

Nineteen Hundred Thirty-One  
Supplement

to

# Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the  
Legislature, both new and amendatory, and notes showing repeals,  
together with annotations from the various courts, state  
and federal, construing the constitution, statutes,  
charters and court rules of Minnesota



Edited by  
WILLIAM H. MASON, Editor-in-Chief  
W. H. MASON, JR., Assistant Editor

CITER-DIGEST CO.  
ST. PAUL, MINNESOTA  
1931

tors thereof stated and set forth in said newspaper. (Act Apr. 21, 1931, c. 293, §3.)

**§7352-14. Violation a gross misdemeanor.**—In the event of any newspaper falling to file and register as provided for in Section 1 of this act, the party printing or publishing the same shall be guilty of a gross misdemeanor. (Act Apr. 21, 1931, c. 293, §4.)

**§7352-15. Court to determine ownership.**—In the event of the publication of any newspaper within the State of Minnesota without the names of the owners and publishers thereof fully set forth in said newspaper, circular or publication, the court or the jury may determine such ownership and publisher on evidence of the general or local reputation of that fact and opinion evidence may be offered

and considered by the court or jury in any case arising in connection with the ownership, printing or publishing of any such publication or of any article published therein either in a criminal action for libel by reason of such publication or in any civil action based thereon. (Act Apr. 21, 1931, c. 293, §5.)

**§7352-16. Definition.**—By the term “newspaper” as expressed herein, shall be included any newspaper, circular or any other publication whether issued regularly or intermittently by the same parties or by parties, one of whom has been associated with one or more publication of such newspaper or circular, whether the name of the publication be the same or different. (Act Apr. 21, 1931, c. 293, §6.)

## CHAPTER 57A Partnership

### PART II.

#### NATURE OF A PARTNERSHIP

##### §7389. Partnership defined.

Joint ownership of land does not create a partnership or make the owners joint adventurers. *Pratt v. M.*, 234NW464. See *Dun. Dig.* 7346, 7350, 4948b.

The evidence is not conclusive that there was a partnership between one of the defendants and a corporation now defunct. *Mahlberg v. J.*, 235NW280. See *Dun. Dig.* 2092, 7346.

##### §7390. Rules for determining the existence of a partnership.

One selling diamonds, held not shown to have been the partner of the owner. 180M447, 231NW408.

### PART III.

#### RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

##### §7392. Partner agent of partnership.

Where a partnership is a party to a contract, the acts of one member thereof bind the partnership. 174M297, 219NW180.

### PART IV.

#### RELATIONS OF PARTNERS TO ONE ANOTHER

##### §7404. Partner accountable as fiduciary.

Rule that parties negotiating for organization of a partnership or joint adventure deal at arm's length cannot be extended so as to permit a secret share in the profits to be made by an agent in the transaction. 175M226, 220NW822.

Accounting by surviving partner to representative of deceased partner. 181M156, 231NW916.

### PART V.

#### PROPERTY RIGHTS OF A PARTNER

##### §7408. Nature of a partner's right in specific partnership property.

###### Subd. (2) (c).

Bond to release garnishment, reciting that there is a stated sum of money in the possession of the garnishee, held to estop the principal and sureties from denying that there was any garnishable property in the hands of the garnishee. 181M404, 232NW631. See *Dun. Dig.* 3975.

### PART VI.

#### DISSOLUTION AND WINDING UP

##### §7412. Dissolution defined.

Where money was loaned to partnership and subsequently one partner sold his interest to another partner, the selling partner was liable in action on note renewed after sale of his interest without knowledge on the part of the lender of such transfer of interest. 171M332, 214NW51.

##### §7418. Power of partner to bind partnership.

Where money was loaned to a partnership and defendant partner thereafter sold his interest to another partner, defendant was liable on a renewal of the loan note after the transfer, plaintiff having no notice of the transfer of interest. 171M332, 214NW51.

##### §7423. Rules for distribution.

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.

## CHAPTER 58 Corporations

### GENERAL PROVISIONS

##### §7429. Existing corporations continued.

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. 171 M395, 214NW658.

**§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.

**Governmental control.**

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 submitted 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.

**§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.

**§7440. Other purposes for which corporations may be formed.**

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

**§7441. Financial corporations.**

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.

**§7443. How organized.**

Whether a corporation is to exchange its capital stock for an issue of non-par stock rests in the judgment of majority stockholders. 172M 303, 215NW185.

**§7447. General powers.**

**Correction**—The citation "156M104, 194NW107" in vol. 2, Mason's Minn. Stat. 1927, should be "156M79, 194NW108."

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. 172M394, 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, 219 NW163.

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 an accommodation guarantor. 181M306, 232NW327. See Dun. Dig. 2007.

Defective industrial bonds held subsisting obligations of the company, to the title to which plaintiff succeeded. Hicks v. F., 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., 236NW710. See Dun. Dig., 2116.

**§7455. Duration—Renewal of corporate existence.**—A railroad corporation may be formed for any period specified in its certificate of incorporation. A savings bank shall have perpetual succession. Every other cor-

poration, 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. 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. (As amended Apr. 18, 1929, c. 233, §1.)

**§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.

**§7457-9. Corporate existence of cooperative associations renewed.**

Subsequent acts: Laws 1931, c. 149.

**§7457-11. Corporate existence of corporations, etc.**

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

**§7457-12. Consolidation of corporations.**

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

**§7458. Election of board of directors.**

Every director must be a stockholder. 172M 119, 215NW192.

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

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. 176M516, 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. 180M 486, 231NW197.

**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.*, 237NW15. See *Dun. Dig.* 3196.

#### §7459. Officers—Certain Corporations legalized.

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, 215NW192.

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.*, 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.*, 236NW461. See *Dun. Dig.* 2114.

#### §7461. Regulation as to voting.

Voting trust agreement existing before purchase of stock, and forming part of the contract of purchase, held valid. *Mackin v. Nicolle Hotel (CCA8)*, 25F(2d)783, aff'g 10F(2d)375.

#### §7463. Transfer of stock.

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. 171M65, 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.*, 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, 226NW513.

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

Assignment of shares passes title without registration of transfer on books of company. 179M373, 229NW353.

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. 173M373, 229NW353.

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

#### §7464. Effect of transfer—Stock books.

179M373, 229NW353; note under §7463.

As between the parties, a transfer of stock is good without 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.*, 230NW645(2).

The corporate books and records are not conclusive evidence as to the ownership of stock. 181M316, 232NW519. See *Dun. Dig.* 2044.

#### §7465. Liability of stockholders.

##### 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. *Barness v. E.*, 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.*, 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.*, 235NW280. See *Dun. Dig.* 2092.

**§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.)

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

#### §7470. Record of stock—Reports—Dividends.

Duty of stockholders in charge and control of corporation to keep books and records. 23F(2d)357.

Petition for examination of corporation books held not sufficient to support mandamus. 173M198, 217NW119.

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

This act does not contravene Const., Art. 10, §3. 172M363, 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.

#### §7470-6. Same—Increase or reduction.

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

**§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 cooperative 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. (As amended Apr. 20, 1929, c. 275.)

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.

#### §7475. Fees.

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.

**§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.**

Ousted officers and directors, held to have no standing to call a stockholders' meeting. 181M281, 232NW262. See Dun. Dig. 2079.

**§7480. Capital stock—How classified and issued.**

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

Persons willfully 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.

**§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.

#### §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.

### FOREIGN CORPORATIONS

#### §7493. Agent—Change—Process.

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., 236NW317. See Dun. Dig. 2187.

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.

#### §7494. Licenses required—Etc.

Lind v. J., 236NW317; note under §7493.

#### §7495. Penalties—Exceptions.

Contract of foreign corporation to give advertising service, held interstate, and corporation was entitled to sue thereon without compliance with statute. 179M457, 229NW580.

### 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.

**§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, 225NW164.

**§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.**

Compliance with this section by power company does not as matter of law absolve it from negligence. 179M46, 228NW342.

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.

### 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.

### CEMETERY ASSOCIATIONS

**§7557. Existing and new cemeteries, how governed.**

Laws 1931, c. 46, legalizes incorporations under G. S. 1894, title 2, c. 34.

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.

**§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. (As amended 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.

### FINANCIAL CORPORATIONS GENERAL PROVISIONS

**§7635. Financial corporations defined.**

Definition of building and loan association has not been changed. Minn. Bldg. & Loan Ass'n v. C., 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 bond holders, 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.

**§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.

**§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. (As amended Mar. 21, 1929, c. 77, §1.)

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.

**§7657. Advertisements of financial institutions.**—No such financial institution shall di-

rectly, 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. (As amended Apr. 25, 1931, c. 380.)

**BANKS**

**§7660. Special powers.**

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., 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., 223NW780.

**§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 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.

**§7669. Stock list—Filing—Effect of transfer, Liability, Acceptance, etc.**

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., 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., 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., 235NW914. See Dun. Dig. 803(11).

**§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., 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., 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., 236NW213. See Dun. Dig. 3346.

**§7677. Restriction upon total liability of individuals to bank—Loans on first mortgage security on improved real estate—Liability of officers or directors to bank—Discounts authorized—Permitting creation of excess liability—Penalty and civil liability.**—The total liabilities to it, as principal, surety, or endorser of any person, corporation, or co-partnership, 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, city, village, or school district in this State, or of the bonds of any other state in the United States.

2. Bills of exchange drawn in good faith against actually existing values.

3. Paper based upon the collateral security of warehouse receipts covering agricultural or manufactured products stored in elevators or warehouses under either of the following conditions:

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

Second—When the full amount of every such loan is at all times covered by fire insurance in duly authorized companies, within the limit of their ability to cover such amounts, and the excess, if any, in companies having sufficient paid-up capital to authorize their admission, and payable in case of loss, to the bank or holder of the warehouse receipt, unless accompanied by a 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. (As amended Feb. 7, 1931, c. 9, §1.)

**§7678. Contracts, how made.**

Powers of national banks. 172M310, 215NW 213.

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. 176M529, 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, 227NW 659.

**§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. (As amended 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. (As amended Mar. 27, 1931, c. 93.)

**§7682. Insolvent banks—Examiner to take charge.**

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 enforceable 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., 234NW304. See Dun. Dig. 824b.

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.

**§7687. Delinquent financial institutions—Etc.**

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., 234NW304. See Dun. Dig. 824b.

### §7689. Liquidation and distribution of assets.

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., 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, 280NW817.

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., 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., 234NW869. See Dun. Dig. 824d, 2159.

Pledgee is proper party to bring action on bills payable pledged by band. Op. Atty. Gen., May 22, 1929.

### §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 stock-

holders 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 who surrendered certificates of deposit before the statute took effect and took new certificates after such effective date. 180M113, 230NW267.

### §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.

### §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., 234NW304. See Dun. Dig. 824b.

### §7699-1. Bonds or contracts of indemnity of officers and employees of bank.

Bank held entitled to recover where its employee 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.

## BANKS AND TRUST COMPANIES

### §7699-9. Same — Corporate existence merged—Rights, powers, obligations, etc.

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 chap. 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.

**§7699-9 1/2. 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.)

**§7699-13 1/2. 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.)

**§7699-13 ½a. 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.)

**§7699-13 ½b. Application.**—The provisions of this act shall not apply to any existing contract. (Act Apr. 9, 1929, c. 144, §3.)

**§7699-13 ½c. Application.**—The provisions of this act shall not apply to mutual savings banks. (Act Apr. 9, 1929, c. 144, §4.)

**§7699-14. Banks may not pledge assets—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 money borrowed in good faith from other banks or trust companies, provided, that this section shall not be construed to permit the use of any assets as security for public deposits other than the securities made eligible by law for that purpose. (As amended Apr. 25, 1931, c. 341.)

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.

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.

SAVINGS BANKS

**§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.

**§7714. Authorized securities for savings banks.**—\* \* \* \*

3. 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 3,500 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.)

\* \* \* \*

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.

**§7717. Repayment—Interest—Surplus, etc.**

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.

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.

**§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 twenty-five thousand inhabitants shall be not less than fifty thousand dollars; the capital of every trust company hereafter organized having its principal place of business in a city of more than twenty-five thousand and less than one hundred thousand inhabitants shall be not less than seventy-five thousand dollars; the capital of every trust company hereafter organized having its principal place of business in a city of more than one hundred thousand and less than two hundred thousand inhabitants shall be not less than one hundred thousand dollars; and the capital of every trust company hereafter organized having its principal place of business in a city of more than two hundred thousand inhabitants shall be not less than two hundred thousand dollars; but the capital stock of any trust company shall not be in excess of two million dollars. 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 two hundred thousand dollars, until at least two hundred thousand dollars thereof has been paid in, in cash, and at least fifty per cent of the capital of all trust companies of less than two hundred thousand dollars and twenty-five per cent of the capital of all trust companies of two hundred thousand dollars 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, if its capital be more than two hundred thousand dollars, 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 twenty-five thousand dollars; 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. (As amended Apr. 25, 1931, c. 375.)

**§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.

**§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.)

**§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.)

**§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, 226NW696.

**§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.

**§7740. Dealings and indebtedness prohibited.**

Powers as to guaranty are not enlarged by the Federal Farm Loan Act (Mason's U. S. Code 12, §§803, 807). 230NW797.

#### BUILDING AND LOAN ASSOCIATIONS GENERAL PROVISIONS

**§7750. Security for loans made—Pledge, etc.**

Minn. Bldg. & Loan Ass'n v. C., 234NW872.

**§7751. Capital.—Stock.—Deposits.**—The association may accumulate funds to be loaned to members upon their homes or upon other improved real estate, and to otherwise carry on in accordance with law the business of building and loan associations, in the following manner:

First: By sale of its capital stock in accordance with the law, provisions in its certificate of incorporation, and its by-laws. Purchase of stock, either by installments or full payment, shall constitute the purchaser a member of the association entitled to all the privileges of membership, until the stock is

duly transferred, retired, suspended, forfeited, or withdrawn. Installment stock may be sold on regular or irregular payments.

The association shall issue no preferred stock or shares. All holders or owners shall share alike in net earnings or profits according to the class or series of stock subscribed for and shall contribute equally to the net losses and expenses according to the value of the shares upon the books of the association. The board of directors shall determine the rate of dividend upon each class or series of stock; provided, however, that no class or series of stock except of a serial association, shall be apportioned a rate of dividend exceeding by more than two per centum per annum the rate of dividend apportioned to any other class or series. No association except serial, shall offer to the public during any one calendar year more than one class of stock of limited participation. Shares shall be known and designated as installments or paid-up shares. Ownership may be evidenced by a pass book, or stock or shares certificate issued to a member.

All associations, except serial, hereafter authorized to transact business must have at least five per cent of its authorized capital stock and a like amount paid in before beginning to carry on business, and at no time shall the amount be diminished below that amount.

Second: Money borrowed as provided by law, articles of incorporation and by-laws, provided that the aggregate amount of money so borrowed shall not exceed eighty per cent of the assets of the association, provided, also that no association issuing shares of limited and full participation in earnings shall be authorized to borrow money in excess of twenty-five per cent of the assets of the association.

Third: Special service fees, including membership fees which shall not exceed two dollars per share of \$100.00 each. All service fees of any kind whatsoever shall be explicitly set forth in membership agreements. Failure so to do shall render the agreement null and void. All fees shall be accounted for by the corporation, and in the same manner as the other funds of the association. (As amended Apr. 24, 1929, c. 356.)

**§7753. Building and Loan Association dividends.**—Whenever a distribution or calculation of profits is made, which shall be at least semi-annually, it shall first deduct therefrom its operating costs for the same period, if such profits are sufficient; if not, the balance of the expenses above the profits shall be carried on the records of the association as "expenses paid," and thereafter deducted from the earliest available net profits. Such balance shall be charged to an account called "permanent expenses," and finally 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, such expenses in the aggregate shall not exceed annually two and one-half per centum of the total amount of all money actually re-

ceived and loaned to members on real estate mortgages and contracts for deed as provided by Section 11, Chapter 260, Laws of 1925 [§7757], 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 expense herein provided. (As amended Mar. 9, 1931, c. 49.)

**§7753-1. Reserve fund of building and loan association.**—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 and to at least fifty per centum of the book value of all real estate owned by it. 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. Provided, that associations issuing serial stock only may accumulate a separate contingent or reserve fund for each series of stock, and distribute the same among the stockholders of each such series, as each such series matures and is cancelled. (As amended Apr. 20, 1931, c. 238.)

**§7754. Premiums not usury.**

Rates of interest otherwise usurious may be enjoyed by a building, and loan association. *Minn. Bldg. & Loan Ass'n v. C.*, 234NW872. See *Dun. Dig.* 1169.

**§7755. Withdrawal of funds.**—The holder of any unpledged shares may withdraw the same 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, provided there are sufficient funds in the treasury not appropriated for incompleting loans, but the directors may waive such notice. The withdrawing shareholder shall be paid the withdrawal value of his shares as determined at the last declaration of dividends before such notice, together with all payments made thereon since such declaration, less fines and other obligations. A withdrawing member, until paid, shall be entitled to dividends upon his shares at the same rate at which dividends are credited upon other shares of the same class. Where payment of withdrawals is deferred, the association shall pay the same in full in the order filed; provided, however, that not exceeding the sum of Five Thousand Dollars per month shall be paid to any one member withdrawing, and shall use at least fifty per cent of its monthly receipts for that purpose, but not over fifty per cent of its monthly receipts shall be so used unless otherwise determined

by resolution of the directors. (As amended Apr. 25, 1931, c. 369.)

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.

**§7757. Real estate dealings—Termination of contracts.**—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 stockholder 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 stockholder 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 stockholder, his representatives or assigns by serving the notice provided by Mason's Minnesota Statutes 1927, Section 9576, upon such stockholder, his representatives or assigns. (As amended 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., 234NW872. See Dun. Dig. 1166, 10091.

#### GENERAL BUILDING AND LOAN ASSOCIATIONS

#### LIQUIDATION AND REORGANIZATION OF BUILDING AND LOAN ASSOCIATIONS

**§7770-1. Building and Loan Associations may liquidate and reorganize.**—Any building and loan association, by a vote of three-fourths of its outstanding capital stock, according to the book value thereof, at any regular meeting of its stockholders or at any special meeting called for the purpose, of which regular or special meeting at least ten days written notice specifying the matter to be considered under this chapter shall have been mailed to each stockholder 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 of the stockholders and of the approval of the commissioner, if granted, shall be mailed to each stockholder 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 stockholders of the association, whether they voted to authorize the same or not. (Act Apr. 24, 1929, c. 334, §1.)

#### CERTAIN INVESTMENT COMPANIES 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.

#### OTHER CORPORATIONS FOR PROFIT MANUFACTURING CORPORATIONS

Act legalizing corporations organized under tit. 2, c. 34, G. S. 1894. Laws 1931, c. 46.

##### §7775. Formation—Purpose.

Articles of incorporation held to confine the corporation to an exclusively manufacturing business. 172M394, 215NW521.

#### 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

##### §7826. Capital—Limit of interest—Shares.

Increase of capital stock beyond \$100,000 held invalid. 172M334, 215NW428.

##### §7831. Officers—By-laws—Amendment of Articles.

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. 178M 164, 226NW401.

#### SUPPLEMENTARY LAWS

##### §7834. Co-operative associations—Etc.

A co-operative corporation, organized under this law, may contract with and incur debts to others than co-operative associations and members thereof. Farmers' Dairy Co.'s Receivership, 225NW22.

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.

**§7836. Capital—Limits of interest—Vote.**

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, 219NW466.

**§7838. Quorum.**

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. 172M334, 215NW428.

Increase of capital stock beyond \$100,000 held invalid. 172M334, 215NW428.

**§7839. Directors—Election of—Etc.**

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.

**§7843. Associations heretofore organized.**

178M164, 226NW401.

172M334, 215NW428; note under §7838.

**§7844. Amending articles of incorporation.**

172M334, 215NW428; note under §7838.

**§7859-7. Renewal of corporate existence.**

Subsequent acts: Laws 1929, c. 136; Laws 1931, c. 108; Laws 1931, c. 241.

**§7859-10. Same—Associations excepted.**

Subsequent curative acts: Laws 1929, c. 136.

**§7859-11. Renewal of corporate existence, etc.**

Act authorizing renewal of period of corporate existence of certain co-operative associations. Laws 1931, c. 149.

**§7859-12. Same—Conveyances, etc., legalized.**

Subsequent curative acts: Laws 1929, c. 171.

**AGRICULTURAL SOCIETIES**

**STATE AGRICULTURAL SOCIETY**

**§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, Minnesota Implement Dealers association, the Minnesota Florists association, the Minnesota Garden Flower association, the Minnesota County Exhibitors' association, the Minnesota Federation of County Fairs, the State Forestry association, Minnesota State Nurserymen's association, the Minnesota State Grange association, Minnesota Creamery Operators and Managers' 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 Durco Jersey Breeders' association, Minnesota Chester White Breeders' association 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.)

\* \* \* \*

**COUNTY AGRICULTURAL SOCIETIES**

**§7885. County agricultural societies—Etc.**

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. 165, ante, §7475-1.

**§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, 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, Grant 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, Mahnommen 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, Olmsted 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 (\$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 appropri-



ation. 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. (As amended Apr. 16, 1929, c. 211.)

The holding of a live stock show is not the holding of a fair, and premium paid will not be considered in apportioning state aid. Op. Atty. Gen., Feb. 26, 1929.

**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.

**§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. (As amended Mar. 9, 1929, c. 58.)

**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 ill-treated 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.)

#### 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.)

#### LODGES, FRATERNAL ORDERS, ETC.

**§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.

#### RELIGIOUS CORPORATIONS

##### §7963. Election of board of trustees, etc.

Churches, like other charitable institutions, are liable for the negligence of their officers and employees. 174M389, 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., 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., 235NW12. See Dun. Dig. 1998, 8381.

##### §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., 235NW12. See Dun. Dig. 8379.

##### §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.

**§7995-1. 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 in-

corporation 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. (As amended Apr. 20, 1931, c. 232, §1.)

#### §7996. How consolidated.

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. 174M207, 219NW88.

#### §7997. Procedure—Notice of meeting—Proof.

172M471, 215NW845, note under §7996.

#### §7998. Organization—Powers of new corporation.

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.)

### 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., 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 section 8013, except as to the burden of proof. 173M493, 217NW940.

**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**—173M20, 226NW198, 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 thereof, but in latter suit defendant may assert that facts do not show cause of action against him. Crowley v. P., 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 canceled the stock. 178M179, 226NW513.

**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. 172M567, 216NW250.

#### §8015. Dissolution on petition of corporation.

Miller v. A., 235NW622; note under §9191.

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. 178M20, 226NW198.

In equitable action to dissolve a corporation, petitioning stockholder must establish mismanagement. 178M545, 227NW654.

#### §8019. Appointment of receiver—Duties.

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., 234NW304. See Dun. Dig. §24b.

#### §8021. Forfeiture of charter—Receiver—Etc.

Miller v. A., 235NW622; note under §9191.

#### §8022. Unpaid stock subscription, etc.

**Correction**—The word "of" after the word "payment" in the fourth line should be "by."

#### §8023. Order limiting time to present claims.

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.

#### §8025. Enforcement of stockholders' liability.

Stockholders of national banks and their liability, see Mason's Code, Title 12.

172M33, 214NW764, note under §8027.

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, 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 canceled 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, 226NW513.

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., 234NW590. See Dun. Dig. 2080a.

Creditors held estopped to enter judgment against stockholder who had already settled his double liability. Robie v. B., 235NW384. See Dun. Dig. 2093.

## §8026. Hearing upon petition.

172M33, 214NW764, note under §8027.

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, 217NW483.

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, 219NW945.

Court not required to take into account creditors expressed desire that stockholders' double liability be not enforced. Farmers' Dairy Co.'s Receivership, 225NW22.

Court was not required to determine the liability and responsibility of the individual stockholder. Farmers' Dairy Co.'s Receivership, 225NW22.

**§8027. Enforcement of stockholders 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. (As amended Apr. 18, 1931, c. 205, §1.)

173M436, 217NW483.

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 nonresident 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. 177M526, 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, 228NW917.

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.*, 230NW645(2).

**§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. (As amended Apr. 18, 1931, c. 205, §2.)

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 super-added stockholder's liability created a substantive right, enforceable in any court of competent jurisdiction on an incident of a receivership. 173M603, 218NW121.

The superadded liability is contractual in its nature and is assumed by one becoming a stockholder. 173M603, 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.*, 230NW645(2).

A transferrer of stock must look to sequestration suit for adjustment of his liability. *Crowley v. P.*, 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.

### §8029. Additional assessments.

A receiver prosecuting an action to collect assessments based on stockholder's liability must sue each stockholder separately. 173M496, 217NW595.

### §8031. Surplus to be divided among stockholders.

173M10, 216NW252, note under §8026.

## Part II. Property Rights and Domestic Relations

### CHAPTER 59

### Estates in Real Property

#### §8032. How divided.

Life tenant of property subject to mortgage must keep down the interest, and on redemption after foreclosure holds for the joint benefit of himself and the remainderman, the latter being required to contribute his share of amount necessary to redeem. 171M182, 213NW736.

Amount remainderman must contribute on redemption by life tenant after mortgage foreclosure. 171M182, 213NW736.

Where remainderman participated in transaction which wrongfully disabled life tenant from redeeming from mechanic's lien foreclosure, redemption by one to whom they had given a sham mortgage was in effect redemption by remainderman and an annulment of the foreclosure. 173M128, 216NW798.

Equity will not take jurisdiction at instance of life tenant and sell property merely because reinvested proceeds would produce a larger net income. 175M531, 221NW906.

#### §8033. Estates in fee simple.

Royalty tax on lease of mineral lands. 172M263, 271, 273, 215NW71, 180, 181.

#### §8036. Freeholds—Chattels real—Chattel interests.

Royalty tax on lease of mineral lands. 172M263, 271, 273, 215NW71, 180, 181.

#### §8041. Remainders defined.

Liability for improvements made by life tenant. 180M151, 230NW634.

#### §8044. Suspension of power of alienation.

Power of alienation was not unlawfully suspended by a provision in a contract for sale of land that no assignment should be valid unless approved in writing by vendors. 175M502, 221NW871.

#### §8074. Estates in common.

Deed to two persons "or the survivor of either," held to create joint tenancy, and survivor became sole owner in fee. 181M8, 231NW401.

Purchase of bonds by husband and wife, held to create an estate in joint tenancy. 181M128, 231NW794.

### CHAPTER 59A

### Property of Absentees

#### §8080-1. Management and disposition of property.

This act provides a cumulative proceeding and is not a bar to administration by probate court upon the estate of one absent for seven years. 175M493, 221NW876.

#### §8080-13. Same—Distribution of balance.

175M493, 221NW876; note under §8080-1.