

CHAPTER 316**ACTIONS RESPECTING CORPORATIONS****316.01 MODE OF PROSECUTION.**

Method of enforcement of statutory or double liability. 7 MLR 104.

Effect of fact that debt to or from the bank is not due at the time of insolvency. 14 MLR 385.

316.02 MANDATORY AND RESTRAINING ORDERS.

Mandamus will lie to compel and restrain by this state the secretary of a domestic corporation to call a stockholders' meeting pursuant to a by-law of the corporation. State ex rel v De Groat, 109 M 68, 123 NW 417.

Attorney's right to enjoin the corporate practice of law. 18 MLR 227.

316.03 POWER OF COURT OVER CORPORATION OFFICERS.

While courts of equity will not interfere with the action of corporate 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. McMains v Morse, 172 M 110, 215 NW 192.

In this action by the receiver to recover a money judgment against the corporation's board of directors for converting to their own use the proceeds of the sale of certain property the plaintiff is not in a position to recover for wrongful preferences in liquidating valid obligations of the corporation and the action is not one to recover for violation by defendants of any statutory regulation respecting the duties of the directors. The wrong to be corrected is not one to be brought under the provisions of section 316.03, and judgment was properly given for the defendant. Williams v Davis, 182 M 186, 234 NW 11.

Right of directors to use corporate functions to defend suit against them as individuals. 16 MLR 102.

316.05 SEQUESTRATION; RECEIVER; DISTRIBUTION.

1. Generally
2. Parties plaintiff
3. Parties defendant
4. Prevention or defeat of action
5. Receiverships
6. Nature of action
7. Enforceable liabilities
8. Pleadings
9. Assessments
10. Allowance of claims
11. Judgment

1. Generally

All assets vest in the receiver as of the date of his appointment. State ex rel v District Court, 206 M 645, 287 NW 491.

Method of enforcement of stockholders' liability in Minnesota. 7 MLR 105.

Right of election of a receiver to proceed with or reject a contract; implied election. 7 MLR 173.

When must a receiver appointed by a state court relinquish property of a bankrupt to the trustee in bankruptcy? 14 MLR 658, 664.

Applicability of a reorganization statute, L. 1925, c. 38, to deposits made before or renewed after the statute became effective. 14 MLR 677.

Right of preferred shareholders to be paid dividends in arrears out of capital assets before payment to holders of common shares. 15 MLR 113; 16 MLR 313.

Preference of prereceivership claims in equity receivership. 15 MLR 261.

Preference of prereceivership claims. 15 MLR 286.

Payment of workmen's compensation by an operating receiver. 19 MLR 253.

Collection of taxes from a receiver in supplementary proceedings. 23 MLR 859.

Preference to claims for unpaid salaries of persons occupying supervisory or executive positions. 24 MLR 274.

State statute providing for winding up receivership as insolvency statute; suspension by national bankruptcy act. 25 MLR 103.

State statute providing for appointment of a receiver upon return of execution unsatisfied as insolvency statute. 30 MLR 638.

Inchoate liens and propriety of liens as affected by the national bankruptcy act. 30 MLR 641.

5. Receiverships

Default in the payment of instalments of principal due under a mortgage and in the payment of taxes and insurance premiums, coupled with a cessation of the mortgagor's business and serious neglect and waste in the maintenance of the mortgaged property, justify the appointment of a temporary receivership pending foreclosure for the instalments on principal. *National Gdn. Life v Schwartz Bros.* 217 M 288, 14 NW(2d) 347.

Where the court, without the consent of defendants, made an order appointing a general receiver for a partnership business in connection with an action for an accounting, which order contained an alternate provision that the receivership would be limited to the books and records and the taking of an inventory, if defendants would furnish a bond conditioned to pay plaintiff such sums as might be found due him on accounting, and the defendants furnished such bond for the purpose of thus limiting the receivership, defendants did not thereby waive the right of appeal. *Bliss v Griswold*, 222 M 494, 25 NW(2d) 303.

Where upon motion of a judgment creditor whose execution has been returned unsatisfied, a general receiver is appointed for a corporation, the proceeding is in the nature of an equitable attachment of the corporate assets, and a lien is created in favor of creditors, secured and unsecured. Section 316.05 is not an insolvency section. Where the liens created by such appointment were created more than four months prior to bankruptcy, the receiver will not be ordered to turn the assets to the trustee in bankruptcy or render an accounting. *Re Schwartz Bros.* 58 F. Supp. 761.

Effect of national bankruptcy act on the appointment of a receiver. 30 MLR 638.

6. Nature of action

Receiver appointed by the Minnesota court for an iron company was not transferee or assignee of property or assets of company under Minnesota law but was a corporation and hence could enforce its claim against the government under the war minerals relief act for loss sustained in producing and preparing to produce manganese. In Minnesota the receiver is not a transferee nor assignee of property or assets of the corporation but he is for the time being the corporation, and when he sues or does any other act it is in place of and in right of the corporation. *Crowley v Ickes*, 83 F(2d) 573.

7. Enforceable liabilities

During temporary receivership of a solvent charitable corporation annuities should be paid by the receiver to donors until such time as it appears that conditions have so changed as to warrant a winding up of the business and distribution of assets, in which event the annuitants will not be entitled to a preference over other creditors. *Peterson v N.W. Baptist Hospital*, 194 M 399, 260 NW 512.

10. Allowance on claims

The statute giving labor claims against the bankrupt estate priority over all others, save expense of administration, is for the benefit of those dependent on their wages for a livelihood and who are not expected to know the credit standing of their employer. Wage claims paid by order of the court do not constitute wages for employment for tax purposes and the trustee in bankruptcy is an officer of the court and not an "employer." *Re Inland Waterways*, 71 F. Supp. 135.

316.06 FORFEITURE OF RIGHTS; DISSOLUTION.

Ordinarily an exercise of corporate powers in excess of those granted by law furnishes at most, in the absence of an express statutory penalty, a cause or basis for a forfeiture of the charter or franchise in proper proceedings by the state. Since there is no provision in the Hamline University charter imposing a loss of a tax exemption as a result or consequence of an excessive income and the court is without power to impose that as a proper penalty, the court holds the exemption remains intact and the property in question not taxable. *State v Harris*, 148 M 20, 189 NW 776.

316.07 DISSOLUTION ON PETITION OF CORPORATION.

Where in a stockholders' suit to wind up affairs of a corporation a receiver is appointed who takes possession of the assets of the corporation and thereafter the claims of creditors are filed and allowed, the creditors whose claims are so allowed acquire a lien on the property of the corporation in the custody of the court; and where such lien is acquired more than four months before the filing of a petition in bankruptcy, the lien is not divested by such filing. *Cohen v Merviss*, 178 M 20, 226 NW 198.

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

316.11 RECEIVER, APPOINTMENT, DUTIES.

The objects of section 546.27 are to abolish the doctrine of implied findings; to make definite and certain just what is decided, not only for the purpose of the particular action but also for the purpose of applying the doctrine of estoppel to future actions; and finally, to separate questions of law and fact so that they may be more conveniently, unconditionally and fairly construed and reviewed on a motion for a new trial or on appeal. The statute is applicable in a case involving a contested claim against an insolvent corporation. *Fredsall v Minn. State Life*, 207 M 18, 289 NW 780.

The appointment of receiver by a federal court is in the nature of a judgment of a court having jurisdiction on the subject matter and is not subject to collateral attack. *Badger v Hoidale*, 88 F(2d) 208.

Where operating agreement entered into by railroad and receiver of another railroad provided for operation of receiver's lines which first railroad had leased for many years and in which it was vitally interested because leased lines gave it important terminal connections and because it was a creditor, a guarantor of interest on bonds of leased road and owner of some of its securities, services rendered by general counsel of first railroad in receivership proceedings were of interest to it, and court, in exercise of its discretion, properly refused to make an allowance for attorney's fees from receivership estate. *Mitchell v Whitman*, 94 F(2d) 817.

Receivers' suits in foreign jurisdictions. 3 MLR 188.

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Dissolution of solvent corporation, de facto and de jure. 6 MLR 409.

Dissension in management of solvent corporation as ground for appointment of receiver. 16 MLR 707.

316.14 UNPAID STOCK SUBSCRIPTION.

The right of creditors to recover of stockholders in a corporation unpaid stock subscriptions does not depend upon constitution or statutory provisions imposing a liability but is based upon fraud. Remedy is governed by the law of the forum, and there is no distinction between domestic and foreign corporations in respect to such right of creditors to recover. *Randall v Sanitas Co.* 120 M 268, 139 NW 606.

A party to a stock agreement whose only defense was that his subscription was conditional upon a specified sum being subscribed has lost by laches his right to claim a rescission after the bankruptcy of the corporation. *Re Sharood Shoe Corp.* 192 F. 945.

316.15 ORDER LIMITING TIME TO PRESENT CLAIMS; EXTENSION.

There was no abuse of judicial discretion in allowing the creditors' claim, filed more than 18 months after giving notice to file claim, there having been no adjudication other than an order appointing a receiver, and no final settlement. *American Fund v Asso. Textiles*, 187 M 300, 245 NW 376.

316.17 ENFORCEMENT OF STOCKHOLDERS' LIABILITY; HEARING, NOTICE OF.

The two-year statute of limitations, prescribed under the provisions of section 216.20, starts running against the stockholders' constitutional liability from the date the corporation goes into the hands of the receiver. *Cashman v Bremer*, 206 M 250, 288 NW 709.

Where a receiver had been appointed and the court had jurisdiction of the corporations and the subject matter, a stockholder is not entitled to defend a stockholder's liability action by claiming that the order of appointment included property not subject to possession and control by the receiver. *Badger v Hoidale*, 88 F(2d) 208.

When may a stockholder assert fraud in judgment against the corporation as a defense to a suit to enforce constitutional liability. 14 MLR 90.

Trial by jury as a matter of right under the code. 19 MLR 599.

316.18 HEARING; EVIDENCE; ORDER FOR ASSESSMENT.

The validity of an assessment made by a court of Minnesota against the stockholders of an insolvent corporation under the provisions of section 316.17 et seq., is not affected as to a particular non-resident stockholder by the fact that such stockholder died before the assessment was made, nor because the notice was addressed to him and not to his executor; all stockholders in such proceeding, which was in a sense in rem, being represented by a corporation. *Spargo v Converse*, 191 F. 823.

Judgment ordering assessment against stockholders of corporation in receivership held binding upon non-resident stockholder and not subject to collateral attack, in suit to recover assessment, on ground that statute requiring assessment order to designate period for payment had not been complied with by order requiring stockholders to pay assessment "forthwith". *Chandler v Peketz*, 56 SC 603, 297 US 609.

Liability of stockholders; propriety of assessments. 7 MLR 165.

316.19 ENFORCEMENT OF STOCKHOLDERS' LIABILITY; HEARING; ORDER.

Where in proceedings to enforce stockholders' liability it appears that the statute of limitations has run, the court should not direct an order for enforce-

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ment of the assessment. An order for assessment against stockholders of a bank is a determination that such corporate shares are assessable. *Bolsta v Bremer*, 212 M 269, 3 NW(2d) 430.

An order assessing stockholders is conclusive as to the amount, propriety, and necessity of the assessment and all other defenses, including that of ultra vires, are available in a suit to collect the assessment. *Satre v Chandler*, 57 F(2d) 951.

316.20 ACTION FOR ASSESSMENTS. *

The two-year statute of limitations under the provisions of section 316.20 was properly invoked in the instant case where plaintiff had been permitted to amend his complaint and defendant was thereupon given the right to amend his answer by pleading the statute. *Cashman v Bremer*, 206 M 251, 288 NW 709.

When a corporation is declared insolvent and goes into the hands of a receiver, all corporate debts mature; hence the stockholders' liability as surety becomes fixed as of that date, and options filed by the stockholders to make an assessment, and the court's delay in making its order, did not suspend the running of the two-year statute of limitations. *Knipple v Lipke*, 211 M 238, 300 NW 620.