

## CHAPTER 300

## CORPORATIONS

NOTE: Mason's compilation of 1927, as amended, carried the subject of corporations in c. 58. When the state adopted the present system of numbering, the legislature adopted a classification placing each class of corporations in a separate chapter as found in cc. 300 through 316.

The 1947 legislature repealed c. 304, relating to corporations for reclaiming timber lands; c. 305, relating to boom companies; c. 310, relating to certain corporations. If any corporations organized under these chapters still exist, their rights are protected; but such corporations organized in the future must organize under the business corporation act.

C. 308 relates to cooperative associations. The earliest law relating to the organization of cooperative associations is L. 1870, c. 29. Various amendments were passed during the years, and finally the Shapiro bill was enacted, L. 1919, c. 382. The provisions of the Shapiro bill, not being satisfactory, have been practically amended out of existence. The most important amendment is L. 1923, c. 326. Nine amendments were made by the 1947 legislature.

A very able and hard-working state bar association committee has worked four years on a non-profit corporation law. It will include in the revision cc. 306, 307, 309, 312, 313, 314, and 315. The bill will be submitted to the 1949 legislature. C. 302 contains the uniform stock transfer act, c. 303 the Minnesota foreign corporation act, and c. 316 relates to actions respecting corporations. C. 301 is based on L. 1933, c. 300, and was recommended to the legislature by a committee of the state bar association. It is a complete revision of the business corporation laws and has been sparingly amended and then only because of changed conditions or changes in the federal laws.

C. 300 is a residue and badly in need of amendment. When c. 301 was created by L. 1933, c. 300, the sections found in c. 300 were not repealed or amended because the bar association and the legislature planned to draft and enact a new chapter which would include special corporation laws relating to banking and insurance corporations. This plan has never been carried out. At present banking and old line insurance corporations are organized under section 300.025. While c. 300 purports to contain general provisions relating to corporations, it must be kept in mind that the following sections are in no way applicable to the business corporation act: ss. 300.12, 300.14 to 300.17, 300.19 to 300.24, 300.26 to 300.35, 300.37 to 300.45, 300.52 to 300.55, 300.57, 300.58, 300.62, 300.64, and 300.65. The first paragraph of section 300.13 has been superseded by the stock transfer act, and the last paragraph is obsolete.

In c. 316, actions relating to corporations, sections 316.07 to 316.09, 316.11, 316.14 to 316.23, do not in any way apply to the business corporation act.

**300.01 EXISTING CORPORATIONS CONTINUED.**

Do business trusts violate business laws? 8 MLR 475.

Liability for the contracts of promoters; right of an attorney to recover for services performed prior to incorporation. 11 MLR 465.

Liability of promoter on contracts made by him with third parties. 13 MLR 495.

Control of public utilities in Minnesota. 16 MLR 457.

Control of public utilities; Revised Laws 1905. 16 MLR 495, 508.

Comparison of business corporation law of Minnesota and Delaware. 22 MLR 661, 679.

**300.02 DEFINITIONS.**

The sale of its newspaper publishing business in toto to another company amounted to a dismissal of defendant's employees engaged in that part of defendant's business and entitled them to severance pay under the provisions of their employment contract. A corporation is an artificial person created by law, and is an entity separate and distinct from the body of its stockholders. It is a legal unit possessing individuality and endowed by law with many of the attributes of persons. *Matthews v Minnesota Tribune*, 215 M 369, 10 NW(2d) 230.

A charter granted to an organization by L. 1854, c. 37, or under similar laws, cannot be amended under the provisions of sections 300.02 or 300.45. The remedy, when a change in the charter is desired, is by act of the legislature assented to by the organization and its members. OAG June 13, 1947 (92-a-7).

The corporate entity theory. 1 MLR 89; 8 MLR 442.

Corporations by estoppel. 7 MLR 42.

Are members of a defectively organized corporation liable as partners? 8 MLR 409.

Comparative tax burden imposed upon corporations. 23 MLR 507.

**300.025 ORGANIZATION, CERTIFICATE.**

Corporate existence after expiration of charter. 14 MLR 270.

**300.03 PUBLIC SERVICE CORPORATIONS; PURPOSES.**

1. Occupancy of streets
2. Diversion of navigable waters; water power

**1. Occupancy of streets**

Services rendered in one's own interest impose no liability upon another in implied contract merely because benefits were thereby bestowed upon the latter; and based on the facts in the instant case, the legal entity of the plaintiff as a separate corporation will be ignored and the rights of the parties determined on the basis of the actual nature of the transactions involved. *Country Club Co. v Village of Edina*, 214 M 26, 8 NW(2d) 321.

The fact that a telegraph or telephone line when completed will be used as an instrument of interstate commerce gives a company projecting the same no greater rights respecting the right of way than are possessed by a purely local company, and it can use the public streets or sidewalks for its line only subject to the state statutes. *Northwestern Telephone Co. v City of St. Charles*, 154 F. 386.

**300.04 STATE AND LOCAL CONTROL; EMINENT DOMAIN.**

1. Generally
2. Supervision and regulation
3. Rates
4. Eminent domain

**1. Generally**

Upon refusal of the receiver of a corporation, a stockholder may sue as a representative of the corporation and other stockholders. *Singer v Allied Factors*, 216 M 443, 13 NW(2d) 378.

A corporation may be organized with shares of stock carrying multiple voting rights. OAG March 30, 1944 (92-A-24).

**3. Rates**

Control of public utilities in Minnesota. 16 MLR 457.

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### 300.05 MUNICIPALITY MAY PURCHASE.

An operator of gasoline and oil filling stations at which automobile accessories and other merchandise were sold, who by appropriation and use had acquired a trade name, is not entitled to protection of the trade name against the operator of a similar station in a market where it has no station and where it does not compete for business. *Direct Service Oil Co. v Honzay*, 211 M 361, 2 NW(2d) 434.

Where generic words are used as a trade name as against a later user, the first is entitled only to have the manner of use so reasonably restricted as to avoid deception and confusion. "Food Centre" as the name of retail grocery stores is generic generally descriptive only and not susceptible of monopolization of a trade name. *Houston v Berde*, 211 M 528, 2 NW(2d) 9.

A parent corporation having no license to conduct a small loan business under Minnesota statutes by owning all the stock of defendant, a subsidiary corporation organized under Minnesota law and licensed has no right to intervene in this action brought by plaintiff duly licensed under the Minnesota small loan act to conduct its business in the same city as defendant, and hence plaintiff's demurrer to the intervenor's complaint in intervention should have been sustained. It being shown clearly that because of defendant's name, window, and neon signs, and the advertising of its business, mail and telephone messages intended for plaintiff went to defendant and mail and telephone messages intended for defendant came to the plaintiff, it was an abuse of discretion to deny plaintiff's motion for a temporary injunction pending suit. *Personal Loan Co. v Personal Finance Co.* 212 M 600, 5 NW(2d) 61.

Except as specially authorized to domestic corporations, the word "bank" is prohibited in the name of a corporation. OAG July 15, 1943 (29-A-1).

Notwithstanding the village has granted a ten-year franchise to a corporation for distribution of electric power, it may acquire the system from the corporation, or may install a new distributing system of its own, and buy current wholesale from any source available. OAG Sept. 18, 1945 (624-C-6).

A municipality may not purchase an electrical distribution system except when authorized by vote of the electors. OAG Nov. 8, 1945 (624-C-8).

The question of the acquisition of a light plant must be voted upon at a special election to be held within three months next preceding the expiration of the five-year period. OAG May 23, 1946 (624-C-6).

Public utility legislation since the Revised Laws. 16 MLR 497.

### 300.07 PUBLICATION OF CERTIFICATE.

The extension of the existence of a corporation is complete, when the resolution has been adopted, filed, recorded, and published. The affidavit of publication may be filed later. OAG May 21, 1945 (92-a-9).

Disregarding the corporate entity in a de facto dissolution. 15 MLR 210, 220.

Colorable compliance with the publicity statute as creating a de facto corporation. 16 MLR 206.

### 300.08 GENERAL POWERS.

Where the act complained of affects plaintiff solely in his capacity as a member of the corporation and is the act of the corporation or through its agents, then such action is the management of the internal affairs of the corporation, and in case of a foreign corporation Minnesota courts will not, as a general rule, take jurisdiction for the reason that the law of the state where the corporation is organized directly controls the rights arising between the corporation and its members. The rule rests upon public policy and efficiency rather than on jurisdictional grounds. *Farmers Educational Union v Farmers Cooperative Union*, 207 M 80, 289 NW 884.

In this action by plaintiffs to recover for the breach of an alleged contract to redeem or purchase 25 shares of the preferred capital stock of the defendant, a Dela-

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ware corporation, the transaction was within the statute of frauds and Exhibit "B," the writing relied on by plaintiffs, is unenforcible because no price is stated nor is it signed by the plaintiffs, the sellers. *Peterson v New England Furniture Co.* 210 M 449, 299 NW 208.

A corporation has only such powers as are expressly granted in its charter or by statute together with such implied powers as are necessary and proper for the purpose of carrying out its express powers. As neither the charter of the corporation nor the statutes permit "buying and selling bonds and stocks with the cash assets of the company for the purpose of making a profit on the rise in the market value," neither the corporation nor Blandin, its liquidator, could transact such business. *Young v Blandin*, 215 M 111, 9 NW(2d) 313.

Where a corporation is used by an individual as an instrument of fraud or for other wrongful purposes, courts will go as far as necessary in disregarding the corporation and its doing in order to accomplish justice, and the finding of a large quantity of liquor upon the premises where there is no license to sell permits an inference that it was there for the purpose of sale, and the finding is sufficient to sustain the conviction of the defendant. *State v Horriگان*, 215 M 123, 9 NW(2d) 416.

A distribution of stock pursuant to a plan for reorganization whereby the old company turned over all its assets to the new company in consideration for stock in the new company which was then given pro rata to old company preferred stockholders was a distribution in the nature of a liquidating dividend within the express exemption of section 80.06(4). *Dworsky v Buzza*, 215 M 282, 9 NW(2d) 767.

Indictment of a corporation for involuntary manslaughter. 5 MLR 74.

Suits against state boards, commissions, institutions and corporations in which the state or the United States owns all or part of the stock. 8 MLR 432.

Practical questions raised by business trusts. 8 MLR 482.

Nature of stockholder's interest in corporate assets. 9 MLR 382.

Right of a transferee to recover on a note issued by a corporation in pursuance of an ultra vires transaction. 9 MLR 478.

Doctrine of estoppel as applied to officer giving a corporate check without authority in payment of a personal debt. 9 MLR 678.

Defense of ultra vires when contract is executed on one side. 11 MLR 558; 16 MLR 853.

After-acquired property under conflicting corporate mortgage indentures. 13 MLR 81.

Power of a corporation to guaranty personal obligation of a stockholder. 15 MLR 239.

Effect in equity of absence of a trustee's certificate. 15 MLR 588.

Liability of a corporation for malicious prosecution. 16 MLR 207.

Power of corporate trust company to hold property as joint tenant. 17 MLR 339.

Validity of mortgages and deeds when executed without corporate sale. 17 MLR 543.

Corporate entity concept. 28 MLR 341.

## 300.081 DOMESTIC CORPORATION MAY ADOPT PLAN OF HEALTH, DEATH, AID, OR INSURANCE.

HISTORY. L. 1947 c. 446 ss. 1, 2.

## 300.09 SALE, LEASE, OR EXCHANGE OF PROPERTY; PROCEDURE.

The right of plaintiffs to have their stock redeemed or retired in case of the sale of all of the assets of the Delaware corporation to a Minnesota corporation

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for the latter's stock, made without plaintiffs' consent, is governed by the law of Delaware, and under that law the sale was authorized, and plaintiffs cannot disturb or set aside the transaction between the two corporations. *Peterson v New England Co.* 210 M 449, 299 NW 208.

This section does not apply to corporations under Chapter 301, but does apply to all other corporations including cooperative associations where the corporation wishes to sell all of its property. The right of a cooperative association to sell part of its property is prescribed by section 308.05. OAG June 19, 1946 (93-A-47).

Power of majority stockholders to authorize the sale of all corporate property. 14 MLR 58.

### **300.13 CORPORATE EXISTENCE; DURATION; RENEWAL; NOTICES OF RENEWAL, PUBLICATION.**

The provisions of L. 1933, c. 300, relating to the right of stockholders to object to the extension of the duration of a corporation and demanding paying for their shares is valid. It impairs no vested rights created by section 300.13. *Warnock v Hudson*, 200 M 196, 273 NW 710.

A statute authorizing renewal of corporate existence creates no contract or vested right to a renewal either among the stockholders or between the state and the corporation. *State v Crookston Trust*, 222 M 17, 22 NW(2d) 913.

The county agricultural society prior to the expiration of its corporate life, may renew its corporate existence by resolution. The statutes should be followed and three-fourths of the members must vote for the resolution. OAG June 13, 1944 (92-B-1).

Upon the adoption, filing, recording and publishing, of the resolution for renewal the existence of the corporation is complete. The failure to file the affidavit of publication is not fatal because the affidavit may be filed at any time. OAG May 21, 1945 (92-A-9).

By a resolution duly adopted, the corporate existence of a cooperative association organized under L. 1935, c. 116, was properly renewed for a period of twenty years. OAG May 14, 1947 (93-a-8).

Corporate existence after expiration of charter; de facto corporations. 14 MLR 270.

Estoppel to deny corporate existence after dealing with plaintiff as a corporation. 14 MLR 559.

### **300.14 CONSOLIDATION OF CERTAIN CORPORATIONS; MANNER OF RECORDING; PUBLICATION; CERTIFIED COPY AS EVIDENCE.**

The combination of two corporations may result in coalescence or union thereof without extinguishing either, extinction of one corporation and its absorption by another which constitutes a "merger" or vital succession, or extinction of both corporations and creation of a new one, which constitutes strictly speaking a consolidation. *United States v N. W. Nat'l Bank*, 37 F(2d) 761.

De facto corporations; consolidation of qualified with unqualified units. 12 MLR 297.

Consolidation; rights of dissenting shareholders. 17 MLR 328.

Protective coloring in corporation law. 26 MLR 824.

### **300.15 POWERS, RIGHTS, LIABILITIES, AND DUTIES OF CONSOLIDATED CORPORATION.**

Liability of consolidated company for the torts of constitutional corporations committed prior to the consolidation. 11 MLR 372.

### **300.16 DISSENTING STOCKHOLDERS; RIGHTS, HOW DETERMINED.**

Rights of minority stockholder to avoid contract between corporations having common directors. 15 MLR 827.

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Consolidation; rights of dissenting shareholders. 17 MLR 328.

### 300.17 LIABILITIES OF CORPORATIONS, STOCKHOLDERS, AND OFFICERS; RIGHTS OF CREDITORS.

On the issue of liability for fraud in procuring plaintiff's corporate stocks in defendant bakery the evidence sustains the verdict. Since the corporation becomes the property of defendant by virtue of fraud, defendant may not use it as a corporate veil to serve as a shield to avoid his or its liability. *Fewell v. Tappan*, 223 M 483, 27 NW(2d) 649.

### 300.20 BOARD OF DIRECTORS, ELECTION; VACANCY, HOW FILLED.

If an officer or director diverts an opportunity from the corporation and embraces it as his own, he is chargeable as a constructive trustee for the benefit of the corporation with all the profits and benefits received therefrom by him; but where the opportunity is one in which the corporation has no interest or expectancy the opportunity is not a corporate but a personal one and belongs to the director, with the right to treat it as his own. *Diedrick v. Helm*, 217 M 483, 14 NW(2d) 913.

The directors of an insolvent corporation cannot by their fiduciary relation secure for themselves a preference over other creditors; and this applies to officers de facto as well as to officers de jure, and it applies although such officers or directors are bona fide creditors. *Farmers Cooperative v. Kotz*, 222 M 153, 23 NW(2d) 576.

Claim presented against the bankrupts' estate by an officer or director of the bankrupt corporation is subjected to vigorous scrutiny, and the burden is on the claimant not only to prove good faith of the transaction but also to show its inherent fairness; and a resolution of the corporation relieving a director from liability as to a debit item was ineffective where the corporation which subsequently became bankrupt was in a bad financial condition and the word of the debtor-director was necessary for the adoption of the resolution. *Goldie v. Cox*, 130 F(2d) 696.

At common law corporate directors have power without statutory authority to delegate to officers, agents, or executive committees, the power to transact not only ordinary and routine business but business requiring the highest degree of judgment and discretion. *Social Security Bd. v. Warren*, 142 F(2d) 974.

Liability of promoter to corporation for secret profits. 8 MLR 520.

Necessity that directors act as a board. 12 MLR 756.

Relation of director to individual stockholder from whom he purchases shares of the corporation. 14 MLR 530.

Degree of care required of corporate directors. 16 MLR 588.

Reimbursement of directors from corporate treasurer for expenses incurred in successful defense of minority stockholders' suit. 26 MLR 119.

### 300.21 OFFICERS.

In representative suit to recover excessive salaries paid by the corporation the evidence justified the trial court's order ordering recovery of excessive salaries from the president and the president's three sons; and the trial court did not err in permitting certain witnesses to testify as to the value to the corporation of the services of certain defendants where witnesses were experts, the defendants in question having fully testified as to the character of the work done by them. *Keough v. St. P. Milk*, 205 M 96, 285 NW 809.

### 300.23 VOTING, HOW REGULATED.

An agreement by a number of stockholders to combine their votes in order to effectuate a particular policy is not of itself unlawful in the absence of evidence of an intent to defraud other stockholders, or to reserve a private benefit at the expense of the corporation, or the other stockholders. *Hart v. Bell*, 222 M 70, 23 NW(2d) 375, 24 NW(2d) 41.

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Validity of voting agreements. 17 MLR 89.

## 300.25 TRANSFER OF STOCK.

A distinguishing characteristic of an option contract is that it imposes no binding obligation upon the person holding the option; and where there is not only the right but the obligation to buy, the contract is not one of option but one of sale. In the instant case the agreement whereby plaintiff's assignor was to sell and defendant was to buy certain stock in ten annual installments, there was a contract of sale under which plaintiff could recover the balance due. It was not an option. *Oleson v Bergwell*, 204 M 450, 283 NW 770.

Liability of record owner to creditors for unpaid balance of stock. 8 MLR 542.

Subrogation of statutory lien of corporation upon stock. 9 MLR 292.

Law covering the transfer of stock certificates. 9 MLR 674.

Stockholders; constitutional liability after foreclosure. 13 MLR 61.

Bona fide purchaser of stock certificate from one entrusted with the certificate endorsed in blank. 13 MLR 272.

Right of pledgee of stock to dividends. 17 MLR 814.

Minnesota business corporation act. 18 MLR 1.

Validity of restrictions placed by corporations upon the transfer of stock. 23 MLR 834.

Duty of controlling stockholders; liability for negligent transfer of control. 25 MLR 525; 26 MLR 118.

Defendants paid under a mistake of law; indemnity; subrogation. 26 MLR 534.

## 300.26 EFFECT OF TRANSFER; STOCK BOOKS.

Statutory or total liability; method of enforcement. 7 MLR 104.

Liability of record owner to creditors for unpaid balance of stock. 8 MLR 542.

Stockholders; constitutional liability after forfeiture. 13 MLR 61.

Liability of unregistered transfer to transferee after re-sale. 19 MLR 339.

## 300.27 STOCKHOLDERS, LIABILITIES.

1. Generally
2. Personal liability
3. Exemptions
4. Application

### 2. Personal liability

Business losses are chargeable to a corporation, not to its stockholders. *Briggs v Kennedy*, 209 M 312, 297 NW 342.

Where a corporation is used by an individual as an instrument of fraud or for other wrongful purposes courts will go as far as necessary in disregarding the corporation and its doing in order to accomplish justice. *State v Horrigan*, 215 M 123, 9 NW(2d) 416.

A stockholder is not liable for failure to sue officers and directors who have been guilty of wrongdoing even if he has full knowledge of the transaction. *Hollman v Crookston Milling Co.* 217 M 303, 14 NW(2d) 470.

Stockholders of banks and trust companies the same as those of other corporations have a right to inspect the corporation's books and records at proper times and for proper purposes; and in mandamus proceedings where the defendant set forth that a stockholder was seeking inspection for the purpose of doing harm to the corporation, the allegations of the answer either did not constitute defensive

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matter or which are mere conclusions of law, it is demurrable. *State ex rel v Crookston Trust*, 222 M 17, 22 NW(2d) 911.

Nature of statutory liabilities imposed upon officers and stockholders. 6 MLR 300.

Rights of creditors against stockholders by reason of constitutional liability. 7 MLR 97, 111.

Stockholders' liability in Minnesota. 7 MLR 79.

Does stockholders' "double liability" extend to ultra vires debts of the corporation? 7 MLR 500, 509.

Are the members of a defectively organized corporation liable as partners? 8 MLR 409.

Fraudulent transfer of stock; liability of transferor to creditors. 9 MLR 477.

Stockholders' liability; liability of trustees. 12 MLR 537.

Sole heir not liable as stockholder unless the stock is accepted by him. 12 MLR 757.

Suit by receiver for balance due on stock subscription upon abandonment of corporate enterprise. 12 MLR 758.

Fraud in introducing the subscription as a defense when the corporation is insolvent. 13 MLR 729.

Stockholders' double liability. 15 MLR 222; 17 MLR 88.

Liability of transferor on subsequent assessment; transfer to infant. 17 MLR 546.

Liability for negligent transfer of control. 25 MLR 525.

### 4. Application

In transaction between a director or a controlling stockholder or a dominating director or stockholder with the corporation which does not carry the earmarks of an arms' length bargain may be set aside by an equitable action. *Boyum v Johnson*, 127 F(2d) 491.

## 300.30 CAPITAL STOCK.

Pre-emptive right of shareholder as between remainderman and life tenant. 13 MLR 60.

## 300.32 RECORD OF STOCK; REPORTS; DIVIDENDS.

The evidence sustains the trial court in ordering the payment of a cash dividend out of surplus, there being sufficient evidence from which the court might conclude that the surplus was unreasonably large and the money was being kept in surplus in bad faith and for the benefit of the directors and for the purpose of defrauding the minority of its just share of the corporate profits. Equitable powers may be called into operation by proper application. *Keough v St. Paul Milk*, 205 M 96, 285 NW 809.

A bank stockholder has a common-law right to inspect bank's books and records whether or not inspection statute is applicable to a bank. The purpose of keeping and filing lists of stockholders is to furnish information to public officials for taxation purposes, to stockholders to advise the names of other stockholders who may vote, and to creditors desiring to enforce liability. *State v Crookston Trust*, 222 M 17, 22 NW(2d) 912.

It was the duty of officers who managed or controlled the corporation to accurately keep and properly preserve all accounts and records. *Backus v Finkelshtein*, 23 F(2d) 357.

Section 300.32 applies to all stock corporations and cooperative associations. OAG May 21, 1946 (93-A-10).



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Effect of transfer of stock on right to dividends; power of directors to determine to whom dividends shall be paid. 8 MLR 541.

Income from stock dividends or corpus as between life tenant and remainderman. 11 MLR 659.

Wasting assets doctrine; payment of dividends on common stock when invested capital is impaired. 12 MLR 178.

Conversion of corporate stock. 12 MLR 554.

Right of member of non-stock corporation to inspect corporate books and records. 22 MLR 555.

Dividend credit theory as to non-cumulative preferred shareholders in years in which net earnings are insufficient to offset capital impairment. 26 MLR 117.

Elimination of accrued preferred dividends by charter amendment. 26 MLR 387.

Directors' liability for declaration of illegal dividends. 26 MLR 400.

Dividends paid under mistake of law. 26 MLR 534.

### **300.33 CORPORATE STOCK WITHOUT NOMINAL OR PAR VALUE; CLASSES OF; PREFERRED STOCK.**

Shares with no par value. 5 MLR 493.

Stock without par value. 10 MLR 235; 12 MLR 772.

Rights of preferred shareholders in excess of preference. 19 MLR 406.

### **300.41 POWERS OF DIRECTORS TO ISSUE STOCK.**

The assignment of railroad stock issued in pursuance of a fraudulent scheme, to which the assignor was a party, places the assignee in no better condition than was his assignor, and equity will not aid such assignee seeking relief by injunction as to acts of the directors and others in relation to other stock of the same issue, and which he asked to have canceled. *Brown v Duluth Ry.* 53 F. 889.

### **300.45 AMENDMENTS TO CERTIFICATES OF INCORPORATION.**

A charter granted to an organization by L. 1854, c. 37, or under similar laws, cannot be amended under the provisions of sections 300.02 or 300.45. The remedy, when a change in the charter is desired, is by act of the legislature assented to by the organization and its members. OAG June 13, 1947 (92-a-7).

Preferred stock dividends. 8 MLR 617.

### **300.49 FILING FEES.**

Where a golf club is a stock corporation even though not organized for pecuniary profit, it must upon the renewal of its certificate of incorporation pay the prescribed fee. OAG March 10, 1944 (92-A-1).

When filing amendments to articles of incorporation an educational corporation with capital stock, organized under the provisions of section 309.01, must pay the fee as prescribed in section 300.49. OAG March 6, 1946 (92-A-12).

Upon renewal of corporate existence under the provisions of L. 1947, c. 60, the corporation must pay fees upon its corporate stock as set forth in the articles. An amendment, reducing the amount of corporate stock passed during a time when the corporation's charter had expired, is ineffective. OAG July 15, 1947 (92-a-12).

### **300.50 COUNTY AGRICULTURAL SOCIETIES MAY RENEW CORPORATE EXISTENCE.**

To extend the period of existence of a county agricultural society it must, before its present existence expires, pass a resolution in accordance with the provisions

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of section 300.13, and three-fourths of the members must vote for the resolution. OAG June 13, 1944 (92-B-1).

### 300.54 CAPITAL STOCK; HOW CLASSIFIED AND ISSUED.

A party to a stock subscription agreement, who paid for and received his agreed share of the stock and continued as a stockholder until the company went into bankruptcy and who at no time inquired whether or not the full subscription had been obtained, has lost by laches his right to claim a rescission on the ground that the full sum was not subscribed. In re Sharood Shoe Corp. 192 F. 945.

Distinction between underwriting agreements and subscriptions for stock. 8 MLR 618.

Stock without par value. 10 MLR 235.

### 300.55 STOCK CERTIFICATES, TO WHOM ISSUED.

On failure of the receiver to bring an action, a stockholder may bring an action as a representative of the corporation and its stockholders to recover for wrongs done to the corporation by its officers and others. If in such case the receiver then takes over the prosecution of the action, the stockholder ceases to be a party in interest and is not entitled to appeal if judgment is taken against the receiver and thereafter the receiver has been discharged. Singer v Allied Factors, 216 M 443, 13 NW(2d) 378.

In an action by the representative of a stockholder against a corporation and its officers, directors, and employees and alleging conspiracy to defraud the company of its property, Anderson and Linster, who were neither officers nor directors and who as employees had no duties in connection with the handling or disposing of its shares of stock, cannot be held liable as parties to the alleged conspiracy and fraud. Holtman v Crookston Milling Co. 217 M 303, 14 NW(2d) 470.

### 300.59 CONTINUANCE TO CLOSE AFFAIRS.

Where the period of duration of a cemetery association, incorporated in 1911, had expired, the association had the right to transfer its property to the city in consideration of an agreement on the part of the city to maintain and operate the cemetery as a public cemetery. OAG Dec. 10, 1943 (59-A-22).

Right of a stockholder to sue in individual capacity where the corporation is dissolved and he is the sole party who could be benefited by the suit. 8 MLR 348.

### 300.60 DIVERSION OF CORPORATE PROPERTY A FELONY.

Restraining or enforcing payment of dividends; payments out of capital, what constitutes. 6 MLR 72.

When must a receiver appointed by a state court relinquish property of the bankrupt to the trustee in bankruptcy. 14 MLR 658.

Dividend credit theory as to non-cumulative preferred shareholders in years in which net earnings are insufficient to offset capital impairment. 26 MLR 117.

### 300.61 FALSE STATEMENT A FELONY.

Bank's liability for misappropriation by fiduciary of fiduciary funds in bank 13 MLR 242.

### 300.62 EXISTING CORPORATION, HOW TO REORGANIZE.

Rights of creditors on reorganization. 8 MLR 604, 616; 18 MLR 14.

Federal bondholders protective committees. 18 MLR 784.

Carry-back of unused excess profits credit. 29 MLR 229.

### 300.64 WITHDRAWAL OF CAPITAL; LIABILITY OF STOCKHOLDERS; PAYMENT OF DIVIDEND WHEN INSOLVENT, ASSENTING DIRECTORS LIABLE.

Dividends paid out of capital; liability of stockholders to refund. 16 MLR 706.