1934 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1934)

(Superseding Mason's 1931 Supplement)

Containing the text of the acts of the 1929, 1931, 1933 and 1933-34 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state, federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota

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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, 214 NW51.

On dissolution of partnership, unimpaired contribution to capital was a "debt" due to partner on the books of the firm. Burnett v. H., 187M7, 244NW254. See Dun. Dig. 7396.

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.

7421. Rights of partners to application of partnership property.

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

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 agreeemnt to that effect. 177M602, 225NW924.

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

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

CHAPTER 58

Corporations

GENERAL PROVISIONS

7429. Existing corporations continued.

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

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

7432. Public service corporations—Purposes of.

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

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

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

7433. State and local control—Eminent domain.

There was no authority and no public necessity for the condemnation of an easement for an electric power line through Jay Cooke State Park. 177M343, 225NW 164.

3. 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.

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

7434. Municipality may purchase.

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

7435. [Repealed].

Repealed Apr. 18, 1933, c. 300, §63.

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

7436. Mortgage loan and land companies.

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

7440. [Repealed].

Repealed Apr. 18, 1933, c. 300, §63.

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.

7442. Insurance corporations.

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

7443. How organized—Certificate.—Any three or more persons may form a corporation for any of the purposes specified in this subdivision by complying with the conditions hereinafter prescribed; provided, no corporation shall be formed under this section which might be formed under the Minnesota Business Corporation Act. They shall subscribe and acknowledge a certificate specifying:

1. The name, the general nature of its business, and the principal place of transacting the same. Such name shall distinguish it from all other corporations, domestic or foreign, authorized to do business in this state, and shall contain the word "company," "corporation," "bank," "association," or "incorporated." In the case of a state bank the name shall contain the words "state bank."
2. The period of its duration, if limited.
3. The name and place of residence of the incorporators.
4. In what board its management shall be vested, the date of the annual meeting at which it shall be elected, and the names and addresses of those composing the board until the first election, a majority of whom, in the case of savings banks and building and loan associations, shall always be residents of the state.
5. The amount of capital stock, if any, how the same is to be paid in, the number of shares into which it is to be divided, and the par value of each share; and, if there is to be more than one a description and the terms of issue of each and the method of voting thereon.
6. The highest amount of indebtedness or liability to which the corporation shall at any time be subject.

It may also contain any other lawful provision defining and regulating the powers or business of the corporation, its officers, directors, trustees, members, and stockholders. (R. L. '05, §2849; '07, c. 468, §1; G. S. '13, §6147; '19, c. 111, §1; Apr. 18, 1933, c. 300, §62, II.)

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

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

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

(5).

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

7446-3. Certain corporations validated. — That every private corporation heretofore in good faith organized, or attempted to be organized, under the general laws of this State, but where the Articles of Incorporation were not published, and the affidavit of such publication was not filed in the office of the

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

7447. General powers.

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

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

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

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

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

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

Articles of incorporation, held not to authorize the corporation to become 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., 182M93, 233NW828. See Dun. Dig. 2021.

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

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

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

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

An individual who has received money or property from a corporation under an ultra vires contract cannot repudiate it without restoring what he has received. Benson Lumber Co. v. T., 185M230, 240NW651. See Dun. Dig. 2026(86).

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

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

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

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

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

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

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

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

Stockholders may authorize president and secretary to execute necessary papers to complete transfer of assets and good will of corporation. Bacich v. N., 185M544, 242NW379.

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

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

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

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

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

7453. By-Laws, how adopted.

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

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

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

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

7455. Duration of corporate existence—Renewal.—A railroad corporation may be formed for any period specified in its certificate of incorporation. A savings bank shall have perpetual succession. Every other corporation, except as hereinafter otherwise provided, shall be formed for a period not exceeding thirty years in the first instance, but may be renewed *from time to time for a further term not exceeding* thirty years, whenever a three-fourths vote of the stock or members in case of mutual or non-stock corporations represented at any regular meeting, or at any special meeting called for that purpose, which shall

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

7456. Publication of notices of renewal of corporate existence.—No such resolution shall take effect until a duly certified copy thereof shall have been filed, recorded, and published in the same manner as its original certificate. Provided, that in the case of a co-operative association, it shall not be necessary to publish said resolution. (R. L. '05, §2857; G. S. '13, §6157; Apr. 10, 1933, c. 189.)

7457. Renewal of corporate existence of certain corporations authorized.

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

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

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

7457-4.

Renewal of corporations after expiration of period of existence: Laws 1929, cc. 73, 136, 171; Laws 1931, cc. 107, 219; Laws 1933, c. 193.

7457-9. Corporate existence of cooperative associations renewed.

Subsequent acts; Laws 1931, c. 149; Laws 1933, c. 199.

7457-11. Corporate existence of corporations, etc.

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

7457-12. Consolidation of corporations.

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

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

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

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

7457-13 to 7457-18.

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

7458. Election of board of directors.

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

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

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

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

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

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

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

Estoppel to object to acts of directors.

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

7459. Officers—Certain Corporations legalized.

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

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

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

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

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

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

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

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

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

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

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

Evidence justified finding that president of a corporation had apparent authority to contract for an audit of its books. Temple, Brissman & Co. v. G., 248NW819. See Dun. Dig. 2114.

1. Acts of Promoters.

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

7460. Classification of managers.

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

7461. Regulation as to voting.

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

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

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

7462. Cumulative voting.

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

7463. Transfer of stock.—The delivery, by the rightful owner or by one by him intrusted therewith,

to a bona fide purchaser or pledgee for value, of a certificate of stock, duly transferred in writing by the holder personally, or accompanied by his power of attorney authorizing such transfer, shall be sufficient to transfer title, but shall not affect the right of the corporation to pay any dividend thereon, or to treat the holder of record as the owner in fact, until such transfer has been recorded on its books, or a new certificate issued to the transferee, who, upon delivery of the former certificate to the treasurer, shall be entitled to receive such new one. Stock in any corporation, except one formed or coming under the Minnesota Business Corporation Act, shall not be transferred upon the books of the corporation while any installment thereon remains delinquent, nor while any indebtedness of the record holder thereof to the corporation remains unpaid; nor shall any transfer deprive it of the right to maintain a personal action against any subscriber to its stock. A pledgee of stock transferred as collateral security shall be entitled to a new certificate, if the instrument of transfer substantially describe the debt or duty intended to be secured thereby. Such new certificate shall state on its face that it is held as collateral security, and the name of the pledgor, who alone shall be liable as a stockholder and entitled to vote thereon; provided, that corporations formed or coming under the Minnesota Business Corporation Act shall not be subject to the provisions of this sentence. (R. L. '05, §2863; G. S. '13, §6176; Apr. 18, 1933, c. 300, §62, V.)

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

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

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

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

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

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

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

The right to vote at a stockholders' meeting is an incident of the legal title to the stock, but a purchaser of stock cannot designedly fail to have the transfer entered on the books and increase his voting power by taking proxies from the seller of the stock. 173M373, 229NW353.

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

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

7464. Effect of transfer—Stock books.

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

179M373, 229NW353; note under §7463.

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

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

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

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

7465. Liability of stockholders.

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

1. In general.

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

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

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

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

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

This section cannot be said to be invalid as impairing contract rights, in view of §7465-2, excepting existing liability. Saetre v. Chandler, (CCA8), 57F(2d)951.

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

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

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

7466. Property of stockholders levied on, when.

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

7467. Proceedings of officer levying.

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

7468. Capital stock.

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

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

7469. Capital stock of certain telephone companies.

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

7470. Record of stock—Reports—Dividends.

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

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

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

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

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

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

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

7470-2 to 7470-5.

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

7470-6. Same—Increase or reduction.

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

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

7470-7 to 7470-11.

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

7471. Officers without and within the state.

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

7472. Amendments to Certificates of Incorporation.—The certificate of any incorporation now or hereafter organized and existing under the laws of this state may be amended so as to change its cooperate [Sic] name, or so as to increase or decrease its capital stock, or so as to change the number and par value of the shares of its capital stock, or in respect to any other matter which an original certificate of a corporation of the same kind might lawfully have contained, by

the adoption of a resolution specifying the proposed amendment, at a regular meeting or at a special meeting called for that expressly stated purpose, in either of the following ways: (1) by majority vote of all its shares, if a stock corporation; or if not, (2) by majority vote of its members; or, in either case (3) by a majority vote of entire board of directors, trustees, or other managers within one year after having been thereto duly authorized by specific resolution duly adopted at such meeting of stockholders or members, and causing such resolution to be embraced in a certificate duly executed by its president and secretary, or other presiding and recording officers, under its corporate seal, and approved, filed, recorded, and published in the manner prescribed for the execution, approval, filing, recording, and publishing of a like original certificate, provided however if such amendment be made for the purpose of changing the principal place of the business of such corporation, said certificate shall be published, filed and recorded in the office of the register of deeds of the county of such principal place of business immediately prior to such amendment, and shall also be recorded in the county where the business is to be carried on after the amendment.

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

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

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.

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

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

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

7473-1. Certain social and educational corporations may amend articles.—That any educational corporation or association organized under the laws of this state for social and/or educational purposes, without capital stock, and having ten thousand or more members, may amend its articles of incorporation or may adopt new articles of incorporation by a majority vote of the members present and voting thereon at any general or special meeting of its members, providing at least three thousand members are present at such meeting, and provided further that the notice of such meeting shall have stated such proposed action would come up for consideration thereat. It shall be sufficient if such notice shall state generally that the matter of amending the articles or the adoption of new articles will come up for consideration at such meeting. The amendment or the new articles so adopted shall become effective upon the filing thereof with the secretary of state, accompanied by a certificate, signed by the president and secretary of such corporation or association, certifying the adoption thereof as herein provided. (Act Apr. 8, 1933, c. 167, 1.)

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

7475. Fees.

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.

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

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

7478. Meeting called by members.

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

7479. Irregular meetings, how validated.

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

7480. Capital stock—How classified and issued.

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

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

Persons wilfully and deliberately causing stock to be issued to them without proper authority were not entitled to restitution for legal services as condition precedent to cancellation of the stock. 172M110, 215NW 192.

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

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

7481. Stock certificates to whom issued.

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

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

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

7484. Dissolution of corporations.

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

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

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; Laws 1933, c. 248.

7489. Diversion of corporate property.

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

This section did not apply to a loan of corporation to stockholder. Benson Lumber Co. v. T., 185M230, 240 NW651.

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

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

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

7491. Existing corporation, how to reorganize.

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

MINNESOTA BUSINESS CORPORATION ACT

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

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

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

III. "Articles of incorporation" and "articles," when not otherwise indicated by the context, include the original articles of incorporation or amended articles of incorporation, all articles of amendment, all certificates made pursuant to subdivision V of Section 13 and subdivision II of Section 32 of this Act and agreements of consolidation or merger.

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

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

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

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

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

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

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

(a) the sum of

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

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

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

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

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

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

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

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

7492-3. Articles of incorporation.

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

(a) Its purposes;

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

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

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

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

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

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

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

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

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

7492-4. Corporate name.

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

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

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

(b) The written consent of such other domestic or foreign corporation to the adoption of its name or a deceptively similar name has been

given and is filed with the articles of incorporation.

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

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

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

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

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

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VIII. The use of a name in violation of this section shall affect or vitiate the corporate existence, but the courts of this State having equity jurisdiction may, upon the application of the State, or of any person, unincorporated association, or corporation interested or affected, enjoin such corporation from doing business under a name assumed in violation of this section, although its articles of incorporation may have been approved and a certificate of incorporation issued. (Act Apr. 18, 1933, c. 300, §4.)

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

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

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

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

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

7492-7. Validity and effect of certificate of incorporation.—The certificate of incorporation issued by the Secretary of State in accordance with the provisions of Section 5 of this Act shall be conclusive evidence of the fact of incorporation. Nothing in this section shall limit the existing rules of law as to corporations de facto, nor as to corporations by estoppel. (Act Apr. 18, 1933, c. 300, §7.)

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

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

(b) To sue and be sued.

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

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

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

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

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

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

7492-11. Ultra vires acts.

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

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

III. The provisions of this section shall not affect:
(a) The right of shareholders or the State to enjoin the doing or continuing of unauthorized acts by the corporation; but in such case the court shall protect or make compensation for rights which may have been acquired by third parties by reason of the doing of any unauthorized act by the corporation.
(b) The right of a corporation to recover against its directors or officers for violation of their authority. (Act Apr. 18, 1933, c. 300, §11.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. The amount of consideration to be received, in cash or otherwise, shall not be less than the par value of shares having a par value so allotted nor less than the stated capital to be represented by shares without par value so allotted. The provisions of this subdivision shall not apply to shares of its own stock acquired by the corporation.

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

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

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

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

II. Directors or shareholders who, wilfully or without reasonable investigation, either make an allotment of shares for a cash consideration which is unfair to the then shareholders or so overvalue property or services received or to be received by the cor-

poration as consideration for shares allotted, shall be jointly and severally liable to the corporation for the benefit of the then shareholders who did not assent to and are damaged by such action, to the extent of their damages. Directors or shareholders who are present and entitled to vote but fail to vote against such allotment or valuation shall be considered, for the purposes of this section, as participating in such allotment or valuation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Foreclose its lien by advertised sale.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. Every certificate of shares shall be signed by the president and the secretary, or by such officers as the articles of incorporation or by-laws may provide, but when a certificate is signed by a transfer agent or registrar the signature of any such corporate officer and the corporate seal, if any, upon such certificate may be facsimiles, engraved or printed.

V. Every certificate of shares shall state:

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

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

(c) The number of shares, and if the corporation is authorized to issue shares of more than one class, the class, or series and class, of the shares represented thereby;
(d) The par value of each share represented, or a statement that such shares are without par value;
(e) If the corporation is authorized to issue shares of more than one class, the rights, preferences, and restrictions granted to or imposed upon the shares of all classes or series, or a summary thereof with a reference to the articles, and the authority, if any, vested by the articles in the board of directors under subdivision I (e) or Section 3 of this Act to fix the rights of series of shares then unallotted.

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

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

7492-18. Liability of subscribers and shareholders.

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

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

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

7492-20. Stated capital and surplus.

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

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

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

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

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

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

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

VIII. Whenever a corporation acquires all or substantially all of the assets of another corporation in consideration of the allotment of shares of the acquiring corporation, with or without other consideration, the earned surplus of the acquired corporation shall become earned surplus of the acquiring corporation, but only to the extent that the aggregate of the stated capital, paid-in surplus and earned surplus of the acquired corporation exceeds the aggregate of the following amounts.
(a) The value of the consideration given therefor, other than shares of the acquiring corporation and other than the assumption by the acquiring corporation of liabilities of the acquired corporation.
(b) The par value of all shares of the acquiring corporation having par value, given as consideration, and
(c) The stated capital represented by all shares of the acquiring corporation without par value, given as consideration.

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

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

7492-21. Dividends and purchase of own shares.

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

II. A corporation may declare dividends in cash or property only as follows:
(a) Out of earned surplus;
(b) Out of paid-in surplus, provided, that if there are outstanding shares entitled to preferential dividends, then dividends may be declared out of paid-in surplus only upon such shares. When dividends are paid from paid-in surplus, notice of such fact shall be given to the shareholders receiving the same concurrently with the payment thereof;
(c) Out of its net earnings for its current or for the preceding fiscal year, whether or not it then has a paid-in or earned surplus, provided, that if there are outstanding shares entitled to a preference upon liquidation, such dividends shall not be paid upon any other shares except to the extent that the fair value of its assets, determined as set forth in subdivision

1 of this section, exceeds the aggregate of its liabilities and its stated capital represented by all shares entitled to a preference upon liquidation; provided, further, that no such dividend shall be declared if the fair value of the assets of the corporation is less than the aggregate of its liabilities, including such proposed dividend as a liability.

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

(a) Out of earned surplus;

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

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

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

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

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

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

(a) Out of earned surplus;

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

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

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

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

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

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

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

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

7492-23. By-laws.

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

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

7492-24. Shareholders' meeting; quorum.

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

II. Shareholders shall hold a meeting each calendar year, known as the annual meeting, at which they shall elect directors, and may transact any other business; provided, however, that no business with respect to which special notice is required shall be transacted

unless such notice shall have been given. When the annual meeting is not held, or the directors are not elected thereat, directors may be elected at a special meeting held for that purpose, and it shall be the duty of the president, vice-president or secretary, upon demand of any shareholder entitled to vote, to call such special meeting.

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

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

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

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

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

7492-25. Voting rights.

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

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

III. If notice in writing is given by any shareholder to the president or secretary of a corporation not less than twenty-four hours before the time fixed for holding a meeting for the election of directors that he intends to cumulate his votes in such election, each shareholder shall have the right to multiply the number of votes to which he may be entitled by the number of directors to be elected, and he may cast all such votes for one candidate or distribute them among any two or more candidates. In such case it shall be the duty of the presiding officer upon the convening of the meeting to announce that such notice has been given. If the articles of incorporation expressly provide that there shall be no cumulative voting, the provisions of this subdivision shall be inapplicable to such corporation.

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

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

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

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

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

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

X. A corporation shall not vote any shares of its own issue belonging to it, nor shall any such shares

be counted in calculating the total voting power of all shareholders of such corporation at any given time.

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

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

7492-26. Voting trusts.

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

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

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

7492-27. Directors.

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

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

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

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

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

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

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

(d) Notice shall be given to each director of the time and place of each meeting of the board but any director may, in writing, either before or after the meeting, waive notice thereof; and, without notice, any director by his attendance at and participation in the action taken at any meeting, shall be deemed to have waived notice;

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

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

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

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

7492-28. Removal of directors.

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

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

7492-29. Officers and agents.

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

II. All officers shall respectively have such authority and perform such duties in the management of the

business of the corporation, as may be prescribed in the by-laws, or, in the absence of controlling provisions in the by-laws, as may be determined by the board of directors.

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

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

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

7492-32. Registered office; changes; penalty.

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

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

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

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

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

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

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

(a) Records of all proceedings of shareholders and directors;

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

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

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

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

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

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

7492-34. Information to shareholders and creditors.

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

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

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

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

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

7492-35. Voluntary transfer of corporate assets.—A corporation may, by action taken at any meeting of its board of directors, sell, lease, exchange or otherwise dispose of all or substantially all of its property and assets, including its good will, upon such terms and conditions and for such considerations, which may be money, shares, bonds, or other instruments for the payment of money or other property, as its board of directors deems expedient, when and as authorized by the vote of holders of shares entitling them to exercise at least two-thirds of the voting power on such proposal or the vote of such other proportion, not less than a majority, or vote by classes, as the articles may require, at a shareholders'

meeting called for that purpose, or when authorized upon the written consent of the holders of such shares. Notice of any such meetings shall be given to all shareholders of record whether or not they shall be entitled to vote thereat. (Act Apr. 18, 1933, c. 300, §35.)

7492-36. Amendments of articles of incorporation.

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

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

III. After allotment of any shares:

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

(b) Except as hereinafter in this section provided, an amendment may be adopted by the vote of the holders of two-thirds of the voting power of all shareholders entitled under the articles to vote, or by such larger or smaller vote, not less than a majority, as the articles may require.

(c) If an amendment would adversely affect the rights of the holders of shares of any class, then in addition to the vote required by subdivision III (b) of this section, the holders of each class of shares so affected by the amendment shall be entitled to vote as a class upon such amendment, whether or not by the terms of the articles such class is entitled to vote; and the vote of the holders of two-thirds of the shares (or such larger or smaller vote of each class, not less than a majority, as the articles may require) of each class so affected by the amendment shall be necessary to the adoption thereof.

(d) If an amendment would make any substantial change in the purpose or purposes for which the corporation was organized, then the holders of each class of the shares shall be entitled to vote as a class upon such amendment, whether by the terms of the articles such class is entitled to vote or not; and the vote of the holders of two-thirds of the shares of each class (or such larger vote as the articles may provide), shall be necessary to the adoption thereof.

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

7492-37. Provisions relating to certain amendments.

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

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

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

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

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

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

7492-38. Reduction of Stated Capital.

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

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

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

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

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

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

I. If a corporation has authorized an amendment which substantially changes the corporate purposes

or extends the duration of the corporation, a shareholder who did not vote in favor of or consent in writing to such corporate action may, within twenty days after the date upon which such amendment was authorized, object thereto in writing and demand payment for his shares.

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

III. A shareholder shall not be entitled to payment for his shares under the provisions of this section unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities exclusive of stated capital. (Act Apr. 18, 1933, c. 300, §39.)

7492-40. Consolidation and merger authorized.—Two or more corporations, except corporations formed for the purpose of carrying on the business of a railroad, may merge into one of the constituent corporations or consolidate into a new corporation, in accordance with the provisions of Sections 41 to 44 of this Act. (Act Apr. 18, 1933, c. 300, §40.)

7492-41. Procedure of consolidation or merger.

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

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

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

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

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

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

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

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

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

7492-43. Rights of dissenting shareholders.

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

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

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

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

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

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

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

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

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

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

7492-46. Voluntary proceedings for dissolution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7492-48. Grounds for involuntary dissolution.

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

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

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

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

(d) That there is internal dissension and that two or more factions of the shareholders in the corporation are so deadlocked that its busi-

ness cannot longer be conducted with advantage to its shareholders; or

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

7492-49. Who may institute involuntary proceedings.

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

(a) A shareholder or

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

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

7492-50. Appointment of receivers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. Any claim may be pleaded as an offset or counterclaim in any action brought against the claimant by the receiver or receivers, except in an action for the balance due upon a subscription for or contract to purchase shares.

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

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

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

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

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

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

I. When a corporation has been completely wound up, the court, if the proceeding is subject to the supervision of the court, shall make an order adjudging the corporation to be dissolved; and if the pro-

ceeding is out of court, the trustee or trustees shall sign and acknowledge a certificate stating that the corporation has been completely wound up and is dissolved.

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

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

7492-56. Action to terminate corporate existence. I. Whenever the public interest may require, the attorney general may bring an action against a corporation to terminate its corporate existence upon the ground that:

(a) The corporate franchise was procured through fraud practiced upon the state; or
(b) The corporation should not have been formed under this Act; or
(c) The corporation was formed without a substantial compliance with the conditions prescribed by this Act as precedent or essential to incorporation; or
(d) The corporation has offended against any provision of the statutes regulating corporations or has abused or usurped corporate privileges or powers; or
(e) The corporation has knowingly and persistently violated any provision of law; or
(f) The corporation has done or omitted any act which amounts to a surrender of its corporate franchise, has failed to exercise or has discontinued its corporate privileges, or has abandoned the corporate enterprise.

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

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

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

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

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

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

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

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

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

III. Whether or not a corporation eligible to accept the provisions of this Act has elected not to accept, under subdivision II of this section, it may, at any time within said one year period, accept and come under the provisions of this Act by resolution adopted, certified, and filed, with the payment of fees, in the same manner as in subdivision II of this section provided for election not to accept.

IV. The Secretary of State, upon the payment of the $5.00 as a filing fee, shall record each resolution of election not to accept and each resolution of acceptance filed within the said one year period, if the same conforms to the requirements of this section.

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

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

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

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

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

IX. The duration of the accepting corporation shall not be in anywise altered by its coming under

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

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

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

I. The provisions of Mason's Minnesota Statutes of 1927, Sections 7453, 7454, 7457-12, 7457-13, 7457-14, 7457-15, 7457-16, 7457-17, 7457-18, 7458, 7459, 7460, 7461, 7462, 7464, 7465, 7466, 7467, 7468, 7469, 7470, 7470-1, 7470-2, 7470-3, 7470-5, 7470-6, 7470-7, 7470-8, 7470-9, 7470-10, 7470-11, 7471, 7472, 7477, 7478, 7479, 7480, 7481, 7483, 7484, 7489, 7491, 7776, 7778, 8015, 8016, 8017, 8019, 8022, 8023, 8024, 8025, 8026, 8027, 8028, 8029, 8030, 8031, as amended, shall not apply to corporations formed under this Act; nor shall they apply to any existing corporation after it comes under this Act in accordance with the provisions of section 61 of this Act. (Act Apr. 18, 1933, c. 300, §62, I.)

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

UNIFORM STOCK TRANSFER ACT

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

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

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

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

7492-72. Powers of those lacking full legal capacity and of fiduciaries not enlarged.—Nothing in this act shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney. (Act Apr. 20, 1933, c. 331, §2.)

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

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

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

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

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

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

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

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

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

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

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

(a) was procured by fraud or duress, or

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

If the delivery of a certificate was made

(c) without authority from the owner, or

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

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

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

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

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

7492-79. Delivery of unindorsed certificate imposes obligation to indorse.—The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. (Act Apr. 20, 1933, c. 331, §9.)

7492-80. Ineffectual attempt to transfer amounts to a promise to transfer.—An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts. (Act Apr. 20, 1933, c. 331, §10.)

7492-81. Warranties on sale of certificate.—A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants

(a) That the certificate is genuine.
(b) That he has a legal right to transfer it, and
(c) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim. (Act Apr. 20, 1933, c. 331, §11.)

7492-82. No warranty implied from accepting payment of a debt.—A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby. (Act Apr. 20, 1933, c. 331, §12.)

7492-83. No attachment or levy upon shares unless certificate surrender or transfer enjoined.—No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it. (Act Apr. 20, 1933, c. 331, §13.)

7492-84. Creditor's remedies to reach certificate.—A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process. (Act Apr. 20, 1933, c. 331, §14.)

7492-85. There shall be no lien or restriction unless indicated on certificate.—There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any by-laws of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate. (Act Apr. 20, 1933, c. 331, §15.)

7492-86. Alteration of certificate does not divest title to shares.—The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby. (Act Apr. 20, 1933, c. 331, §16.)

7492-87. Lost or destroyed certificate.—Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issue of a new certificate under an order of the court as provided in this section, shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate. (Act Apr. 20, 1933, c. 331, §17.)

7492-88. Rule for cases not provided for by this Act.—In any case not provided for by this act, the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. (Act Apr. 20, 1933, c. 331, §18.)

7492-89. Interpretation shall give effect to purpose of uniformity.—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it. (Act Apr. 20, 1933, c. 331, §19.)

7492-90. Definition of indorsement.—A certificate is indorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered. (Act Apr. 20, 1933, c. 331, §20.)

7492-91. Definition of person appearing to be the owner of certificate.—The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect. (Act Apr. 20, 1933, c. 331, §21.)

7492-92. Other definitions.—(1) In this act, unless the context or subject matter otherwise requires—

"Certificate" means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" means a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"State" includes state, territory, district and insular possession of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(2) A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not. (Act Apr. 20, 1933, c. 331, §22.)

7492-93. Act does not apply to existing certificates.—The provisions of this act apply only to certificates issued after the taking effect of this act. (Act Apr. 20, 1933, c. 331, §23.)

7492-94. Inconsistent legislation repealed.—All acts or parts of acts inconsistent with this act are hereby repealed. (Act Apr. 20, 1933, c. 331, §24.)

7492-95. Time when the act takes effect.—This act shall take effect on the first day of July, one thousand nine hundred and thirty-three. (Act Apr. 20, 1933, c. 331, §25.)

7492-96. Name of act.—This Act may be cited as the Uniform Stock Transfer Act. (Act Apr. 20, 1933, c. 331, §26.)

FOREIGN CORPORATIONS

7493. 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., 183M239, 236NW317. See Dun. Dig. 2187.

Foreign corporation in purchasing hay held to be doing business in the state. Massee v. C., 184M196, 238NW327. See Dun. Dig. 2187(58).

One purchasing hay for a foreign corporation for years held an agent upon whom service of summons could be had. Massee v. C., 184M196, 238NW327. See Dun. Dig. 7814(98).

On motion to set aside service of summons, burden of showing that defendant was not present in Minnesota so as to be subject to service of process was upon the defendant. Massee v. C., 184M196, 238NW327.

Numerous unequivocal documents showing that business was that of corporation held to control against testimony of president that he was but transacting his personal business in name of corporation. E. C. Vogt, Inc. v. G., 185M442, 242NW338. See Dun. Dig. 1730a, 3204b.

Purchase and management of several rent producing pieces of real estate constituted "transaction of business," in state. E. C. Vogt, Inc. v. G., 185M442, 242NW338. 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., 183M239, 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.

Movement of grain separator over highway, held "ordinary travel," and whether power company was negligent in permitting sagging wire and whether plaintiff, a farmer, was guilty of contributory negligence in attempting to raise the wire to permit the passage of the separator, held questions for the jury. Interstate Power Co. v. T., (CCA8), 51F(2d)964.

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

One using high tension wires in transmission of electric power must exercise ordinary care to prevent injury to others; and this means diligence commensurate with dangers reasonably to be apprehended. Faribault v. N., 247NW680. See Dun. Dig. 2996(29).

If one maintains high tension wires in such manner that in exercise of reasonable care he should anticipate injury is likely to result to another, he is liable though he could not have anticipated particular injury which did occur. Id. See Dun. Dig. 2996.

Whether power company was negligent as to house mover who came into contact with live electric wire held for jury. Id.

Section does not prevent finding of actual negligence in power company where house mover was killed by coming in contact with overhead wire. Id.

It is the uncompensated duty of a telephone company to properly trim trees which interfere with its wires, and city should not undertake this work at its own expense. Op. Atty. Gen., Feb. 24, 1931.

A reservation by dedicator of streets of exclusive right to lay and operate mains, wires, poles, and pipes, is void and of no effect. Op. Atty. Gen., Nov. 21, 1931.

County is under no obligation to pay telephone company for temporarily removing pole line from right of way of county road under construction. Op. Atty. Gen., July 26, 1932.

Reservation in deed of street of exclusive right to use for waterworks system is absolutely void. Op. Atty. Gen., Aug. 22, 1933.

TELEGRAPH AND TELEPHONE COMPANIES

7548. Liability for damages.

Interstate business of telegraph and telephone companies comes under the federal law regulating commerce. (Mason's Code, Title 49, chap. 1.) 173M424, 217NW486.

BOOM COMPANIES

7552. Corporations for driving logs, etc.

Canadian corporation floating logs on Pigeon river, forming international boundary, held engaged in foreign commerce, and Minnesota corporation cannot charge toll for movement of such logs, though it had constructed works on the Minnesota side of the river under statute authorization. Pigeon River I., S. & B. Co. v. Charles W. Cox, Ltd., (CCA8), 63F(2d)567.

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. (R. L. '05, §2936; '11, c. 385, §1; G. S. '13, §6276; Apr. 8, 1931, c. 119, §1.)

Laws 1931, c. 119, amends this section "by adding thereto a paragraph reading as" above. The amendment, however, sets out the entire section as set forth above.

7559. Officers of cemetery associations to make reports.—Every such corporation, in addition to its ordinary corporate officers, shall annually appoint an actuary, or provide by its by-laws that its secretary shall perform the duties of such office. The actuary shall keep a register of burials, in which he shall enter the date of burial or cremation, and the name, age, sex, nativity, and cause of death, of every person interred or cremated in such cemetery, so far as such facts can be ascertained from the friends, attending physician, or undertaker in charge, and, in case of a pauper, stranger, or criminal, from the public official directing the burial. Such record shall be open to public inspection, and he shall furnish to the state board of health and to local health officers, when so requested, an accurate summary of such record during any specified year. Such actuary shall also report to the adjutant general, the burial of any veteran of the Civil war, Spanish-American War, China Relief Expedition, Philippine Insurrection, Mexican Border Service, and World War, stating the name of such deceased veteran and the location of his grave in the cemetery by lot number. (R. L. '05, §2937; G. S. '13, §6277; Mar. 8, 1933, c. 65.)

PRIVATE CEMETERIES

7625. Plat and record.

County board has authority to set aside part of poor farm for burial ground for poor. Op. Atty. Gen., May 17, 1933.

FINANCIAL CORPORATIONS

GENERAL PROVISIONS

7635. Financial corporations defined.

Definition of building and loan association has not been changed. Minn. Bldg. & Loan Ass'n v. C., 234NW 872. See Dun. Dig. 1163(32).

A state bank had no authority to become a depositary to hold bonds issued by a hospital association, and to issue certificates of deposit to the bondholders, and original certificates of deposit and transfers thereof in books to be kept for that purpose. Op. Atty. Gen., Sept. 16, 1930.

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

7636. Bank and savings bank defined—Control of examiner.

A cooperative association could not be organized on a membership basis to accept sums of money for safekeeping and to grant members privilege of withdrawing deposits at any time. Op. Atty. Gen., May 31, 1933.

7637. Word "bank" not to be used unless inspection permitted.

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

7646. Examiner's certificate.

Commissioner of banks may refuse to approve articles of incorporation and name of bank prior to hearing before state securities commission on petition for issuance of bank charter. Op. Atty. Gen., Feb. 21, 1933.

7651. Trust Companies given power to establish savings department.—No individual, co-partnership or corporation other than a savings bank or safe deposit and trust company subject to and complying with all the provisions of law relating to such bank or safe

deposit and trust companies respectively, shall in any manner display or make use of any sign, symbol, token, letterhead, card, circular, or advertisement stating, representing or indicating that he, it, or they, are authorized to transact the business which a savings bank, safe deposit or trust company usually does, or under said provision are authorized to do; nor shall any such individual, co-partnership or corporation use the words "savings" or "trust" or "safe deposit" alone or in combination in title or name or otherwise or in any manner solicit business or make loans or solicit or receive deposits or transact business as a savings bank or safe deposit or trust company. Except that a state bank, or trust company, regularly incorporated and authorized to do business under the laws of this state, may establish and maintain a savings department under the supervision of the superintendent of banks, and may solicit and receive deposits in said savings department and advertise the same as such, and every such trust company having a savings department may use in its name or title in addition to the word "trust," the words "savings" or savings bank." Savings deposits received by any such trust company using the words "Savings" or "Savings Bank" in its name or title shall be invested only in authorized securities as defined by law and such trust company shall keep on hand, at all times, such securities as deposits in savings banks may be invested in to an amount at least equal to the amount of such deposits and these securities shall be the representative of and the fund for, applicable first and exclusively to the payments of, such savings deposits. Deposits received by such trust company subject to its right to require notice of withdrawal evidenced by pass books shall be deemed savings deposits.

Provided, That any old line life insurance company which does not in any manner display or make use of any sign, symbol, token, letterhead, card, circular or advertisement representing or indicating that it is authorized to transact any business which a savings bank, safe deposit or trust company usually does and which does not attempt to do any such business; and which uses the word "trust" in its name in combination with other words in such a manner that it is apparent that such company is not either a savings bank, safe deposit or trust company and does not attempt to do any of the business which a savings bank, safe deposit or trust company usually does, shall not be prohibited by this act from so using such word "trust" in its name.

Every individual, co-partnership or corporation which shall violate any of the provisions of this section shall forfeit to the state the sum of one hundred dollars for every day such violation shall continue. (R. L. '05, §2978; '09, c. 178, §1; G. S. '13, §6340; '15, c. 236, §1; Mar. 21, 1929, c. 77, §1.)

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

7656. Financial institutions to file articles with superintendent of banks.

If industrial thrift company is permitted to purchase its own stock and hold it as treasury stock, such company must deduct amount of such stock from its paid-in capital for advertising purposes. Op. Atty. Gen., Jan. 19, 1933.

7657. Advertisements of financial institutions.—No such financial institution shall directly, indirectly or by inference of any kind, display, represent, hold out or otherwise advertise as its capital, resources, assets or financial strength or ability or availability therefor any capital, resources or assets of any other financial institution or institutions, whether or not such other financial institution or institutions are in any way connected with such financial institution through or by way of a holding company or other corporation or similar structure; nor shall any such financial institution, the capital stock of which is in whole or in part controlled or owned by any such holding company, other corporation or similar structure, display, represent, hold out or otherwise advertise that it is affiliated with or has any other connection with such company, corporation or similar structure other than that which truly and actually exists; and no such financial institution shall advertise as its capital any amount other or greater than the amount of actual paid-in capital, which it shall have at the time of the appearance of such advertisement, and no such financial institution shall advertise in any way the aggregate or individual responsibility or financial worth of its stockholders, or in any manner seek to convey the impression that the financial resources of its stockholders above the limit provided by law are available for the purpose of meeting its liabilities. ('11, c. 323, §2; G. S. '13, §6346; '25, c. 169; Apr. 25, 1931, c. 380.)

7658-1. Definitions.—For the purpose of this act the term "corporation" shall be construed to mean any bank, savings bank, trust company, insurance company, or building and loan association organized under the laws of this State; and the term "agency" shall be construed to mean the Federal Home Loan Bank of the district of which this State is a part, or of an adjoining district if convenience shall so require, or other financial corporation, association or agency created by any Act of Congress. (Act Mar. 20, 1933, c. 101, §1.)

7658-2. May become members of Federal Home Loan Bank System, etc.—Any corporation is hereby empowered and authorized to become a member of, or stockholder in any such agency and to that end to purchase stock in or securities of or deposit money with such agency and/or to comply with any other conditions of membership or credit; to borrow money from such agency upon such rates of interest, not exceeding the contract rate of interest in this State, and upon such terms and conditions as may be agreed upon by such corporation and such agency for the purpose of making loans, paying withdrawals, paying maturities, paying debts, and for any other purpose not inconsistent with objects of the corporation; and provided further that the aggregate amount of the indebtedness, so incurred by such corporation, which shall be outstanding at any time shall not exceed twenty-five per centum of the then total assets of the corporation; to assign, pledge and hypothecate its bonds, mortgages or other assets, and in the case of building and loan association, to repledge with such agency the shares of stock in such association which any owner thereof may have pledged as collateral security, without obtaining the consent thereunto of such owner, as security for the repayment of the indebtedness so created by such corporation and as evidenced by its note or other evidence of indebtedness given for such borrowed money; and to do any and all things which shall or may be necessary or convenient in order to comply with and to obtain the benefits of the provisions of any Act of Congress creating such agency, or any amendments thereto. (Act Mar. 20, 1933, c. 101, §2.)

State banks may borrow money on proposed reconstruction finance corporation capital notes and debentures. Op. Atty. Gen., Aug. 12, 1933.

Money borrowed by state bank on reconstruction finance corporation debenture may be considered as additional capital. Id.

Building and loan association may accept bonds issued by home owners' loan corporation in satisfaction of mortgages. Id.

Insurance company may issue capital notes not to exceed 25% of total assets of company. Op. Atty. Gen., Sept. 26, 1933.

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7659. How graded—Prepayment.

Legislature may authorize existing state banks to issue preferred stock only with the consent of all the stockholders, but may authorize state banks hereafter organized to issue such stock. Op. Atty. Gen., Mar. 31, 1933.

Bank charter cannot limit amount of stock which may be held by one person. Op. Atty. Gen., June 2, 1933.

7660. Special powers.

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

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

Where a person steals a certificate of deposit and forges the payee's indorsement thereon and cashes it at the bank which in turn delivers it to the issuing bank and receives the amount thereof, both banks are liable to the payee in an action for conversion. Moler v. S., 176M459, 223NW780.

The rule that a bank must know the signature of its customer has a direct reference to the ordinary depositor having a checking account, and is not applicable to the indorsement of a certificate of deposit by the payee therein. Moler v. S., 176M459, 223NW780.

A state bank in the exercise of the usual and influential powers belonging to the banking business may receive special deposits. Hurley v. M., 185M76, 239NW 769. See Dun. Dig. 786b.

7661. Application.

See §§7661-1 to 7661-4, post.

7661-1. Banks may be organized as trust company.—Hereafter state banks which may be organized in the manner now provided by law may be organized with the additional authority to exercise the fiduciary powers and privileges set out in Mason's Minnesota Statutes of 1927, Section 7663, provided that the capital of any such bank shall not be less than $50,000 if its principal place of business is to be located in a municipality of less than 25,000 inhabitants, and that the capital of any such bank shall not be less than $75,000 if its principal place of business is to be located in a municipality of 25,000 or more but less than 100,000 inhabitants, and that the capital of any such bank shall not be less than $100,000 if its principal place of business is to be located in a municipality of 100,000 or more but less than 200,000 inhabitants, and that the capital of any such bank shall not be less than $200,000 if its principal place of business is to be located in a municipality of 200,000 or more inhabitants. (Act Apr. 20, 1931, c. 267, §1.)

7661-2. Corporate names.—Any such bank may be organized with a corporate name which may include the words "trust" or "trust company," in addition to the word "bank" or other words now permitted by law, and the word "state" shall not be a required part of the corporate name of any such state bank. (Act Apr. 20, 1931, c. 267, §2.)

7661-3. To purchase authorized securities.—No state bank hereafter organized with authority to exercise fiduciary powers pursuant to the provisions of this act, the corporate name of which contains the words "trust" or "trust company," shall transact any banking or trust company business until it shall have invested in and assigned, transferred to, and deposited with the Commissioner of Banks the authorized securities described in and required by Mason's Minnesota Statutes of 1927, Section 7662, relating to the authorization of existing state banks to exercise such fiduciary powers, and until the Commissioner of Banks has issued the certificate provided by Mason's Minnesota Statutes of 1927, Section 7646, and a certificate stating that such bank is qualified to exercise the fiduciary powers set forth in Mason's Minnesota Statutes of 1927, Section 7663. (Act Apr. 20, 1931, c. 267, §3.)

7661-4. May carry on banking and trust company business.—After the application of the corporation shall have been favorably acted on by the Department of Commerce in compliance with Mason's Minnesota Statutes of 1927, Section 53-30, and upon compliance with the terms hereof and the issuance of such certificates, such bank may commence the transaction of banking and trust company business and may exercise, in addition to all the powers and privileges conferred by law on state banks, the powers and privileges set forth in Mason's Minnesota Statutes of 1927, Section 7663, and such bank shall thereafter comply with and be subject to all of the provisions of law relating to state banks exercising such fiduciary powers and privileges. (Act Apr. 20, 1931, c. 267, §4.)

7663. Powers and duties.

Where a bank, through an extended course of dealing has become the agent of another bank for the collection of checks forwarded to it, it cannot arbitrarily and without notice refuse to accept for collection a check, and is liable for loss resulting from failure to present it for payment. 172M204, 214NW922.

A bank is liable to the owner of trust funds deposited with it by the trustee in his individual name, if, with actual or constructive notice of the trust character of the funds, it applies such funds upon a past-due indebtedness owing by the trustee personally to the bank. Wegerslev v. M., 184M393, 238NW792. See Dun. Dig. 787 (58).

It was not ultra vires for bank to assume payment of mortgage by extension agreement made to protect security held by it. Nippolt v. F., 186M325, 243NW136. See Dun. Dig. 767.

Where, by extension agreement, bank has agreed to pay mortgage for purpose of protecting other security, on payment of mortgage note, it is entitled to assignment of note and mortgage. Nippolt v. F., 186 M325, 243NW136.

A bank may take out life insurance on its officers, but Commissioner of Banks has a right to hold a bank within reasonable limitations. Op. Atty. Gen., Feb. 6, 1931.

Bank holiday does not prohibit banks collecting taxes from transmitting them to county treasurer. Op. Atty. Gen., Mar. 7, 1933.

Commissioner of finance has authority to authorize state banks to issue cashiers' checks with the consent of the depositor for the purposes mentioned in the orders of the secretary of the treasury of the United States, under strict regulations which will insure that they will be later redeemable at their face value. Op. Atty. Gen., Mar. 8, 1933.

A state bank not having fiduciary powers granted by this section is without power to act as broker of securities, but one having such powers may act as broker. Op. Atty. Gen., Aug. 1, 1933.

7664. To keep record of trust accounts.

One entrusting funds to trust department of a state bank, which failed to keep the fund intact, was entitled to a preferred claim. Benson v. A., 185M541, 241NW 794. See Dun. Dig. 786b, 842d.

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

Minnesota State Bank of Amboy v. T., 184M179, 238 NW53; note under §7684.

Purchaser of bank stock, failing to rescind for fraudulent representation, held not entitled to rescind as against the Commissioner of Banks after failure of bank. 179M284, 229NW130.

Cancellation of stock denied as working prejudice to creditors. 179M161, 228NW603.

Liability of stockholders in state banks. Bank of Dassel v. M., 183M127, 235NW914. See Dun. Dig. 803(11).

A bona fide transferor of stock is not liable for the debts of the bank incurred after the transfer. He is liable for those existing at the time of the transfer and not afterwards paid. Bank of Dassel v. M., 183M127, 235NW914. See Dun. Dig. 803(11).

Liability of the bank stockholder making a transfer on November 23, 1925, continued to and included November 23, 1926. Bank of Dassel v. M., 183M127, 235NW914. See Dun. Dig. 803(11).

7671. Dividends—surplus.

Bank charter may not be amended so as to limit return on stock to 6% interest. Op. Atty. Gen., June 2, 1933.

7674. Reports to public examiner.

179M217, 228NW926; notes under §5325.

7675. Books to be kept.

In an action for fraud, where the value of the assets of a financial corporation at a given time is in issue, its record books and history, both before and after the time in question, may be examined and received as bearing upon such value at the time of the transaction involved. Watson v. G., 183M233, 236NW213. See Dun. Dig. 3247.

An expert accountant, after examination of books and records and with the books in evidence, may testify to and present in evidence summaries and computations made by him therefrom. The foundation for such evidence is within the discretion of the court. Watson v. G., 183M233, 236NW213. See Dun. Dig. 3329.

The record books of banks and financial corporations, subject to the supervision of the superintendent of banks, when shown to be the regular record books of such a corporation, are admissible in evidence without further proof of the correctness of the entries therein. Watson v. G., 183M233, 236NW213. See Dun. Dig. 3346.

7677. Restrictions upon total liability of individuals to bank—first mortgage security—liability of officers—discounts authorized—excess liability—penalty and civil liability.—The total liabilities to it, as principal, surety, or endorser of any person, corporation, or copartnership, including the liabilities of the several members thereof, shall never exceed fifteen (15) per cent of its capital actually paid in cash and of its actual surplus fund. Provided that for the purposes of this section the members of a family living together in one household shall be regarded as one person and the total liabilities of the members of such family shall be limited as herein provided. Provided, however, that loans not exceeding 25 per cent of such capital and surplus made upon first mortgage security on improved real estate in the State of Minnesota or in an adjoining state within 20 miles of the place where the bank is located, shall not constitute a liability of the maker of the notes secured by such mortgages within the meaning of the foregoing provision limiting liability, but shall be an actual liability of such maker; provided, that such mortgage loans be limited to, and in no case to exceed forty (40) per cent of the cash value of the security covered by such mortgage; provided further, that commercial paper actually owned by the person negotiating the same not exceeding 15 per cent of the capital stock and surplus taken from any one person, shall not constitute a liability within the meaning of this Act, but shall be an actual liability of the maker. The total liability of any officer or director shall never exceed ten per cent of the same aggregate amount. But the discount of the following classes of paper shall not be regarded as creating liability within the meaning of the section, viz.:

1. Bonds, orders, warrants or other evidences of indebtedness of the United States, of federal land banks, of this State or of any county, town, village, or school district in this State, or of the bonds of any other state in the United States, or bonds and obligations of the Federal Home Loan Banks established by Act of Congress known as the Federal Home Loan Bank Act, approved July 23, 1932, and Act amendatory thereto, and in bonds and obligations of the Home Owners' Loan Corporation established by Act of Congress known as the Home Owners' Loan Act of 1933, and Acts amendatory thereto, in exchange for mortgages on homes, or contracts for deed, and/or real estate held by it.

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

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

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

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

Whenever a bank shall allow any person, co-partnership or corporation to become indebted to it, directly or indirectly, in excess of the amount, exclusive of interest, permitted by the laws of this State, the officer or employe of such bank wilfully permitting or approving such loan shall be guilty of a gross misdemeanor and in addition thereto shall be personally liable to the bank for the amount of such loan in excess of the statutory limit. (R. L. '05, §2993; '07, c. 156; '11, c. 160, §1; G. S. '13, §6358; '19, c. 103, §1; '27, c. 258, §1; Feb. 7, 1931, c. 9, §1; Jan. 9, 1934, Ex. Ses., c. 70.)

Claim of insolvent bank against insolvent and nonresident directors for making excessive loans, held not shown to be barred by limitations; and such liability may be set off against liability of the bank to the directors for satisfying liability of the bank on a depository bond. Andresen v. Thompson, (DC-Minn), 56F(2d) 642. See Dun. Dig. 5656, 7613.

Applies to actual loans and does not include guaranty of paper assigned to bank, without other consideration, to make good depleted or questionable assets. State v. Flowers, 254NW834. See Dun. Dig. 773a.

7678. Contracts, how made.

Powers of national banks. 172M310, 215NW213.

A cashier of a bank has implied power to indorse negotiable paper in the ordinary transaction of its business. 174M471, 219NW757.

Where all the stock of a corporation is owned by its three directors, they are estopped from questioning the validity of a deed for want of a formal resolution authorizing its execution and delivery, they having given authority informally. 176M411, 223NW624.

In the absence of by-laws defining or limiting the duties of a vice president, he may act as president in the absence of the latter. 176M411, 223NW624.

Allegation that corporations "made and entered into" certain contracts was good as against demurrer. 176M 529, 224NW149.

Transaction whereby president gave his note, guaranteed by the bank, in exchange for a certificate of deposit, held a transaction of the bank and it was liable on the note. 178M476, 227NW659.

Bank whose vice president gave note on settlement of an action against the bank was estopped to question the settlement, and the validity of the note after having stood by for three years. Nelson v. C., 185M449, 241NW 585. See Dun. Dig. 779c.

Vice president of bank upon settlement of an action against the bank made by vice president and attorneys had authority to give note as part of settlement, though not signed by cashier. Nelson v. C., 185M449, 241NW585. See Dun. Dig. 777c.

There being no limitation of power shown, cashier of a state bank has authority to execute a contract in behalf of bank for preservation or protection of its securities. Bankers' Life Co. v. F., 247NW239. See Dun. Dig. 778.

Where officer, in active charge of bank, is sole representative of bank in a transaction with others, his knowledge of facts is chargeable to bank, even if he has a personal interest, adverse to the bank. People's State Bank of Jordan v R., 249NW325.

Where officer of bank had misappropriated funds from account of a depositor for which misappropriation bank was liable, bank was entitled to credit for moneys restored by such officer to account of such depositor. Id.

7679. May hold real estate—Restrictions.—Such bank may purchase, hold and convey real estate for the following purposes:

1. Such as shall be necessary for the convenient transaction of its business, including with its banking office other apartments to rent as a source of income, which investment shall not exceed forty per centum of its paid-in capital stock and permanent surplus.

2. Such as is acquired through foreclosure of any mortgage given to it in good faith by way of security for loans made or money due to such bank.

3. Such as is conveyed to it in satisfaction of debts previously contracted in good faith in the course of its dealings.

4. Such as it acquires by sale on execution or judgment of any court in its favor.

It shall not purchase, hold or convey real estate in any other case or for any other purpose whatever. No real estate acquired in the cases contemplated in the second, third and fourth subsections above shall be held for a longer period than five years, unless such time has been extended by certificate of the commissioner of banks. (R. L. '05, §2995; G. S. '13, §6360; '19, c. 85, §1; '21, c. 258, §1; Mar. 9, 1929, c. 54.)

7680. Cash reserve in banks.—It shall always keep a reserve equal to fifteen per centum (15%) of its demandable liabilities and five per centum (5%) of its time deposits if located in a reserve city, if not located in a reserve city it shall always keep a reserve equal to twelve per centum (12%) of its demandable liabilities and five per centum (5%) of its time deposits; which shall be in cash and balance due from

solvent banks. No bank shall act as reserve agent for another without the approval of the commissioner of banks if its capital and surplus is less than twenty-five thousand dollars. Whenever its reserve shall become impaired, it shall make no new loans or discounts except upon sight bills of exchange, nor declare any dividend until the same has been fully restored. The term "Reserve City" as used herein shall be taken to mean such cities as are designated as reserve cities by act of congress or other federal authority. (R. L. '05, §2996; G. S. '13, §6361; '15, c. 362, §1; Mar. 27, 1931, c. 93.)

7682. Insolvent banks—Examiner to take charge.

The action of the receiver of a bank in bringing suit on a note given to the bank as accommodation under agreement by the bank to indemnify the maker, held to constitute a breach of the contract of indemnity. Kaercher v. Citizens' Nat. Bank, (CCA8), 57F(2d)58. See Dun. Dig. 4335.

The receiver of an insolvent bank stands in no better position than the bank stood as a going concern. Kaercher v. Citizens' Nat. Bank, (CCA8), 57F(2d)58. See Dun. Dig. 802, 823.

Commissioner of banks was authorized to enforce the individual liability of stockholders, and to that end attach property held in trust for stockholder. 172M83, 214NW771.

Notes and securities executed to a bank to deceive examiner by making an appearance of assets, could be collected by receiver representing creditors, though probably not enforcible by the bank itself. 177M529, 225NW891.

Transfer by insolvent bank to another bank of all its assets, the transferee assuming liability for all deposits shown by the books, held not an assignment contemplated by this section, and transferee was not liable in an action for damages for a judgment for attorney's fees against the transferor. 181M1, 231NW407.

The exclusive power to liquidate insolvent state banks is placed in the commissioner of banks, and where he has attempted to exercise such power the district court is without jurisdiction to appoint a receiver for such banks in proceedings brought by a judgment creditor to enforce the "double" liability of shareholders. Northwestern Fuel Co. v. L., 182M276, 234NW304. See Dun. Dig. 824b.

A deposit in a bank becomes due so as to be available as a set-off when the bank fails. First Nat. Bank of Windom v. C., 184M635, 240NW662. See Dun. Dig. 787 (59).

In absence of imminent danger of loss, or need for summary relief, a receiver should not be appointed for solvent corporation on petition of minority stockholders. Rule applied to banking corporation in voluntary liquidation and without creditors. Zwick v. S., 186M308, 243NW140. See Dun. Dig. 2138.

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.

7683. District Court may appoint receiver from the officers or directors of a bank.—At any time after a period of three years shall have elapsed, after the Commissioner of Banks shall have taken possession of the business and property of an insolvent bank or trust company, a majority of the creditors in number and amount may petition the court for the appointment of a committee of three competent persons, residents of the county, named by them, the court may make such appointment, and any officer or member of the board of directors of the insolvent bank or trust company may be appointed as members of said committee if residents of the county. All rights and duties of the Commissioner of Banks shall then devolve upon the said committee. (R. L. '05, §2999; G. S. '13, §6364; Apr. 17, 1933, c. 310, §1.)

7683-1. Committee to furnish bonds.—The committee herein provided for shall furnish adequate bond to be approved by the district court for the faithful performance of their duties. (Act Apr. 17, 1933, c. 310, §2.)

7683-2. Commissioner to be discharged as liquidator.—Upon such order of the court the Commissioner of Banks of the State of Minnesota shall be discharged as statutory liquidator of such banks and released from any further liability thereunder. (Act Apr. 17, 1933, c. 310, §3.)

Sec. 4 of Act Apr. 17, 1933, cited, provides that the act shall take effect from its passage.

7684. Stock unpaid or impaired.

Assessment of stockholders under this section constitutes a bank asset, and it cannot be applied in discharge of the superadded or constitutional double liability of stockholders. Minnesota State Bank of Amboy v. T., 184M179, 238NW53. See Dun. Dig. 824e.

Constitutional double liability of stockholders of bank is for benefit of creditors, and bank has no authority over the fund created by its enforcement. Minnesota State Bank of Amboy v. T., 184M179, 238NW53. See Dun. Dig. 824e, 2080(45).

7685. Reorganization.

Act does not contemplate finding of insolvency by reason of declaration of emergency by directors of bank, and contingent liability of stockholders for debts of bank does not become absolute. Op. Atty. Gen., Mar. 10, 1933.

State banks must bear expenses incident to reorganization and such expense money belongs to the state and is a preferred claim against the bank in which it is deposited in case of liquidation. Op. Atty. Gen., Apr. 4, 1933.

A depositor who is indebted to a bank is entitled to set off the amount to his credit against his indebtedness whether the bank be in liquidation or under the reorganization law. Op. Atty. Gen., Apr. 11, 1933.

Commissioner of banks may allow an individual bank to raise the restrictions against the withdrawals on checking accounts but leave those restrictions against time deposits providing the board of directors pass a resolution to that effect. Op. Atty. Gen., Apr. 17, 1933.

Depositors who have not signed depositors' agreements do not have a preference under bank reorganization law, and this applies to estate of decedent. Op. Atty. Gen., July 12, 1933.

2.

Bank under reorganization is analogous to bank in liquidation with regard to offset against depositors. Op. Atty. Gen., Apr. 11, 1933.

Bank may not adopt plan of reorganization without written approval of commissioner. Op. Atty. Gen., May 2, 1933.

Endorsers and guarantors may invoke principal of offsets against bank, but a contingent obligation cannot be basis for offset. Op. Atty. Gen., May 3, 1933.

When jurisdiction of commissioner has been invoked by involuntary proceedings under §7688, he is without authority to liquidate bank under this act. Op. Atty. Gen., May 15, 1933.

A bank having resolved to reorganize under this act may not thereafter abandon such plans and go into voluntary liquidation under same chapter. Op. Atty. Gen., May 16, 1933.

2(b).

Commissioner may allow an individual bank to raise restrictions against withdrawals on checking accounts but leave those restrictions against time deposits. Op. Atty. Gen., Apr. 17, 1933.

3.

Borrower of bank has right to offset deposits for full amount of note. Op. Atty. Gen., Apr. 11, 1933.

Depositors' meeting should not be called on Good Friday. Op. Atty. Gen., Apr. 12, 1933.

4(c).

Depositors who have not signed depositors' agreements do not have a preference under bank reorganization law, and this applies to estate of decedent. Op. Atty. Gen., July 12, 1933.

5.

Deposits of county money in bank in trust on restricted basis is not protected by collateral which became deposited prior to bank holiday. Op. Atty. Gen., Apr. 20, 1933.

6.

There can be no enforcement of stockholders' liability unless bank is, in fact, insolvent. Op. Atty. Gen., May 16, 1933.

8.

Accounts in name of individuals held to represent deposits of association organized for relief of poor, and therefore exempt from operation of act. Op. Atty. Gen., May 8, 1933.

7687. Delinquent financial institutions—Etc.

The exclusive power to liquidate insolvent state banks is placed in the commisioner of banks, and where he has attempted to exercise such power the district court is without jurisdiction to appoint a receiver for such banks in proceedings brought by a judgment creditor to enforce the "double" liability of shareholders. Northwestern Fuel Co. v. L., 182M276, 234NW304. See Dun. Dig. 824b.

7688. Violation of charter, etc.—Examiner to take charge.

American State Bank of Minneapolis v. J., 184M498, 239NW144; note under §7689.

When jurisdiction of commissioner has been invoked by involuntary proceedings, he is without authority to liquidate bank under Laws 1933, c. 55. Op. Atty. Gen., May 15, 1933.

7689. Liquidation and distribution of closed banks.—The commissioner of banks shall collect all debts

due and all claims belonging to such bank, and upon the order of the district court may sell or compound all bad or doubtful debts, and on like order may sell all the real and personal property of such bank on such terms as the court shall direct, and may, if necessary to pay the debts of such bank, enforce the individual liability of the stockholders. The commissioner of banks may under his hand appoint one or more special deputy examiners as agents to assist him in the duty of liquidation and distribution, the certificate of appointment to be filed in the office of the commissioner of banks and a certified copy in the office of the secretary of state and also the clerk of the district court of the county in which the principal office of such bank was located. The commissioner of banks may from time to time authorize any such special deputy examiner to perform such duties connected with such liquidation and distribution as the commissioner of banks may deem proper. The commissioner of banks may procure such expert assistance as may be necessary in the liquidation and distribution of the assets of such bank and may retain such of its officers or employes as he may deem necessary and upon his request in writing the attorney general shall employ a special attorney to act as counsel in all matters relating to the liquidation of each bank, which appointment shall be made according to the provisions of the statutes regulating the employment by the attorney general of special attorneys for state boards and officers, and the payment of such attorney shall be from the proceeds of the assets of the bank with whose liquidation he becomes thereby connected. The commissioner of banks shall require from each special deputy examiner such security for the faithful discharge of his duties as he may deem proper. The commissioner of banks shall cause notice to be given by advertisement in a legal newspaper in the city or village where such bank is located, or, if none in such city or village, then in the county, weekly for five (5) consecutive weeks, calling on all persons who may have claims against such bank to present the same to the commissioner of banks, and make legal proof thereof at a place and within a time not earlier than one week after the last day of publication, which time and place shall be specified in said notice. The commissioner of banks shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank. If the commissioner of banks doubts the justice and validity of any claim he may reject the same and serve notice of such rejection upon the claimant, either by mail or personally. An affidavit of the service of such notice made according to law shall be filed with the commissioner of banks. An action upon a claim so rejected must be brought within sixty days after such service and the filing of proof thereof. The venue of such action shall be in the county in which such bank is located, and such action shall be brought jointly against the bank and the commissioner of banks as statutory liquidator of said bank. Any person having a claim against such bank and not presented and filed within the time fixed in the notice to creditors may present the same and the commissioner of banks shall allow or reject the same in whole or in part as hereinbefore provided, and suit on such rejected claim not filed within the time fixed by the notice shall be brought within thirty days after the service and filing of proof of such rejection. Any claim not filed within the time fixed in the notice to creditors but received and filed as by this section provided and duly allowed, shall participate and share in such dividends only as shall be paid from the proceeds of those assets remaining undistributed at the time of filing of such claim. No interest shall be allowed or paid on any deposit or other claim from and after the closing of the bank and the taking over of the same by the commissioner of banks for purposes of liquidation. Upon taking possession of the property and assets of such bank the commissioner of banks shall make an inventory of the assets of such bank in duplicate, one to be filed in the office of the commissioner of banks and one in the office of the clerk of district court of the county in which the principal office of such bank was located. Upon the expiration of the time fixed for the presentation of claims, the commissioner of banks shall make in duplicate a complete list of the claims presented, including and specifying such claims as have been rejected by him, one such list to be filed in his office and one in the office of said clerk of district court. Such inventory and list of claims shall be open at all reasonable times to inspection. The compensation of the special deputy examiners and the other employes and assistants of the commissioner of banks, except legal counsel, and all expenses of supervision and liquidation hall be fixed by the commissioner of banks, subject to the approval of the district court of the county in which said bank is located, after notice fixing the time and place when the commissioner of banks will hear and fix the amount of all such expenses, and the amount so fixed and the compensation of legal counsel as fixed by the attorney general, shall be paid upon the certificates of the commissioner of banks and the attorney general respectively, out of the funds of such bank in the hands of the commissioner of banks. The moneys collected by the commissioner of banks shall be from time to time deposited in one or more state banks or trust companies, and, in case of a suspension or insolvency of the depository, such deposits shall be preferred before all of the deposits. At any time after the expiration of a date fixed for the presentation of claims the commissioner of banks may, out of the funds remaining in hands after the payments of expenses, declare one or more dividends, and after the expiration of one year from the first publication of notice to creditors he may declare a final dividend, such dividends to be paid to such persons and in such amounts and upon such notice as may be directed by the said district court. Objections to any claim not rejected by the commissioner of banks may be made by any party interested by filing a copy of such objections with the commissioner of banks, who shall present the same to the district court at the time of the next application to declare a dividend. Whenever any such bank of whose property and business the commissioner of banks has taken possession as aforesaid, deems itself aggrieved thereby it may at any time within ten days after such taking possession apply to the district court of the county in which such bank is located to enjoin further proceedings, and said court, after citing the commissioner of banks to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties in determining the facts, may, upon the merits, dismiss such application or enjoin the commissioner of banks from further proceedings and direct him to surrender such business and property to such bank. Whenever the commissioner of banks shall have paid each and every depositor and creditor of such bank (not including stockholders) whose claim or claims as such creditor or depositor shall have been duly approved and allowed, the full amount of such claims, and shall have made proper provision for unclaimed and unpaid deposits or dividends and shall have paid all the expenses of the liquidation, the commissioner of banks shall call a meeting of the stockholders of such corporation by giving notice thereof for ten days by publishing such notice in one or more newspapers of the county where the bank is located. At such meeting the stockholders shall determine whether the commissioner of banks shall be continued as liquidator and shall wind up the affairs of such bank, or whether an agent or agents shall be elected for that purpose, and in so determining the said stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote, and the majority of the stock shall be necessary to a determination. In case it is determined

to continue the liquidation under the commissioner of banks he shall complete the liquidation of the affairs of such corporation, and after paying the expenses thereof, if there are proceeds of liquidation as yet undistributed he shall reimburse those stockholders who paid their stock assessments pursuant to the order for assessment to the extent that each has paid, and if the proceeds are insufficient to reimburse such paying stockholders in full, then in just proportion. Any proceeds remaining undistributed after such paying stockholders have been reimbursed as by this act provided shall be distributed among all the stockholders in proportion to their several holdings of stock in such manner and upon such notice as may be directed by the district court. In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary to a choice. Such agent or agents shall execute and file with the commissioner of banks a bond to the state of Minnesota, in such amount with such sureties and in such form as shall be approved by the commissioner of banks, conditioned for the faithful performance of all the duties of his or their trust, and thereupon the commissioner of banks shall transfer and deliver to such agent or agents all the undivided or uncollected or other assets of such corporation then remaining in his hands, and upon such transfer and delivery, the said commissioner of banks, shall be discharged from any and all further liability to such bank and its creditors. Such agent or agents shall convert the assets coming into his or their possession into cash and shall account for and make distribution of the property of such bank as is herein provided in the case of distribution by the commissioner of banks, except that the expenses thereof shall be subject to the direction and control of the said district court. In case of the death, removal or refusal to act of any such agent or agents, the stockholders, on the same notice as that after which they were elected and in the same way, may elect a successor who shall have the same powers and be subject to the same liabilities and duties as the agent originally elected.

Dividends on deposits and other claims unclaimed up to the time of the application of the commissioner of banks for authority to pay a final dividend shall in just proportion be paid to other depositors and creditors who have duly filed their claims and who are entitled to participate in such final dividend. Final dividends unclaimed shall after the expiration of one year from the date of the court order authorizing the payment of the final dividend be paid to the State Treasurer and by him credited to the general revenue fund. Section 2. All acts or parts of acts inconsistent herewith are hereby repealed. ('09, c. 179, §3; G. S. '13, §6370; Apr. 8, 1933, c. 168.)

The debtor of an insolvent bank when sued by its receiver, cannot set off his liability as a surety for the bank upon a depository bond. 172M80, 214NW792.

City did not have a preferred claim against an insolvent bank in which it had made deposits in excess of collateral securities deposited by depository bank under §1973-1. 172M324, 215NW174.

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

Purchaser of a bank draft, a cashier's check or a certified check becomes a general creditor of the bank and is not entitled to a preference. 174M500, 219NW863.

A fund left in a bank in escrow for the agreed specific purpose of being paid over to a third person upon completion of a land sale is a trust fund and the owner of such fund is entitled to recover it as a preference from a receiver of the bank, where there has been at all times an amount sufficient to cover the trust fund. 175M88, 220NW168.

Commingled fund as trust fund entitled to preference on insolvency of bank. 175M336, 221NW236.

Money deposited in a bank without authority of the one for whom it was deposited constituted a trust fund and not merely a debt. 176M108, 222NW576.

Where depositor gives check to bank requesting sum to be remitted to another person, the transaction is equivalent to payment in cash to bank for special purpose. 176M384, 223NW622.

County to whose credit taxpayers had deposited money held entitled to preference. 176M594, 224NW159.

Where bank mailed unaccepted time certificate of deposit instead of crediting proceeds of conveyance to checking account, owner of the money was entitled to preferred claim. Emerson v. V., 176M584, 224NW239.

Deposit by treasurer of village for a specific purpose, held not a special one entitling treasurer to preference. 177M51, 224NW258.

Where bank, acting as collection agent only receives and accepts a payment of a check, held by it for collection, checks on itself drawn by its own depositors, which checks are good and are duly debited, it stands in the same position as if it has received payment in cash, and a preference is created. 178M64, 225NW916.

General deposit held not preferred claim. 180M342, 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., 182M291, 234NW449. See Dun. Dig. 824d.

The deposit by an agent in his bank of moneys received as rents from his principal's property held not to create a trust under the circumstances stated in the opinion. Lambrecht v. M., 182M442, 234NW869. See Dun. Dig. 824d, 2159.

Where bank deeded realty to a company to have it execute and deliver a mortgage to plaintiff, and plaintiff's money went to the bank which used it, plaintiff had a valid claim against the commissioner of banks who had taken over the bank for liquidation, and this liability was not affected by extension of time to the mortgagor. Agricultural Credit Corp. v. S., 184M68, 237 NW823. See Dun. Dig. 824d.

Section is not unconstitutional as attempt to delegate judicial power to the commissioner of banks, and does not confer such power. American State Bank of Minneapolis v. J., 184M498, 239NW144. See Dun. Dig. 824d.

This law is not unconstitutional as an attempt to deprive a bank or its stockholders of property without due process of law. Americaan State Bank of Minneapolis v J., 184M498, 239NW144. See Dun. Dig. 824d.

The deposit of money by a guardian in his name as such, unless there be special circumstances making it otherwise, is a general deposit. Ottawa Banking & Trust Co. v. C., 185M22, 239NW666. See Dun. Dig. 786b (54).

Evidence sustains finding that receiver of an insolvent corporation made a special deposit of receivership funds in the bank under an agreement that such deposit should remain intact to pay the dividends to be declared in receivership. Hurley v. M., 185M56, 239NW769. See Dun. Dig. 786b.

Where president of bank knowing it is hopelessly insolvent accepts a deposit, the fraud avoids implied contract by which relationship of debtor and creditor would ordinarily arise. Forsythe v. F., 185M255, 241NW66. See Dun. Dig. 780.

Mere insolvency of a bank coupled with fact that bank officials have good reasons to know of such insolvency does not make a deposit a trust fund. Forsythe v. F., 185M255, 241NW66. See Dun. Dig. 786b.

One entrusting funds to trust department of a state bank, which failed to keep the fund intact, was entitled to a preferred claim. Benson v. A., 185M541, 241NW794. See Dun. Dig. 786b, 842d.

Funds deposited in state bank by guardian of mentally incapacitated and permanently disabled world war veteran were funds of United States and entitled to preference. Anderson v. O., 186M396, 243NW398.

Purchaser of draft from bank held not entitled to preference over other general creditors. Paul v. F., 187 M411, 245NW832. See Dun. Dig. 824d.

Money deposited by clerk of court for benefit of heirs in condemnation proceedings, held special deposit entitled to preference on insolvency of bank. Luiten v. P., 249NW420. See Dun. Dig. 786b.

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

Members of depositors' committee are not entitled to compensation for services. Op. Atty. Gen., Feb. 11, 1933.

Expense of reorganization under Laws 1933, c. 55, is preferred claim. Op. Atty. Gen., Apr. 4, 1933.

Money received by industrial commission from Spellman Fund under §3183-18½ belongs to state, and is preferred claim against depositary. Op. Atty. Gen., Apr. 8, 1933.

Certificate of deposit held not a preferred claim against closed bank. Op. Atty. Gen., Apr. 10, 1933.

Holders of drafts issued in payment of cash letters which did not clear prior to closing of bank are only general creditors and are not entitled to preference. Op. Atty. Gen., June 7, 1933.

Late claimants are not entitled to share in dividends already paid. Op. Atty. Gen., June 14, 1933.

Claims based on duress issued on payment of cash letters which did not clear prior to closing of bank are preferred. Op. Atty. Gen., June 28, reversing June 7, 1933.

7690. Banks in possession of Commissioner of Banks or in liquidation—powers of Commissioner—Certificates.—That in all cases where the commissioner of banks of this state has taken possession of the property and business of any bank, or any such bank is in the process of liquidation by him, pursuant to the laws of this state, such commissioner of banks may in the name of any such bank or in his own name as commissioner of banks of the state of Minnesota, for the use of any such bank, bring and carry to an end all necessary actions in the proper courts to reduce the assets of any such bank to money and to protect the property and rights of any such bank, and to that end may in the name of any such bank or in his own name as commissioner of banks, execute all bonds and other papers necessary to carry on any such actions, and may in the name of any such bank, satisfy, discharge and assign by written instrument, any and all real estate and chattel mortgages and all other liens held by any such bank and may in the name of any such bank foreclose by advertisement in the manner provided by the laws of this state, any real estate mortgage held by any such bank and to execute in the name of any such bank to the attorney employed to foreclose any such mortgage by advertisement the power of attorney required by the laws of this state in case of foreclosure of mortgages by advertisement. Such commissioner of banks prior to any sale under such foreclosure proceedings shall file for record in the office of the register of deeds of the county where any land affected by any such foreclosure sale is situated, a certificate under his hand as such commissioner of banks, stating therein the corporate name of the bank affected; its principal place of business; that as such commissioner of banks he has taken possession of the property and business of such bank under the laws of the state and the date of such taking possession thereof; that such bank is in process of liquidation by him, pursuant to the laws of this state if such be the fact. A like certificate shall filed for record by such commissioner of banks in the office where any such mortgage or lien is recorded. Such certificate, or a duly certified copy thereof, shall be prima facie evidence of the facts therein set forth. Only one such certificate need be filed as hereinbefore provided by this section for each bank in liquidation. All foreclosure proceedings heretofore conducted, whether such certificate was filed for record as to each such foreclosure or not, are hereby validated if one such certificate has been so filed as to each bank in liquidation.

A like certificate shall be filed by such commissioner of banks in the office of the clerk of the district court in any county where any action or proceeding affecting any such bank or its property shall be brought in any court, in the name of any such bank or in the name of such commissioner of banks, for its use prior to the entry of judgment therein or the entry of any final order in any such proceeding, and such certificate, or duly certified copy thereof, shall be prima facie evidence of the facts therein set forth.

That where such commissioner of banks has heretofore taken possession of the property and business of any such bank or the same is in process of liquidation by the commissioner of banks, pursuant to the laws of this state, and actions have been heretofore brought in the name of any such bank or in the name of such commissioner of banks for the use of any such bank in any court of the state, all such actions and all orders and judgments that have heretofore been entered therein or may hereafter be entered therein be and the same are hereby in all things validated on the filing of the certificate hereinbefore provided for in the court wherein any such action or proceeding is or has been pending.

This act shall not affect any action now pending in any court in this state, affecting any such action or judgment. (G. S. '13, §6371; '13, c. 447, §1; Feb. 2, 1933, c. 10, §1.)

Commissioner of banks may lease vacant bank building to government without order of court. Op. Atty. Gen., June 6, 1933.

7690-1. Reorganization plans of insolvent banks.

Action of commissioner in approving a reorganization agreement under this act is not conclusive upon creditors who do not assent thereto. 174M36, 218NW238.

The commissioner of bank is given practically entire control over liquidation of state banks and to represent and act for the bank, its stockholders and all its creditors. 174M36, 218NW238.

This act is valid. 174M36, 218NW238.

This section does not impair obligation of contract made after it went into effect. 174M36, 218NW238.

Constitutional as to depositors becoming such after passage of act, and is without application to preexisting depositors except those whose surrendered certificates of deposit before the statute took effect and took new certificates after such effective date. 180M113, 230NW267.

A bank having resolved to reorganize under Laws 1933, c. 55, may not thereafter abandon such plans and go into voluntary liquidation under same chapter. Op. Atty. Gen., May 16, 1933.

There can be no enforcement of stockholders' liability unless bank is, in fact, insolvent. Op. Atty. Gen., May 16, 1933.

7690-5. Bank directors may suspend business.—Whenever the board of directors of a bank organized and existing by virtue of the laws of the State of Minnesota by resolution determine that it is unsafe and inexpedient for said bank to continue in business, it shall be lawful for said board to suspend temporarily the business of said bank for a period of not more than 15 days. The board of directors shall thereupon immediately present to the commissioner of banks a plan of reorganization calculated to put said bank in a safe condition and for continuing said bank as a going institution. The Commissioner of Banks shall forwith make an investigation of the assets and liabilities of said bank and determine its financial condition and whether said plan is for the best interests of the depositors. Upon approval in writing by the Commissioner of Banks of said plan, the same shall become effective when assented to in writing by the owners of not less than 90% of the total amount of desposits and unsecured claims of such bank, provided that by the total amount of deposits and unsecured claims is meant the total thereof after excluding therefrom all deposits mentioned in Section 3 of this Act and deposits that may not be legally reduced without an order of Court, or otherwise, and provided that the Commissioner of Banks is satisfied that the stockholders have made such contribution to the assets of the bank as the Commissioner of Banks may deem just and equitable. Thereafter, all other depositors and unsecured creditors shall be subject to such agreement and plan to the same extent and with the same effect as if they had joined in the execution thereof and had consented thereto; and the claims of such persons shall be thereafter treated in all respects the same as if they had joined in the execution of said agreement and consented thereto. That whenever under such an agreement and plan there has been a reduction of the amount or value of deposits and unsecured claims, if during the two years following the date of such agreement there shall be an increase in the total value of the assets and securities owned by the bank at the time of such agreement or in assets and securities substituted therefor, which increase is more than 5% of the value at the time of such agreement such surplus increase shall be redistributed to the holders of such deposits and unsecured claims, or their assigns which were reduced. Provided, that nothing contained in any such agreement shall be construed to release any stockholder of any such bank from liability upon his stock nor as releasing any person or corporation as surety or otherwise to any depositor and any such agreement purporting to release any such stockholder or person or corporation liable as surety shall be void. All remedies provided by law for enforcing stockholders'. liability

or the liability of any surety are hereby preserved. (Act Feb. 28, 1933, c. 39, §1.)

7690-6. No business to be transacted during suspension.—During said period of suspension, no banking business shall be transacted by the suspended bank, and no other banking institution having knowledge of such suspension shall honor drafts, checks, or other items of exchange drawn by or on such suspended bank. (Act Feb. 28, 1933, c. 39, §2.)

7690-7. Exceptions.—Deposits of the United States, of the State of Minnesota, and of the counties, cities, villages, boroughs, townships and school districts of said state are exempt from the operation of this act. (Act. Feb. 28, 1933, c. 39, §3.)

7690-8. Effective until January 15, 1935.—This act shall take effect and be in force from and after its passage until January 15th, 1935; provided that it is hereby declared as legislative intent that an emergency exists under the police power of the state, and that at any time prior to said date of January 15, 1935, the Governor may make, and file in the office of the Secretary of State, an order suspending and rendering inoperative all of the provisions of this act, and thereupon this act and all of the provisions thereof shall be in all matters suspended and inoperative, except as to those banks that may then have been reorganized under the provisions of this act. (Act Feb. 28, 1933, c. 39, §4.)

7690-9. Provisions separable.—If any section, subsection, clause or phrase of this act is for any reason held to be unconstitutional or invalid, such decision shall not effect the validity of the remaining portions of this act. (Act Feb. 28, 1933, c. 39, §5.)

7690-10. Definitions.—Wherever used in this act the following words or phrases shall be deemed to have the following meaning, namely:

"Bank"—shall mean any state bank, savings bank or trust company doing a banking business under the laws of this State.

"Period of Reorganization"—shall mean the thirty day or additional sixty or one hundred and eighty day periods or such shorter time as the Commissioner of Banks may determine during which the bank is in process of reorganization.

"Reorganized Bank"—shall mean any bank reorganized under the provisions of this Act from and after the date the plan of reorganization is declared effective by the Commissioner of Banks. (Act Mar. 3, 1933, c. 55, §1; Apr. 15, 1933, c. 277, §1.)

7690-11. Bank may be declared to be in process of reorganization.—Whenever the Board of Directors or Trustees of any bank shall have adopted a resolution declaring an emergency to exist in the affairs of said bank rendering it advisable to invoke the provisions of this Act, the Commissioner of Banks, having first given his written approval of such action, may declare said bank to be in process of reorganization for a period of thirty days thereafter subject to the right of the Commissioner of Banks if he deems such action to be for the best interests of the debtors and creditors of such bank to—

(a) Extend the period of reorganization for a further period of not to exceed sixty (60) additional days; provided, however, that during the year of 1933 only, the Commissioner of Banks, if he deems it necessary, may extend the period of reorganization for not more than one hundred and eighty (180) days from and after the end of said sixty (60) day period;

(b) Terminate the period of reorganization and declare the same at an end.

During said period of reorganization said bank shall remain open and be operated by the directors and officers thereof but under the supervision of the Commissioner of Banks and shall carry on its operations subject to such rules and regulations and restrictions as the Commissioner of Banks shall approve as being for the best interests of the debtors and creditors of such institution, including the right to prohibit or limit withdrawal of funds on deposit, but all such rules, regulations or restrictions as applied to any one bank shall be general in character and shall apply equally to all deposits or claims of a similar class of said bank. During such period of reorganization all the remedies at law or in equity of any creditor or stockholder for the enforcement of any claim against such bank shall be suspended and the statute of limitations against such claims or rights shall be tolled during said period.

The reorganization of said bank not having been effected prior to the expiration of said period of reorganization as originally declared or extended, the Commissioner of Banks in his discretion may take possession of the property and business of said bank and proceed to liquidate the same in accordance with the statutes relating thereto. (Act Mar. 3, 1933, c. 55, §2; Apr. 15, 1933, c. 277, §2.)

7690-12. Reorganization.—During said period of reorganization said bank may be reorganized in accordance with a written plan approved in writing by the Commissioner of Banks and by the owners of not less than sixty-six and two-thirds per cent. (66-2/3 %) of the total amount of deposits of, or unsecured liquidated claims against said bank after deducting from said deposits or unsecured liquidated claims any legal off-sets thereto, deposits entitled to priority of payment, deposits or claims which cannot be reduced without an order of the Court, and deposits of the United States, of the State of Minnesota, and of the counties, cities, villages, boroughs, townships and school districts of said state.

Upon such approval being obtained the Commissioner of Banks shall declare the plan of reorganization effective as of a date to be fixed in said declaration. Those depositors and unsecured creditors not approving such plan shall nevertheless be subject to the plan and bound thereby to the same extent and with the same effect as if they had approved it. (Act Mar. 3, 1933, c. 55, §3, Apr. 15, 1933, c. 277, §3.)

Non-assenting stockholder or creditor is bound by plans for reorganization when approved by commissioner of banking and owners of 66 2/3% of outstanding deposits and unsecured claims. Op. Atty. Gen., May 18, 1933.

Depositor's agreement must be filed in district court if agreement so provides. Op. Atty. Gen., Aug. 8, 1933.

7690-13. Provisions of reorganization.—Such plan of reorganization may contain any or all of the following provisions:

(a) placing in the hands of a liquidating agent or agents, corporate or individual, of the non-liquid assets of the bank to be held and liquidated for the benefit of the creditors of the bank existing at the beginning of the period of reorganization in accordance with their respective rights and priorities, if any, and thereafter for the benefit of the reorganized bank. Said liquidating agent or agents shall be appointed and act under the jurisdiction of, and report to, the District Court of the County wherein said bank is located. The expenses of said liquidating agent or agents shall be paid from the assets in its, his or their possession.

(b) reducing the amount of the debtor liability of the reorganized bank to depositors and unsecured creditors existing at the begining of the period of reorganization to a sum equivalent to the then market value of the assets of the bank carried forward into the reorganized bank and, with the written consent of the depositor or unsecured creditor, limiting the time and method of withdrawal thereof.

(c) providing that the deposit liabilities of the reorganized bank (i. e., those of old depositors carried forward as liabilities of the reorganized bank by way of reduced deposit liability

and deposits arising during the period of and after reorganization) may have priority of payment over the claims of the old depositors and unsecured creditors existing at the beginning of the period of reorganization to the extent that the claims of said old depositors or unsecured creditors have been transferred to the assets in the hands of the liquidating agent or agents, and not carried forward as a liability under the plan of reorganization against the reorganized bank. (Act Mar. 3, 1933, c. 55, §4; Apr. 15, 1933, c. 277, §4.)

7690-14. May receive deposits under certain conditions.—During the period of reorganization the bank may, with the approval of the Commissioner of Banks, receive non-interest-bearing deposits. All deposits so made shall be segregated from the other assets of the bank and retained as cash, or deposited in the Federal Reserve Bank of Minneapolis; shall be utilized solely for the purpose of repaying deposits so made and shall be deemed a trust fund therefor. Deposits made other than in cash shall be received for collection only and shall be treated as a deposit only when and as said bank shall actually have received the cash therefor. (Act Mar. 3, 1933, c. 55, §5; Mar. 17, 1933, c. 92; Apr. 15, 1933, c. 277, §5.)

Sec. 13 of Act Apr. 15, 1933, cited, repeals Laws 1933, c. 92, which amended Laws 1933, c. 41(55) §5, which is again amended by §5 of this act.

Act Mar. 17, 1933, cited, purports to amend "Laws 1933, chapter 41, §5." The act relating to the subject matter of the amendment is chapter 55 of Laws 1933. Act Mar. 17, 1933, was repealed by Act Apr. 15, 1933, c. 277, §13. Sec. 5 of the latter act amended this section to read as above.

7690-15. Commissioner may levy assessment.—Whenever it appears to the Commissioner of Banks wise or advisable in order to effectuate the reorganization of any bank under this Act, said Commissioner of Banks may levy an assessment payable forthwith upon the stockholders thereof, pro-rata, according to the capital stock held by each at such amount as he deems necessary, not exceeding their liability under the Consitution. (Act Mar. 3, 1933, c. 55, §6, Apr. 15, 1933, c. 277, §6.)

7690-16. May sell stock upon failure to pay assessment.—On failure of any stockholder to pay said assessment the Commissioner of Banks may order the Board of Directors of said bank to sell, and the latter shall thereupon sell the stock of said stockholder at public or private sale on ten days published notice in a newspaper in the county. (Act Mar. 3, 1933, c. 55, §7; Apr. 15, 1933, c. 277, §7.)

7690-17. Exemptions.—Deposits of the United States, of the State of Minnesota, and of the counties, cities, villages, boroughs, townships, school districts of said state and deposits of banks in liquidation held by the Commissioner of Banks and deposits of corporations and associations organized for the relief of the poor and/or the unemployed are exempt from the operation of this Act. (Act Mar. 3, 1933, c. 55, §8; Apr. 15, 1933, c. 277, §8.)

Funds in hands of Firemen's Relief Association are not public funds to extent that they are a preferred claim against bank and required to be paid over without restrictions or deduction by bank opened after bank holiday. Op. Atty. Gen., June 1, 1933.

7690-18. Not to relieve stockholders of constitutional liability.—Nothing in this Act shall be construed as, nor shall any reorganization plan or agreement contain any provision, releasing any stockholder of the bank from his liability upon his stock, nor as releasing any person or corporation as surety or otherwise to any depositor, and any such agreement purporting to release any such stockholder or person or corporation liable as surety shall be void. All remedies provided by law for enforcing stockholders' liability or the liability of any surety are, except as herein expressly provided to the contrary, preserved. (Act Mar. 3, 1933, c. 55, §9; Apr. 15, 1933, c. 277, §9.)

7690-18a. Expense of reorganization to be paid by bank.—All expense of the Commissioner of Banks incidental to the reorganization, reopening and/or supervision of banks under the provisions of this Act and Acts amendatory thereto, shall be paid by those banks so reorganized, reopened and/or supervised or attempting reorganization. The Commissioner of Banks may from time to time demand from each such bank reimbursement and payment of such expenses, and the demanded sum shall be paid within ten days after demand therefor. On receipt of such sums, the Commissioner of Banks shall credit the same to a fund in his department to be known as "Reorganization Revolving Fund," which fund shall be examined by the public examiner annually, and out of such fund the Commissioner of Banks shall liquidate the expenses so incurred. (Act Mar. 3, 1933, c. 55, §10; Apr. 15, 1933, c. 277, §10.)

7690-19. Effective until January 15, 1935.—This Act shall take effect and be in force from and after its passage until January 15, 1935, and it is hereby declared as legislative intent that an emergency exists under the police power of the state, rendering the passage of this Act necessary and advisable. (Act Mar. 3, 1933, c. 55, §11; Apr. 15, 1933, c. 277, §11.)

7690-20. Provisions separable.—If any section, sub-section, clause or phrase of this Act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Act. (Act Mar. 3, 1933, c. 55, §12; Apr. 15, 1933, c. 277, §12.)

7690-21. Commissioner of banks may borrow money in certain cases.—The Commissioner of Banks, for the benefit of any bank, savings bank, trust company or building and loan association which is in process of liquidation by said Commissioner, is authorized to borrow money and to issue evidence of indebtedness therefor and to secure the repayment of the same by the mortgage, pledge, transfer in trust or hypothecation of any or all of the property of such bank, savings bank, trust company or building and loan association, whether real, personal or mixed, and whether or not such property is subject to a prior mortgage, pledge or hypothecation. Such loans may be obtained for the purposes of facilitating liquidation, protecting or preserving the assets in his charge, expediting the making of distributions and payment of dividends to depositors and other creditors, providing for the expenses of administration and liquidation and aiding in the reopening or reorganization of such bank, savings bank, trust company or building and loan association, or its merger or consolidation with another bank, savings bank, trust company or building and loan association, or the sale of all of its assets.

The Commissioner of Banks shall be under no personal obligation to repay any such loans so made and shall have power to take any and all action necessary or proper to consummate such loan and to provide for the repayment thereof. (Act Jan. 10, 1933, c. 3, §1.)

Commisioner of banks may release vacant bank building to government without order of court. Op. Atty. Gen., June 6, 1933.

7690-22. Inconsistent acts repealed.—All laws or parts of laws inconsistent or in conflict herewith are hereby repealed. (Act Jan. 10, 1933, c. 3, §2.)

7690-23. Certain Proclamation validated.—That certain proclamation made by the Lieutenant Governor of the State of Minnesota, acting in the absence of its Governor from the State at 8 o'clock A. M. on March 4, 1933, by which there was declared and proclaimed a temporary banking holiday mandatory for all banks in Minnesota, including state, national and private banks, savings banks and trust companies, is hereby in all respects ratified and confirmed and declared to be in all respects valid, and any and all action in compliance therewith taken by such banks and trust companies is hereby legalized and declared valid. (Act Mar. 6, 1933, c. 56, §1.)

7690-24. Bank holiday legalized.—The Fourth day of March, 1933, is hereby declared to have been a banking holiday for all banks in Minnesota, including state and national banks, savings banks and trust companies, and to the extent that any such bank, savings bank or trust company has refrained from the transaction of any banking business on said day, such action is hereby in all respects legalized and declared valid. (Act Mar. 6, 1933, c. 56, §2.)

7690-25. Banking holiday declared.—A Banking holiday is hereby declared in the State of Minnesota commencing as of the 6th day of March, 1933, and ending when and as the Governor of the State shall have by proclamation so declared. During such banking holiday all banks, state and national, savings banks and trust companies shall refrain from any banking business. (Act Mar. 6, 1933, c. 56, §3.)

7690-26. Banks prohibited from transacting business.—By proclamation of the Governor, all state banks, savings banks or trust companies shall refrain from transacting any banking business on any day on which national banks shall be prohibited by Federal law or proclamation from transacting business. (Act Mar. 6, 1933, c. 56, §4.)

7690-27. Effective on passage.—This Act shall be deemed effective from and after its passage. (Act Mar. 6, 1933, c. 56, §5.)

7690-28. Resumption of banking business—rules and regulations.—Whenever any banking holiday, as such, shall have existed in this state and shall have been duly terminated, any bank, savings bank and trust company shall resume business under such rules, regulations and restrictions as the Commissioner of Banks may prescribe, which rules, regulations and restrictions may vary as to different banks, savings banks and trust companies and may contain any or all of the following amongst other provisions:

(1) Prohibit or limit the withdrawal of currency or money by depositors in such banks, savings banks or trust companies or any of them.

(2) Authorize any bank, savings bank or trust company to join with other banks, state and/or national, in forming an association for the issuance by said associations of secured certificates of indebtedness, to acquire such certificates of indebtedness for transaction of its business and to pledge from time to time any of its assets as security for any certificates so issued and acquired by it and to the extent necessary therefor any such bank, savings bank or trust company is hereby authorized and empowered by and with the approval of the Commissioner of Banks to so pledge any of its assets for such purpose.

(3) Authorize any bank to issue its own secured evidences of indebtedness and pledge any of its assets as security therefor and to the extent necessary therefor any such bank is hereby authorized and empowered by and with the approval of the Commissioner of Banks to so pledge any of its assets for such purpose.

(4) Any such rules, regulations or restrictions or any authorization given thereunder may be terminated or changed by the Commissioner of Banks from time to time and new rules, regulations or restrictions or authorizations made subject to like power to change. (Act Mar. 6, 1933, c. 57, §1.)

7690-29. Provisions separable.—If any section, subsection, clause or phrase of this Act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Act. (Act Mar. 6, 1933, c. 57, §2.)

7690-30. Effective on passage and terminable by proclamation.—This Act shall take effect from and after its passage and shall terminate when and as the Governor by proclamation shall have declared the emergency which renders the passage of this Act necessary ended, but in no event shall the powers herein conferred exist beyond January 15th, 1935. Upon termination of this Act any bank may continue to operate hereunder for such reasonable time and to such extent as may be necessary to liquidate said collateral so deposited by it and to pay said certificates of indebtedness. (Act Mar. 6, 1933, c. 57, §3.)

7693. Branch banks prohibited.

The inhabitants of a community having no local bank might install a depository service, providing it is their own agency and not the agency of a bank or banks. Op. Atty. Gen., Mar. 25, 1931.

7694. Liquidation.

Act is constitutional. Paul v. F., 187M411, 245NW832. See Dun. Dig. 824e.

7697. Clearing houses.

Act, relating to "clearing house associations." Laws 1933, c. 58.

7697-1. Banks may form clearing house associations.—Any bank, savings bank or trust company may join with any other bank, state or national, or group of banks, state or national, doing business in this State, in the forming of an association called herein a "Clearing House Association." (Act Mar. 6, 1933, c. 58, §1.)

7697-2. Powers and purposes.—Any Clearing House Association formed under the provisions of this Act—

(1) shall be a non-profit making corporation without corporate stock, and shall have power to sue and be sued in its own name.

(2) may issue non-interest bearing certificates of indebtedness secured by collateral furnished by its member banks. Such certificates of indebtedness shall be the liability solely of the Clearing House Association and redeemable or payable from its assets or the collateral so deposited with or held by or for it. May be made non-transferable thirty (30) days after issuance and shall be accepted by all member banks at par for deposit. Any certificates so deposited shall, in the absence of a contrary agreement between the depositor and the bank, be repaid in like certificates.

(3) may enter into any agreement under the terms of which the collateral so deposited with or held by it may be placed in the hands of a third party banking institution or trust company, state or national, to be held by such third party for the benefit of the holders of all of the outstanding certificates of indebtedness of said Clearing House Association without priority one over the other. Such agreement may contain provisions for the substitution of other collateral of at least equal value.

(4) to adopt such rules and regulations as may be necessary or advisable for the conduct of its business, and change and modify any rules or regulations so made, provided no such change or modification shall affect the rights of the holder of any then outstanding certificate of indebtedness. (Act Mar. 6, 1933, c. 58, §2.)

7697-3. Articles of Association.—The Association shall come into being upon signing of the agreement of association by the members thereof. A duplicate original of the Articles of Association or Agreement of said Clearing House Association and of all rules and regulations thereof or any changes or modifications therein, duly certified by the officers of said Association, shall be filed with the Secretary of State within fifteen days after the same becomes effective and no other filing or publication thereof shall be necessary. (Act Mar. 6, 1933, c. 58, §3.)

7697-4. Exempt from operation of blue sky laws.—Certificates of indebtedness issued by a Clearing House Association formed hereunder shall be exempt from the regulations and jurisdiction of the Department of Commerce, Securities Division, or of any

Blue Sky Law, so-called. (Act Mar. 6, 1933, c. 58, §4.)

7697-5. Provisions separable.—If any section, subsection, clause or phrase of this Act is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Act. (Act Mar. 6, 1933, c. 58, §5.)

7697-6. Effective at once.—This Act shall take effect from and after its passage, and the powers herein conferred upon any bank, savings bank or trust company to so enter such an Association shall terminate on the 15th day of January, 1935, provided, however, that the governor may, by proclamation, terminate the powers herein conferred on any earlier date, when and if, in his judgment the emergency, making the passage of this Act necessary, ceases to exist. Upon the termination of the powers herein conferred by lapse of time or by proclamation of the governor, no such Clearing House Association shall thereafter issue any further certificates of indebtedness, and shall cease all operations save and except such as are necessary for the retirement and payment of all the then outstanding certificates of indebtedness of said Association. (Act Mar. 6, 1933, c. 58, §6.)

7699. Same—Notice to depositor.

The exclusive power to liquidate insolvent state banks is placed in the commissioner of banks, and where he has attempted to exercise such power the district court is without jurisdiction to appoint a receiver for such banks in proceedings brought by a judgment creditor to enforce the "double" liability of shareholders. Northwestern Fuel Co. v. L., 182M276, 234NW304. See Dun. Dig. 824b.

7699-1. Bonds or contracts of indemnity of officers and employes of bank.

Op. Atty. Gen., May 15, 1933; note under §7688.

Bank held entitled to recover where its employe acted wrongfully or dishonestly and in bad faith resulting in a money loss. 177M65, 224NW451.

Evidence sustains the finding that notice of loss was given in time to indemnity company, except as to one item. 177M65, 224NW451.

BANKS AND TRUST COMPANIES

7699-5. Consolidation of state banks or trust companies—when authorized—Procedure.

This act is constitutional. First Minneapolis Trust Co. v. L., 185M121, 240NW459.

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

Sureties on bonds securing state deposits held not released by the consolidation or merger of the bank with another bank. 173M406, 217NW360.

Consolidation of two state banks under c. 156, Laws 1925, does not create a novation as to a creditor of one of the banks, who treats the merged bank as his debtor. 173M406, 217NW360.

Consolidated bank is not county depository though both consolidating banks are depositories. Op. Atty. Gen., Oct. 4, 1929.

Where two banks consolidate into a third, a new corporation is created, but the old corporations still exist so far as the creditors, depositors, beneficiaries, etc., of such old corporations are concerned. Op. Atty. Gen., Feb. 11, 1931.

This statute gives double protections in case of merger of state trust company with national bank—the new corporation assumes the liabilities of the merging corporation, and the liability of the stockholders of the merging corporation continues. Op. Atty. Gen., Jan. 24, 1933.

7699-9½. Consolidation of banks and trust companies.—Upon the consolidation of a Trust Company with a National Banking Corporation into a consolidated Banking Corporation as provided by any existing Act of Congress of the United States, the corporate existence of such Trust Company shall be merged into that of the consolidated Banking Corporation to the same extent and with the same effect provided in Section 7699-9, Mason's Statutes of Minnesota for 1927, relating to the consolidation of two or more State Banks or Trust Companies. (Act Apr. 25, 1931, c. 348.)

7699-13½. Rate of interest on savings deposits.—No state bank or trust company shall pay interest on deposits at a greater rate than four per cent per annum, provided that interest at that rate per annum may be credited or paid on savings accounts quarterly or semi-annually, and interest at that rate per annum may be paid on certificates of deposit not oftener than every six months. (Act Apr. 9, 1929, c. 144, §1.)

7699-13½a. Violation a misdemeanor.—Any person or officer of such state bank or trust company who knowingly or wilfully accepts deposits with an agreement or understanding either directly or indirectly on the part of said bank or trust company to pay a larger rate of interest than that herein provided, shall be guilty of a misdemeanor. (Act Apr. 9, 1929, c. 144, §2.)

7699-13½b. Application.—The provisions of this act shall not apply to any existing contract. (Act Apr. 9, 1929, c. 144, §3.)

7699-13½c. Application.—The provisions of this act shall not apply to mutual savings banks. (Act Apr. 9, 1929, c. 144, §4.)

7699-14. 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, or from any financial agency created by an Act of Congress, 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. ('27, c. 257, §1; Apr. 25, 1931, c. 341; Apr. 4, 1933, c. 149, §1.)

Sec. 2 of Act Apr. 4, 1933, cited, provides that the act shall take effect from its passage.

175M363, 221NW242.

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

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

A contract of pledge of collateral securities to secure any indebtedness or obligation owing from foreign bank to Minnesota bank, made and to be performed in Minnesota, is a Minnesota contract and is not ultra vires though forbidden by statute of other state. 175M555, 222NW274.

While a state bank may give a bond to secure the government for deposit of postal savings, it may not pledge any portion of its assets. Op. Atty. Gen., May 22, 1931.

A bank cannot pledge a customer's notes to secure public deposits. Op. Atty. Gen., June 11, 1931.

A bank had no legal authority to pledge certificates of deposit, but in view of Laws 1931, c. 296, school district warrants may be pledged to secure public deposits. Op. Atty. Gen., Aug. 18, 1931.

County had no valid claim upon deposited collateral not authorized by laws or approved by county board. Op. Atty. Gen., Apr. 21, 1932.

Moneys of university societies are not public moneys. Op. Atty. Gen., June 12, 1933.

State banks may borrow money on proposed reconstruction finance corporation capital notes and debentures. Op. Atty. Gen., Aug. 12, 1933.

Money borrowed by state bank on reconstruction finance corporation debenture may be considered as additional capital. Id.

(3).

Depository for county funds may deposit and assign county warrants as collateral security. Op. Atty. Gen., May 31, 1932.

7699-20. Assessments against stockholders of insolvent banks, etc.

Laws 1927, c. 254, sufficiently safeguards the rights of stockholders of banks. American State Bank of Minneapolis v. J., 184M498, 239NW144. See Dun. Dig. 802.

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. 179 M428, 229NW867.

7714. Authorized securities for savings banks.—

* * * * * *

3. In the legally issued bonds or certificates of indebtedness of any city of this state containing over

50,000 inhabitants, or of any board of any such city, without regard to any debt limits other than those applicable to the issuance thereof; or in the bonds of any county, city, town, village, school, drainage or other district created pursuant to law for public purposes in Minnesota, or in any warrant, order, or interest-bearing obligation, issued by the state, or by any city, city board, village, school district, town or county therein, provided that the net indebtedness of any such municipality or district, as net indebtedness is defined by Revised Laws of 1905, Section 777, and its amendments, shall not exceed ten per cent of its assessed valuation, or in the bonds of any county, city, town, village, school, drainage or other district created pursuant to law for public purposes in Iowa, Wisconsin and North and South Dakota, or in the bonds of any city, county, town, village, school district, drainage or other district created pursuant to law for public purposes in the United States, containing at least 3500 inhabitants, provided that the total bonded indebtedness of any such municipality or district shall not exceed ten per cent of its assessed valuation. (As amended Apr. 21, 1931, c. 296; Apr. 21, 1933, c. 368.)

* * * * * *

7. In farm loan bonds issued by any federal land bank, or by a joint stock land bank in the Federal Reserve district in which Minnesota is situated, in accordance with the provisions of an act of Congress of the United States of July 17, 1916, known and designated as "The Federal Farm Loan Act," and acts amendatory thereto, and in bonds and obligations of the Federal Home Loan Banks established by Act of Congress known as the Federal Home Loan Bank Act approved July 22, 1932, and acts amendatory thereto. (As amended Apr. 17, 1933, c. 307.)

* * * * * *

10. In the bonds of any corporation which at the time of such investment is incorporated under the laws of the United States or any state thereof, or the District of Columbia, and transacting the business of supplying electrical energy, or artificial gas, or natural gas purchased from another corporation and supplied in substitution for or in mixture with artificial gas, for light, heat, power and other purposes, or transacting any or all of such business, provided that a least seventy-five per centum of the gross operating revenues of any such corporation are derived from such business and that not more than fifteen per centum of the gross operating revenues are derived from any one kind of business other than supplying electricity or gas or electricity and gas, and provided further that such corporation, if operating outside of Minnesota, is subject to regulation by a public service commission or public utility commissioner or other similar regulatory body duly established by the laws of the United States or the states or state in which such corporation operates, subject to the following conditions:

(a) Such corporation shall have all franchises necessary to operate in the territory in which at least seventy-five per centum of its gross income is earned, which franchises either shall be indeterminate permits or agreements with, or subject to the jurisdiction of, a public service commission or other duly constituted regulatory body, or shall extend at least five years beyond the maturity of such bonds, and such corporation shall file with the Commissioner of banks or make public each year a statement and a report giving the income account covering the previous fiscal year and the balance sheet showing in reasonable detail the assets and liabilities at the end of such fiscal year.

(b) The book value of the outstanding capital stock of such corporation shall at the time of such investment be equal to at least two-thirds of its total funded debt.

(c) Such corporation shall have been in existence for a period of not less than eight fiscal years and at no time within such period of eight fiscal years next preceding the date of such investment shall said corporation have failed to pay promptly and regularly the matured principal and interest of all its indebtedness direct, assumed or guaranteed, but the period of life of the corporation, together with the period of life of any predecessor corporation or corporations from which a substantial portion of its property was acquired by consolidation, merger, purchase or as a successor corporation, shall be considered together in determining the required period.

(d) For a period of five fiscal years next preceding the date of such investment the net earnings of such corporation shall have been each year not less than twice the annual interest charges on its total funded debt applicable to that period, and for such period the gross operating revenues of any such corporation shall have averaged per year not less than one million dollars.

(e) In determining the qualifications of any bond under this subdivision where a corporation shall have acquired its property or any substantial portion thereof within five years immediately preceding the date of such investment by consolidation, merger, purchase or as a successor corporation, the gross operating revenues, net earnings and interest charges of the predecessor or constituent corporations shall be consoliated and adjusted so as to ascertain whether the requirements of paragraph (d) of this subdivision have been complied with.

(f) The gross operating revenues and expenses of a corporation for the purpose of this subdivision shall be respectively the total amount earned from the operation of, and the total expense of maintaining and operating, all property owned and operated or leased and operated by such corporation, as determined by the system of accounts prescribed by the public service commission or public utility commission or other similar regulatory body having jurisdicition in the matter. The gross operating revenues and expenses, as defined above, of subsidiary companies must be included, provided that all the mortgage bonds and a controlling interest in stock or stocks of such subsidiary companies are pledged as part security for the mortgage debt of the principal corporation.

(g) The net earnings of a corporation for the purpose of this subdivision shall be the balance obtained by deducting from its gross operating revenues its operating and maintenance expenses, taxes other than federal and state income taxes, rentals, depreciation and provision for renewals and retirements of the physical assets of the corporation, and by adding to said balance its income from securities and miscellaneous sources, but not, however, to exceed fifteen per centum of said balance. The term "funded debt" shall be construed to mean all interest-bearing debt excepting therefrom unsecured obligations maturing within one year of date of issue.

(h) Such bonds must be part of an original issue of not less than one million dollars and must be mortgage bonds secured by a first or refunding mortgage secured by property owned and operated by the corporation issuing or assuming them, or must be underlying mortgage bonds secured by property owned and operated by the corporation issuing or assuming them, provided that such bonds are to be refunded by a junior mortgage providing for their retirement and provided further that the bonds under such junior mortgage comply with the requirements of this subdivision and that such underlying mortgage either is a closed mortgage or remains open solely for the issuance of additional bonds which are to be pledged under such junior mortgage. The aggregate principal amount of bonds secured by such first or refunding mortgage plus the principal amount of all the underlying outstanding bonds shall not exceed sixty per centum of the value of the physical property owned as shown by the books of the corporation and subject to the lien of such mortgage or mortgages securing the total mortgage debt, provided that if a refunding mortgage,

it must provide for the retirement on or before the date of their maturity of all bonds secured by prior liens on the property. No such savings bank shall loan upon or invest in bonds of such public utility companies in an amount exceeding in the aggregate ten per centum of its deposits and surplus, nor exceeding five per centum thereof in the bonds of any one public utility company. (As amended Apr. 15, 1933, c. 256, §1.)

11. In the bonds of any corporation which at the time of such investment is incorporated under the laws of the United States or any state thereof, or the District of Columbia, and authorized to engage, and engaging, in the business of furnishing telephone service in the United States, provided that such corporation is subject to regulation by the Interstate Commerce Commission or a public service commission or public utility commission or other similar federal or state regulatory body duly established by the laws of the United States or the states or state in which such corporation operates, subject to the following conditions:

(a) Such corporation shall have been in existence for a period of not less than eight fiscal years and at no time within such period of eight fiscal years next preceding the date of such investment shall said corporation have failed to pay promptly and regularly the matured principal and interest of all its indebtedness direct, assumed or guaranteed, but the period of life of the corporation, together with the period of life of any predecessor corporation or corporations from which a substantial portion of its property was acquired by consolidation, merger, purchase or as a successor corporation, shall be considered together in determining the required period; and such corporation shall file with the Commissioner of banks or make public in each year a statement and a report giving the income account covering the previous fiscal year and the balance sheet showing in reasonable detail the assets and liabilities at the end of such fiscal year.

(b) The book value of the outstanding capital stock of such corporation shall at the time of such investment be equal to at least two-thirds of its total funded debt.

(c) For a period of five fiscal years next preceding the date of such investment the net earnings of such corporation shall have been each year not less than twice the annual interest charges on its total funded debt applicable to that period, and for such period the gross operating revenues of any such corporation shall have averaged per year not less than five million dollars.

(d) In determining the qualifications of any bond under this subdivision where a corporation shall have acquired its property or any substantial portion thereof within five years immediately preceding the date of such investment by consolidation, merger, purchase or as a successor corporation, the gross operating revenues, net earnings and interest charges of the predecessor or constituent corporations shall be consolidated and adjusted so as to ascertain whether the requirements of paragraph (c) of this subdivision have been complied with.

(e) The gross operating revenues and expenses of a corporation for the purpose of this subdivision shall be respectively the total amount earned from the operation of, and the total expense of maintaining and operating, all property owned and operated or leased and operated by such corporation, as determined by the system of accounts prescribed by the Interstate Commerce Commission or the public service commission or public utility commission or other similar federal or state regulatory body having jurisdiction in the matter.

(f) The net earnings of a corporation for the purpose of this subdivision shall be the balance obtained by deducting from its gross operating revenues its operating and maintenance expenses, taxes, other than federal and state income taxes, rentals, depreciation and provision, for renewals and retirements of the physical assets of the corporation, and by adding to said balance its income from securities and miscellaneous sources, but not, however, to exceed fifteen per centum of said balance. The term "funded debt" shall be construed to mean all interest-bearing debt excepting therefrom unsecured obligations maturing within one year of date of issue.

(g) Such bonds must be a part of an original issue or of a subsequent series of bonds of the aggregate amount of not less than five million dollars, both the original issue and the subsequent series being protected by the same mortgage provisions, and must be secured by a first or refunding mortgage, and the aggregate principal amount of bonds secured by such first or refunding mortgage plus the principal amount of all the underlying outstanding bonds shall not exceed sixty per centum of the value of the property, real and personal, owned absolutely as shown by the books of the corporation and subject to the lien of such mortgage, provided that if a refunding mortgage, it must provide for the retirement of all bonds secured by prior liens on the property. Not more than thirty-three and one-third per centum of the property constituting the specific security for such bonds may consist of stock or unsecured obligations of affiliated or other telephone companies, or both. No such savings banks shall loan upon or invest in bonds of such telephone companies in an amount exceeding in the aggregate ten per centum of its deposits and surplus, nor exceeding five per centum thereof in the bonds of any one telephone company. (Added by Act Apr. 15, 1933, c. 256, §2.)

12. In bonds and obligations of the Federal Home Loan Banks established by Act of Congress known as the Federal Home Loan Bank Act, approved July 23, 1932, and Acts amendatory thereto, and in bonds and obligations of the Home Owners' Loan Corporation established by Act of Congress known as the Home Owners' Loan Act of 1933, and Acts amendatory thereto. (Added Jan. 6, 1934, Ex. Ses., c. 50, §1.)

Sec. 2 of Act Jan. 6, 1934, cited, provides that the act shall take effect from its passage.

An executor has no general or implied authority to invest or loan money of estate; and, if it is desirable to do either, it should be done only under authority of probate court; otherwise he is directly responsible for money invested or loaned. Marchildon v. M., 246 NW676. See Dun. Dig. 3571.

A bank had no legal authority to pledge certificates of deposit, but in view of Laws 1931, c. 296, school district warrants may be pledged to secure public deposits. Op. Atty. Gen., Aug. 18, 1931.

This section should be considered in determining what securities may be lawfully accepted by a village in pledge as collateral security for deposit of village moneys. Op. Atty. Gen., Dec. 2, 1931.

Depositary of city and school district could deposit bonds of city as collateral for city and district. Op. Atty. Gen., Feb. 2, 1933.

Notes secured by mortgages on village real estate may not be deposited as collateral by village depositary. Op. Atty. Gen., Feb. 4, 1933.

Legislature may anticipate issuance of securities by making them "authorized securities." Op. Atty. Gen., Feb. 28, 1933.

Bonds as security for township funds, classified. Op. Atty. Gen., May 5, 1933.

Clauses relating to regulation by public service commission relate to regulation of rates and charges alone and not of issuance of securities. Op. Atty. Gen., July 14, 1933.

United States treasury notes are authorized security in lieu of depositary bonds, but it is question of fact whether "South Park Commissioners, Improvement, Chicago, Ill.," bonds, qualify. Op. Atty. Gen., Aug. 2, 1933.

(11).

Mortgage need not cover all property of corporation. Op. Atty. Gen., July 14, 1933.

See §§2517-7, 6452-5, ante.

For certificates of indebtedness payable from Red Lake Game Preserve Fund, see Laws 1929, c. 258, ante §5620-5.

Bonds of the City of Cleveland, Ohio, might qualify as collateral under §1973-1, as amended by Laws 1929, c. 370. Op. Atty. Gen., Feb. 10, 1930.

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 not be less than fifty thousand dollars: tne 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 not be 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. (R. L. '05, §3033; '07, c. 225; '11, c. 314, §1; G. S. '13, §6405; '27, c. 323; 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.
Trust companies organized under §§7730 to 7740 may act as brokers of securities. Op. Atty. Gen., Aug. 1, 1933.

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.)

7735. Investment of trust funds—Responsibilty of corporation.
Trustee under will held to be surcharged with amount paid itself as executor of will for worthless stock, though with consent of beneficiaries and authorization of probate court. Rosenfeldt's Will, 185M425, 241NW573. See Dun. Dig. 9931.

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.) 180M319, 230NW797.

SAFE DEPOSIT BUSINESS

7747-1. Definitions.—The words "safe deposit box" or "safe deposit boxes," as used herein, shall mean any box, boxes, safe, safes, safe deposit box, safe deposit boxes, receptacle, receptacles, or any part or parts thereof, contained in burglar-protected vault with steel walls at least one-half inch thick, or a masonry vault lined throughout with steel at least

one-half inch thick, or a masonry vault with steel rails or rods embedded in walls at least 12 inches thick, or a vault of non-reinforced concrete or stone at least 18 inches thick, and each vault shall have one or more steel doors, no door being less than one inch thick, and aggregating at least two and one-half inches in thickness exclusive of bolt work and locking device, which may be used for the safekeeping and storage of valuable personal property as herein defined. The words "Valuable personal property," as used herein, shall mean jewelry, plate, money, specie, bullion, stocks, bonds, valuable papers or other personal property of value. (Act Apr. 20, 1933, c. 340, §1.)

7747-2. Safe deposit companies—powers.—Any corporation having an authorized and paid up capital of not less than $50,000 and owning or leasing a vault as described in Section 1, shall have power:

1. To let out or rent as lessor for hire safe deposit boxes in such vault, upon such terms and for such compensation as may be agreed upon by such corporation and the lessee.
2. To take and receive valuable personal property for safekeeping and storage, as bailee for hire, upon such terms and for such compensation as may be agreed upon by such corporation and the bailor; no such corporation shall make any loans or advances upon any valuable personal property so left with it for safekeeping and storage. (Act Apr. 20, 1933, c. 340, §2.)

7747-3. Must be licensed.—No such corporation shall engage in such occupation or business unless licensed so to do. (Act Apr. 20, 1933, c. 340, §3.)

7747-4. Commissioner of banks to grant license.—The Commissioner of Banks may license any such corporation to engage in the occupation or business set forth in Section 2 of this Act, which license shall designate the place or places of business of such corporation, which place or places of business shall be located upon the premises in which such safe deposit boxes are located. It shall be unlawful for any corporation holding such license to engage in such occupation or business upon any premises or in any building other than those designated in such license. (Act Apr. 20, 1933, c. 340, §4.)

7747-5. Corporation to give bonds.—Before any such license shall be issued to a corporation it shall execute and file with the state treasurer a bond to the State of Minnesota in the penal sum of $20,000.00 in such form and with such surety or sureties as shall be approved by the Commissioner of Banks to secure the faithful performance of its contracts of rental or deposit, and such bond shall enure to the benefit of anyone who shall be in any manner damaged by a breach of such contract. No such corporation shall lease any safe deposit box or receive any valuable personal property for safekeeping or for storage until the bond herein provided for shall be on file and in full force. (Act Apr. 20, 1933, c. 340, §5.)

7747-6. Unauthorized action may be enjoined.—Whoever engages in such occupation or business without procuring a license and giving a bond, as required by this Act, except as otherwise authorized by law so to do, shall be punished by a fine of not more than $1,000.00, and may be enjoined by any court having jurisdiction from engaging in such occupation or business, in an equitable action brought by the Attorney General at the relation of any person. (Act Apr. 20, 1933, c. 340, §6.)

7747-7. Shall keep books and records.—Such licensed corporation shall keep books in which shall be entered an account of all its transactions relative to the letting, renting or leasing of its safe deposit boxes, and to the receipt of valuable personal property for safekeeping or storage. (Act Apr. 20, 1933, c. 340, §7.)

7747-8. Licenses must be posted.—Immediately upon the receipt of the license issued by the Commissioner of Banks pursuant to the provisions of this Act, the licensee named therein shall cause such license to be posted and conspicuously displayed in the place of business for which it is issued, so that all persons visiting such place of business may readily see the same. It shall be unlawful for any corporation holding such license to post such license, or permit such license to be posted, upon premises other than those designated therein, or knowingly to deface or destroy any such license. (Act Apr. 20, 1933, c. 340, §8.)

7747-9. Must publish notice.—Before such corporation shall engage in such occupation or business, it shall give notice of its license and qualification, and of the amount of the bond given by it by publishing the same forthwith once each week for two consecutive weeks in a legal newspaper published in the county or counties where such place or places of business are located. (Act Apr. 20, 1933, c. 340, §9.)

7747-10. Shall be exempt from liability in certain cases.—When a safe deposit box shall have been hired from any licensed corporation in the name of two or more persons, including husband and wife, with the right of access being given to either, or with access to either or the survivor or survivors of said person, or property is held for safekeeping by any licensed corporation for two or more persons, including husband and wife, with the right of delivery being given to either, or with the right of delivery to either of the survivor or survivors of said persons, any one or more of such persons, whether the other or others be living or not, shall have the right of access to such safe deposit box and the right to remove all, or any part, of the contents thereof, or to have delivered to him or them all, or any part, of the valuable personal property so held for safekeeping; and in case of such access, removal or delivery said corporation shall be exempt from any liability for permitting such access, removal or delivery. (Act Apr. 20, 1933, c. 340, §10.)

7747-11. Corporation to be governed by contract of rental.—No such corporation shall be obliged to ascertain or take notice of any trust or fiduciary relationship which the tenant of a safe deposit box may bear to the contents thereof, but shall be presumed to deal with the tenant of a box in an individual and not in a representative capacity, and shall be protected if it grants access to a box to the lessee, thereof according to the terms of his contract of rental. (Act Apr. 20, 1933, c. 340, §11.)

7747-12. May limit liability.—Any licensed corporation may, in any lease or contract governing or regulating the use of any safe deposit box to or by any customer or customers, limit its liability as such lessor or bailee in the following respects:

1. Limit its total liability for any loss by negligence to such maximum amount as may be stipulated.
2. Stipulate that it shall in no event be liable for loss of such valuable property as may be excepted against in such lease or contract. (Act Apr. 20, 1933, c. 340, §12.)

7747-13. Shall be entitled to lien.—Every licensed corporation shall be entitled to the following special remedies in enforcing the liability of depositors and tenants:

1. A warehouseman's lien on property deposited.
2. A sale of the contents of any safe deposit box for the nonpayment of rental. (Act Apr. 20, 1933, c. 340, §13.)

7747-14. Shall send notice of rent due.—If the amount due for the use or rental of any safe deposit box of any licensed corporation shall have remained unpaid for a period of six months, such corporation may, at any time after the expiration of such period, cause to be sent by registered mail addressed to the renter or lessee of such safe deposit box, directed to the address standing on its books, a written notice that, if the amount due for the use or rental of such safe deposit box is not paid within 60 days after the date of the mailing of such notice, it will cause such safe deposit box to be opened in the presence of its president or vice-president or secretary or treasurer

or assistant secretary or assistant treasurer or superintendent, and of a notary public not in its employ, and the contents thereof, if any, to be placed in a sealed package by said notary public upon which he shall mark the name of such renter or lessee as given upon its books and the estimated value thereof and that said package so sealed and marked will be placed in one of the general safe deposit boxes of such corporation; upon the expiration of 60 days from date of mailing the notice, as aforesaid and in default of payment within said 60 days of the amount due for the use or rental of such safe deposit box, it may, in the presence of a notary public not in its employ and one of its officers heretofore named, cause such safe deposit box to be opened and the contents thereof, if any, to be removed and sealed by said notary public in a package upon which he shall mark the name of such renter or lessee and also the estimated value of the contents of such safe deposit box and, in the presence of one of its officers heretofore named, such notary public shall place in one of its general safe deposit boxes such package; and the proceedings of such notary public shall be set out in a certificate by him under his official seal, which shall be delivered to such licensed corporation. Such licensed corporation shall have a lien upon the contents of any such safe deposit box, which shall have been removed in the manner provided, for the amount due to it for the use or rental of such safe deposit box, up to the time of such removal of the contents, and for the costs and expenses, if any, incurred in the opening of such safe or box and its repair, or restoration for use; in case the lien of such licensed corporation, for rental and expenses, shall not be paid and discharged within six months from the date of the opening of such safe deposit box and the removal of the contents therefrom, then such licensed corporation may sell, or cause to be sold, at public auction the contents of such safe deposit box, or so much thereof as is required to pay and discharge the lien and expenses of sale, having first cause to be sent by registered mail addressed to the renter or lessee of such safe deposit box, directed to the address standing on its books, a written notice of the time and place of such sale and also giving public notice of the time and place of such sale by advertisement in a legal newspaper published in the county in which the place of business of such licensed corporation is located at least once a week for two successive weeks, and from the proceeds of such sale it may retain for its own use the amount of its lien and the expenses of the sale; the balance of such proceeds of the sale and the contents remaining unsold, if any, being held to be paid over and delivered to those having ownership of the contents of such safe deposit box so sold as aforesaid. (Act Apr. 20, 1933, c. 340, §14.)

7747-15. Provisions separable.—In case any section, provision or part of this Act shall be declared unconstitutional, it shall not in any way effect [Sic] any other section, provision or part thereof. (Act Apr. 20, 1933, c. 340, §15.)

7747-16. Inconsistent acts superseded.—All other Acts or parts of Acts now in effect inconsistent with the provisions of this Act are hereby superseded, modified or amended to conform to and give full force and effect to the provisions of this Act. (Act Apr. 20, 1933, c. 340, §16.)

7747-17. Application of act.—This Act shall not be held or construed as limiting, restricting or in any way affecting the operation or management of safe deposit boxes or vaults, or a safe deposit business conducted by any savings bank, or bank of discount and deposit or trust company, but any savings bank, or bank of discount and deposit or trust company may come under the provisions of this Act by complying with its requirements. (Act Apr. 20, 1933, c. 340, §17.)

LOCAL BUILDING AND LOAN ASSOCIATIONS

7749-1. Deemed financial corporations—Purposes of, etc.

Borrowing members from the Hennepin Savings and Loan Association were not stockholders in the true sense of the word, and were not entitled to vote upon a proposition offered to reduce outstanding capital stock and continue the business. Op. Atty. Gen., Dec. 19, 1931.

BUILDING AND LOAN ASSOCIATIONS GENERAL PROVISIONS

7750. Security for loans made—Pledge, etc.

Minn. Bldg. & Loan Ass'n v. C., 182M452, 234NW872.

7751. Accumulation of loan funds—capital stock—sale—service fees.—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 percentum 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 installment 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 subscribed 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: By money borrowed as provided by law, articles of incorporation or 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 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. (R. L. '05, §3051; G. S. '13, §6428; '13, c. 482, §1; '15, c. 69, §1; '25, c. 260, §6; Apr. 24, 1929, c. 356; Feb. 9, 1933, c. 14, §1.)

Sec. 2 of Act Feb. 9, 1933, cited, provides that the act shall take effect from its passage.

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 received 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. (R. L. '05, §3053; G. S. '13, §6430; '25, c. 260, §8; 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. '25, c. 260, §9; 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.*, 182M452, 234NW872. See Dun. Dig. 1169.

7755. Withdrawals.—The holder of unpledged shares may withdraw a part or all of the value thereof upon thirty days' written notice of his intentions so to do given to and duly filed with the Secretary of the association at any time, but the board of directors may waive such notice. Such notice of withdrawal shall not, however, make such shareholder a creditor of the association but his status shall be and remain that of a shareholder. Such shareholder, until paid, shall be entitled to dividends upon the sum requested to be withdrawn, to the extent of seventy-five per cent of the rate declared and credited upon other shares of the same class. The association shall use at least fifty per cent of its monthly receipts, which shall not include money borrowed, for the purpose of paying withdrawals, but not over fifty per cent of its monthly receipts shall be so used, unless otherwise determined by resolution of the board of directors. Whenever the proportion of receipts applicable to the demands of withdrawing members is not sufficient to pay all such demands within sixty days from the date of application for withdrawal, such application shall be paid out of funds available as hereinafter set forth and shall be liquidated as follows: The applicant first on the list will receive twenty-five per cent of the amount of his application for withdrawal, but in no case less than Two Hundred Dollars, nor more than One Thousand Dollars, on account, if the funds are available as hereinafter set forth, or if the amount of his application is for less than Two Hundred Dollars, and funds to pay the same are available as hereinafter set forth, his application shall be liquidated in full. For any balance remaining due to the applicant after the aforesaid payment, the application shall be transferred at once to the bottom of the withdrawal list, and no further payments shall be made to said applicant, except as hereinafter set forth, until the said applicant's name has again found its way to the head of the withdrawal list. The second applicant shall be treated in exactly the same manner, and so on. All new applicants shall be placed at the bottom of the list, immediately upon the filing of their respective applications. This method of paying withdrawals shall become obligatory upon all associations upon the passage of this act; and the withdrawal list as then existing in each association shall be liquidated from that date as provided in this act. In addition to the above, out of the remainder of its monthly receipts the association may use its discretion in meeting on demand at all times all applications for withdrawals by members whose entire interest in the association amounts to less than one hundred dollars; and may further, in its discretion, pay the sum of not more than one hundred dollars, per month, to any applicant on the withdrawal list; provided that such payments of one hundred dollars per month shall be made only when emergent circumstances justify the same and only after a thorough investigation of each application has been made. The board of directors shall have full authority to prescribe such rules as may in its discretion be suitable to prevent shareholders from making any simulated or purported transfer of shares in order to expedite their withdrawals, and all rules thus made shall be binding on the members of the association. Whenever the total of applications for withdrawal exceeds sixty per cent of the accumulated capital of any association, the Commissioner of Banks, if he believes that the condition of the association justifies such an order, may direct that the payment of withdrawals as above provided be discontinued, and that thereafter all withdrawals from said association be paid on a pro rata basis, from time to time, to all persons appearing on the withdrawal list of said association. Said distribution to be made to all persons actually on the withdrawal list on a date not less than ten days previous to the day on which the pro rata distribution checks are issued. (R. L. '05, §3055; G. S. '13, §6432; '25, c. 260, §20; Apr. 25, 1931, c. 369; Mar. 20, 1933, c. 100.)

Withdrawals must be paid in full in the order in which they are filed up to 50% of monthly receipts, and by-law limiting amount of payment, passed after purchase of shares was ineffective. Op. Atty. Gen., Apr. 1, 1930.

While the right of a withdrawing member to be paid in full within the restrictions of this section cannot be affected by a subsequent by-law, the association may enact a by-law to the effect that where there is more than one withdrawal the amount available for payment shall be pro-rated. Op. Atty. Gen., May 7, 1930.

Money borrowed may not be considered part of monthly receipts. Op. Atty. Gen., Feb. 15, 1933.

A building and loan association having applications for withdrawal after having paid out 50% of its monthly receipts, may use remainder for purpose of payment of dividend or making of stock loans or mortgage loans. Op. Atty. Gen., Feb. 15, 1933.

7757. Real estate dealings—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 in-

terest. 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. (R. L. '05, §3057; G. S. '13, §6434; '19, c. 329, §1; '25, c. 260, §11; Apr. 25, 1931, c. 370.)

A building and loan association organized under §7748 et seq., including the amendments of 1919 and 1925, cannot make a loan in the form of an executory contract of sale and have a forfeiture or strict foreclosure on 30 days' notice pursuant to Mason's Minn. Stats., §9576. Minn. Bldg. & Loan Ass'n. v. C., 182M452, 234NW 872. See Dun. Dig. 1166, 10091.

Where executory contract is, in fact, a mortgage, building and loan association, except as specified in this section as amended, has no right to cancel by giving 30 days' notice. Op. Atty. Gen., Mar. 6, 1933.

7758-1. Expenses of Building & Loan Associations.—No building and loan association, now or hereafter organized under the laws of this state, shall hereafter be permitted to pay or agree to pay to any person or corporaton an agreed percentage of its stock payments or other assets, or make any payment whatsoever, in consideration of the payment by such person or corporation of the expenses of such building and loan association either in whole or in part The intent of this act is that building and loan associations shall pay their actual expenses within the limitations imposed by law, directly to their creditors, and not through the medium of third parties; but this act shall not apply to existing contracts or to payments made or to be made pursuant thereto. (Act Mar. 20, 1933, c. 102.)

GENERAL BUILDING AND LOAN ASSOCIATIONS

LIQUIDATION AND REORGANIZATON 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.)

Borrowing members from the Hennepin Savings and Loan Association were not stockholders in the true sense of the word, and were not entitled to vote upon a proposition offered to reduce outstanding capital stock and continue the business. Op. Atty. Gen., Dec. 19, 1931.

7770-2. Conversion into federal savings and loan association.—That any Building and Loan Association organized and existing under and by virtue of the laws of the State of Minnesota is hereby authorized and empowered, by majority vote of its shareholders present either in person or by proxy at any meeting of its shareholders duly called for that purpose, to convert itself into a Federal Savings and Loan Association as provided in that certain Act of the Congress of the United States known as the "Home Owners' Loan Act of 1933." [Mason's U. S. C. A., title 12, §§1421 to 1449.] (Act Jan. 9, 1934, Ex. Ses., c. 77, §1.)

Sec. 2 of act Jan. 9, 1934, cited, provides that the act shall take effect from its passage.

CERTAIN INVESTMENT COMPANIES

7771. Investment companies under control of superintendent of banks.

Duluth Morris Plan Company comes within provisions of section and gives commissioner of banks power and duty to safeguard rights of those dealing with it. Op. Atty. Gen., Jan. 19, 1933.

Whether Duluth Morris Plan Company may purchase its own stock to hold for resale is a matter resting within discretion of commissioner of banks. Op. Atty. Gen., Jan. 19, 1933.

7772. Supervision of superintendent—Powers, how exercised—Fees.

Op. Atty. Gen., Jan. 19, 1933; note under §7771.

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.

7774-2. By-laws and amendments to be approved.—To amend certificate of organization or by-laws whether at a general or special meeting; proposed amendments shall be fully set forth in the notice of the meeting. Any amendments to the by-laws shall be approved by three-fourths of the members then present, which number shall constitute a quorum. Any and all amendments to the certificate of organization or by-laws must be approved by the Commissioner of Banks, before they become operative. The certificate of organization may be amended by a majority vote of the entire membership of the credit union at a meeting called for that purpose. In case such amendment is adopted the resolution containing a full text thereof and verified by its president and treasurer and approved by the Commissioner of Banks shall be recorded in the office of the register of deeds in the county in which said credit union is located. ('25, c. 206, §1; Apr. 20, 1933, c. 346, §1.)

7774-5. Membership in.

Family relationship alone is not sufficient to entitle persons to belong to a credit union. Op. Atty. Gen., Dec. 21, 1931.

7774-7. Fiscal year—meetings.—The fiscal year of all credit unions shall end December 31. General and special meetings may be held in the manner and for the purposes indicated in the by-laws, provided, however, that 30 days before any regular meeting and ten days before any special meeting written notice shall be mailed to each member and in the case of a special meeting the notice shall clearly state the purpose of the meeting and what matters will be considered thereat. At all meetings a member shall have

but a single vote whatever his share holdings. There shall be no voting by proxy, provided, however, that any firm, society or corporation having a membership in the credit union may cast its vote by one person upon presentation by him of written authority of such firm, society or corporation. ('25, c. 206, §7; Apr. 20, 1933, c. 346, §2.)

7774-17. Reserve funds.—Every credit union shall maintain a reserve fund which at all times shall be kept liquid and intact and used as a reserve against bad loans and other losses and shall not be loaned to members or used to pay expenses of the credit union or otherwise distributed except in case of liquidation. All entrance fees, fines and each year, before the declaration of a dividend ten per cent of the gross earnings shall be set aside as a reserve fund against said bad loans and other losses until such time as such fund shall equal fifteen per cent of the assets of the credit union, and thereafter there shall be added to such fund at the end of each fiscal year such per cent of the gross earnings as will be required to maintain such fund as herein provided. There shall also be established and at all times maintained a reserve of not less than five per cent of the amount of the deposits; which shall be in cash and balances due from solvent banks. ('25, c. 206, §17; Apr. 20, 1933, c. 346, §3.)

A credit union must set aside 20% of its net earnings irrespective of the amount of the reserve fund. Op. Atty. Gen., Dec. 21, 1931.

7774-20. Voluntary dissolution.—The process of voluntary dissolution shall be as follows:

(a) A credit union may be voluntarily liquidated after four-fifths of the entire membership shall have voted such liquidation at a special meeting called by a majority of the board of directors for that purpose, upon thirty days' mailed written notice to each member clearly stating the purpose of such special meeting. By a majority vote of the members present at such meeting, a committee of three members shall be elected to liquidate the credit union.

(b) Immediately after such meeting and before such committee shall proceed with the liquidation, the officers of the credit union shall file with the Commissioner of Banks a certified copy of the minutes of such meeting, a written statement outlining the plan of liquidation and a verified statement in writing signed by a majority of the officers consenting to such liquidation containing the names and addresses of all officers and directors of the credit union. After the Commissioner of Banks shall by proper examination determine that such credit union is solvent, he shall issue a certificate of approval of the liquidation, which certificate shall be filed with the Register of Deeds in the County where such credit union is located. From and after such special meeting the credit union shall cease to do business except for purposes of liquidation. Before commencing such liquidation such committee shall execute and file with the Commissioner of Banks a bond running to the State of Minnesota for the benefit of the members and creditors of the credit union in such amount and with such sureties and in such form as shall be approved by the Commissioner of Banks conditioned for the faithful performance of all duties of its trust.

(c) Upon filing of such certificate with the Register of Deeds, the credit union shall be deemed dissolved and its corporate existence terminated except for the purpose of discharging its debts, collecting and distributing its assets and doing all other acts required in order to liquidate. The credit union shall have a corporate existence and may sue and be sued.

(d) If the credit union shall not be completely liquidated and its assets discharged within three years after such special meeting of the members, the Commissioner of Banks shall take possession of the books, records and assets and proceed to complete the liquidation in the manner then provided by law for the liquidation of closed banks.

(e) Funds representing unclaimed dividends in liquidation in the hands of such liquidating committee or the Commissioner of Banks for six months after date of final dividend shall be deposited with the State Treasurer who shall within one year thereafter pay over the money so held by him to the persons respectively entitled thereto upon being furnished satisfactory evidence of their right to the same, and at the end of such year the State Treasurer shall credit all residue of such deposit to the General Revenue Fund.

(f) Upon completion of the liquidation by such liquidating committee it shall file with the Commissioner of Banks a verified statement in writing signed by the members of such committee stating that all debts of the credit union, including deposits, have been paid except unclaimed dividends, and if any such, the amount thereof, the names of the persons entitled thereto with their last known addresses, and all books and papers of the credit union shall thereupon be deposited with the Commissioner of Banks. ('25, c. 206, §20; Apr. 20, 1933, c. 346, §4.)

INDUSTRIAL LOAN AND THRIFT COMPANIES

7774-25. Industrial loan and thrift companies authorized.—It shall be lawful for three or more persons who may desire to form a corporation for the purpose of carrying on primarily the business of loaning money in small amounts to persons within the conditions hereinafter set forth, to organize under this law an industrial loan and thrift company by filing with the Secretary of State and the Register of Deeds of the counties in which such business is to be carried on, a certificate of incorporation, and upon paying the fees and upon compliance with the procedure provided for the organization and government of ordinary corporations under the laws of this state, and complying with the additional requirements prior to authorization to doing business as set forth in this Act. (Act Apr. 15, 1933, c. 246, §1.)

7774-26. Capital stock.—No corporation shall be organized under this law or qualified to do business thereunder with a capital of less than $25,000.00 in cities with less than 50,000 people; $50,000.00 in cities with more than 50,000 people and less than 100,000 people; and $75,000.00 in cities with 100,000 people, or more, according to the last official census; each share of stock shall have a par value of not less than $25.00 per share. No corporation shall begin doing business under this Act and no existing corporation shall be permitted to qualify under this Act in this state unless its capital is fully paid, and unless a surplus of no less than ten per cent of said capital shall have also been fully paid and set up. After the capital of a corporation organized or doing business under this Act shall have been fully paid and a surplus of not less than 10% also fully paid and set up, additional capital stock in any said corporation may be sold at not less than par, provided, however, that there is always maintained a surplus of at least 10% of said capital of said corporation. (Act Apr. 15, 1933, c. 246, §2.)

Authorized capital must be fully issued. Op. Atty. Gen., June 27, 1933.

7774-27. Must secure certificate from department of commerce.—Any corporation organized under the law of this state, shall, after compliance with the requirements set forth in Sections 1 and 2 of this Act, cause an application in writing to be made to the Department of Commerce of this state for a certificate of authorization, said application to be in such form as is now or may hereafter be required from state banks making applications for charters in this state and at the time of filing such application shall also submit a copy of the by-laws of the corporation, its articles of incorporation and all amendments thereto.

The Department of Commerce shall thereupon make or cause to be made an examination to ascertain whether the assets of such corporation over and above

all its liabilities, have an actual value of not less than the par value of all of its capital stock, which shall not be less than the amount prescribed by Section 2 of this Act; and if such facts appear and the by-laws and articles of incorporation and amendments thereto are in accordance with law, the Department of Commerce shall issue a certificate of authorization, authorizing the corporation to transact business as an industrial loan and thrift company as provided in this Act.

This authorization shall then be filed in the same places as specified for the filing of the certificate of incorporation in Section 1 of this Act. Such corporation shall thereupon become an industrial loan and thrift company. (Act Apr. 15, 1933, c. 246, §3.)

Legislature did not intend that banking division of department of commerce exercise any jurisdiction over choice of name. Op. Atty. Gen., May 24, 1933.

Certificate of incorporation need not be submitted to commissioner of banks for approval, nor need there be filed printer's certificate of publication of articles with secretary of state and with commissioner of banks, nor need there be a certified statement of expenses incurred in incorporation, but by-laws must be filed with department of commerce. Id.

7774-28. Special powers.—Industrial loan and thrift companies in addition to the general and usual powers incidental to ordinary corporations in this state, which are not specifically restricted in this law, shall have the following special powers, which powers must be set forth in their articles of incorporation or amendments, thereto, to-wit:

(a) The right to discount or purchase notes, bills of exchange, acceptances or other choses in action.

(b) The right to lend money upon the security of co-makers, personal chattels or other property, exclusive of real estate, for a period not to exceed one year; to deduct in advance one year's interest on such loans at the rate of not in excess of (8%) eight per cent discount per annum; to require as a condition to the making of such a loan that the borrower purchase and pledge with the company as security for the loan a certificate of inbedtedness of the company in the same amount as the loan secured thereby, providing for payments in equal weekly, bi-weekly, or monthly installments, with or without interest, extending over substantially the period of the loan, payments thereon not to be construed as payments on the loan secured thereby; to charge for a loan exceeding $50.00 made pursuant to this subdivision, $1.00 for each $50.00, or fraction thereof, loaned, for expenses, including any examination or investigation of the character and circumstances of the borrower, co-maker or security and drawing and taking the acknowledgment of necessary papers, or other expenses incurred in making the loan; provided that no fee collected hereunder shall exceed $10.00; and provided that for a loan exceeding $500.00 one per cent (1%) additional of the amount loaned in excess of $500.00 may be charged for such expenses, not exceeding a total fee of $15.00. If any such loan made pursuant to this subdivision is $50.00 or less, such charge shall not be more than $1.00. No such charge shall be collected unless a loan shall have been made.

(c) To impose a handling charge of five cents (5c) for each default in the payment of $1.00, or fraction thereof, at the time any periodical installment on a certificate of indebtedness assigned as collateral security for the payment of a loan made pursuant to the foregoing provisions becomes due, provided, however, that such handling charge shall not be cumulative; that the aggregate of such handling charges collected in connection with any such loan of $50.00, or less, shall not exceed fifty cents (50c), and that the aggregate of such handling charges collected in connection with any such loan of more than $50.00, shall not exceed one per cent (1%) of such loan and shall in no event exceed $5.00.

(d) The right with the consent of the Department of Commerce of this State to sell and issue for investment or to be pledged as security for a loan made contemporaneously therewith or otherwise, certificates of indebtedness, under any descriptive name, which may bear such interest, if any, as their terms may provide and which may require the payment to the company of such amounts from time to time as their terms may provide, and permit the withdrawal of amounts paid upon the same in whole or in part from time to time, and the credit of amounts thereon upon such conditions as may be set forth therein; and no such certificate of indebtedness shall have a surrender value which is less than the total amount paid to the company therefor.

(e) Upon the maturity of a note, the borrower may, at his option, surrender the certificate of indebtedness pledged to secure the same, in which event, the amounts, if any, paid on said certificate of indebtedness, less such handling charges as are authorized by this Act, shall be applied to reduce the balance owing on said note. (Act Apr. 15, 1933, c. 246, §4.)

(d).

"Consent" should be given only upon compliance with provisions of law relating to regulation of sale of securities. Op. Atty. Gen., May 4, 1933.

7774-29. Limitation of powers.—No industrial loan and thrift company shall have power, however, to do any of the following, to-wit:

(a) To carry commercial or demand banking account; to use the word "bank" or "banking" in its corporate name; to receive savings accounts or deposits or operate as a savings bank.

(b) To have outstanding at any one time certificates of indebtedness, exclusive of those held by the company, as security for loans made by it of more than seven times the sum of the capital, surplus and undivided profits of the company.

(c) To lend money in excess of five per cent of its paid-in capital, surplus and undivided profits to any one person or corporation primarily liable; provided, however, that if marketable collateral be taken as security for a loan, then an industrial loan and thrift company may loan not to exceed ten per cent of its capital, surplus and undivided profits to any one person or corporation primarily liable.

(d) To accept trusts or act as guardian, administrator or judicial trustee in any form.

(e) To deposit any of its funds in any banking corporation, unless such corporation has been designated by vote of a majority of directors or of the executive committee present at a meeting duly called, at which a quorum was in attendance. (Act Apr. 15, 1933, c. 246, §5.)

7774-30. Residence of directors.—At least three-fourths of the Directors of any industrial loan and thrift company shall be residents of the principal city in which an industrial loan and thrift company shall be organized, and every director shall own and hold not less than twenty shares of capital stock of said industrial loan and thrift company, unencumbered. (Act Apr. 15, 1933, c. 246, §6.)

7774-31. Must establish reserve.—All industrial loan and thrift companies shall establish as a reserve against the certificates of indebtedness described in subdivision (d) under Section 4 above, of not less than ten per cent of the amount of indebtedness thus created. Three per cent of this indebtedness shall be in cash in the actual possession of the industrial loan company or on demand deposit in approved banks of this state, and seven per cent of the total indebtedness may be in bonds admissible for investment by mutual savings banks under the laws of this state; provided, however, that such certificates of indebtedness as are issued under authority of subdivision (b) of Section 4 of this Act, and are held by the industrial loan and thrift company as security for its own loans, shall not be considered as an indebtedness for which a reserve must be maintained under this section. (Act Apr. 15, 1933, c. 246, §7.)

7774-32. May pay dividends.—When an industrial loan and thrift company is organized under this Act, or operating thereunder, the Board of Directors may declare a dividend of so much of the net profits of

the corporation, after providing for all expenses, reserves, interest and taxes accrued or due from said corporation, as they shall judge expedient, but before any such dividend is declared, not less than one-tenth of the net profits of the industrial loan company of the preceding half year, or for such period as is covered by the dividend, shall be carried to a surplus fund until such surplus shall amount to 20 per cent of its capital stock. (Act Apr. 15, 1933, c. 246, §8.)

7774-33. Commissioner of banks to examine records.—The Commissioner of Banks of this state shall make examinations at least one time each year of each industrial loan and thrift company organized or operating under this Act at which time he will satisfy himself that the corporation is in a solvent condition and is complying with the requirements of this Act and operating according to sound business principles. In order to enforce his actions in this connection, the Commissioner of Banks is hereby vested with the same authority as in his examination and regulation of state banks. The cost of such examinations shall be borne by the corporation and the fees to be charged and paid by the corporation therefor shall be the same as is provided in Mason's Minnesota Statutes of 1927, Section 7772.

The penalties for violation of this Act, or for any wrongdoing in connection therewith, shall be the same as those applied to state banks under the laws of this state. (Act Apr. 15, 1933, c. 246, §9.)

7774-34. Inconsistent acts repealed.—All Acts or parts of Acts in conflict herewith are hereby repealed. Provided, however, that nothing contained herein shall be construed to repeal, modify, change or replace Laws 1913, Chapter 439 as amended by Laws 1915, Chapter 117. (Act Apr. 15, 1933, c. 246, §10.)

7774-35. Provisions separable.—If any section, subsection, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. It is hereby declared that this Act would have been passed irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases are declared unconstitutional or invalid. (Act Apr. 15, 1933, c. 246, §11.)

OTHER CORPORATIONS FOR PROFIT

MANUFACTURING CORPORATIONS

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

7775. [Repealed].

Repealed Apr. 18, 1933, c. 300, §63.

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

7776. Withdrawal of capital—Liability of stockholders.

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

FOR MINING AND OTHER PURPOSES

7777. [Repealed].

Repealed Apr. 18, 1933, c. 300, §63.

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

7778. Meetings—Stock in other companies—Fraudulent issue of stock.

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

MORTGAGE AND LOAN COMPANIES

7796. Powers.

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

CO-OPERATIVE ASSOCIATIONS

7822. Formation—purposes.

Independent rural telephone company organized on June 25, 1913, held a de facto corporation and dependents of employe held entitled to compensation. Ebeling v. I., 187M604, 246NW373. See Dun. Dig. 1981.

7825. Officers—Management.

Chairman of a central organization consisting of five delegate representatives chosen by five cooperative associations has a right to vote as a delegate upon all questions coming before the body for consideration in the absence of a specific provision restricting him to a vote only in case of a tie. Op. Atty. Gen., Jan. 30, 1932.

7826. Capital—Limit of interest—Shares.

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

7831. Officers—by-laws—amendment of articles.—Every such association shall have a president, a treasurer and not less than three directors, who shall together constitute a board of managers and conduct its business. Such officers shall be chosen annually by the stockholders, and shall hold their offices until others shall be chosen and qualified. The association shall make its own by-laws, not inconsistent with the law, and may herein provide for any other officers deemed necessary, and the mode of their selection. It may amend its articles of incorporation at any general stockholders' meeting, or at any special meeting called for that purpose, upon ten days' notice to the stockholders. The amount of capital stock shall be fixed by the articles of incorporation, which amount and the number of shares may be increased or diminished at a stockholders' meeting, specially called for that purpose, but the whole amount of stock shall never exceed one hundred thousand dollars. Within thirty days after the adoption of the amendment increasing or diminishing its capital stock, it shall cause the vote so adopting it to be recorded in the office of the secretary of state. No share shall be issued for less than its par value, and no member shall own shares of a greater par value than one thousand dollars, or be entitled to more than one vote. It may commence business whenever 20 per cent of the authorized stock has been subscribed for and paid in, but no certificate of shares shall be issued to any person until the full amount of such subscription therein has been paid in cash, and no person shall become a shareholder therein except by the consent of the managers. The profits on the earnings of such association shall be distributed to those entitled thereto by its by-laws and in proportions and at the times therein prescribed, which shall be as often as once in twelve months. Every corporation organized under the terms of this act shall, on or before December 30th, in each year, make a report to the state dairy and food commissioner; such report shall contain the name of the corporation, its principal place of business in this state, and generally a statement as to its business, showing total amount of business transacted, its profits and losses. ('07, c. 293, §2; G. S. '13, §6488; Apr. 20, 1933, c. 330, §1.)

Sec. 2 of Act Apr. 20, 1933, cited, repeals all laws in conflict.

Stockholders of a co-operative association, organized prior to the enactment of Laws 1919, c. 382, and which has not elected to come under its provisions, cannot remove officers or directors at a meeting called for that purpose. 178M164, 226NW401.

SUPPLEMENTARY LAWS

7834. Co-operative associations—who may organize—purpose—powers.—A co-operative association may be formed for the purpose of conducting any agricultural, dairy, marketing, transportation, warehousing, commission, contracting, building, mining, telephone, manufacturing, or any mechanical, mercantile or electrical heat, light or power business, or for all such purposes or for any other lawful purpose, upon the co-operative plan, and in addition to other powers, such co-operative association, shall have the power either as agent or otherwise to buy, sell or deal in its own products, the products of its individual members or patrons, the products of any other co-operative association or of its members or patrons, whether such co-operative association be organized under the provisions of this Act or otherwise. It shall be lawful for such co-operative association to sell its own products as well as the products of its members or patrons for

them, or the products of any other co-operative association or of its members or patrons for them, as the case may be, either individually or collectively, and to negotiate the price at which such products may be sold either for itself or for its members or patrons, or such other co-operative association and its members or patrons, individually or collectively, as the case may be; also to enter into or become a party to any contract or agreement either for itself or for its individual members or patrons, or between it and its member. For the purposes above stated such co-operative association shall have the power and authority as a corporation to purchase and hold, lease, mortgage, encumber, sell, exchange and convey such real estate, buildings and personal property as the business of the association may require, also to erect buildings or other structures or facilities upon its own lands or leased grounds, or upon right of way legally acquired by such co-operative association. Such co-operative association shall have the power and authority to issue bonds or other evidence of indebtedness and to borrow money to finance the business of the association, or to make advances to its members or patrons upon produce delivered by such members or patrons to the association provided, however, that the indebtedness so incurred shall not exceed the limit of indebtedness fixed in the articles of incorporation of such co-operative association, as hereinafter required. For the purpose of empowering and authorizing co-operative associations incorporated under the provisions of this Act to join with other co-operative associations in this state or other states, whether incorporated under this Act or under the laws of any other state, to form district, state or national organizations or market agencies, any co-operative association incorporated under this Act, by vote of the governing board thereof may purchase, acquire, hold or dispose of the stock of any other co-operative association or corporation, whether incorporated under this Act or under the laws of any other state, and assume all rights, interests, privileges, responsibilities and obligations arising out of the ownership of such stock. A co-operative association incorporated under this Act shall also have the power and authority, either for itself or for its individual members or patrons, to do and perform every act and thing necessary or proper to the conduct of its business or the accomplishment of the purposes set forth in this Act, and in addition any other rights, powers or privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the expressed provisions of this Act.

A co-operative association incorporated under this Act, constituted wholly or partially of other co-operative associations organized under this Act or under the laws of this or any other state, shall have the power to accept deposits of money or securities from such co-operative associations, to loan or borrow upon such security as it may consider sufficient in dealing with its member co-operatives and to exercise any and all fiduciary powers in its relations with such co-operatives as constitute its membership.

For the purpose of this Act a co-operative association shall be defined as any corporation or association of ultimate producers and/or consumers organized under this Act or any other statute of the State of Minnesota now existing or hereafter enacted providing for the incorporation of co-operative associations; also any central organization composed wholly or in part of such associations. The plans of organization and the business practices of any such association shall be stated in its articles of incorporation and by-laws and shall provide (a) that the ownership of capital stock therein by any individual stockholder shall not exceed the par value of $1,000.00; and (b) that individual stockholders shall be restricted to only one vote in the affairs of the association; and (c) that shares of stock shall not be transferable except with the approval and consent of the governing board of such association; and (d) that interest shall not be paid on outstanding or paid-up capital stock of the association in excess 6% per annum; and (e) that the net income of such association, except such amounts as are required to be set aside as a reserve fund or permanent surplus or may be set aside by vote of the stockholders of the association, available for distribution, among the members, or patrons, or both, as the case may be, shall be distributed only on the basis of patronage. No corporation or association hereafter organized in this state shall be entitled or permitted to use the term "co-operative" as part of its corporate or business name or title, or to represent itself as a co-operative association, unless it has complied with the provisions of this Act, or any other law of this state now existing or hereafter enacted providing for the incorporation of co-operative associations. Any corporation or association which violates this provision shall be guilty of a misdemeanor. ('19, c. 382, §1; '21, c. 23, §1; '23, c. 326, §1; Apr. 1, 1933, c. 148.)

A cooperative corporation, organized under this law, may contract with and incur debts to others than cooperative associations and members thereof. Farmers' Dairy Co.'s Receivership, 177M276, 225NW22.

Corporation organized under this act and paying a fixed rate of 6 per cent on its shares, held not entitled to deduct such payment as interest paid in computing its federal income tax. 21 U. S. Board of Tax Appeals, 744. See Dun. Dig. 245b.

A cooperative association could not be organized on a membership basis to accept sums of money for safe-keeping and to grant members privilege of withdrawing deposits at any time. Op. Atty. Gen., May 31, 1933.

Cooperative association may be organized for purpose of purchasing fuel oil to sell to members only. Op. Atty. Gen., June 9, 1933.

7836. Capital—Limits of interest—Vote.—The amount of the authorized capital stock of the association shall be fixed by the articles of incorporation. The amount of the authorized capital stock and the number of shares may be increased or diminished at any regular meeting of the stockholders of the association or at any special meeting of the stockholders called for such purposes, in the manner hereinafter provided for amending the articles of incorporation.

Within 30 days after the adoption of an amendment increasing or diminishing the authorized capital stock, a copy of such amendment and a statement of the proceedings and the vote by which such amendment was adopted shall be filed or recorded in the offices where the articles of incorporation were filed or recorded, as provided in Section 2, of this Act. The association may commence business whenever 20% of the authorized capital stock has been subscribed and paid in and the amount of the capital stock outstanding shall at no time be diminished below 20% of the amount of the authorized capital. No share shall be issued for less than its par value nor until the same has been paid for in cash or its equivalent and such payment has been deposited with the treasurer of the association.

Any association organized under this Act may limit the amount of stock or the number of shares of stock therein, which may be issued to or owned by an individual person or association, which in the case of an individual shall not exceed the amount of $1,000.00 of the par value of such stock. Any co-operative association organized under this Act may acquire and hold stock in any other corporation organized under any law of this state or of any other state of the United States, the purpose of which may be a federation of co-operative associations or for the purpose of forming a district, state or national marketing, sales or service agency or for the purpose of acquiring marketing facilities at terminal or other markets in this state or other states. A stockholder in any co-operative association organized under this Act shall not be entitled to more than one vote which shall be in person, or by mail as hereinafter provided, and not by proxy, except that any such co-operative association that is a stockholder in any other corporation shall have the power and author-

ity by its board of directors or by its stockholders to elect or appoint any person or persons to represent it at any meeting of the stockholders of any corporation in which it owns stock and the person or persons so elected or appointed shall have full power and authority to represent such co-operative association and also to cast its vote or votes at any such meeting.

Provided however that in co-operative associations wholly or partially constituted of other co-operative associations organized under this Act or under the Laws of this or any other state, each affiliated member co-operative shall have an additional vote for a certain stipulated volume of business done by it with its central organization and/or a certain stipulated number of members in such associations, to be determined in either or both cases by the articles and/or by-laws of the central association.

Provided further, that any such co-operative central association organized under this Act or under the laws of this or any other state having at any time more than three thousand (3,000) individual members or stockholders may group such members or stockholders in local units on territorial or other basis as may be determined by the articles and/or bylaws of the central association.

The grouping of such members or stockholders shall be determined by the directors of the central association at their first meeting immediately following the adoption of such provision in the articles and/or by-laws of the central association.

Each of said units shall be entitled to be represented at any and all stockholders' meetings of the central association by a delegate or delegates of their own choosing and such delegates shall exercise the same powers at such stockholders' meetings as any shareholder of the central association may exercise on such basis of voting rights as is provided for in the articles and/or by-laws of the central association pertaining to such shareholders.

The directors of the central association shall have the power to do all things necessary to give full force and effect to this section including the power to fix the time and place and rules of conduct for the holding of meetings by such units for the purpose of their electing a delegate or delegates to all stockholders' meetings of the central association.

Stock in any co-operative association organized under this Act shall be sold or transferred only with the consent and approval of the board of directors and the by-laws of such co-operative association shall provide that it shall have the first privilege of purchasing stock offered for sale by any stockholder. Any stock so acquired by the board of directors for such co-operative association may be held as treasury stock or may be retired and cancelled. Any stockholder who knowingly, intentionally or repeatedly violates a provision of the by-laws adopted by any co-operative association organized under this Act may be required by the board of directors of such co-operative association to forfeit his stock, in which case the association shall refund to such stockholder the par value of his stock or in case the book value of such stock shall be greater or lesser than the par value, such stockholder shall be paid the amount of the book value of such stock. Stock so forfeited shall be retired and cancelled by the board of directors and such stockholders shall thereafter have no rights, privileges or benefits in such co-operative association.

Any stockholder who is absent from any meeting of the stockholders of any association organized under the provisions of this Act, may, as herein provided but not otherwise, vote by mail on the ballot herein prescribed, upon any motion, resolution or amendment to be acted upon at such meeting. Such ballot shall be in the form prescribed by the board of directors of such association and shall contain the exact text of the proposed motion, resolution or amendment to be acted upon at such meeting and the date of the meeting; and shall also contain spaces opposite the text of such motion, resolution or amendment in which such stockholder may indicate his affirmative or negative vote thereon. Such stockholder shall express his choice by marking an "X" in the appropriate space upon such ballot. Such ballot shall be certified to and signed by the stockholder if an individual, or if a corporation by the president or secretary thereof, and when received by the secretary of the association holding the meeting, shall be accepted and counted as the vote of such absent stockholder at such meeting. ('19, c. 382, §3; '21, c. 23, §3; '23, c. 326, §3; Apr. 1, 1933, c. 148.)

Provision for forfeiting and retiring the stock of an offending stockholder does not free him from double liability imposed by Const., art. 10, §3. 174M427, 219NW466.

Cooperative associations may issue bonus stock. Op. Atty. Gen., May 31, 1933.

Notes or property may be accepted in lieu of cash in payment of stock. Id.

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 cooperative association, organized prior to the enactment of Laws 1919, c. 382, and which has not elected to come under its provisions, cannot remove officers or directors at a meeting called for that purpose. 178M164, 226NW401.

7840. Earnings—Reserve fund—Distribution.

Counties purchasing gasoline from cooperative oil associations may not receive a patronage dividend. Op. Atty. Gen., Dec. 16, 1931.

No cooperative association is authorized to pay interest upon stock or to declare a patronage dividend until an adequate reserve for depreciation of physical equipment is set up. Op. Atty. Gen., Jan. 2, 1932.

7843. Associations heretofore organized.

178M164, 226NW401.

172M334, 215NW428; note under §7838.

7844. Amending articles of incorporation.

172M334, 215NW428; note under §7838.

Provision in articles of incorporation limiting ownership of capital stock to $75 par value, could be amended to limit such ownership to $50, but such change would not affect rights of existing stockholders. Op. Atty. Gen., Feb. 23, 1933.

Cooperative association may issue stock dividend and amend articles by majority vote of shares of stock. Op. Atty. Gen., June 9, 1933.

Cooperative association may not amend articles to permit membership of companies doing a garage manufacturing or other similar non-cooperative businesses. Id.

7859-7. Renewal of corporate existence.

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

7859-10. Same—Associations accepted.

Subsequent curative acts: Laws 1929, c. 136.

7859-11. Renewal of corporate existence, etc.

Act authorizing renewal of period of corporate existence of certain cooperative associations. Laws 1931, c. 149.

Act Mar. 1, 1933, c. 40, authorizes renewal where corporate existence has expired within 10 years prior to passage of act, and validates acts done prior to renewal.

Act Ex. Ses., Dec. 23, 1933, c. 11, authorizes renewal of corporate existence of cooperative companies and associations whose period of duration has expired prior to passage of act. Omitted as temporary.

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

Subsequent curative acts: Laws 1929, c. 171.

7859-13. Certain cooperative creamery associations continued.—Any cooperative creamery association organized under the provisions of Revised Laws of 1905, Section 3073, or acts amendatory thereof, may renew its corporate existence for a period of not more than twenty years, whenever the holders of a majority of the stock thereof shall adopt a resolution to that effect at any regular meeting, or at any special meeting called for that expressly stated purpose. (Act Apr. 21, 1933, c. 358, §1.)

7859-14. Resolution to be filed with the register of deeds.—A copy of such resolution certified by the

chairman and secretary of such meeting shall be filed in the office of the register of deeds of the county in which such corporation shall be located. (Act Apr. 21, 1933, c. 358, §2.)

Sec. 3 of Act Apr. 21, 1933, cited, provides that the act shall take effect from its passage.

Act Jan. 6, 1934, Ex. Ses., c. 48, authorizes renewal of corporate existence of horticultural corporations and societies whose term has expired, proceedings therefore to be taken within six months after passage of act. Omitted as temporary.

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, the Minnesota Implement Dealers' association, the Minnesota Florists' association, the Minnesota Garden Flower association, the Minnesota County Exhibitors' associations, the Minnesota Federation of County Fairs, the State Forestry association, Minnesota State Nurserymen's association, the Minnesota State Grange association, the Minnesota Creamery Operators' and Managers' association, the Minnesota Association of Local Creameries, Inc., the Land O'Lakes Creameries, Inc., 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 Ayrshire Breeders' association, Minnesota Brown Swiss Breeders' association, Minnesota Poland China Breeders' association, Minnesota Duroc 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 subdivision shall file with the Secretary of State, on or before December 20, of each year, a report showing that said society or association has held a regular annual meeting for such year, a summary of its financial transactions for the current year and an affidavit of the president and secretary that it has a paid-up membership of at least twenty-five. On or before January 5 of each year, the secretary of state shall certify to the secretary of the state agricultural society the names of such societies or associations herein named as have complied with the provisions hereof. (As amended Apr. 20, 1931, c. 231; Apr. 1, 1933, c. 136; Jan. 9, 1934, Ex. Ses., c. 57, §1.)

The report required to be filed by Subdivision 4, Section 7861 of Mason's Minnesota Statutes for 1927, as amended, for the year 1934 may be filed by the Minnesota Association of Local Creameries, Inc., Land O'Lakes Creameries, Inc., on or before January 13, 1935, and in succeeding years shall be filed in accordance with the provisions of said subdivision 4. (Act Jan. 9, 1934, Ex. Ses., c. 57, §2.)

* * * * * * *

7862. Management.

For the purpose of electing members of the governing board of the State Agricultural Society, House File No. 1456 (Laws 1931, pages 640, 641) must be followed. Op. Atty. Gen., Oct. 20, 1931.

A congressional district under new apportionment act is entitled to a representative, and a vacancy exists for a district not represented, though number of directors exceed number of congressional districts. Op. Atty. Gen., May 11, 1933.

Congressional redistricting act, Laws 1933, c. 185, abolished office held by member of board of managers from 10 districts and also created vacancy in office of one elected for district of which he was not resident under new act. Op. Atty. Gen., May 25, 1933.

7875. Rules and regulations.

County board with approval of state fair board and board of town in which state fair grounds are situated may issue license to sell non-intoxicating beer to a restaurant to be located on fair grounds for three days. Op. Atty. Gen., June 17, 1933.

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.

Agricultural association was entitled to state aid, though all entry fees were charged to premiums awarded exhibitors. Op. Atty. Gen., Feb. 8, 1933.

Fact that agricultural association discounted premium checks after they were written in full sums did not deprive it of state aid, it appearing that association had aid premiums in excess of amount of state aid and discount being used to prorate fund. Op. Atty. Gen., Feb. 8, 1933.

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, Mahnomen County Agricultural Society, Marshall County Agricultural Association, Martin County Agricultural Society, Meeker County Agricultural Society, Mille Lacs County Agricultural Society, Morrison County Agricultural Society, Mower County Agricultural Society, Murray County Agricultural Society, Nicollet County Agricultural Society, Nobles County Fair Association, Norman County Agricultural Society, Olmstead County Agricultural Association, Ottertail County Agricultural Society and Fair Association, Pennington County Agricultural Society, Pine County Agricultural Society, Pipestone County Agricultural Society, Northwestern Minnesota

Agricultural Society, Pope County Agricultural Society, Ramsey County Agricultural Society, Red Lake County Agricultural Society, Redwood County Agricultural Society, Renville County Agricultural Society, Rice County Agricultural Society, Rock County Agricultural Society, Roseau County Agricultural Society, St. Louis County Agricultural Society, Scott County Agricultural Society, Sherburne County Agricultural Society, Sibley County Agricultural Association, Stearns County Agricultural Society, Steele County Agricultural Society, Stevens County Agricultural Society, Swift County Agricultural Society, Todd County Agricultural Society, Traverse County Agricultural Association, Wabasha County Agricultural Society, Wadena County Agricultural Society, Waseca County Agricultural Society, Watonwan County Agricultural Society, Wilkin County Agricultural Society and Fair Association, Winona County Agricultural Society and Industrial Fair Association, Wright County Agricultural Society, Yellow Medicine County Agricultural Society, Perham Agricultural Society, Farmers' Co-operative Agricultural Society of Waconia, Scott County Good Seed Association and Farmers' Agricultural Society, Mankato Fair and Blue Earth County Agricultural Association, Faribault Agricultural and Fair Association, Polk County Agricultural Fair Association, Traverse County Agricultural Fair Association, St. Vincent Union Industrial Association, Cass County Agricultural Association, Shell Prairie Agricultural Association, Cannon Valley Agricultural Association, Morrison County Agricultural Fair Association, and Washington County Agricultural Society, Northern Minnesota District Fair Association, and Lake of the Woods County Fair Association, Baudette and St. Louis County Community Fair Association, when not receiving specific state appropriations, pro rata, to be paid out in premiums at the fairs of only such society or association as have an annual membership of twenty-five or more, maintain an active existence, hold annual fairs on enclosed grounds owned or leased by such societies and associations; provided, that they shall have paid out in premiums to exhibitors during the year as much as they received from the state, and provided further that no such county or district agricultural society shall receive in any year from the state for the purpose of reimbursing it for the amount of premiums paid at its fairs, a sum in excess of seventeen [hundred] ($1,700) dollars. Such pro rata distribution shall be in accordance with the following method; the premiums paid out by the said societies or associations, after excluding therefrom the payments made for horse races, ball games and amusement features of any nature as hereinafter provided, shall be added together, but in case any society or association shall have paid out a sum in excess of $1,700 in making such total amount the sum of $1,700 shall be taken in place of the amount actually paid out. The total amount available for distribution shall be divided by such total amount of premiums paid out and the rate per cent for distribution thus arrived at, but if this shall exceed 100% the same shall be reduced to 100%. The amount of the premiums so paid out by each society shall then be multiplied by this rate, and the amount each society shall receive shall be in that manner determined, but the sum of $1,700 shall be so multiplied by the rate in case of any society which shall have actually paid out in a sum in excess of $1,700. All payments authorized under the provisions of this act shall be made only upon the filing by the public examiner with the state auditor a certificate of examination, in which the public examiner shall certify that he has caused an examination to be made of the records and accounts of such agricultural society making application for state aid and that it has in every respect complied with the requirements of this act relating to state aid. Upon receipt of such certificate of examination by the public examiner it shall be the duty of the state auditor to draw his voucher in favor of such agricultural society for the amount to which it is entitled under the pro rata distribution of any appropriations made for the purpose of state aid to such societies.

It shall be the duty of the public examiner to prescribe uniform forms and methods of accounting to be used by agricultural societies and no such society shall be entitled to state aid under the provisions of this act unless it has complied with the orders and instructions of the public examiner with respect to the use of the accounting forms and methods so prescribed by the public examiner.

Any county or district agricultural society which may have held its second annual fair shall be entitled to share pro rata in such distribution. The state auditor shall certify to the secretary of the State Agricultural Society on or before January 5th of each year a list of all county or district agricultural societies that have complied with this act, and which are entitled to share in such appropriation. All payments hereunder shall be made on or before December 20th on the year in which the fair is held, provided, however, that in determining the amount to be paid to any society or association under this section, the state auditor shall exclude all payments made by such society or associations as premiums or purses for, or in horse races, ball games and amusement features of any nature. (R. L. '05, §3098; '11, c. 381, §6; G. S. '13, §6516; '13, c. 425, §1; '15, c. 243, §1; '19, c. 138, §1; '21, c. 452, §1; '23, c. 301, §1; '25, c. 47; Apr. 16, 1929, c. 211.)

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

County agricultural society can legally limit payment of premiums to 4H club members. Op. Atty. Gen., May 25, 1933.

County agricultural society is entitled to aid, though it pays premiums to only 4H Club exhibitors. Op. Atty. Gen., June 19, 1933.

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. (R. L. '05, §3105; G. S. '13, §6525; 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 illtreated children. Such incorporators shall file with the secretary of state their certificate of incorporation, accompanied by a certificate of the board of control, that said corporation is trustworthy and entitled to confidence. A like certificate of the board of control shall be filed every ten years thereafter. Such corporation shall have a main office, adopt and publish rules for the transaction of their business and its financial records shall be open to public inspection. (As amended Mar. 29, 1929, c. 105.)

Children of an orphange have legal right to attend school without payment of tuition. Op. Atty. Gen., Apr. 17, 1933.

CORPORATIONS FOR MAINTAINING HOMES FOR AGED MEN AND WOMEN

7926-1. Certain corporations validated.—That every private corporation heretofore organized under and pursuant to the provision of Title 3, Chapter 34 of the General Statutes of the State of Minnesota for the year 1878 and the amendments thereto for benevolent purposes to provide asylums for widows and orphans and a home for the aged, indigent, and infirm, the articles of which corporation provide for the election of the entire Board of Directors thereof by another corporation but do not provide for an amendment thereof and where the persons organizing said corporation acted in good faith and where the directors have been elected by the other corporation as authorized by such articles and have carried on the business of such corporation, the same is hereby declared to be a valid and legal corporation, and its Board of Directors is hereby declared to be the legal board thereof the same as though there were no defect in the organization of said corporation, and all amendments to said articles of incorporation which have been executed by the officers of said corporation as authorized by the Board of Directors thereof and filed and recorded in the office of the Secretary of State and the office of the Register of Deeds of the county where said corporation is located are hereby in all things validated and confirmed, and all acts, transactions and contracts of said corporation are hereby validated and confirmed and shall be held to be valid in all courts provided that this act shall not affect any action now pending in any court. (Act Feb. 20, 1929, c. 28.)

SOCIETIES FOR PREVENTION OF CRUELTY

7928. Society constituted state bureau.

Op. Atty. Gen., Jan. 5, 1932; note under §7934.

7934. County societies.

Property of the Animal Rescue League of Minneapolis is exempt from taxation. Op. Atty. Gen., Jan. 5, 1932.

LODGES, FRATERNAL ORDERS, ETC.

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 employes. 174M 389, 219NW463.

Generally, a corporation may contract by vote of its members assembled in regular meeting, by vote of its trustees having authority to act, or through agents authorized to act by vote of one or the other of such bodies. Parker College v. M., 182M501, 235NW12. See Dun. Dig. 2025a, 8379.

Where the contract is within the power of the corporation to make, the members of the corporation may ratify the act of its officers or agents in making it. Parker College v. M., 182M501, 235NW12. See Dun. Dig. 1998, 8381.

7967. Trustees—Term of office—Powers.

Laws 1885, c. 151, §5, granting to the board of trustees of a religious society power to manage and govern the corporation and act for it, did not deprive the members of the corporation, assembled in regular meeting, of the power, granted by law to the corporation, to make contracts. Parker College v. M., 182M501, 235NW12. See Dun. Dig. 8379.

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 incorporation adopted pursuant to said Act or Laws; provided however, that nothing herein contained shall authorize or empower any such religious organization to amend or alter, in the manner provided by this Act, its said articles of incorporation in respect to any matter relating to the management or the conduct of the affairs of any cemetery now or hereafter owned or controlled by such religious organization where such cemetery is now or hereafter may be managed or conducted pursuant to the provisions of Sections 7606 to 7609, both inclusive, General Statutes 1923. ('25, c. 357, §1; Apr. 20, 1931, c. 232, §1.)

7996. 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. 174 M207, 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., 183M12, 235NW622; note under §9191.
1. In general—A general creditor by virtue of the power of equity or by virtue of §9389, has a standing before the court equal to that of a judgment creditor as contemplated by §8013, except as to the burden of proof. 173M493, 217NW940.
Complaint for appointment of receiver for corporation because of dissension rendering it impossible to elect a new board of directors held demurrable. McGuire v. K., 184M553, 239NW616. See Dun. Dig. 2138, 2157.
Statute is not exclusive as to appointment of receivers and court may under its general equity powers appoint receivers in other cases in accordance with existing practice. Asleson v. A., 247NW579. See Dun. Dig. 2144 (14).
State is a preferred creditor entitled to all assets if not sufficient to pay claim in full. Op. Atty. Gen., Aug. 1, 1933.
2. Who may maintain action—General creditor who has not reduced his claim to judgment may in equity procure the appointment of a receiver of an insolvent corporation to enforce stockholders' liability. 173M493, 217NW940.
4. What will prevent or defeat action—178M20, 226 NW198; note under §8015.
10. Enforcement of stockholder's liability incidental—General creditor who has not reduced his claim to judgment may in equity procure the appointment of a receiver of an insolvent corporation to enforce stockholders' liability. 173M493, 217NW940.
Order of assessment in sequestration suit is conclusive in action on assessment as to amount and necessity therefor, but in latter suit defendant may assert that facts do not show cause of action against him. Crowley v. P., 180M250, 230NW645(2).
11. What liabilities enforceable—No rights arose in receiver in sequestration proceedings from the fact that corporation issued stock to stockholders as security for a loan, there being no creditor whose claim did not come into existence until after the corporation gave its notes for and cancelled the stock. 178M179, 226NW513.
13. Pleadings.
Complaint in action to enforce stockholders' liability was not demurrable because of absence of allegation that complaint in action resulting in sequestration alleged that debt accrued prior to repeal of Const. Art. 10, §3. Miller v. R., 246NW465. See Dun. Dig. 2142, 2161, 2170.
17. Allowance of claims.
Court has authority to permit a claim to be filed more than 18 months after giving of notice to file claims, where there has been no adjudication other than an order appointing a receiver and no final settlement. American Fund v. A., 187M300, 245NW376.
Funds deposited in state bank by guardian of mentally, incapacitated and permanently disabled world war veteran were funds of United States and entitled to preference. Anderson v. O., 186M396, 243NW398. See Dun. Dig. 824d.
State is entitled to interest on preferred claims against insolvent bank in favor of surety claiming through subrogation. American Surety Co. v. P., 186M588, 244NW74. See Dun. Dig. 824d.
18. Miscellaneous—This section does not require the receiver to pay taxes on land in which the corporation has no interest when the receivership was created. 172 M567, 216NW250.

8015. Dissolution on petition of corporation.
Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).
Miller v. A., 183M12, 235NW622; note under §9191.
Paterson v. S., 186M611, 244NW281; notes under §§7447, 7447-1.
Where creditors claims are filed and allowed in a receivership proceeding, such allowance amounts to a lien, and where acquired more than four months before the filing of a petition in bankruptcy, the jurisdiction of the state court is not divested thereby, at least where the assets are insufficient to pay such liens in full and there will be no surplus for the trustee in bankruptcy. 178M20, 226NW198.
In equitable action to dissolve a corporation, petitioning stockholder must establish mismanagement. 178M 545, 227NW654.

8016. Hearing—Notice.
Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

8017. Procedure pertaining to dissolution of corporations.
Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).

8019. Appointment of receiver—Duties.
Not applicable to corporations governed by §7492-1 et seq. See §7492-62(I).
178M20, 226NW198; note under §8015.

8020. Insolvent banks and insurance companies.
The exclusive power to liquidate insolvent state banks is placed in the commissioner of banks, and where he has attempted to exercise such power, the district court is without jurisdiction to appoint a receiver for such banks in proceedings brought by a judgment creditor to enforce the "double" liability of shareholders. Northwestern Fuel Co. v. L., 182M276, 234NW304. See Dun. Dig. 824b.

8021. Forfeiture of charter—Receiver—Etc.

Miller v. A., 183M12, 235NW622; note under §9191.

8022. Unpaid stock subscription, etc.

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

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

8023. Order limiting time to present claims.

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

178M20, 226NW198; note under §8015.

A director, officer, or stockholder of a domestic mining corporation is not debarred from asserting a claim against it when insolvent and may resort to stockholders double liability. 177M72, 224NW454.

Court has authority to permit a claim to be filed more than 18 months after giving of notice to file claims, where there has been no adjudication other than an order appointing a receiver and no final settlement. American Fund v. A., 187M300, 245NW376.

8024. Notice of hearing.

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

8025. Enforcement of stockholders' liability.

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

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

172M33, 214NW764; note under §8027.

Where the court appointed a day not less than 30 and not more 60 days from the date of the order for hearing on petition for assessment, but thereafter continued the date of hearing to a day 61 days after such order, there was a substantial compliance with this section. Saetre v. Chandler, (CCA8), 57F(2d)951.

Stipulated facts as to service of notice under this section, held to show due service where no evidence was offered to contradict the facts thus established as to service. Id.

A stockholder having notice of enforcement proceeding is constructively present in court and is charged with knowledge of all that transpires in such proceeding. Chandler v. M., 13Pac(2d)(Wash)22. See Dun. Dig. 2166.

In action by national bank receiver, answer held properly stricken as frivolous. 171M329, 214NW664.

Construed as providing for the service by publication in such manner as the court shall direct on nonresident stockholders, of notice of hearing on a petition for the assessment of stockholders in a Minnesota corporation. 173M436, 217NW483.

Fact that some of corporate assets have been used to pay debts incurred in excess of the charter limit is immaterial. 174M166, 218NW885.

In establishing the existence of ultra vires indebtedness the burden rests upon the stockholder who makes the assertion. 174M166, 218NW885.

An assessment cannot be resisted upon grounds that debts remaining unpaid are in excess of the charter limit, where the assessment is not in excess of the charter limit. 174M192, 218NW887.

Stockholder who has been duly served with notice cannot resist application because of failure to give notice to a nonresident stockholder. 174M166, 218NW885.

Stockholder cannot offset corporation's indebtedness to him. 174M387, 219NW452.

Provision in §7836 for retiring stock does not relieve from double liability under Const., art. 10, §3. 174M427, 219NW466.

A voluntary composition agreement between a corporation and its creditors, whereby the corporation transfers all of its property in consideration of being released from all liability on the amounts owing the creditors, waives and releases the constitutional liability of the stockholders. 175M382, 221NW426.

President and manager of corporation held not entitled to present claim for certain monies advanced for unpaid salary and expenses, in view of prior settlement agreement. 177M72, 224NW454.

A director, officer, or stockholder of a domestic mining corporation is not debarred from asserting a claim against it when insolvent and may resort to stockholders' double liability. 177M72, 224NW454.

Court acquired jurisdiction to assess stockholders of insolvent co-operative corporation, even though there was an obvious misprint of the year in the published notice of hearing and no proper proof of personal service of notice. Farmer's Dairy Co.'s Receivership. 177M 276, 225NW22.

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

No rights arose in receiver in sequestration proceedings from the fact that corporation issued stock to stockholders as security for a loan, there being no creditor whose claim did not come into existence until after the corporation gave its notes for and cancelled the stock. 178M179, 226NW513.

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

Where stockholder, prior to bankruptcy of corporation, offered to surrender his stock on ground of fraudulent representation, but took no steps to perfect rescission, he had no defense which he could urge against receiver suing to enforce assessment. 179M259, 228NW917.

One who subscribes to the stock of one corporation and receives that of another does not become a stockholder, and he is not estopped to deny that he is liable as such. 181M316, 232NW519. See Dun. Dig. 2080a.

An active director of a corporation was estopped to deny that he was a stockholder as respected double liability. Johnson v. B., 182M385, 234NW590. See Dun. Dig. 2080a.

Creditors held estopped to enter judgment against stockholder who had already settled his double liability. Robie v. B., 183M41, 235NW384. See Dun. Dig. 2093.

Complaint in action to enforce stockholder's liability was not demurrable because of absence of allegation that complaint in action resulting in sequestration alleged that debt accrued prior to repeal of Const. Art. 10, §3. Miller v. R., 246NW465. See Dun. Dig. 2142, 2161, 2170.

In receivership of Delaware corporation organized solely to do business in this state where all stockholders reside, court could properly order receiver to sue stockholder alleged to have received issue of bonus stock, but could not assess such stockholder or in any manner foreclose or determine that his stock was bonus, or its full par value not paid, or in any manner adjudge his liability. United States Rubber Co. v. E., 248NW729. See Dun. Dig. 2188.

There can be no enforcement of stockholders' liability unless bank is, in fact, insolvent. Op. Atty. Gen., May 16, 1933.

8026. Hearing upon petition.

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

172M33, 214NW764; note under §8027.

The ordinary rules of evidence do not apply to a proceeding under this section, and the evidence may be by affidavits or otherwise in the discretion of the court, and the solvency of the stockholders need not be established by precise evidence. Evidence, held to support assessment. Saetre v. Chandler, (CCA8), 57F(2d)951.

Order directing payment "forthwith," held to sufficiently designate time of payment. Chandler v. M., 13Pac(2d)(Wash)22. See Dun. Dig. 2167.

Order for enforcement of liability is conclusive on stockholder notified of proceedings as to all matters except defenses personal to himself. Chandler v. M., 13 Pac(2d)(Wash)22. See Dun. Dig. 2167(87).

That assets, two years after appointment of receiver, exceed the debts does not change the rule as to assessment of stockholders or as to payment of expenses of receivership. 173M10, 216NW252.

Where assets are not sufficient to pay expenses, plus debts, stockholders are liable up to par value of stock for full amount of deficiency unless it exceeds charter limit indebtedness. 173M10, 216NW252.

Examiner in charge of the liquidation of an insolvent bank held to be a competent witness as to the value of assets, the amount of liabilities, and the necessity and the amount of the proposed assessment. 173M436, 217 NW483.

The creditors may waive right to resort to constitutional liability of stockholders and such defense is not determined by the order of assessment, but may be interposed when the receiver brings suit. 175M44, 219 NW945.

Court not required to take into account creditors expressed desire that stockholders' double liability be not enforced. Farmers' Dairy Co.'s Receivership, 177M276, 225NW22.

Court was not required to determine the liability and responsibility of the individual stockholder. Farmers' Dairy Co.'s Receivership, 177M276, 225NW22.

8027. Enforcement of stockholder's liability—hearing—order.—Such order shall authorize and direct the assignee or receiver to collect the amount so assessed, and, on failure of any one liable to such assessment to pay the same within the time prescribed, to prosecute an action against him, whether resident or non-resident, and wherever found. Such order shall be conclusive as to all matters relating to the amount, propriety, and necessity of the assessment, against such parties as shall have been served with notice of the Receiver's Petition for Assessment as provided in Section 8025, General Statutes of 1923, as amended by Section 273, Section 1, Session Laws of Minnesota for 1925, except that the defense of ultra vires set forth in Section 6646 may be interposed by any stockholder in any suit for any such assessment and if maintained shall diminish the liability of such stockholder in the proportion that the liabilities determined to be ultra vires shall bear to the total

liabilities of such corporation. (R. L. '05, §3186; G. S. '13, §6647; '25, c. 272, §2; Apr. 18, 1931, c. 205, §1.)

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

173M436, 217NW483.

Saetre v. Chandler, (CCA8), 57F(2d)951.

Order of court of another state assessing stockholders' superadded liability must be given full faith and credit as against stockholder in South Dakota. Hallam v. T., (S. D.) 242NW920. See Dun. Dig. 2081, 2167, 5207.

Stockholders, sued for superadded liability, could not complain that order making assessment was not supported by formal findings, there being no dispute as to facts. Hallam v. T., (S. D.) 242NW920. See Dun. Dig. 2167.

Stockholder notified of enforcement proceeding is concluded by all matters except defenses personal to himself. Chandler v. M., 13Pac(2d)(Wash)22. See Dun. Dig. 2167(87).

An order for assessment of stock is conclusive only as to total amount, propriety, and necessity of assessment, and findings in such order relative to personal defenses which are to be litigated in the action to recover the assessment are not final. 172M33, 214NW764.

Fact that some of corporate assets have been used to pay debts inferred in excess of the charter limit is immaterial. 174M166, 218NW885.

Stockholder who has been duly served with notice cannot resist application because of failure to give notice to a non-resident stockholder. 174M166, 218NW885.

In establishing the existence of ultra vires indebtedness the burden rests upon the stockholder who makes the assertion. 174M166, 218NW885.

Defense that judgment upon the sequestration proceeding was based, was obtained by fraud or collusion, cannot be set up in action to collect assessment. 177M 526, 225NW649.

Where stockholder, prior to bankruptcy of corporation, offered to surrender his stock on ground of fraudulent representation, but took no steps to perfect rescission, he had no defense which he could urge against receiver suing to enforce assessment. 179M259, 228NW 917.

Assessment is conclusive in action to enforce same, but in latter action defendant may assert lack of cause of action against him. Crowley v. P., 180M250, 230NW 645(2).

Title to amendatory act of 1931, held sufficient. Sweet v. R., 250NW46. See Dun. Dig. 8920.

8028. Action for assessments.—Upon expiration of the time specified in the order for the payment of assessments, the assignee or receiver shall commence action against every party so assessed and failing to pay, wherever he or any property subject to process in such action is found, unless he shall report to the court that he believes such stockholder to be insolvent, or that the expenses of the prosecution will probably exceed the amount likely to be collected, in which case the court, unless satisfied to the contrary, shall order action suspended as to such party, provided that no action shall be commenced to collect the amount of any such assessment, unless commenced within two years after the insolvency of the corporation and the appointment of a receiver or assignee, or in the event that the insolvency of such corporation, and the appointment of such receiver or assignee occurred more than eighteen months prior to the passage of this act then within six months after the passage of this act. (R. L. '05, §3187; G. S. '13, §6648; Apr. 18, 1931, c. 205, §2.)

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

Failure of stockholder in Minnesota corporation to avail himself of opportunity to make settlement of double liability by payment of smaller amount, and fact that others had settled at such reduced amount, did not affect right of receiver to recover entire amount. Hallam v. T., (S. D.) 242NW920. See Dun. Dig. 2080(36), 2173.

In action to enforce superadded stockholders' liability, record held not to warrant finding that stock was held merely as evidence of indebtedness of another corporation. Hallam v. T., (S. D.) 242NW920. See Dun. Dig. 2080(44), 2173.

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

The provision in the constitution for a superadded stockholder's liability created a substantive right, enforceable in any court of competent jurisdiction as an incident of a receivership. 173M603, 218NW121.

The superadded liability is contractual in its nature and is assumed by one becoming a stockholder. 173M 603, 218NW121.

A federal court has jurisdiction to empower a receiver of a Minnesota corporation appointed by it to institute actions in state court to enforce constitutional liability, using the remedy provided by state statute. 173M603, 218NW121.

Order of assessment in sequestration suit is conclusive in action on assessment as to amount and necessity therefor, but in latter suit defendant may assert that facts do not show cause of action against him. Crowley v. P., 180M250, 230NW645(2).

A transferor of stock must look to sequestration suit for adjustment of his liability. Crowley v. P., 180M250 230NW645(2).

One who subscribes to the stock of one corporation and receives that of another does not become a stockholder, and he is not estopped to deny that he is liable as such. 181M316, 232NW519. See Dun. Dig. 2080a.

Title to chapter 205, Laws 1931, is not objectionable in that it purports to amend two consecutively numbered sections in Mason's Minn. Stat., 1927, said sections covering but one subject. Sweet v. R., 250NW46. See Dun. Dig. 8920.

Proviso added by amendment did not enlarge or add a new subject to section, but modified and restricted same. Id.

Time limited in provision for commencement of action to enforce a stockholder's liability appears adequate. Id. See Dun. Dig. 5656.

Time for commencement of action to enforce stockholder's liability is not governed by statutes of limitation in force when order for sequestration was made but by applicable statute at time action is brought. Id.

8029. Additional assessments.

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

Miller v. R., 246NW465; note under §8025.

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

8030. Proceedings on failure of assignee or receiver to prosecute.

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

8031. Surplus to be divided among stockholders.

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

173M10, 216NW252; note under §8026.