposes or for any other lawful purpose, upon the co-operative plan, and in addition to other powers, such co-operative association, shall have the power either as agent or otherwise to buy, sell or deal in its own products, the products of its individual members or patrons, the products of any other co-operative association or of its members or patrons, whether such co-operative association be organized under the provisions of this Act or otherwise. It shall be lawful for such co-operative association to sell its own products as well as the products of its members or patrons for them, or the products of any other co-operative association or of its members or patrons for them, as the case may be, either individually or collectively, and to negotiate the price at which such products may be sold either for itself or for its members or patrons, or such other co-operative association and its members or patrons, individually or collectively, as the case may be; also to enter into or become a party to any contract or agreement either for itself or for its individual members or patrons, or between it and its member. For the purposes above stated such co-operative association shall have the power and authority as a corporation to purchase and hold, lease, mortgage, encumber, sell, exchange and convey such real estate, buildings and personal property as the business of the association may require, also to erect buildings or other structures or facilities upon its own lands or leased grounds, or upon right of way legally acquired by such co-operative association. Such co-operative association shall have the power and authority to issue bonds or other evidence of indebtedness and to borrow money to

finance the business of the association, or to make advances to its members or patrons upon produce delivered by such members or patrons to the association provided, however, that the indebtedness so incurred shall not exceed the limit of indebtedness fixed in the articles of incorporation of such co-operative association, as hereinafter required. For the purpose of empowering and authorizing co-operative associations incorporated under the provisions of this Act to join with other co-operative associations in this state or other states, whether incorporated under this Act or under the laws of any other state, to form district, state or national organizations or market agencies, any co-operative association incorporated under this Act, by vote of the governing board thereof may purchase, acquire, hold or dispose of the stock of any other co-operative association or corporation, whether incorporated under this Act or under the laws of any other state, and assume all rights, interests, privileges, responsibilities and obligations arising out of the ownership of such stock. A co-operative association incorporated under this Act shall also have the power and authority, either for itself or for its individual members or patrons, to do and perform every act and thing necessary or proper to the conduct of its business or the accomplishment of the purposes set forth in this Act, and in addition any other rights, powers or privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the expressed provisions of this Act.

A co-operative association incorporated under this Act, constituted wholly or partially of other co-operative associations organized under this Act or under the laws of this or any other state, shall have the power to accept deposits of money or securities from such co-operative associations, to loan or borrow upon such security as it may consider sufficient in dealing with its member co-operatives and to exercise any and all fiduciary powers in its relations with such co-operatives as constitute its membership.

For the purpose of this Act a co-operative association shall be defined as any corporation or association of ultimate producers and/or consumers organized under this Act or any other statute of the State of Minnesota now existing or hereafter enacted providing for the incorporation of co-operative associations; also any central organization composed wholly or in part of such associations. The plans of organization and the business practices of any such association shall be stated in its articles of incorporation and by-laws and shall provide (a) that the ownership of capital stock therein by any individual stockholder shall not exceed the par value of $1,000.00; and (b) that individual stockholders shall be restricted to only one vote in the affairs of the association; and (c) that shares of stock shall not be transferable except with the approval and consent of the governing board of such association; and (d) that interest shall not be paid on outstanding or paid-up capital stock of the association in excess 6% per annum; and (e) that the net income of such association, except such amounts as are required to be set aside as a reserve fund or permanent surplus or may be set aside by vote of the stockholders of the association, available for distribution, among the members, or patrons, or both, as the case may be, shall be distributed only on the basis of patronage. No corporation or association hereafter organized in this state shall be entitled or permitted to use the term "co-operative" as part of its corporate or business name or title, or to represent itself as a co-operative association, unless it has complied with the provisions of this Act, or any other law of this state now existing or hereafter enacted providing for the incorporation of co-operative associations. Any corporation or association which violates this provision shall be guilty of a misdemeanor. ('19, c. 382, §1; '21, c. 23, §1; '23, c. 326, §1; Apr. 1, 1933, c. 148.)

Tax on cooperative electric, heat, light and power associations. Laws 1939, c. 303.

A cooperative corporation, organized under this law, may contract with and incur debts to others than cooperative associations and members thereof. Farmers' Dairy Co.'s Receivership, 177M276, 225NW22.

Cooperative association formed to engage in transportation of goods and products of its members is subject to control and regulation of the warehouse commission. North Shore Fish & Freight Co. v. N., 195M336, 263NW98. See Dun. Dig. 8078c.

Corporation organized under this act and paying a fixed rate of 6 per cent on its shares, held not entitled to deduct such payment as interest paid in computing its federal income tax. 21 U. S. Board of Tax Appeals, 744. See Dun. Dig. 245b.

A cooperative association could not be organized on a membership basis to accept sums of money for safekeeping and to grant members privilege of withdrawing deposits at any time. Op. Atty. Gen., May 31, 1933.

Cooperative association may be organized for purpose of purchasing fuel oil to sell to members only. Op. Atty. Gen., June 9, 1933.

Provision in Laws 1933, c. 148, limiting 6% interest on paid-up capital stock relates only to co-operative associations organized after passage thereof. Op. Atty. Gen., Nov. 18, 1933.

Where articles of incorporation and by-laws of creamery limit its business to purchase and sale of cream and milk products, it cannot, as a side line, deal in feeds, farm machinery, twine, gasoline and oils, etc. Op. Atty. Gen., Nov. 24, 1933.

Retail dealers are not ultimate producers or consumers. Op. Atty. Gen., Jan. 15, 1934.

A number of small owners of trucks in different localities may form a co-operative association for purpose of non-profit purchase of gasoline, oils, etc. Op. Atty. Gen., Mar. 19, 1934.

Sections 7834 to 7846 superseded in part §§7823 and 7824. Op. Atty. Gen., Mar. 26, 1934.

Cooperative organized for social and charitable purposes may not represent itself as being formed to "engage in cooperative undertakings." Op. Atty. Gen. (93a-29), Apr. 6, 1934.

A farmers' mutual automobile insurance company which is not a cooperative may not use the term "Co-op" in its name. Op. Atty. Gen. (385a-2), Nov. 15, 1934.

Words "hereafter organized" do not include a renewal of life of a corporation. Op. Atty. Gen. (93a-43), Nov. 30, 1935.

Co-operative cannot hold stock in a non-co-operative corporation unless for special reasons. Op. Atty. Gen. (93a-38), Mar. 18, 1936.

Co-operative association transporting property for members must obtain permits and are subject to regulation under the motor carrier laws. Op. Atty. Gen. (93b-34), Apr. 23, 1936.

Co-operative association organized under Laws 1923, c. 326 (§7834, et seq.), may by taking appropriate steps bring themselves under provisions of Laws 1923, c. 264 (§6709, et seq.). Op. Atty. Gen. (93a-2), May 6, 1936.

City may purchase stock from co-operative association engaged in oil and petroleum business, if ownership of stock will impose no financial obligation in form of assessments or liability for death of association. Op. Atty. Gen. (93a-38), May 19, 1936.

Rural telephone companies desiring to incorporate as a co-operative association should do so under §7834, et seq., and not under §7823. Op. Atty. Gen. (93b-33), Apr. 7, 1937.

Cemetery association may not be incorporated under §7834 but must be incorporated under §7557. Op. Atty. Gen. (93b-40), Apr. 19, 1937.

Amendments to by-laws of cooperative associations need not originate with board of directors, unless vote is to be had thereon by mail. Op. Atty. Gen., (93a-4), Jan. 5, 1938.

So long as a member is continued or being carried as one in good standing, even though he may have violated provisions of by-laws pertaining to failure to pay for merchandise in a certain time, he is entitled to patronage dividends, but by-law may require it be credited against past due indebtedness. Op. Atty. Gen. (93a-11), Apr. 12, 1938.

So long as REA prohibits rural lines from serving urban communities, a resident of an urban community could not possibly be an ultimate producer or consumer and, strictly speaking, would not be eligible for membership in a cooperative. Op. Atty. Gen. (93B-29), August 16, 1939.

Where an electric cooperative is formed and membership fee charged to join, cooperative may charge a member minimum bill for electric energy which is available to him but which he refuses or does not care to use, since one must be an ultimate producer or consumer to be eligible for membership. Id.

Essential requisite for membership is that member be an ultimate consumer or producer, and articles and by-laws may prescribe time during which prospective member must be such ultimate producer or consumer to become a member, and a period of 30 days or 3 months would each be reasonable. Op. Atty. Gen. (93a-22), Sept. 5, 1939.

Cooperative creamery associations organized under Revised Laws of 1905, §3073, or acts amendatory thereof, may renew their corporate existence without complying

with Laws 1923, c. 326. Op. Atty. Gen. (93b-10), March 9, 1939.

7835. Organizers—Articles of incorporation—Contents and filing.

Directors who permit debts to be contracted in excess of statutory limitations are personally liable. Op. Atty. Gen. (93a-18), Jan. 31, 1936.

Amendment to articles of incorporation was not void for lack of publication, but amendment should be published and affidavit filed with register of deeds to put amendment in full force and effect. Op. Atty. Gen. (93a-2), Nov. 24, 1936.

Witnesses are not required to signatures of incorporators. Op. Atty. Gen. (92a-14), Apr. 26, 1937.

Amendments to by-laws must be approved by Attorney General. Op. Atty. Gen. (93a-5), Jan. 5, 1938.

Amendments to by-laws need not be published and filed or recorded in office of register of deeds or secretary of state. Id.

Persons forming a co-operative association are not required to be residents of this state. Op. Atty. Gen. (93a-29), Aug. 22, 1938.

Limitation of debt provision is not absolute, and accounts with members and patrons may under certain circumstances be excluded. Op. Atty. Gen. (93a-18), Oct. 25, 1938.

Vote to renew period of corporate existence must be three-fourths of all stock or members, and not merely three-fourths vote of a quorum present at meeting in person. Op. Atty. Gen. (93a-2), August 25, 1939.

7836. Capital—Limits of interest—Vote.—The amount of the authorized capital stock of the association shall be fixed by the articles of incorporation. The amount of the authorized capital stock and the number of shares may be increased or diminished at any regular meeting of the stockholders of the association or at any special meeting of the stockholders called for such purposes, in the manner hereinafter provided for amending the articles of incorporation.

Within 30 days after the adoption of an amendment increasing or diminishing the authorized capital stock, a copy of such amendment and a statement of the proceedings and the vote by which such amendment was adopted shall be filed or recorded in the offices where the articles of incorporation were filed or recorded, as provided in Section 2, of this Act. The association may commence business whenever 20% of the authorized capital stock has been subscribed and paid in and the amount of the capital stock outstanding shall at no time be diminished below 20% of the amount of the authorized capital. No share shall be issued for less than its par value nor until the same has been paid for in cash or its equivalent and such payment has been deposited with the treasurer of the association.

Any association organized under this Act may limit the amount of stock or the number of shares of stock therein, which may be issued to or owned by an individual person or association, which in the case of an individual shall not exceed the amount of $1,000.00 of the par value of such stock. Any co-operative association organized under this Act may acquire and hold stock in any other corporation organized under any law of this state or of any other state of the United States, the purpose of which may be a federation of co-operative associations or for the purpose of forming a district, state or national marketing, sales or service agency or for the purpose of acquiring marketing facilities at terminal or other markets in this state or other states. A stockholder in any co-operative association organized under this Act shall not be entitled to more than one vote which shall be in person, or by mail as hereinafter provided, and not by proxy, except that any such co-operative association that is a stockholder in any other corporation shall have the power and authority by its board of directors or by its stockholders to elect or appoint any person or persons to represent it at any meeting of the stockholders of any corporation in which it owns stock and the person or persons so elected or appointed shall have full power and authority to represent such co-operative association and also to cast its vote or votes at any such meeting.

Provided however that in co-operative associations wholly or partially constituted of other co-operative associations organized under this Act or under the Laws of this or any other state, each affiliated member co-operative shall have an additional vote for a certain stipulated volume of business done by it with its central organization and/or a certain stipulated number of members in such associations, to be determined in either or both cases by the articles and/or by-laws of the central association.

Provided further, that any such co-operative central association organized under this Act or under the laws of this or any other state having at any time more than three thousand (3,000) individual members or stockholders may group such members or stockholders in local units on territorial or other basis as may be determined by the articles and/or by-laws of the central association.

The grouping of such members or stockholders shall be determined by the directors of the central association at their first meeting immediately following the adoption of such provision in the articles and/or by-laws of the central association.

Each of said units shall be entitled to be represented at any and all stockholders' meetings of the central association by a delegate or delegates of their own choosing and such delegates shall exercise the same powers at such stockholders' meetings as any shareholder of the central association may exercise on such basis of voting rights as is provided for in the articles and/or by-laws of the central association pertaining to such shareholders.

The directors of the central association shall have the power to do all things necessary to give full force and effect to this section including the power to fix the time and place and rules of conduct for the holding of meetings by such units for the purpose of their electing a delegate or delegates to all stockholders' meetings of the central association.

Stock in any co-operative association organized under this Act shall be sold or transferred only with the consent and approval of the board of directors and the by-laws of such co-operative association shall provide that it shall have the first privilege of purchasing stock offered for sale by any stockholder. Any stock so acquired by the board of directors for such co-operative association may be held as treasury stock or may be retired and cancelled. Any stockholder who knowingly, intentionally or repeatedly violates a provision of the by-laws adopted by any co-operative association organized under this Act may be required by the board of directors of such co-operative association to forfeit his stock, in which case the association shall refund to such stockholder the par value of his stock or in case the book value of such stock shall be greater or lesser than the par value, such stockholder shall be paid the amount of the book value of such stock. Stock so forfeited shall be retired and cancelled by the board of directors and such stockholders shall thereafter have no rights, privileges or benefits in such co-operative association.

Any stockholder who is absent from any meeting of the stockholders of any association organized under the provisions of this Act, may, as herein provided but not otherwise, vote by mail on the ballot herein prescribed, upon any motion, resolution or amendment to be acted upon at such meeting. Such ballot shall be in the form prescribed by the board of directors of such association and shall contain the exact text of the proposed motion, resolution or amendment to be acted upon at such meeting and the date of the meeting; and shall also contain spaces opposite the text of such motion, resolution or amendment in which such stockholder may indicate his affirmative or negative vote thereon. Such stockholder shall express his choice by marking an "X" in the appropriate space upon such ballot. Such ballot shall be certified to and signed by the stockholder if an individual, or if a corporation by the president or secretary thereof, and when received by the secretary of the association holding the meeting, shall be accepted and

counted as the vote of such absent stockholder at such meeting. ('19, c. 382, §3; '21, c. 23, §3; '23, c. 326, §3; Apr. 1, 1933, c. 148.)

Provision for forfeiting and retiring the stock of an offending stockholder does not free him from double liability imposed by Const., art. 10, §3.. 174M427, 219 NW466.

Cooperative associations may issue bonus stock. Op. Atty. Gen., May 31, 1933.

Notes or property may be accepted in lieu of cash in payment of stock. Id.

Where authorized capital stock is diminished below 20% association is subject to dissolution in an action by the state. Op. Atty. Gen. (93a-18), Jan. 13, 1936.

Credits to nonmember patrons may be assigned, but association may not pay to nonmembers amount of credit. Op. Atty. Gen. (93a-38), Jan. 31, 1936.

Articles may not provide for expulsion of a member and sale of his stock to the highest bidder, but should provide that stock be canceled and par value paid to member. Op. Atty. Gen. (93a-2), Apr. 27, 1937.

A by-law may not be in conflict with the articles. Id.

Amendments to by-laws of cooperative associations need not originate with board of directors, unless vote is to be had thereon by mail. Op. Atty. Gen., (93a-4), Jan. 5, 1938.

Board of directors of an electric association may require members to comply with contracts to use electric energy unless a good legal defense is shown. Op. Atty. Gen. (93a-40), March 9, 1939.

It is not necessary that all delegates vote as a unit, but each delegate may cast his vote for or against a proposition presented, though matter of "unit voting" may be regulated by by-law or by agreement. Op. Atty. Gen. (93a-30), June 12, 1939.

Stock issued in excess of authorized capitalization is void and stockholders have no voting right. Op. Atty. Gen. (83a-37), July 10, 1939.

Failure to file with register of deeds amendment of articles increasing capital stock was a mere irregularity which did not prevent holders of such stock from voting it. Op. Atty. Gen. (93a-37), August 3, 1939.

7836–1. Application of act.—The provisions herein shall not apply to any co-operative corporation or association organized under the laws of this state, or of any other state, prior to April 1, 1933, unless and until such corporation or association by proper amendment of its Articles of Incorporation elects to be bound by the provisions of this act. (Act Apr. 22, 1935, c. 231.)

7838. Quorum.—At any regular or special meeting of the stockholders of any association incorporated under this act a quorum necessary to the transaction of business shall be at least twenty per cent of the total number of stockholders in the association when the number of stockholders in such association does not exceed two hundred and in associations having a larger number of stockholders fifty stockholders present in person shall constitute a quorum; provided, however, that where any association has for two successive years been unable to secure a quorum at its annual meeting thereafter a quorum shall be at least ten per cent of the total number of stockholders when the number of stockholders in such association does not exceed two hundred. The fact of the attendance of a sufficient number of stockholders to constitute a quorum shall be established by a registration of the stockholders of the association present at such meeting, which registration shall be verified by the president and secretary of the association and shall be reported in the minutes of such meeting. No action by any association organized under this act shall be valid or legal in the absence of a quorum at the meeting at which such action may be taken. (As amended Apr. 5, 1937, c. 153, §1.)

This section refers to corporate action of associations originally created under the act of 1919 or which became subject to that act in accordance with section 7843. 172 M334, 215NW428.

Increase of capital stock beyond $100,000 held invalid. 172M334, 215NW428.

Method provided by this section for determining quorum in an ordinary cooperative will apply to central cooperative, except where affiliated member cooperatives are given additional votes on basis on volume of business or number of members, in which case number will be determined by articles of incorporation or by-laws of central association. Op. Atty. Gen. (93a-30), April 18, 1939.

It is entirely optional with local member cooperative as to whether it shall send one or more of its members to represent it at any meeting of central cooperative, the number of votes being the same in either case. Id.

Cooperative wishing to avail itself of provision of Laws 1939, c. 51, authorizing it to qualify under Business Corporation Act, need not comply with the two-thirds vote requirement of that act. Op. Atty. Gen. (93a-2), June 22, 1939.

7839. Directors—Election of—Etc.

Stockholders of a cooperative association, organized prior to the enactment of Laws 1919, c. 382, and which has not elected to come under its provisions, cannot remove officers or directors at a meeting called for that purpose. 178M164, 226NW401.

Directors may appoint themselves to salaried positions subject to regulation by articles of incorporation and by-laws. Op. Atty. Gen. (93a-9), Jan. 7, 1936.

Quorum of Lakeland Co-operative Power and Light Association of Gilbert may not be less than 20% where membership is under 200. Op. Atty. Gen. (92a-14), Apr. 26, 1937.

Vacancy in board of directors may not be filled by board of directors. Op. Atty. Gen. (93a-9), March 21, 1939.

7840. Earnings—Reserve fund—Distribution.

Counties purchasing gasoline from cooperative oil associations may not receive a patronage dividend. Op. Atty. Gen., Dec. 16, 1931.

No cooperative association is authorized to pay interest upon stock or to declare a patronage dividend until an adequate reserve for depreciation of physical equipment is set up. Op. Atty. Gen., Jan. 2, 1932.

Proclamation of President of Oct. 23, 1933, relating to patronage dividends, applies to State of Minnesota. Op. Atty. Gen., Nov. 15, 1933.

Patronage dividends may not be paid in cash but only by way of credit on stock. Op. Atty. Gen., Nov. 18, 1933.

Non-members may participate in surplus by way of credit towards purchase of stock. Op. Atty. Gen., Apr. 2, 1934.

Conservator of rural credit department, as owner of farm marketing grain, may accept membership in cooperative through whom grain is sold. Op. Atty. Gen. (7701), Sept. 7, 1934.

Non-member patrons may not be paid cash, but all patronage dividends should be credited to them until the amount equals value of share of stock. Op. Atty. Gen. (93a-11), Nov. 15, 1934.

Co-operative association is not required to set up an account with transients nor may it cancel a patronage refund to which a purchaser to whom credit has been extended has failed to pay for merchandise within stated length of time, nor may a patronage refund die simply because it has remained upon the books for several years. Op. Atty. Gen. (93b-26), Aug. 8, 1936.

Association should not declare a dividend and set it up in books as a liability to credit of various stockholders not to be paid in cash for several years, but should create a reserve or borrow necessary working capital. Op. Atty. Gen. (93a-17), Jan. 4, 1938.

County welfare boards have no authority to issue orders, rules or regulations which contravene provisions of this section. Op. Atty. Gen. (125a-64), Apr. 13, 1938.

Association may pay interest on capital stock and patronage dividends on same date and combine them in same check. Op. Atty. Gen. (93a-11), April 13, 1939.

After interest on capital stock, or patronage refunds have been lawfully ordered, amount thereof belongs to member patrons and cannot be revoked or recalled by association to be used for general corporate purposes or to care for current losses. Op. Atty. Gen. (93a-35), May 11, 1939.

7843. Associations heretofore organized.

172M334, 215NW428; note under §7838.

178M164, 226NW401.

A de facto co-operative corporation may amend and extend its term, but a corporation whose term has expired cannot extend its life in absence of curative act of legislature. Op. Atty. Gen. (93a-33), Feb. 10, 1937.

Co-operative corporations coming under act may amend articles by changing their names. Op. Atty. Gen. (93a-2), Mar. 19, 1937.

A cooperative corporation whose period of existence has expired may authorize sale of all of corporation's assets to a new cooperative association in consideration of issuance of new stock and purchase of shares at their value of old shareholders who do not consent to exchange. Op. Atty. Gen. (932-8), Jan. 31, 1938.

Amendment of articles of incorporation originally filed under General Statutes of 1913 so as to be governed by Laws 1923, c. 326, and an amendment extending period of corporate existence may be passed at same meeting. Op. Atty. Gen. (93a-2), Feb. 14, 1939.

7844. Amending articles of incorporation.

172M334, 215NW428; note under §7838.

Provision in articles of incorporation limiting ownership of capital stock to $75 par value, could be amended to limit such ownership to $50, but such change would not affect rights of existing stockholders. Op. Atty. Gen., Feb. 23, 1933.

Cooperative association may issue stock dividend and amend articles by majority vote of shares of stock. Op. Atty. Gen., June 9, 1933.

Cooperative association may not amend articles to permit membership of companies doing a garage manufacturing or other similar non-cooperative businesses. Id.

Section does not require that certificate of amendment show more than new or amended section, and does not require resolution of board of directors and notice to stockholders of the meeting. Op. Atty. Gen. (93a-2), Mar. 19, 1937.

Co-operative corporations coming under act may amend articles by changing their names. Id.

Amendment of articles of incorporation of a wholesale oil corporation so as to authorize it to engage in any mercantile, jobbing, wholesale and retail, mining, manufacturing or mechanical business, is a fundamental alteration of the corporation, not comprehended within the reserved power to amend the articles of incorporation. Midland Co-Operative W. v. R., 200M538, 274NW624. See Dun. Dig. 1995.

Amendments to by-laws need not be published and filed or recorded in office of register of deeds or secretary of state. Op. Atty. Gen. (93a-5), Jan. 5, 1938.

Quorum necessary when a cooperative votes upon question of coming under Laws 1923, c. 326, and when voting to renew period of corporate existence, is fixed by §7835, but there must be a three-fourths vote of all of the stock of members for resolution of extension. Op. Atty. Gen. (93a-2), August 25, 1939.

Cooperatives when voting to come under Laws 1923, c. 326, and when voting to renew period of their corporate existence, may use the mail vote. Id.

Resolution of cooperative taking advantage of Laws 1939, c. 14, in extending its existence should contain jurisdictional requisites set forth in that act. Op. Atty. Gen. (93a-2), August 28, 1939.

Articles of incorporation and by-laws constitute a contract between cooperative and members, and right to share in dissolution cannot be abrogated by amendment. Op. Atty. Gen. (93a-22), Sept. 5, 1939.

7846. Laws repealed.

Co-operative elevators' association organized under §7822 cannot extend its corporate existence without taking advantage of this act. Op. Atty. Gen. (93a-1), Feb. 5, 1937.

Amendment of articles of incorporation originally filed under General Statutes of 1913 so as to be governed by Laws 1923, c. 326, and an amendment extending period of corporate existence may be passed at same meeting. Op. Atty. Gen. (93a-2), Feb. 14, 1939.

7859-7. Renewal of corporate existence.

Subsequent acts: Laws 1929, c. 136; Laws 1931, c. 108; Laws 1931, c. 241.

7859-10. Same—Associations accepted.

Subsequent curative acts: Laws 1929, c. 136.

7859-11. Renewal of corporate existence, etc.

Act authorizing renewal of period of corporate existence of certain cooperative associations. Laws 1931, c. 149.

Act Mar. 1, 1933, c. 40, authorizes renewal where corporate existence has expired within 10 years prior to passage of act. and validates acts done prior to renewal.

Act Ex. Ses., Dec. 23, 1933, c. 11, authorizes renewal of corporate existence of cooperative companies and associations whose period of duration has expired prior to passage of act. Omitted as temporary.

Act June 15, 1936, Sp. Ses., 1935-36, c. 28, authorizes renewal of expired associations.

Act Feb. 14, 1939, c. 14, reenacts the curative features of this section.

7859-12. Same—Conveyances, etc., legalized.

Subsequent curative acts: Laws 1929, c. 171.

7859-13. Certain cooperative creamery associations continued.—Any cooperative creamery association organized under the provisions of Revised Laws of 1905, Section 3073, or acts amendatory thereof, may renew its corporate existence for a period of not more than twenty years, whenever the holders of a majority of the stock thereof shall adopt a resolution to that effect at any regular meeting, or at any special meeting called for that expressly stated purpose. (Act Apr. 21, 1933, c. 358, §1.)

Cooperative creamery associations organized under Revised Laws of 1905, §3073, or acts amendatory thereof, may renew their corporate existence without complying with Laws 1923, c. 326. Op. Atty. Gen. (93b-10), March 9, 1939.

7859-14. Resolution to be filed with the register of deeds.—A copy of such resolution certified by the chairman and secretary of such meeting shall be filed in the office of the register of deeds of the county in which such corporation shall be located. (Act Apr. 21, 1933, c. 358, §2.)

Sec. 3 of Act Apr. 21, 1933, cited, provides that the act shall take effect from its passage.

Act Jan. 6, 1934, Ex. Ses., c. 48, authorizes renewal of corporate existence of horticultural corporations and societies whose term has expired, proceedings therefore to be taken within six months after passage of act. Omitted as temporary.

Laws 1939, c. 14, app. Feb. 14. Legalizing and renewing corporate co-ops. acts.

Minnesota State Horticultural Society should obtain act of legislature in order to renew its articles of incorporation, its plan of organization having been substantially changed by amendments not legally adopted. Op. Atty. Gen., Nov. 29, 1933.

AGRICULTURAL SOCIETIES

STATE AGRICULTURAL SOCIETY

7860. Confirmation—Purposes.

State agricultural society has no authority to take out workmen's compensation insurance for its employees. Op. Atty. Gen. (4a), Mar. 27, 1935.

7861. Membership in state agricultural society.—

* * * * * * *

4. Two delegates elected by, and the president, ex-officio, of the following societies and associations: The State Horticultural Society, the State Dairyman's association, the State Beekeepers' association, the Minnesota Livestock Breeders' association, the Minnesota Crop Improvement association, the Minnesota Swine Breeders' association, the Minnesota Sheep Breeders' association, the Minnesota Horse Breeders' association, the Minnesota Veterinary association, the Minnesota Cattle Breeders' association, the State Poultry association, the Minnesota Implement Dealers' association, the Minnesota Florists' association, the Minnesota Garden Flower association, the Minnesota County Exhibitors' associations, the Minnesota Federation of County Fairs, the State Forestry association, the Minnesota Saddle Horse Owners' and Breeders' association, Minnesota State Nurserymen's association, Minnesota Fruit Growers' association, the Minnesota State Grange association and the Minnesota Farm Bureau Federation. The following societies and associations shall be entitled to one vote each; Minneapolis Market Gardeners' association of Minnesota, the State Growers' association, Minnesota Shorthorn Breeders' association, Minnesota Guernsey Breeders' association, Minnesota Jersey Cattle club, Minnesota Holstein-Friesian Breeders' association, the Minnesota Hereford Breeders' association, Minnesota Aberdeen Angus Breeders' association, Minnesota Red Polled Breeders' association, Minnesota Ayreshire Breeders' association, Minnesota Brown Swiss Breeders' association, Minnesota Poland China Breeders' association, Minnesota Duroc Jersey Breeders' association, Minnesota Chester White Breeders' association, the Minnesota Gladiolus Society and Minnesota Berkshire Breeders' association, provided that all such societies and associations shall be active and state-wide in their scope and operation, hold annual meetings and be incorporated under the laws of the State of Minnesota, before being entitled to select such delegates. The societies and associations named in this sub-division shall file with the Secretary of State, on or before December 20, of each year, a report showing that said society or association has held a regular annual meeting for such year, a summary of its financial transactions for the current year and an affidavit of the president and secretary that it has a paid up membership of at least twenty-five. On or before January 5 of each year, the secretary of state shall certify to the secretary of the state agricultural society the names of such societies or associations herein named as have complied with the provisions hereof. (As amended Apr. 20, 1931, c. 231; Apr. 1, 1933, c. 136; Jan. 9, 1934, Ex. Ses., c. 57, §§1, 2; Apr. 20, 1935, c. 227; Jan. 27, 1936, Ex. Ses., c. 110; Mar. 25, 1937, c. 106, §1.)

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7862. Management.

For the purpose of electing members of the governing board of the State Agricultural Society, House File No. 1456 (Laws 1931, pages 640, 641) must be followed. Op. Atty. Gen., Oct. 20, 1931.

A congressional district under new apportionment act is entitled to a representative, and a vacancy exists for a district not represented, though number of directors exceed number of congressional districts. Op. Atty. Gen., May 11, 1933.

Congressional redistricting act, Laws 1933, c. 185, abolished office held by member of board of managers from 10 districts and also created vacancy in office of one elected for district of which he was not resident under new act. Op. Atty. Gen., May 25, 1933.

7871. Annual appropriations.

$20,000 to furnish 4-H building at state fair. Laws 1939, c. 428.

7875. Rules and regulations.

County board with approval of state fair board and board of town in which state fair grounds are situated may issue license to sell non-intoxicating beer to a restaurant to be located on fair grounds for three days. Op. Atty. Gen., June 17, 1933.

7882. Holding justice court on fair grounds.

Fines imposed under Pure Food Law in justice court held on Fair Grounds should be remitted to treasurer of State Agricultural Society. Op. Atty. Gen. (266b-9), Oct. 8, 1934.

COUNTY AGRICULTURAL SOCIETIES

7885. County agricultural societies—formation—general powers.—An agricultural society may be incorporated by citizens of any county or two or more counties jointly, but only one such agricultural society shall be organized in any county except in counties having an area of five thousand square miles or more, in which two such societies may be organized, and when so organized shall receive all benefits that other senior agricultural societies obtain both from the state and the county: provided, however, that in any county in this state having not more than 46 nor less than 42 full or fractional congressional townships and having a population according to the 1930 Federal census of not more than 27,000 and not less than 23,000 persons may have two such societies; such society may sue and be sued in its corporate name; may adopt by-laws, rules and regulations, alter and amend the same; may purchase and hold, lease and control any real or personal property deemed to promote the objects of the society, sell and convey the same. This act shall not be construed to preclude the continuance of any agricultural society now existing, nor the granting of aid thereto.

Such society shall have jurisdiction and control of the grounds upon which its fairs are held, and of the streets and grounds adjacent thereto during such fair, so far as may be necessary for such purpose. At or before the time of holding any fair, the president of any such 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 such society, and within one-half mile thereof, all the power and authority of constable at common law, and in addition thereto may, within such limits without warrant arrest any person found violating any laws of the state, or any rule, regulation, or by-law 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. Every such peace officer shall wear an appropriate badge of office while acting as such.

Any person who shall wilfully violate any rule or regulation made by such societies during the days of a fair shall be guilty of a misdemeanor. (As amended Apr. 22, 1937, c. 352, §1.)

Laws 1929, c. 91, and Laws 1931, c. 219, authorize renewal of corporate existence after expiration of original term.

Act relating to filing fees for extension of corporate term of county agricultural societies. Laws 1931, c. 166, ante, §7475-1.

Laws 1935, c. 352. Incorporation of county agricultural societies in certain counties where there existed a society.

Laws 1939, c. 294. Incorporation of county agricultural societies.

Agricultural association was entitled to state aid, though all entry fees were charged to premiums awarded exhibitors. Op. Atty. Gen., Feb. 8, 1933.

Fact that agricultural association discounted premium checks after they were written in full sums did not deprive it of state aid, it appearing that association had aid premiums in excess of amount of state aid and discount being used to prorate fund. Op. Atty. Gen., Feb. 8, 1933.

Any county or district agricultural society formed pursuant to §7885 comes within term "municipality" as defined by §1918-55. Op. Atty. Gen. (772a), June 1, 1936.

Motor truck owned by county agricultural association is not exempt from registration tax. Op. Atty. Gen. (632e-12), May 23, 1938.

7886. Aid to county agricultural societies.—All sums hereafter appropriated to aid county and district agricultural societies and associations, shall be distributed to the following named agricultural societies, or associations: Aitkin County Agricultural Society, Anoka County Agricultural Society, Becker County Agricultural Society and Fair Association, Beltrami County Agricultural Association, Benton County Agricultural Society, Bigstone County Agricultural Society, Blue Earth County Agricultural Society, Brown County Agricultural Society, Carlton County Agricultural and Industrial Association, Carver County Agricultural Society, Cass County Agricultural Society, Chippewa County Driving Park and Fair Association, Chisago County Agricultural Society, Clay County Agricultural Association, Clearwater County Agricultural Society, Cook County Agricultural Society, Cottonwood Agricultural Society, Crow Wing County Agricultural Society, Crow Wing county Fair Association, Dakota County Agricultural Society, Dodge County Agricultural Association, Douglas County Fair Association, Faribault County Agricultural Society, Fillmore County Agricultural Society, Freeborn County Agricultural Society, Goodhue County Agricultural Society and Mechanic Institute, Grand County Agricultural Association, Hennepin County Agricultural Society, Houston County Agricultural Society, Hubbard County Agricultural Association, Isanti County Agricultural Society, Itasca County Agricultural Society, Jackson County Fair Association, Kanabec County Agricultural Society, Kandiyohi County Agricultural Society, Kittson County Agricultural Society, Koochiching County Agricultural Association, Lac qui Parle County Agricultural Society, Lake County Agricultural Society, LeSueur County Agricultural Society, Lincoln County Agricultural Society and Fair Association, Lyon County Agricultural Society, McLeod County Agricultural Association, Mahnomen County Agricultural Society, Marshall County Agricultural Association, Martin County Agricultural Society, Meeker County Agricultural Society, Mille Lacs County Agricultural Society, Morrison County Agricultural Society, Mower County Agricultural Society, Murray County Agricultural Society, Nicollet County Agricultural Society, Nobles County Fair Association, Norman County Agricultural Society, Olmstead County Agricultural Association, Ottertail County Agricultural Society and Fair Association, Pennington County Agricultural Society, Pine County Agricultural Society, Pipestone County Agricultural Society, Northwestern Minnesota Agricultural Society, Pope County Agricultural Society, Ramsey County Agricultural Society, Red Lake County Agricultural Society, Redwood County Agricultural Society, Renville County Agricultural Society, Rice County Agricultural Society, Rock County Agricultural Society, Roseau County Agricultural Society, St. Louis County Agricultural Society, Scott County Agricultural Society, Sherburne County Agricultural Society, Sibley County Agricultural Association, Stearns County Agricultural Society, Steele

County Agricultural Society, Stevens County Agricultural Society, Swift County Agricultural Society, Todd County Agricultural Society, Traverse County Agricultural Association, Wabasha County Agricultural Society, Wadena County Agricultural Society, Waseca County Agricultural Society, Watonwan County Agricultural Society, Wilkin County Agricultural Society and Fair Association, Winona County Agricultural Society and Industrial Fair Association, Wright County Agricultural Society, Yellow Medicine County Agricultural Society, Perham Agricultural Society, Farmers' Co-operative Agricultural Society of Waconia, Scott County Good Seed Association and Farmers' Agricultural Society, Mankato Fair and Blue Earth County Agricultural Association, Faribault Agricultural and Fair Association, Polk County Agricultural Fair Association, Traverse County Agricultural Fair Association, St. Vincent Union Industrial Association, Cass County Agricultural Association, Shell Prairie Agricultural Association, Cannon Valley Agricultural Association, Morrison County Agricultural Fair Association, and Washington County Agricultural Society, Northern Minnesota District Fair Association, and Lake of the Woods County Fair Association, Baudette and St. Louis County Community Fair Association, when not receiving specific state appropriations, pro rata, to be paid out in premiums at the fairs of only such society or association as have an annual membership of twenty-five or more, maintain an active existence, hold annual fairs on enclosed grounds owned or leased by such societies and associations; provided, that they shall have paid out in premiums to exhibitors during the year as much as they received from the state, and provided further that no such county or district agricultural society shall receive in any year from the state for the purpose of reimbursing it for the amount of premiums paid at its fairs, a sum in excess of seventeen (hundred) ($1,700) dollars. Such pro rata distribution shall be in accordance with the following method; the premiums paid out by the said societies or associations, after excluding therefrom the payments made for horse races, ball games and amusement features of any nature as hereinafter provided, shall be added together, but in case any society or association shall have paid out a sum in excess of $1,700 in making such total amount the sum of $1,700 shall be taken in place of the amount actually paid out. The total amount available for distribution shall be divided by such total amount of premiums paid out and the rate per cent for distribution thus arrived at, but if this shall exceed 100% the same shall be reduced to 100%. The amount of the premiums so paid out by each society shall then be multiplied by this rate, and the amount each society shall receive shall be in that manner determined, but the sum of $1,700 shall be so multiplied by the rate in case of any society which shall have actually paid out in a sum in excess of $1,700. All payments authorized under the provisions of this act shall be made only upon the filing by the public examiner with the state auditor a certificate of examination, in which the public examiner shall certify that he has caused an examination to be made of the records and accounts of such agricultural society making application for state aid and that it has in every respect complied with the requirements of this act relating to state aid. Upon receipt of such certificate of examination by the public examiner it shall be the duty of the state auditor to draw his voucher in favor of such agricultural society for the amount to which it is entitled under the pro rata distribution of any appropriations made for the purpose of state aid to such societies.

It shall be the duty of the public examiner to prescribe uniform forms and methods of accounting to be used by agricultural societies and no such society shall be entitled to state aid under the provisions of this act unless it has complied with the orders and instructions of the public examiner with respect to the use of the accounting forms and methods so prescribed by the public examiner.

Any county or district agricultural society which may have held its second annual fair shall be entitled to share pro rata in such distribution. The state auditor shall certify to the secretary of the State Agricultural Society on or before January 5th of each year a list of all county or district agricultural societies that have complied with this act, and which are entitled to share in such appropriation. All payments hereunder shall be made on or before December 20th on the year in which the fair is held, provided, however, that in determining the amount to be paid to any society or association under this section, the state auditor shall exclude all payments made by such society or associations as premiums or purses for, or in horse races, ball games and amusement features of any nature. (R. L. '05, §3098; '11, c. 381, §6; G. S. '13, §6516; '13, c. 425, §1; '15, c. 243, §1; '19, c. 138, §1; '21, c. 452, §1; '23, c. 301, §1; '25, c. 47; Apr. 16, 1929, c. 211; Apr. 22, 1937, c. 352, §2.)

Sec. 3 of Act Apr. 22, 1937, cited, provides that the Act shall take effect from its passage.

The holding of a live stock show is not the holding of a fair, and premiums paid will not be considered in apportioning state aid. Op. Atty. Gen., Feb. 26, 1929.

County agricultural society can legally limit payment of premiums to 4H club members. Op. Atty. Gen., May 25, 1933.

County agricultural society is entitled to aid, though it pays premiums to only 4H Club exhibitors. Op. Atty. Gen., June 19, 1933.

County agricultural society leasing land to hold fair is entitled to state aid, though it owns a fairgrounds which it does not desire to use because used as a C. C. C. camp site in which camp infantile paralysis epidemic broke out during preceding year. Op. Atty. Gen. (772a), June 29, 1934.

Laws 1939, c. 339, §6, provides: "Any association or society enumerated in said general statutes 1923, §7886, may suspend the holding of its annual fair for one year, and upon resumption shall be entitled to its pro rata distributive share." Op. Atty. Gen. (772a-6), Sept. 18, 1939.

Blue Earth Agricultural Association is entitled to state aid on premiums paid, even though fair is limited to one day and to exhibitors who are members of 4-H Club. Op. Atty. Gen. (772a-6), Sept. 20, 1939.

7887. Lands owned by counties may be leased to county agricultural societies.

County board may lease lands to agricultural society for any term of years it deems advisable. Op. Atty. Gen. (772a), June 24, 1935.

7889. Appropriations by certain municipalities.

A village may make an appropriation to agricultural association having fair grounds within its limits. Op. Atty. Gen., Feb. 5, 1934.

7891-1. Incorporation of County Agricultural Society—Appropriations.—In any county wherein an existing county agricultural society or association shall have discontinued holding annual county fairs, and wherein a county fair has been annually held for more than ten years immediately preceding the passage of this act, whether by said agricultural society or association or by some other organization, a second county agricultural society or association may be incorporated prior to the dissolution of the existing society or association, and when so incorporated it shall be entitled to recive all benefits and appropriations that other county agricultural societies and associations receive from the state, county or municipalities under existing laws; provided, however, that not more than two annual appropriations shall be made by the state, county or any municipality to any such new county agricultural society or association unless the existing county agricultural society or association shall have, within that time, been legally dissolved. (Act Apr. 17, 1939, c. 294.)

SOCIAL AND CHARITABLE CORPORATIONS

GENERAL PROVISIONS

7892. Enlarging powers of social and charitable corporations.

Curative Act—Laws 1929, c. 28, post, §7926-1, legalizes certain corporations organized under G. S. 1878, c. 34,

Title 3, to provide asylums for widows and orphans and a home for the aged, etc.

A hospital organized to operate on a nonprofit basis was tax exempt, though it charged for services and did not pretend to care for charity patients without charge. State v. H. Longstreet Taylor Foundation, 198M263, 269 NW469. See Dun. Dig. 9152.

The Minnesota Rural Rehabilitation Corporation was legally established under this section. Op. Atty. Gen. (102), Mar. 8, 1935.

Articles of incorporation for formation of social and charitable corporations which would authorize company to transact business of death and disability benefit payments upon assessment plan may not be filed with the secretary of state, but such corporation must comply with insurance laws. Op. Atty. Gen. (92a-1), May 11, 1935.

The Minneapolis College of Law is a charitable corporation. Op. Atty. Gen. (102), Sept. 1, 1939.

A business corporation can not be converted into a charitable corporation by amendment of articles. Id.

7893. Certificate—Contents—Filing, etc.

Amendment to articles of incorporation of state horticultural society must be by a majority vote of all members entitled to vote, but they may vote by proxy. Op. Atty. Gen. (236), July 15, 1937.

Provision "any such corporation" may properly be construed as relating to corporations organized under general statutes of 1894. Op. Atty. Gen. (198a-3), Jan. 6, 1938.

A charitable corporation may have capital stock. Op. Atty. Gen. (102), Sept. 1, 1939.

(4).

Red Wing Seminary Alumni Association may be considered to be a religious corporation within meaning of this section. Op. Atty. Gen. (92b-15), Dec. 11, 1934.

7894. Powers—Collection of assessments.

Provisions of articles of incorporation and by-laws, that a membership in club may, by action of its board of governors, be forfeited and sold for nonpayment of dues, did not constitute sole remedy for such nonpayment. Lafayette Club v. R., 196M605, 265NW802. See Dun. Dig. 1499.

An incorporated club was not estopped to sue for dues by statement of treasurer to defendant that this membership would be declared forfeited and sold, board refusing to accept a resignation. Id.

Assuming that plaintiff country club corporation had power to levy assessments on members as condition precedent to their resignation, attempt to do so held abortive for failure to comply with applicable charter provisions. Lafayette Club v. W., 199M356, 271NW702. See Dun. Dig. 1499.

7895. Election of officers.—Any benevolent, charitable, missionary, hospital, educational 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 or by any council, synod or other governing body of a religious denomination. (R. L. '05, §3105; G. S. '13, §6525; Mar. 9, 1929, c. 58.)

CORPORATIONS TO ADMINISTER CHARITIES

7902. Powers of corporation—Visitorial right—Consolidation.

Legal effect of gift to charitable corporations. 23Minn LawRev670.

CORPORATIONS FOR ACQUISITION AND MANAGEMENT OF PUBLIC PARKS, ETC.

7902-1. Corporations may be organized for certain purposes.—Any number of adult persons, not less than five in number, residing in any city, in the state, whether incorporated by general law or special act, excepting cities of the first class, may organize a public corporation for the purpose of acquiring, holding, governing, managing, controlling and improving parks, playgrounds, boulevards and pleasure drives within and in the vicinity of the city in which they reside. Such corporation shall be without capital stock and shall be governed by a Board of Directors. It shall have all of the powers and privileges conferred by this act. (Act Apr. 16, 1929, c. 209, §1.)

7902-2. Certificate of incorporation.—They shall adopt and sign a certificate of incorporation containing:

1. The name of the corporation; its general purpose; and its location.
2. The terms for admission to membership.
3. The names and places of residence of the incorporators.
4. The number of members constituting its board of directors; the date of the annual meeting at which they shall be elected; and the names and addresses of those composing the board until the first election.

Such certificate shall be acknowledged, and recorded in the office of the Secretary of State and in the office of the Register of Deeds in the county where the corporation is located. Any such corporation may amend its certificate of incorporation as provided in the case of other corporations. Neither the original certificate of incorporation or any amendment thereto need be published. (Act Apr. 16, 1929, c. 209, §2.)

7902-3. Powers of corporation.—Corporations authorized by this act shall have full power to acquire, hold, govern, manage, control and improve parks, playgrounds, boulevards and pleasure drives over which their powers and jurisdiction extend under the provisions of this act, and to lay out the same, and shall have the power to take and hold by gift or bequest for such purposes, personal property and to take and hold by purchase, gift, grant, dedication or devise, real property for such purposes, located within the limits as fixed by Section 4 [§7902-3] of this act, but shall take and hold such property and exercise said powers in trust for the city in connection with which said parks, playgrounds, boulevards or pleasure drives shall be laid out and maintained. (Act Apr. 16, 1929, c. 209, §3.)

7902-4. May accept gifts or acquire in any manner.—Any city of the class mentioned in Section 1 of this act shall have power to take by gift or bequest any personal property for the purpose of securing, constructing or maintaining parks, playgrounds, boulevards or pleasure drives, and may also take and hold by grant, devise or dedication, or by purchase, any real property within the county in which said city is located for like purposes, and cities situated in two or more counties shall have like power to acquire real estate for such purposes in any or either of said counties. Any such city located upon or within one mile of the county boundary line may take real property by grant, devise or dedication for the purposes aforesaid, either in the county in which it is located or in such other county or counties. Provided further however, that no city of the class mentioned in section one of this act nor any corporation organized under the provisions of this act shall have power to take by gift, bequest or acquire in any other manner any lands within the confines of any city of the first class. (Act Apr. 16, 1929, c. 209, §4.)

7902-5. Gifts shall be legal and valid.—All gifts, grants, bequests, devises or dedications for the benefit or advantage of any such corporation in its trust capacity as aforesaid, or for the benefit or advantage of any such city for the purposes aforesaid, whether made to trustees for or directly to any such corporation or city, shall be legal and valid, including all provisions and directions in any such instrument for accumulation of the income of any fund or rents or profits of any real estate, and shall be executed and enforced and exclusively devoted to the specific objects for which they shall have been designed according to the provisions of the instrument making the same, without being subject to the limitations and restrictions provided by law in other cases; but no such accumulation shall be allowed to produce a fund more than 20 times as great as that originally given. (Act Apr. 16, 1929, c. 209, §5.)

7902-6. Cities may transfer management of property to corporation.—Any such city may, by a vote of its common council, vest in and transfer to any such corporation, but in trust as hereinbefore provided, the

management and control of any real property held by it for parks, playgrounds, boulevards or pleasure drives, in whatsoever manner the same were acquired by said city; but any such city may, by a like vote, revoke such transfer to said corporation and reinvest the management and control of said property in its own officers at any time that it may deem it for the public interest so to do. (Act Apr. 16, 1929, c. 209, §6.)

7902-7. Cities may appropriate money.—It shall be lawful for any such city to appropriate to any such corporation, moneys not to exceed $1,500.00 a year for the uses and purposes of such corporation, when expressly authorized by a two-thirds vote of the common council and approved by the mayor. (Act Apr. 16, 1929, c. 209, §7.)

7902-8. Officials to be ex-officio members of the Board of Directors.—The Mayor of any such city and the members of the park committee of its common council, where such a committee is provided for by charter or otherwise, shall be ex-officio members of the board of directors of any corporation organized under this act. (Act Apr. 16, 1929, c. 209, §8.)

7902-9. Lands to be held in trust.—All lands acquired by any corporation organized under this act or subject to its control and management shall be held in trust as aforesaid for public parks, playgrounds, boulevards and pleasure drives for the recreation, health, welfare and benefit of the public, and shall be free to all persons, subject to such necessary and reasonable rules and regulations as shall, from time to time, be adopted under the provisions of this act, for the well-ordering and government thereof. And all such lands and personal property so held in trust for such purposes shall be exempt from taxation. Provided, however, that such lands only as are used for parks, playgrounds, boulevards and pleasure drives shall be exempt from taxation. (Act Apr. 16, 1929, c. 209, §9.)

7902-10. Powers and duties.—Such corporations shall have power to make rules and regulations for the government, management and control of such parks, playgrounds, boulevards and pleasure drives and for the preservation of order therein, to restrict traffic and prohibit heavy teaming thereon, to employ such persons and purchase such machinery and tools as may be necessary for the proper improvement, management and care thereof, and prescribe the respective duties and authority of their employes and fix the amount of their compensation. Copies of said rules and regulations shall be posted up in convenient places in and upon such parks, playgrounds, boulevards and drives, and the officers of said corporation or any superintendent thereof shall have power to summarily enforce all such regulations, and for that purpose shall have the powers of police officers. Any such officer or superintendent may also summarily arrest any person engaged in the violation of any provision of Section 13 of this act, and for that purpose shall have the same powers as a policeman within the city in connection with which any such park, playground, boulevard or drive shall be maintained, and the municipal or police courts of any such city shall have jurisdiction of any such offense and also of any offense committed under Section 14 of this act, in the same manner and to the same extent as they have jurisdiction of misdemeanors. (Act Apr. 16, 1929, c. 209, §10.)

7902-11. Public liability on drives.—No city in connection with which any such park, playground, boulevard or pleasure drive shall be maintained under the provisions of this act shall be liable for any damage resulting from any want of repair or insufficiency in construction or maintenance of any parks, playgrounds, boulevards or pleasure drives, nor shall any such corporation so holding the same in trust, or its officers, agents or servants, be liable for any damage resulting from any want or repair or insufficiency therein. There shall be placed at conspicuous points along such drives, outside the city limits, at intervals of not exceeding one mile, a notice in large plain letters as follows: "Any person using this drive does so at his own risk as to defects therein." (Act Apr. 16, 1929, c. 209, §11.)

7902-12.—May acquire right to use public highways.—Any such corporation may procure by agreement with the supervisors of any town, the right to take and use any part of any public highway in said town, to be used in connection with any drive or boulevard under the management and control of said corporation, and may agree with said supervisors upon the amount of compensation and damages to be paid by such corporation to the town therefor; every such agreement with the supervisors shall be in writing and be filed in the town clerk's office; and said compensation and damages, when paid to the supervisors, shall be expended by them in improving the highways of the town. (Act Apr. 11, 1929, c. 209, §12.)

7902-13. Penalties for destroying property.—Any person who shall injure, remove, break, burn, cut down, root up, sever or carry away any tree, shrub, plant, root, vine or flower, standing or growing in or upon any such park, playground, boulevard or pleasure drive, or who shall tear down, mutilate, deface, destroy, or injure, any sign-board, milestone, post, guide-board, bridge, fence, walk, or railing or any part thereof, or any printed or written copy of the rules or regulations of said corporation, or of any statute relating to parks, playgrounds, boulevards or pleasure drives, posted up or being in or upon such parks, playgrounds, boulevards or pleasure drives, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding ten dollars, but upon proof that any such act was maliciously done, he shall, upon conviction thereof, be punished by a fine not exceeding 50 dollars. (Act Apr. 16, 1929, c. 209, §13.)

7902-14. Violation a misdemeanor.—Any person who shall violate any of the rules or regulations of such corporation mentioned in Section 10 [§7902-10] of this act, which shall be posted up as required by said Section, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding ten dollars. (Act Apr. 16, 1929, c. 209, §14.)

SOCIETIES FOR SECURING HOMES FOR CHILDREN

7912. 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 illtreated children. Such incorporators shall file with the secretary of state their certificate of incorporation, accompanied by a certificate of the board of control, that said corporation is trustworthy and entitled to confidence. A like certificate of the board of control shall be filed every ten years thereafter. Such corporation shall have a main office, adopt and publish rules for the transaction of their business and its financial records shall be open to public inspection. (As amended Mar. 29, 1929, c. 105.)

Children of an orphange have legal right to attend school without payment of tuition. Op. Atty. Gen., Apr. 17, 1933.

CORPORATIONS FOR MAINTAINING HOMES FOR AGED MEN AND WOMEN

7926-1. Certain corporations validated.—That every private corporation heretofore organized under and pursuant to the provision of Title 3, Chapter 34

of the General Statutes of the State of Minnesota for the year 1878 and the amendments thereto for benevolent purposes to provide asylums for widows and orphans and a home for the aged, indigent, and infirm, the articles of which corporation provide for the election of the entire Board of Directors thereof by another corporation but do not provide for an amendment thereof and where the persons organizing said corporation acted in good faith and where the directors have been elected by the other corporation as authorized by such articles and have carried on the business of such corporation, the same is hereby declared to be a valid and legal corporation, and its Board of Directors is hereby declared to be the legal board thereof the same as though there were no defect in the organization of said corporation, and all amendments to said articles of incorporation which have been executed by the officers of said corporation as authorized by the Board of Directors thereof and filed and recorded in the office of the Secretary of State and the office of the Register of Deeds of the county where said corporation is located are hereby in all things validated and confirmed, and all acts, transactions and contracts of said corporation are hereby validated and confirmed and shall be held to be valid in all courts provided that this act shall not affect any action now pending in any court. (Act Feb. 20, 1929, c. 28.)

SOCIETIES FOR PREVENTION OF CRUELTY

7927. Purposes—Powers.

Agent of Minnesota society for the prevention of cruelty is a public officer who may carry a concealed weapon. Op. Atty. Gen. (201a-2), July 6, 1934.

7928. Society constituted state bureau.

Op. Atty. Gen., Jan. 5, 1932; note under §7934.

7934. County societies.

Property of the Animal Rescue League of Minneapolis is exempt from taxation. Op. Atty. Gen., Jan. 5, 1932.

LODGES, FRATERNAL ORDERS, ETC.

7937. Incorporation.—Any subordinate lodge or encampment of Odd Fellows, any subordinate lodge of the Ancient Order of the United Workmen, and 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 Kednota v Spojenych Statoch Severenej 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 any other supreme body authorized to institute such subordinate bodies, any post of the Grand Army of the Republic, United Spanish War Veterans, Veterans of Foreign Wars of the United States, The American Legion, The American Legion Auxiliary, Sons of the American Legion, Lasociete Des 40 Hommes Et 8 Chevaux, The Disabled American Veterans of the World War, World War Veterans, and U. S. Navy Veterans, and any unit and any county, district, state, grand and national subdivisions of any such bodies or organizations, or any subordinate unit of any such subdivision thereof, may become incorporated in the manner hereafter specified, and any body or organization hereinbefore incorporated under any general or special law of the State of Minnesota or which shall hereafter become incorporated under the laws of the State of Minnesota, shall have the power to acquire or receive in its corporate name by purchase, gift, grant or bequest any property, real, personal or mixed, and the same to hold, transfer, sell, mortgage, convey loan, let or otherwise use, but not contrary to the laws or usages of the society or order or organization of which it is a part. (As amended Apr. 5, 1937, c. 160, §1.)

7938. Certificate—contents—record.—Such commandery, chapter, lodge, encampment, post, division, section, board, unit or such county, district, state, grand or national subdivision of such bodies or organizations, or any such subordinate unit of any such subdivision thereof, shall cause to be prepared, executed and acknowledged, by its presiding officer and recording officer, a certificate of incorporation which shall contain: 1. The charter name and number, if it has a number, of such commandery, chapter, lodge, encampment, post, division, section, board, unit, or county, district, state, grand or national subdivision of such body or organization, or any subordinate unit of any such subdivision thereof. 2. The time when the authority by which the same was instituted. 3. The names of the charter members thereof, if any, and its location. 4. The names of the elective officers of such body for the current term.

Such certificate shall be recorded in the office of the register of deeds of the county in which such body is located, or if a grand body, in the office of the secretary of state, and thereupon such body shall become a corporation under its charter name with power in such name to sue and be sued, and to receive, acquire, hold, manage and dispose of property of every kind. (As amended Apr. 5, 1937, c. 160, §2.)

7939. Corporate seal.—The seal of any such lodge, branch, commandery, encampment, chapter, post, division, section, board, unit, or any such county district, state, grand or national subdivision of such body or organization, or subordinate unit of such subdivisions thereof, shall be its corporate seal. (As amended Apr. 5, 1937, c. 160, §3.)

7940. 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. (As amended Apr. 5, 1937, c. 160, §4.)

7945-1. Societies may hold property.—That the Grand Lodge and/or grand body by whatever name known, of any fraternal society incorporated by or under any law of this state, is hereby granted the power and authority to receive by gift, devise and bequest, or in any other lawful way, property of any and all kinds in addition to the amount now limited by its charter or articles of incorporation, and to sell and dispose of such property and to invest and reinvest the same in accordance with the provisions of such gift, devise or bequest and in all other instances as the grand lodge or grand body may deem for the best interests of the fraternal society, and each grand body may also purchase and hold any property it may deem necessary and beneficial in connection with the work of the fraternity. (Act Mar. 11, 1929, c. 71, §1.)

Sec. 2 of Act Mar. 11, 1929, c. 71, repeals inconsistent laws.

7953. Powers.

It is unlawful for a fraternal corporation to employ a doctor of medicine and an osteopath for treatment of members on a salary basis, or on basis of percentage of dues paid by members, money being equally divided between the two practitioners, and the practitioners are guilty of misconduct. Op. Atty. Gen. (303), August 8, 1939.

7962-1. Grand Lodge of A. O. U. W. may incorporate.—Any grand lodge of the Ancient Order of United Workmen may incorporate, whether the same has heretofore incorporated or attempted to incorpo-

rate or not, in the manner provided herein. (Act Apr. 1, 1935, c. 102, §1.)

7962–2. Certificate of incorporation.—Such a grand lodge of the Ancient Order of United Workmen, desiring to become a body corporate, shall so determine by a two-thirds vote of all its members present and voting thereon, at a regular meeting thereof, and to that end by the same vote at the same meeting, adopt and cause to be prepared a certificate which shall contain:

First—Its name and the name under which it was instituted.

Second—The date of its institution and the date of any charter issued to it.

Third—The names of the first or charter officers of such incorporating body.

Fourth—The names and places of residence of the officers of such incorporating body, who hold such offices at the time such certificate is filed, as hereinafter provided.

Fifth—The objects or purposes of the society or order of which the incorporating body is a part, together with the powers and limitations upon the powers, if any, of the incorporating body, to effect such objects or purposes.

Sixth—The length of time such corporation shall continue which shall not exceed fifty years from its beginning. (Act Apr. 1, 1935, c. 102, §2.)

7962–3. To be under seal.—Such certificate shall be under the seal of the body so incorporating, if it have a seal, and the same shall be signed by the chief executive, or presiding officer, and the secretary or recording officer of the body so incorporating, and by them verified by their affidavit to the effect that the body so incorporating adopted the contents of the same by two-thirds vote of all its members present and voting thereon at a regular meeting of the same; and that the said body by the same vote at the same meeting authorized and directed them to sign and record the same as provided by law. (Act Apr. 1, 1935, c. 102, §3.)

7962–4. Shall be recorded with secretary of state.—Such certificate shall be recorded in the office of the Secretary of State. (Act Apr. 1, 1935, c. 102, §4.)

7962–5. Powers and privileges.—Upon the filing for record as aforesaid of such certificate as hereinbefore provided, the body so adopting and filing the same shall be and constitute a body corporate under the name, or the name and number, as the case may be, under which it was instituted and chartered, or by which it is known and authorized to exist as is set forth in said certificate hereinbefore provided, and the same shall, unless sooner dissolved as provided by law, continue as such body corporate for the time mentioned in such certificate for the same to continue, not exceeding, however, the period of fifty years from its beginning. And such corporation shall have the power to sue and be sued by its corporate name and in such name to carry out its objects and carry on its business in such places and in such states as the certificate of incorporation shall provide, and execute the powers under the limitations and as may be provided and set forth in said certificate, which said certificate shall be and constitute its corporate charter or articles of association. And in such name such corporation shall have power to acquire or receive by purchase, gift, grant or bequest, any property, real, personal or mixed, and the same to hold, transfer, sell, mortgage, convey, loan, let or otherwise use in accordance with the laws or usages of the society or order of which it is a part of the laws of this state. (Act Apr. 1, 1935, c. 102, §5.)

7962–6. May adopt seal.—The seal of the body so incorporating shall be its corporate seal, and the same may be changed in the manner it may determine. And if it have no seal it may adopt one, and alter the same as it may determine. Such seal shall be attached to all conveyances, by such corporation, of real property, and all such conveyances shall be signed by the chief executive or presiding officer and by the secretary or recording officer of such corporation. (Act Apr. 1, 1935, c. 102, §6.)

7962–7. May amend charter.—Such corporation may amend, alter, or repeal any portion of its corporate charter or articles of association and may embody therein any provision which an original certificate of incorporation might have contained by adopting such amendment, alteration, or repealing clause, at a regular meeting of the same, by a two-thirds vote of all its members, present and voting thereon, and by the same vote at the same meeting adopting and causing a certificate thereof to be prepared, which certificate shall fully set forth the amended, altered or repealed portion thereof as so amended, altered, or repealed, and which certificate shall be signed by the chief executive or presiding officer and the secretary or recording officer of the corporation, and be by them verified by their affidavit to the effect that the corporation adopts the contents of the same by a two-thirds vote of all its members present and voting thereon, at a regular meeting thereof, and that said corporation by the same vote at the same meeting authorized and directed them to sign and record the same as provided by law. Such certificate shall be recorded in the same office, or offices, that the original certificate of incorporation of said corporation was recorded, and from the date when the same is filed for such record the said amendment, alteration, or repealing clause, shall take effect and be in force. (Act Apr. 1, 1935, c. 102, §7.)

7962–8. Terms of officers.—The officers of any body organized and incorporated under the provisions of this act shall continue to hold their respective offices in such corporation until they are succeeded therein, as provided in the constitution or by-laws or the rules and regulations of such body. (Act Apr. 1, 1935, c. 102, §8.)

7962–9. May adopt constitution and by-laws.—Any corporation organized and incorporated under the provisions of this act shall have power in such manner as it may determine to adopt a constitution, by-laws, rules and regulations providing for its government and to carry on its business and to determine who shall be members of the same and what officers it shall have and how they shall be selected, and it may in the manner by it determined alter and amend or repeal the same. Provided, however, that the constitution, by-laws, rules and regulations of any body incorporating under the provisions of this act that are in force at the time such incorporation is effected shall continue in full force as the constitution, by-laws, rules and regulations of such corporation until changes in the same theretofore or thereafter adopted by it in the manner by it provided go into effect as by it provided. (Act Apr. 1, 1935, c. 102, §9.)

7962–10. Application of act.—This act shall be applicable to any Grand Lodge of the Ancient Order of United Workmen incorporated under and by virtue of Chapter 2 Laws of 1901 and any such Grand Lodge so incorporated shall be governed by and shall be entitled to the rights and privileges given by this act. (Act Apr. 1, 1935, c. 102, §10.)

RELIGIOUS CORPORATIONS

7963. Election of board of trustees, etc.

Lands reconveyed to religious corporations by state, when forfeited in 1929. Laws 1939, c. 276.

Churches, like other charitable institutions, are liable for the negligence of their officers and employes. 174M 389, 219NW463.

Generally, a corporation may contract by vote of its members assembled in regular meeting, by vote of its trustees having authority to act, or through agents authorized to act by vote of one or the other of such bodies. Parker College v. M., 182M501, 235NW12. See Dun. Dig. 2025a, 8379.

Where the contract is within the power of the corporation to make, the members of the corporation may ratify the act of its officers or agents in making it.

Parker College v. M., 182M501, 235NW12. See Dun. Dig. 1998, 8381.

Laws, rules, and usages of a general church organization with which a local church has affiliated control over by-laws of local church if latter are inconsistent with former. Russian-Serbian Holy Trinity Orth. Church v. K., 202M560, 279NW364. See Dun. Dig. 8379a.

Statute permits affiliation subject to laws and rules of denomination or sect with which affiliation is had, with result that incorporation under statute does not necessarily make a church independent. Id. See Dun. Dig. 8379a.

Where laws of church provide that election of trustees of a local church shall be effective only upon confirmation by bishop or other church authority, such confirmation must be had to make such an election effective. Id. See Dun. Dig. 8383.

The final judgments and decisions of the governing authority of a general church organization having rules for government and conduct of its adherents, congregations, and officers, so far as they relate exclusively to church affairs and church government, are binding on local churches and parishes. Id. See Dun. Dig. 8388.

7965. Certificate to be recorded—powers of trustee.—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. They may hold, purchase and receive title, by gift, grant, devise or bequest, of and to any property, real or personal, without limitation as to amount, for any of the purposes authorized or approved by the congregation or society, as hereinafter provided, with power to mortgage, sell, convey, demise, lease and improve the same.

Provided, however, that this act shall apply to all religious corporations formed under the Revised Statutes of the Territory of Minnesota 1851, Chapter 36, and acts amendatory thereof and supplementary thereto. Provided, further, that the acquisition, retention and use prior to the passage of this act by any such religious corporations, of any property, real or personal, for any or all of the purposes specified herein, is hereby declared legal, valid and effectual for all purposes. Provided, further, that the provisions of this act shall not apply to any action or proceeding now pending in any court in this state. (As amended Apr. 17, 1937, c. 252, §1.)

7966. 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 or approval of the congregation or society, they may erect, acquire and operate churches, dwellings for their ministers, and other buildings for the use of the church, congregation, or society, hospitals, nurses homes and training schools, missions, camps and recreational grounds and other buildings or facilities for the carrying on of other religious, moral and charitable activities. 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.

Provided, however, that this act shall apply to all religious corporations formed under the Revised Statutes of the Territory of Minnesota 1851, Chapter 36, and acts amendatory thereof and supplementary thereto. Provided, further, that the acquisition, retention and use prior to the passage of this act by any such religious corporations, of any property, real or personal, for any or all of the purposes specified herein, is hereby declared legal, valid and effectual for all purposes. Provided, further, that the provisions of this act shall not apply to any action or proceeding now pending in any court in this state. (As amended Apr. 17, 1937, c. 252, §2.)

7967. Trustees—Term of office—Powers.

Laws 1885, c. 151, §5, granting to the board of trustees of a religious society power to manage and govern the corporation and act for it, did not deprive the members of the corporation, assembled in regular meeting, of the power, granted by law to the corporation, to make contracts. Parker College v. M., 182M501, 235NW12. See Dun. Dig. 8379.

Lawful and de jure trustees of religious society are not accountable for their doings as such in quo warranto. Dollenmayer v. R., 286NW297. See Dun. Dig. 8379a.

7971. Lands held in trust.

A conveyance to the officers of an unincorporated society as trustees created a valid trust for the use of such society. 172M471, 215NW845.

7972. Appointment of trustees.

Where there has been no attempt to create a corporation de jure there can be no corporation de facto. 172M471, 215NW845.

7985. Incorporation in other cases.

Where there has been no attempt to create a corporation de jure there can be no corporation de facto. 172M471, 215NW845.

7986. Existing churches.

Where church property was conveyed to trustees for the benefit of an unincorporated society, and such society consolidated with an incorporated society the title held by the trustees vested in the consolidated corporation. 172M471, 215NW845.

7995. Amendment of certificate.

In quo warranto proceeding records held to have conclusively established that respondents were de jure trustees of society pursuant to valid amendment of articles. Dollenmayer v. R., 286NW297. See Dun. Dig. 8065.

7995-1. Religious societies may amend articles of incorporation.—Any religious society, religious association, or religious corporation heretofore formed or re-organized and now existing pursuant to the provisions of Chapter 229, General Laws 1889 [repealed], or General Statutes 1923, Section 7985, upon compliance with the provisions of this Act, may alter or amend its articles of incorporation as to any matter or thing, which, under said Acts or Laws, could have been included in the original articles of incorporation adopted pursuant to said Act or Laws; provided however, that nothing herein contained shall authorize or empower any such religious organization to amend or alter, in the manner provided by this Act, its said articles of incorporation in respect to any matter relating to the management or the conduct of the affairs of any cemetery now or hereafter owned or controlled by such religious organization where such cemetery is now or hereafter may be managed or conducted pursuant to the provisions of Sections 7606 to 7609, both inclusive, General Statutes 1923. ('25, c. 357, §1; Apr. 20, 1931, c. 232, §1.)

7996. Consolidation of religious corporations.—Any two or more incorporated churches, congregations, parishes or religious societies, or an incorporated parish and an incorporated cathedral, may consolidate and reorganize as a single church, congregation, parish cathedral, or religious society by complying with the provisions of law for the formation of such church, congregation, parish, cathedral, or society contained in this subdivision. (R. L. '05, §3157; '13, c. 42, §1; G. S. '13, §6617; Apr. 24, 1935, c. 265, §1.)

Where an unincorporated church society which erected a building united with an incorporated society the

attempted consolidation became a corporation at least de facto so that the title to the property of the unincorporated society passed to and vested in the new corporation. 172M471, 215NW845.

Affiliation and consolidation of Lutheran churches under Gen. Stat., 1878, c. §§231, 232, and amendments. 174 M207, 219NW88.

7997. Resolution for consolidation—Notice.—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, parishes, parish and cathedral, 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. (R. L. '05, §3158; G. S. '13, §6618; Apr. 24, 1935, c. 265, §2.)

172M471, 215NW845; note under §7996.

7998. Notice of meeting—Organization—Powers of new corporation.—After the adoption of such resolution by said several churches, congregations, parishes, parish and cathedral, or societies, notice shall be given stating the time and place of the meeting of the united congregation of all said churches, congregations, parishes, parish and cathedral, or societies by posting the same at the place where each society statedly meets for worship at least 15 days prior to such meeting, and the minister or some other officer of each such organization shall give public notice of said meeting at the usual Sabbath service at least one week before the meeting. The notice for such meeting shall be signed by the clerk of the board of trustees, vestry or chapter of each church, or by some other person authorized by such board to sign the same. At the meeting of the united congregation held pursuant to said notice, a name shall be adopted for the new corporation and the meeting shall, by a majority vote, determine the form of organization of the new corporation, fix the qualifications for trustees or vestrymen and the number which shall be not less than three nor more than 12, and a new board of trustees, vestry and wardens or chapter and wardens shall be elected by a majority vote of all the members present.

The board of trustees, vestry or chapter not including wardens shall be divided into three classes, one class shall be elected and hold office until the next annual meeting of the congregation, one class until the second annual meeting of the congregation, and one class until the third annual meeting of the congregation. Thereafter, the terms of office of the trustees or vestrymen shall be three years and until their successors are elected and qualified. In case a vacancy shall occur in the board of trustees, vestry, or chapter, at the next meeting of the congregation, board of trustees, chapter or vestry a successor shall be elected to fill the unexpired term caused by such vacancy.

After said meeting the chairman and secretary shall make a certificate in the form and manner prescribed by Mason's Minnesota Statutes of 1927, Sections 7693, 7977 or 7982 as the case may be, and such certificate, together with proof by affidavit of the giving of proper notice of the meeting, and the affidavits provided for in Mason's Minnesota Statutes of 1927, Section 7997, shall be recorded in the office of the Register of Deeds at the county where the place of worship of said consolidated society is located, and thereupon such churches, congregations, parishes, parish and cathedral, or societies shall be merged into a new corporation under the name specified in the certificate and the new corporation shall have the rights, powers and privileges and shall be liable for all the obligations of the several corporations so consolidated and all of the property of every kind and nature of the original corporation shall vest in the new corporation, and, whenever by any will or other instrument which takes effect after such consolidation, any of said original corporations is named as a legatee or devisee, or as beneficiary of any trust therein provided, said new corporation shall take under such will or other instrument and shall receive and become entitled to all the money, property and benefits that the original corporation would have received under such will or other instrument, save as therein otherwise expressly provided. (R. L. '05, §3159; '13, c. 42, §2; G. S. '13, §6619; Apr. 24, 1935, c. 265, §3.)

7998-1. Certain notices validated.—All notices given, resolutions adopted, meetings held and other proceedings taken in accordance with the provisions of Mason's Minnesota Statutes of 1927, Sections 7996, 7997 and 7998, as amended by this act, shall be valid and effective for all purposes whether the same take place before or after the passage of this act. (Act Apr. 24, 1935, c. 265, §4.)

172M471, 215NW845; note under §7996.

8002-4. Religious societies, etc., may provide for benefits.—Any religious society, religious association, or religious corporation may when duly authorized by its members provide for the support and payment of benefits to ministers, teachers, and other functionaries and employes of such society, association or corporation, or of any congregation, or of any educational, benevolent, charitable, or other body affiliated with or under the jurisdiction of such society, association, or corporation; for the payment of benefits to their widows, children, or other dependents or beneficiaries; for the collection of contributions and other payments; and for the creation, maintenance, investment, management, and disbursement of necessary endowment, reserve and other funds for said purposes.

The insurance laws of this state shall not apply to the operations of any such society, association or corporation under the provisions of this act. (Act Apr. 13, 1929, c. 180.)

8002-5. Certain deeds legalized and validated.—All deeds of real property heretofore made by the trustees of any religious corporation conveying real property within this state belonging to such corporation which were recorded prior to January 1, 1931, in the office of the register of deeds of the county in which the real estate conveyed thereby is situate, and the record thereof, are hereby legalized, validated and confirmed, notwithstanding that the church records do not disclose that the execution of such deeds was authorized by the congregation of said religious corporation in the manner provided by law. (Apr. 19, 1937, c. 295, §1.)

8002-6. Deeds to be read in evidence.—The records of any such deed shall in all respect have the same force and effect as it would have if such deed had been legally authorized, and a duly authenticated copy of the record of any such deed may be read in evidence in any court within this state with the same effect as the original record thereof. (Apr. 19, 1937, c. 295, §2.)

8002-7. Not to affect pending litigation.—This act shall not affect any conveyance the validity of which is questioned in any litigation now pending. (Apr. 19, 1937, c. 295, §3.)

ACTIONS RESPECTING CORPORATIONS

8009. Mode of prosecution.

When stockholders sue to cancel stock, the corporation should be made a party. 172M110, 215NW192.

8011. Power of court over corporation officers.

While courts of equity will not interfere with the action of officers as to acts within their powers and which involve an exercise of discretion committed to them, it will stay those acts which are in excess of authority or in violation of their trust. 172M110, 215NW192.

8013. Sequestration—Receiver—Distribution.

Miller v. A., 183M12, 235NW622; note under §9191.

1. In general—A general creditor by virtue of the power of equity or by virtue of §9389, has a standing before the court equal to that of a judgment creditor as contemplated by §8013, except as to the burden of proof. 173M493, 217NW940.

Complaint for appointment of receiver for corporation because of dissension rendering it impossible to elect a new board of directors held demurrable. McGuire v. K., 184M653, 239NW616. See Dun. Dig. 2138, 2157.

Statute is not exclusive as to appointment of receivers and court may under its general equity powers appoint receivers in other cases in accordance with existing practice. Asleson v. A., 188M496, 247NW579. See Dun. Dig. 2144(14).

State is a preferred creditor entitled to all assets if not sufficient to pay claim in full. Op. Atty. Gen., Aug. 1, 1933.

2. Who may maintain action—General creditor who has not reduced his claim to judgment may in equity procure the appointment of a receiver of an insolvent corporation to enforce stockholders' liability. 173M493, 217NW940.

4. What will prevent or defeat action—178M20, 226 NW198; note under §8015.

10. Enforcement of stockholder's liability incidental—General creditor who has not reduced his claim to judgment may in equity procure the appointment of a receiver of an insolvent corporation to enforce stockholders' liability. 173M493, 217NW940.

Order of assessment in sequestration suit is conclusive in action on assessment as to amount and necessity therefor, but in latter suit defendant may assert that facts do not show cause of action against him. Crowley v. P., 180M250, 230NW645(2).

11. What liabilities enforceable—No rights arose in receiver in sequestration proceedings from the fact that corporation issued stock to stockholders as security for a loan, there being no creditor whose claim did not come into existence until after the corporation gave its notes for and cancelled the stock. 178M179, 226NW513.

12. Powers and duties of receiver.

Receiver of a corporation is an officer of the court which appoints him and the property in his custody is not, in a legal sense, in his possession. He is not a transferee or an assignee. Crowley v. I., (USCA-DC), 83F(2d) 573.

Receiver of Minnesota corporation held entitled to prosecute its claim under War Minerals Act as against contention such claim did not pass to him. Id.

In a temporary receivership of a solvent charitable corporation, certain annuities were properly ordered paid by receiver to donors until such time as it appears that conditions have so changed as to warrant a winding up of business and distribution of assets, in which event annuitants will not be entitled to a preference over other creditors. Peterson v. N., 194M399, 260NW512. See Dun. Dig. 2159.

13. Pleadings.

Complaint in action to enforce stockholders' liability was not demurrable because of absence of allegation that complaint in action resulting in sequestration alleged that debt accrued prior to repeal of Const. Art. 10, §3. Miller v. R., 188M35, 246NW465. See Dun. Dig. 2142, 2161, 2170.

15½. Set-off.

Where a state bank ceases to do business, pledging certain assets to another bank which assumes its liabilities, and proceeds to liquidate, and, after its stockholders have authorized dissolution, declared a liquidating dividend of $30 a share upon its capital stock, receiver of an insolvent corporation, owner of shares of such bank stock, is entitled to receive such dividend and bank may not set off debts due from corporation to bank at time receiver was appointed and when bank ceased to function as a bank. Rockwood v. F., 195M64, 261NW 697. See Dun. Dig. 2159.

17. Allowance of claims.

Court has authority to permit a claim to be filed more than 18 months after giving of notice to file claims, where there has been no adjudication other than an order appointing a receiver and no final settlement. American Fund v. A., 187M300, 245NW376.

Funds deposited in state bank by guardian of mentally, incapacitated and permanently disabled world war veteran were funds of United States and entitled to preference. Anderson v. O., 186M396, 243NW398. See Dun. Dig. 824d.

State is entitled to interest on preferred claims against insolvent bank in favor of surety claiming through subrogation. American Surety Co. v. P., 186M588, 244NW74. See Dun. Dig. 824d.

Equity favors ratable distribution of assets of an insolvent corporation. First Nat. Bank v. B., 192M90, 255 NW482. See Dun. Dig. 2159.

18. Miscellaneous—This section does not require the receiver to pay taxes on land in which the corporation has no interest when the receivership was created. 172 M567, 216NW250.

8015. Dissolution on petition of corporation.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Miller v. A., 183M12, 235NW622; note under §9191.

Paterson v. S., 186M611, 244NW281; notes under §§7447, 7447-1.

Where creditors' claims are filed and allowed in a receivership proceeding, such allowance amounts to a lien, and where acquired more than four months before the filing of a petition in bankruptcy, the jurisdiction of the state court is not divested thereby, at least where the assets are insufficient to pay such liens in full and there will be no surplus for the trustee in bankruptcy. 178M 20, 226NW198.

In equitable action to dissolve a corporation, petitioning stockholder must establish mismanagement. 178M 545, 227NW654.

A bank which has transferred all its deposits to another bank may not terminate its existence by merely filing amendment to articles of incorporation shortening term of charter, but should apply to district court for an order of dissolution and obtain certificate from commissioner of banks that deposit liabilities have been either paid or secured in a manner satisfactory to him. Op. Atty. Gen. (29a-6), July 24, 1936.

A cooperative corporation whose period of existence has expired may authorize sale of all of corporation's assets to a new cooperative association in consideration of issuance of new stock and purchase of shares at their value of old shareholders who do not consent to exchange. Op. Atty. Gen. (932-8), Jan. 31, 1938.

Dissolution proceedings for a cooperative association must be affected pursuant to §§8015 to 8019, as §7492-45, et seq., relates only to corporations coming under business corporation act. Op. Atty. Gen. (93a-10), Mar. 7, 1938.

8016. Hearing—Notice.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

8017. Procedure pertaining to dissolution of corporations.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

8019. Appointment of receiver—Duties.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

178M20, 226NW198; note under §8015.

8020. Insolvent banks and insurance companies.

The exclusive power to liquidate insolvent state banks is placed in the commissioner of banks, and where he has attempted to exercise such power, the district court is without jurisdiction to appoint a receiver for such banks in proceedings brought by a judgment creditor to enforce the "double" liability of shareholders. Northwestern Fuel Co. v. L., 182M276, 234NW304. See Dun. Dig. 824b.

8021. Forfeiture of charter—Receiver—Etc.

Miller v. A., 183M12, 235NW622; note under §9191.

8022. Unpaid stock subscription, etc.

Correction—The word "of" after the word "payment" in the fourth line should be "by."

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

8023. Order limiting time to present claims.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

178M20, 226NW198; note under §8015.

A director, officer, or stockholder of a domestic mining corporation is not debarred from asserting a claim against it when insolvent and may resort to stockholders' double liability. 177M72, 224NW454.

Court has authority to permit a claim to be filed more than 18 months after giving of notice to file claims, where there has been no adjudication other than an order appointing a receiver and no final settlement. American Fund v. A., 187M300, 245NW376.

8024. Notice of hearing.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

8025. Enforcement of stockholders' liability.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Stockholders of national banks and their liability, see Mason's Code, Title 12.

172M33, 214NW764; note under §8027.

Federal district court for Minnesota in receivership proceedings did not lose jurisdiction by continuing hearing on assessment, or by directing payment "forthwith," and its order was not subject to collateral attack in an action in Colorado brought by receiver to enforce assessment against shareholder residing in such state. Chandler v. P., 297US609, 56SCR602, rev'g 49Pac(2d)425. Reh. den., 298US691, 56SCR746.

Where the court appointed a day not less than 30 and not more 60 days from the date of the order for hearing on petition for assessment, but thereafter continued the date of hearing to a day 61 days after such order, there was a substantial compliance with this section. Saetre v. Chandler, (CCA8), 57F(2d)951.

Stipulated facts as to service of notice under this section, held to show due service where no evidence was offered to contradict the facts thus established as to service. Id.

In action by national bank receiver, answer held properly stricken as frivolous. 171M329, 214NW664.

Construed as providing for the service by publication in such manner as the court shall direct on nonresident stockholders, of notice of hearing on a petition for the assessment of stockholders in a Minnesota corporation. 173M436, 217NW483.

Fact that some of corporate assets have been used to pay debts incurred in excess of the charter limit is immaterial. 174M166, 218NW885.

In establishing the existence of ultra vires indebtedness the burden rests upon the stockholder who makes the assertion. 174M166, 218NW885.

An assessment cannot be resisted upon grounds that debts remaining unpaid are in excess of the charter limit, where the assessment is not in excess of the charter limit. 174M192, 218NW887.

Stockholder who has been duly served with notice cannot resist application because of failure to give notice to a nonresident stockholder. 174M166, 218NW885.

Stockholder cannot offset corporation's indebtedness to him. 174M387, 219NW452.

Provision in §7836 for retiring stock does not relieve from double liability under Const., art. 10, §3. 174M427, 219NW466.

A voluntary composition agreement between a corporation and its creditors, whereby the corporation transfers all of its property in consideration of being released from all liability on the amounts owing the creditors, waives and releases the constitutional liability of the stockholders. 175M382, 221NW426.

President and manager of corporation held not entitled to present claim for certain monies advanced for unpaid salary and expenses, in view of prior settlement agreement. 177M72, 224NW454.

A director, officer, or stockholder of a domestic mining corporation is not debarred from asserting a claim against it when insolvent and may resort to stockholders' double liability. 177M72, 224NW454.

Court acquired jurisdiction to assess stockholders of insolvent co-operative corporation, even though there was an obvious misprint of the year in the published notice of hearing and no proper proof of personal service of notice. Farmer's Dairy Co.'s Receivership. 177M 276, 225NW22.

One who was a director of a certain company, was estopped to claim that he was induced through deceit to accept stock in the company and believed that he was stockholder in another company with a similar name. 178M9, 225NW927.

No rights arose in receiver in sequestration proceedings from the fact that corporation issued stock to stockholders as security for a loan, there being no creditor whose claim did not come into existence until after the corporation gave its notes for and cancelled the stock. 178M179, 226NW513.

A corporation may buy and sell its own shares, provided it does so in good faith without intent to injure and without, in fact, injuring its creditors. 178M179, 226 NW513.

Where stockholder, prior to bankruptcy of corporation, offered to surrender his stock on ground of fraudulent representation, but took no steps to perfect rescission, he had no defense which he could urge against receiver suing to enforce assessment. 179M259, 228NW917.

One who subscribes to the stock of one corporation and receives that of another does not become a stockholder, and he is not estopped to deny that he is liable as such. 181M316, 232NW519. See Dun. Dig. 2080a.

An active director of a corporation was estopped to deny that he was a stockholder as respected double liability. Johnson v. B., 182M385, 234NW590. See Dun. Dig. 2080a.

Creditors held estopped to enter judgment against stockholder who had already settled his double liability. Robie v. B., 183M41, 235NW384. See Dun. Dig. 2093.

Complaint in action to enforce stockholder's liability was not demurrable because of absence of allegation that complaint in action resulting in sequestration alleged that debt accrued prior to repeal of Const. Art. 10, §3. Miller v. R., 188M35, 246NW465. See Dun. Dig. 2142, 2161, 2170.

In receivership of Delaware corporation organized solely to do business in this state where all stockholders reside, court could properly order receiver to sue stockholder alleged to have received issue of bonus stock, but could not assess such stockholder or in any manner foreclose or determine that his stock was bonus, or its full par value not paid, or in any manner adjudge his liability. United States Rubber Co. v. E., 189M187, 248NW729. See Dun. Dig. 2188.

Petition and notice of hearing for order of assessment against stockholders were not vitiated by some palpably inadvertent errors therein. Mutual Trust Life Ins. Co. v. A., 196M226, 265NW48. See Dun. Dig. 2080(b)2170.

Petition and notice need not state that corporation is not one excepted from double liability. Id.

No substantial right of defendant, a stockholder in insolvent domestic corporation, was adversely affected by failure to file order of assessment of shares of stock until after commencement of action to enforce payment; order being on file before trial began and there being ample time to commence another action had pending action been dismissed. Hatlestad v. A., 196M230, 265NW60. See Dun. Dig. 2080(b).

A stockholder having notice of enforcement proceeding is constructively present in court and is charged with knowledge of all that transpires in such proceeding. Chandler v. M., 168Wash563, 13Pac(2d)22. See Dun. Dig. 2166.

There can be no enforcement of stockholders' liability unless bank is, in fact, insolvent. Op. Atty. Gen., May 16, 1933.

8026. Hearing upon petition.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

172M33, 214NW764; note under §8027.

Mutual Trust Life Ins. Co. v. A., 196M226, 265NW48; note under §8025.

Orders requiring stockholders to pay assessment "forthwith," held to impose personal liability upon nonresident shareholder. Chandler v. P., 297US609, 56SCR 602, rev'g 49Pac(2d)(Colo)425. Reh. den., 298US691, 56 SCR746.

The ordinary rules of evidence do not apply to a proceeding under this section, and the evidence may be by affidavits or otherwise in the discretion of the court, and the solvency of the stockholders need not be established by precise evidence. Evidence, held to support assessment. Saetre v. Chandler, (CCA8), 57F(2d)951.

Order directing payment "forthwith" held to sufficiently designate time of payment. Chandler v. M., 168Wash 563. 13Pac(2d)22. See Dun. Dig. 2167.

Order for enforcement of liability is conclusive on stockholder notified of proceedings as to all matters except defenses personal to himself. Id. See Dun. Dig. 2167(87).

That assets, two years after appointment of receiver, exceed the debts does not change the rule as to assessment of stockholders or as to payment of expenses of receivership. 173M10, 216NW252.

Where assets are not sufficient to pay expenses, plus debts, stockholders are liable up to par value of stock for full amount of deficiency unless it exceeds charter limit indebtedness. 173M10, 216NW252.

Examiner in charge of the liquidation of an insolvent bank held to be a competent witness as to the value of assets, the amount of liabilities, and the necessity and the amount of the proposed assessment. 173M436, 217 NW483.

The creditors may waive right to resort to constitutional liability of stockholders and such defense is not determined by the order of assessment, but may be interposed when the receiver brings suit. 175M44, 219 NW945.

Court not required to take into account creditors expressed desire that stockholders' double liability be not enforced. Farmers' Dairy Co.'s Receivership, 177M276, 225NW22.

Court was not required to determine the liability and responsibility of the individual stockholder. Farmers' Dairy Co.'s Receivership, 177M276, 225NW22.

8027. Enforcement of stockholder's liability—hearing—order.—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 such parties as shall have been served with notice of the Receiver's Petition for Assessment as provided in Section 8025, General Statutes of 1923, as amended by Section 273, Section 1, Session Laws of Minnesota for 1925, except that the defense of ultra vires set forth in Section 6646 may be interposed by any stockholder in any suit for any such assessment and if maintained shall diminish the liability of such stockholder in the proportion that the liabilities determined to be ultra vires shall bear to the total liabilities of such corporation. (R. L. '05, §3186; G. S. '13, §6647; '25, c. 272, §2; Apr. 18, 1931, c. 205, §1.)

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

173M436, 217NW483.

Saetre v. Chandler, (CCA8), 57F(2d)951.

Mutual Trust Life Ins. Co. v. A., 196M226, 265NW48; note under §8025.

Order requiring stockholders to pay assessment "forthwith," held to impose personal liability upon nonresident shareholder. Chandler v. P., 297US609, 56SCR 602, rev'g 49Pac(2d)(Colo)425. Reh. den., 298US691, 56 SCR746.

Order of court appointing receiver for corporations coming under §§7492-61a and 7492-62, could not be collaterally attacked in receiver's action to enforce liability of stockholders as the court had jurisdiction of the corporations and the subject-matter; however the receiver had the right to bring such an action. Badger v. H. (USCCA8), 88F(2d)208.

Personal presence of the stockholders was not essential to the jurisdiction of the court in the original suit appointing the receiver. Id.

Order of court of another state assessing stockholders' superadded liability must be given full faith and credit as against stockholder in South Dakota. Hallam v. T., 60SD45, 242NW920. See Dun. Dig. 2081, 2167, 5207.

Stockholders, sued for superadded liability, could not complain that order making assessment was not supported by formal findings, there being no dispute as to facts. Id.

An order for assessment of stock is conclusive only as to total amount, propriety, and necessity of assessment, and findings in such order relative to personal defenses which are to be litigated in the action to recover the assessment are not final. 172M33, 214NW764.

Fact that some of corporate assets have been used to pay debts inferred in excess of the charter limit is immaterial. 174M166, 218NW885.

Stockholder who has been duly served with notice cannot resist application because of failure to give notice to a non-resident stockholder. 174M166, 218NW885.

In establishing the existence of ultra vires indebtedness the burden rests upon the stockholder who makes the assertion. 174M166, 218NW885.

Defense that judgment upon the sequestration proceeding was based, was obtained by fraud or collusion, cannot be set up in action to collect assessment. 177M 526, 225NW649.

Where stockholder, prior to bankruptcy of corporation, offered to surrender his stock on ground of fraudulent representation, but took no steps to perfect rescission, he had no defense which he could urge against receiver suing to enforce assessment. 179M259, 228NW 917.

Assessment is conclusive in action to enforce same, but in latter action defendant may assert lack of cause of action against him. Crowley v. P., 180M250, 230NW 645(2).

Title to amendatory act of 1931, held sufficient. Sweet v. R., 189M489, 250NW46. See Dun. Dig. 8920.

Stockholder notified of enforcement proceeding is concluded by all matters except defenses personal to himself. Chandler v. M., 168Wash563, 13Pac(2d)22. See Dun. Dig. 2167(87).

8028. Action for assessments.—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, provided that no action shall be commenced to collect the amount of any such assessment, unless commenced within two years after the insolvency of the corporation and the appointment of a receiver or assignee, or in the event that the insolvency of such corporation, and the appointment of such receiver or assignee occurred more than eighteen months prior to the passage of this act then within six months after the passage of this act. (R. L. '05, §3187; G. S. '13, §6648; Apr. 18, 1931, c. 205, §2.)

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Order requiring stockholders to pay assessment "forthwith," held to impose personal liability upon nonresident shareholder. Chandler v. P., 297US609, 56SCR 602, rev'g 49Pac(2d)(Colo)425. Reh. den., 298M691, 56 SCR746.

Failure of stockholder in Minnesota corporation to avail himself of opportunity to make settlement of double liability by payment of smaller amount, and fact that others had settled at such reduced amount, did not affect right of receiver to recover entire amount. Hallam v. T., 60SD45, 242NW920. See Dun. Dig. 2080(36), 2173.

In action to enforce superadded stockholders' liability, record held not to warrant finding that stock was held merely as evidence of indebtedness of another corporation. Id. See Dun. Dig. 2080(44), 2173.

A receiver prosecuting an action to collect assessments based on stockholder's liability must sue each stockholder separately. 173M496, 217NW595.

The provision in the constitution for a superadded stockholder's liability created a substantive right, enforceable in any court of competent jurisdiction as an incident of a receivership. 173M603, 218NW121.

The superadded liability is contractual in its nature and is assumed by one becoming a stockholder. 173M 603, 218NW121.

A federal court has jurisdiction to empower a receiver of a Minnesota corporation appointed by it to institute actions in state court to enforce constitutional liability, using the remedy provided by state statute. 173M603, 218NW121.

Order of assessment in sequestration suit is conclusive in action on assessment as to amount and necessity therefor, but in latter suit defendant may assert that facts do not show cause of action against him. Crowley v. P., 180M250, 230NW645(2).

A transferor of stock must look to sequestration suit for adjustment of his liability. Crowley v. P., 180M250 230NW645(2).

One who subscribes to the stock of one corporation and receives that of another does not become a stockholder, and he is not estopped to deny that he is liable as such. 181M316, 232NW519. See Dun. Dig. 2080a.

Title to chapter 205, Laws 1931, is not objectionable in that it purports to amend two consecutively numbered sections in Mason's Minn. Stat., 1927, said sections covering but one subject. Sweet v. R., 189M489, 250NW 46. See Dun. Dig. 8920.

Proviso added by amendment did not enlarge or add a new subject to section, but modified and restricted same. Id.

Time limited in provision for commencement of action to enforce a stockholder's liability appears adequate. Id. See Dun. Dig. 5656.

Time for commencement of action to enforce stockholder's liability is not governed by statutes of limitation in force when order for sequestration was made but by applicable statute at time action is brought. Id.

In view of Firehammer v. Interstate Securities Co., 170 Minn475, 212NW911, proviso added by Laws 1931, c. 205, §2, that actions must be brought within two years after order for payment is made, does not apply to an action brought to enforce statutory liability of a stockholder in a foreign corporation. Johnson v. J., 194M617, 261NW 450. See Dun. Dig. 2150.

8029. Additional assessments.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

Miller v. R., 188M35, 246NW465; note under §8025.

A receiver prosecuting an action to collect assessments based on stockholder's liability must sue each stockholder separately. 173M496, 217NW595.

8030. Proceedings on failure of assignee or receiver to prosecute.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

8031. Surplus to be divided among stockholders.

Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

173M10, 216NW252; note under §8026.