

# GENERAL STATUTES

OF THE

# STATE OF MINNESOTA

36

IN FORCE

JANUARY 1. 1889.

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COMPLETE IN TWO VOLUMES.

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VOLUME 1, the General Statutes of 1878, prepared by GEORGE B. YOUNG, edited and published under the authority of chapter 67 of the Laws of 1878, and chapter 67 of the Laws of 1879.

VOLUME 2, Supplement.—Changes effected in the General Statutes of 1878 by the General Laws of 1879, 1881, 1881 Extra, 1883, 1885, and 1887, arranged by H. J. HORN, Esq., with Annotations by STUART RAPALJE, Esq., and others, and a General Index by the Editorial Staff of the NATIONAL REPORTER SYSTEM.

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VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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ST. PAUL:  
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shall apply to savings banks now in existence and operation in the state of Minnesota, which banks may be continued under the laws applicable to such banks before the passage of this act, unless they or any of them desire to organize thereunder. (*Id.* § 52.)

## CHAPTER 34.

### CORPORATIONS.\*

#### TITLE 1.

##### CORPORATIONS EMPOWERED TO TAKE PRIVATE PROPERTY FOR PUBLIC USE.†

As to the constitutionality of this title, see *Weir v. St. Paul, S. & T. F. R. Co.*, 18 Minn. 155, (Gil. 139.)

See also, *Carli v. Stillwater & St. P. R. Co.*, 16 Minn. 260, (Gil. 234;); *Witt v. St. Paul & N. P. Ry. Co.*, 35 Minn. 404, 29 N. W. Rep. 161; *In re St. Paul & N. P. Ry. Co.*, 34 Minn. 227, 25 N. W. Rep. 345, 36 Minn. 85, 30 N. W. Rep. 432; *Red River & L. W. R. Co. v. Sture*, 32 Minn. 95, 20 N. W. Rep. 229.

#### § 1. Incorporation—Purpose—Method.

Any number of persons, not less than five, may associate themselves and become incorporated for the purpose of building, improving, and operating railways, telegraphs, pneumatic tube lines, subway conduits for the passage, operation, and repair of electric and other lines or pipes, canals, or slack-water navigation, upon any river, bay, or lake, and all works of internal improvement which require the taking of private property or any easement therein; and that any citizens of the United States, not less than nine in number, being the owner or owners of any railroad within this state, now or hereafter actually constructed for public use in the conveyance of persons or property, or organized for the purpose of maintaining and operating, under lease or contract, a railroad constructed for like public uses, may, by making and filing articles of association as authorized by this act, acquire and enjoy the rights, privileges, and franchises granted by this act, and may, by filing in the office of the secretary of state a resolution of such corporation of its intent to construct or operate any branch line, become empowered to so construct and operate the same in connection with such main line, subject to the provisions of this act and the general laws of this state; that any such railroad

\* See an act limiting the quantity of land which corporations may acquire. *Laws 1887, c. 204, post, c. 75, \*§ 41a et seq.*

† Terms "railroad" and "railroads" apply to all gauges. *Ante, c. 4, § 1.*

In relation to the adjustment of the Minnesota state railroad bonds, see *Gen. Laws 1881, cc. 102, 104; Gen. Laws 1881, (Ex. Sess.) cc. 1, 2, 71.* And for provisions for the substitution of other bonds for state railroad bonds belonging to the permanent school fund and the university fund, see *Gen. Laws 1885, c. 227.*

Duty of railroad companies to file map, etc., of new roads, branches, and extensions, and to notify commission of their completion, see *ante, c. 11, \*§ 129b.* Duties in relation to the prevention of the burning of passenger cars, *ante, c. 6, \*§§ 77v-77z.* And see the railroad and warehouse commission act, etc., *ante, \*§§ 77a-77z.*

As to the duty of the attorney general to provide for the defense of actions by railroad companies concerning the title to indemnity lands embraced in § 10, c. 201, *Sp. Laws 1877*, see *Gen. Laws 1885, c. 176.* For the appropriation to reimburse settlers for the defense of such actions, see *Gen. Laws 1887, c. 203.*

See an act in relation to the Taylor's Falls & Lake Superior Railroad Company. *Sp. Laws 1879, c. 69.* As to the powers of the St. Paul & Duluth Railroad Company and the Northern Pacific Railroad Company to condemn private property, see *Gen. Laws 1879, cc. 82, 83.* For provisions relating to the transfer of certain lands to the Duluth, St. Cloud, Mankato & Southern Railroad Company, see *Gen. Laws 1887, c. 19.*

corporation to be organized under this act may erect and maintain lines of telegraph along or over its lines of railroad, and charge a reasonable compensation for transmitting messages over the same. (*As amended* 1875, c. 14, § 1; 1885, c. 18; 1887, c. 161.)

See *In re St. Paul & N. P. Ry. Co.*, 36 Minn. 85, 30 N. W. Rep. 432.

### § 3. Contents of articles—Publication.

Corporation *de facto*, East Norway Lake, etc., *Church v. Froislie*, 35 N. W. Rep. 260. SUBD. 4. See *Weed v. Little Falls & D. R. Co.*, 31 Minn. 154, 16 N. W. Rep. 851.

### § 4. Incorporation—When completed—Powers of corporation—Amendment of articles.

When articles are filed, recorded, and published as aforesaid, the persons named as corporators therein become a body corporate, and are authorized to proceed to carry into effect the objects set forth in said articles, in accordance with the provisions of this title, and shall have perpetual succession, sue and be sued by its corporate name, have a common seal, which it may alter at pleasure, may render the interest of its stockholders transferable, establish by-laws, and make all rules and regulations deemed expedient for the management of its affairs, in accordance with law, and not incompatible with an honest purpose; and whenever, after the adoption, filing, publication, and recording of the articles of incorporation, as provided for in section three of said chapter, and the creation thereby of a body corporate, the said corporation so created shall resolve to alter, modify, or change any of its articles of incorporation, such corporation may, by resolution duly passed at any regular meeting of the directors thereof, adopt a new article or articles, altering, modifying, or changing any of the original articles of incorporation: *provided*, such alteration, modification, or change shall only relate to and affect the name of such incorporation, the general nature of its business, and the principal place of transacting the same, the amount of its capital stock, and how to be paid in, the highest amount of indebtedness or liability to which said corporation shall at any time be subject, and the number and amount of the shares of its capital stock, and also the number of directors, their term of office, and the manner of their election: *and provided, further*, that no such new and amended articles of incorporation shall be operative or valid to alter, modify, or change such original articles of incorporation until the same shall be filed, published, and recorded in the same manner and with like formalities that the original articles of incorporation are now required to be filed, published, and recorded; and, when so adopted, the said amended articles of incorporation shall be substituted for and take the place of the original articles of incorporation so amended. (*As amended* 1873, c. 12, § 1; 1885, c. 9.)

### § 5. Duration of corporation.

The easement which a railroad company imposes on land is not one for a definite period, but one which at its pleasure it may make practically perpetual. The jury are to estimate the damages caused by imposing such an easement on the land. *Robbins v. St. Paul, etc., R. Co.*, 22 Minn. 287.

### \*§ 8a. Unpaid shares—Fictitious stock—Issuing prohibited.

That it shall not be lawful for any railroad company existing by virtue of any of the laws of this state, nor for any officer of any such company, to sell, dispose of, or pledge any shares in the capital stock of such company, nor to issue certificates of shares in the capital stock of such company, until the shares so sold, disposed of, or pledged, and the shares for which such certificates are to be issued, shall have been fully paid, nor issue any stock or bonds except for money, labor, or property actually received and applied to the purpose for which such corporation was created, and all fictitious stock, dividends, and other fictitious increase of the capital stock or indebtedness of any such cor-

poration shall be void; and if any officer or officers of any such company shall issue, sell, pledge, or dispose of any shares or certificates of shares of the capital stock of such company, in violation of the provisions of this act, such officer or officers so doing shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as hereinafter provided. The provisions of this act shall apply as fully to the stocks and officers of consolidated railroad companies, existing in whole or in part within this state, as to original unconsolidated companies existing as aforesaid. (1887, c. 12, § 1.\*)

**\*§ 8b. Statement of capital stock.**

It is hereby made the duty of every such railroad company as aforesaid to file with the secretary of state, in the month of July in each year, a special report and statement, sworn to by the president and treasurer of the company, setting forth explicitly the number of shares of capital stock actually issued, sold, pledged, or disposed of by the company to the date of such report, and the amount of capital stock issued during the year last past, and the amount received therefor in money, and the amount received therefor, if any, improperly, and other effects. (*Id.* § 2.)

**\*§ 8c. Violation of act—Penalties.**

Any violation of the provisions of this act, or any neglect to comply with the requirements of this act, or the making of any false statement to the secretary of state in relation to any matters required by the preceding section to be reported to him, shall render the officers and directors of any such railroad company, as aforesaid, guilty of any such violation or neglect, or making or permitting any such false statement, liable to the state for the penalties herein provided. (*Id.* § 3.)

**\*§ 8d. Same.**

Any violations of the provisions of this act shall render any officer or director of any such railroad company, as aforesaid, guilty of any such violation, liable to indictment, and on conviction shall be punished by a fine of not more than five thousand dollars, or imprisonment in the state prison not more than three years, or both such fine and imprisonment, in the discretion of the court. (*Id.* § 4.)

**§ 9. Individual liability of stockholders.**

Where the stockholders of a corporation are liable for its debts under § 3, art. 10, of the constitution, or under §§ 9, 10, 11, of this chapter, and a judgment has been recovered against the corporation, and an execution thereon returned unsatisfied, an action may be brought against the corporation and one or more of the stockholders to enforce the liability of the latter. *Dodge v. Minnesota Plastic Slate Roofing Co.*, 16 Minn. 368, (Gil. 327.)

Subsequent to the decision of *Dodge v. Minnesota Plastic Slate Roofing Co.*, *supra*, and by Laws 1875, c. 15, the fourth subdivision of § 9 was repealed, and the force of the decision, as indicating the nature of the action or proceeding to be thereafter pursued, must be confined to cases falling within the three remaining subdivisions. *Johnson v. Fischer*, 30 Minn. 175, 14 N. W. Rep. 799.

Under §§ 9, 10, 11, a creditor of a corporation, such as those provided for in the chapter, may sue the corporation for the debt, and join as defendants one or more of the stockholders, to enforce their individual liability; and in such an action it is unnecessary to join all the creditors of the corporation, or all the stockholders subject to individual liability. *Merchants' Nat. Bank v. Bailey Manuf'g Co.*, 34 Minn. 323, 25 N. W. Rep. 639.

*Allen v. Walsh*, 25 Minn. 543, followed, and applied as to the manner of enforcing the individual liability of a stockholder in a manufacturing corporation, in a case not falling within the provisions of this section. *Johnson v. Fischer*, 30 Minn. 173, 14 N. W. Rep. 799.

Under the provisions of the charter of the Saint Anthony Falls Water-Power Company, stockholders at the time when a debt of the corporation is contracted, and those

\*"An act relative to the issuing of false, fraudulent, and part-paid and unpaid shares of the stock of railroad companies, and providing a penalty therefor." Approved March 7, 1887.

becoming stockholders before the debt is paid, are individually liable for its debts, and it is not necessary to proceed against the corporation in the first instance. Gebhard v. Eastman, 7 Minn. 56, (Gil. 40.)

### §§ 10, 11. Same—Levy on individual property.

See note to § 9, *supra*.

### § 13. Right of way.

Any corporation organized or reorganized under the provisions of this title may obtain the right of way over, through, under, and across any lands needed for the construction of any railroad or telegraph, pneumatic tube lines, subway conduits for the passage, operation, and repair of electric and other lines and pipes, and all necessary sites and grounds for depots, shops, and other buildings requisite for the proper carrying on of the business to be transacted, or may obtain the right to overflow, by reason of any dam, lock, sluices, or other erection necessary for the convenient prosecution of their enterprise, all and any lands damaged thereby, and may obtain the right to the use of any land for a towpath, the erection of necessary buildings for the purpose of said business, and the right of way in and over the bed of any river, bay, lake, or water-course, and the banks thereof, together with the right to overflow, injure, or destroy any existing dams, mills, or other property, and to canal in and along the valley of any such river, bay, stream, lake, or water-course, and to purchase and erect all necessary buildings for the operation and prosecution of any manufacturing business upon the water-power incidentally created by such improvement, by proceeding as in this title provided. (*As amended* 1885, c. 18; 1887, c. 161, § 2.)

The provisions of this chapter, authorizing the creation of corporations for railroad purposes, with power to condemn private property for their own use, are not in conflict with any provision of the constitution, and are valid. Weir v. St. Paul, S. & T. F. R. Co., 18 Minn. 155, (Gil. 139.)

A railroad corporation, organized under this chapter, may, by proceeding in accordance with the provisions thereof, lawfully take and appropriate private property for the purposes of such road. *Id.*

A railroad company, organized under this title, has no power to take, use, appropriate, or condemn lands, except those necessary for railroad purposes. The taking of lands for a common public highway is not such purpose. Curtis v. St. Paul, S. & T. F. R. Co., 20 Minn. 28, (Gil. 19.)

Town lots belonging to or held in trust for the university of the state of Minnesota, but not set apart or occupied for public purposes, may be acquired by condemnation proceedings as in the case of the lands of private persons or corporations. *In re* St. Paul, etc., R. Co., 34 Minn. 227, 25 N. W. Rep. 345.

See *Cari v. Stillwater & St. P. R. Co.*, 16 Minn. 260, (Gil. 234.)

### § 14. Petition for appointment of commissioners.

Whether the petition of the railroad company for the appointment of commissioners, or the report of the commissioners appointed, should state the specific use for which a particular piece of land is taken, *quære*. Curtis v. St. Paul, S. & T. F. R. Co., 20 Minn. 28, (Gil. 19.)

See *Wilmes v. Minneapolis & N. W. Ry. Co.*, 29 Minn. 242, 13 N. W. Rep. 39; *Rochette v. Chicago, M. & St. P. Ry. Co.*, 32 Minn. 203, 20 N. W. Rep. 140; *Lehmicke v. St. Paul, S. & T. F. R. Co.*, 19 Minn. 464, (Gil. 406;) *St. Paul & S. C. R. Co. v. Murphy*, 19 Minn. 500, (Gil. 433;) and notes to §§ 25, 26, *infra*.

### § 15. Notice—Service.

The fact that c. 34, Gen. St. 1866, did not provide for notice of application for appointment of commissioners to assess damages for property to be taken, did not invalidate such proceeding; distinguishing *Langford v. Commissioners Ramsey Co.*, 16 Minn. 375, (Gil. 333;) *Weir v. St. Paul, etc., R. Co.*, 18 Minn. 155, (Gil. 139.)

The provision for service upon the officers named is exclusive, and service according to c. 66, § 2, would not be legal. *In re* St. Paul, etc., R. Co., 36 Minn. 85, 30 N. W. Rep. 432.

Want of service of notice will not render the proceedings void in such a sense that they could not be rendered valid by the consent or appearance of the person who should have been served with notice. They would be void unless and until they should be ren-

dered valid by some other event or act having the effect of curing the want of jurisdiction. Such is one of the recognized uses of the word "void." *Rheiner v. Union Depot, etc.*, Co., 31 Minn. 294, 17 N. W. Rep. 623.

Filing affidavit a condition precedent to service by publication. *Brown v. St. Paul & N. P. Ry. Co.*, 38 N. W. Rep. 698.

See *Lohman v. St. Paul, S. & T. F. R. Co.*, 18 Minn. 174, (Gil. 157;); *Lehmick v. St. Paul, S. & T. F. R. Co.*, 19 Minn. 464, (Gil. 406;); *St. Paul & S. C. R. Co., v. Murphy*, 19 Minn. 500, (Gil. 433.)

### § 17. Hearing order—Appointment of commissioners.

At the time and place appointed for hearing said petition, or at the time and place to which the proceedings may have been adjourned as provided in the preceding section, upon the presentation of such petition, with satisfactory proof that all the parties therein named have been duly served with the said notice as hereinbefore prescribed, the court shall proceed to hear and determine the same. All or any of the persons whose lands, property, estates, or interests are to be affected by the proceedings may show cause against granting the prayer of the petition, and may disprove any of the facts alleged in it. The court shall hear the proofs and allegations of the parties, and if the court shall be satisfied that the public interests require the prosecution of such enterprise, and that the lands or real estate proposed to be taken are required and necessary for the purposes of such enterprise, it shall make an order, to be recorded in the minutes thereof, appointing three competent, disinterested persons, resident in said county, commissioners to ascertain and determine the amount to be paid by such corporation, to each of such owners or persons interested, as compensation for his or her damages by reason of the taking or injuriously affecting any such lands, property, estates, or interests, and specifying therein the time and place of the first meeting of such commissioners, and fixing their compensation. And the court may also, in its discretion, in and by said order, limit the easement to be acquired by reserving to the land-owner such rights and privileges therein, and to be defined in such order as shall not be incompatible with the use for which the land is sought to be appropriated; such rights and privileges to be exercised and enjoyed in such manner, at all times, as not to injure or interfere with the railway track or structures, or other improvement for which the land is to be appropriated, or the free and legitimate use of the same for the purpose of such railway or other enterprise. (*As amended 1872, c. 53, § 4; 1879, c. 35, § 1.*)

Upon such application it is for the court to determine whether the use for which lands are sought to be appropriated is a public use, and whether they are reasonably required or necessary therefor. In *re St. Paul, etc., Ry. Co.*, 34 Minn. 227, 25 N. W. Rep. 345.

An order appointing commissioners in condemnation proceedings in pursuance of this section is a final order in a special proceeding, and is appealable. *Id.*

See *Knauft v. St. Paul, S. & T. F. R. Co.*, 22 Minn. 173, and cases cited to § 14, *supra*.

### § 18. (Sec. 19.) Commissioners' oath. — Powers — Assessment of damages.

The said commissioners shall meet at the time and place appointed in the order, and severally take and subscribe an oath faithfully and impartially to discharge the duties of their appointment. Any of them may issue subpoenas and administer oaths to witnesses. A majority of them may adjourn the proceedings before them from time to time, in their discretion. They shall view and examine the premises described in the petition and proposed to be appropriated, and shall hear the proofs and allegations of all persons interested, and they, or a majority of them, all being present, shall, without any unnecessary delay, proceed to make in each case a separate assessment of the damages which will result to any person, company, or corporation by reason of the construction of such railroad or other improvement, and the taking or injuriously affecting their said land, property, or estate for the purpose of such enterprise,

and award the same to the owner or owners or persons interested therein respectively. (*As amended 1872, c. 53, § 6; 1879, c. 35, § 2.*)

The omission to give the personal notice of the meeting of the commissioners to the owner residing on the land renders condemnation proceedings under the statute void. *Lohman v. St. Paul, etc., R. Co., 18 Minn. 174, (Gil. 157.)*

The persons named in the petition as owners of the land sought to be taken may, before the commissioners as well as on appeal, dispute the statements of the petition as to their title and estate, and show their real title and estate; and the issue thus made is proper to be passed upon by the commissioners in determining the question of damages, and their decision thereon is reviewable, on appeal, in the district court. *Brisbine v. St. Paul, etc., R. Co., 23 Minn. 114.*

Where the company entered and constructed its road over land with the owner's consent, "the question of damages for the right of way to be adjusted after the road was in operation," held, that this was not a contract for the right of way, and did not affect the proceedings for condemnation. *St. Paul, etc., R. Co. v. Murphy, 19 Minn. 500, (Gil. 433.)*

Where the railroad had already been constructed, when commissioners were appointed, and the charter did not fix the time with reference to which the value should be taken to furnish a standard for compensation, held, that the time when it was passed on by the commissioners was the proper time, and not the time when the company took possession. *Winona, etc., R. Co. v. Denman, 10 Minn. 267, (Gil. 208.)* Compensation is to be awarded with reference to the value and condition of the premises at the time of the award. *Sherwood v. St. Paul, etc., Ry. Co., 21 Minn. 122.*

The land-owner cannot have compensation for property injuriously affected, where no part of it has been actually taken; as where a railroad company made an excavation across certain streets in the vicinity of plaintiff's premises, thereby cutting off his most convenient and usual means of access to and egress from them, to and from his place of business in the city, and thereby compelling him to resort to a less convenient and accessible route. *Rochette v. Chicago, etc., Ry. Co., 32 Minn. 201, 20 N. W. Rep. 140.*

When the premises described in the petition are part of a compact tract actually used as one farm owned by one person, the damage to the whole tract may be assessed. But damages to other distinct and separate farms of the same owner, not described in the petition, cannot be assessed. *Minnesota Valley R. Co. v. Doran, 15 Minn. 230, (Gil. 179.)* In ascertaining the compensation to be paid for taking for public use for a railroad a strip of land through a tract used as a farm, it is proper to consider, not only the value of the strip taken, but the injury to the entire tract by taking the strip for railroad purposes. *Winona, etc., R. Co. v. Denman, 10 Minn. 267, (Gil. 208.)* In ascertaining the compensation to be paid for taking, for railroad purposes, a strip of land through a farm, it is competent for the owner to prove the market value of the strip per acre, and also to prove in what manner the market value of the farm will be injured by the railroad. *Winona, etc., R. Co. v. Waldron, 11 Minn. 515, (Gil. 392;)* followed, *Minnesota Central Ry. Co. v. McNamara, 13 Minn. 503, (Gil. 463.)* In condemnation proceedings for railroad purposes it is proper, where a strip is taken out of an entire tract, to prove the value of the tract immediately before, and its value immediately after, the taking. *Curtis v. St. Paul, etc., R. Co., 20 Minn. 28, (Gil. 19.)* A question by the owner to a witness, "What was the farm worth at the time the railway company took possession, and what was the farm worth at the time the railway company entered upon it, deducting the strip from it taken by the company for its purposes?" was proper. *Simmons v. St. Paul, etc., Ry. Co., 18 Minn. 184, (Gil. 168;)* followed, *Colvill v. St. Paul, etc., Ry. Co., 19 Minn. 283, (Gil. 240.)* Plaintiff was owner of 120 acres of land, consisting of three forties in line from east to west. The land was occupied and used by him as one farm, his residence being on the easterly forty. Defendant, having located the line of its railway across the two westerly forties, instituted proceedings for condemnation. Held that, in assessing the compensation to be paid to the plaintiff, he was entitled to have the effect of the appropriation of the right of way across the two westerly forties upon the easterly forty considered and taken into account, although the petition for the appointment of commissioners described the two westerly forties only. *Wilmes v. Minneapolis, etc., Ry. Co., 29 Minn. 242, 13 N. W. Rep. 39.* *Sherwood v. St. Paul & C. R. Co., 21 Minn. 122,* followed as to the point that where a strip of land appropriated by defendant for the purposes of its railway is part of a larger compact tract, and used and occupied as an entirety, it is proper to assess compensation for the appropriation in one gross sum, although such compact tract may be composed of several town lots and intervening streets, and although the strip appropriated may consist of several lots and parts of lots. *Sherwood v. St. Paul, etc., Ry. Co., 21 Minn. 127.* *Curtis v. St. Paul, S. & T. F. R. Co., 20 Minn. 28, (Gil. 19,)* and other cases, followed as to the character of testimony admissible to show the amount of damage resulting to a land-owner from the construction of a railway. *Id.*

Where, upon the property, part of which is taken, there is a water-power, the jury may assess full damages for the injury to the water-power from the taking. *Lake Superior, etc., R. Co. v. Greve, 17 Minn. 322, (Gil. 299.)* Increased exposure to fire from the passage of a railroad through land near which buildings are already erected is proper to be estimated by the jury in ascertaining compensation. *Colvill v. St. Paul,*

etc., Ry. Co., 19 Minn. 283, (Gil. 240.) It is proper for the jury to consider as an element of damages whether a fence, which the company is required by law to construct on each side of its line, does not create a further obstruction to the free use of the farm; that is, whether the fence and road do not damage the farm more than the road alone would do. *Minnesota Valley, etc., R. Co. v. Doran*, 17 Minn. 188, (Gil. 162.) The delay to the owner in time and labor in necessarily opening and shutting gates, or letting down and putting up bars, in crossing the track from one side to the other of the track, is proper to be considered by the jury as an element of damage. *Id.* The additional expense to the owner of fencing, rendered necessary by taking the strip for a railroad, is to be considered in ascertaining the damages. *Id.*

Upon one lot owned by plaintiffs, and appropriated by defendant, there was a building, which had been removed therefrom by plaintiffs, before the examination and award of commissioners, upon defendant's agreement that, if plaintiffs would remove the same, the company would pay for removing and making it as good as before. Held, that it was error to include, in the award for the appropriation of such lot, the expense of removing the building, and making the same good; and that on account of such error the judgment recovered by plaintiffs, on account of the appropriation of such lot, must be reversed. *Sherwood v. St. Paul, etc., R. Co.*, 21 Minn. 122.

The benefits which, under this section, may be deducted from the damages awarded for lands taken for railroad purposes are the benefits peculiar to the land-owner alone, and not those in which he shares as member of the community at large. *Weir v. St. Paul, S. & T. F. R. Co.*, 18 Minn. 155, (Gil. 139.) In estimating damages to an owner for land taken for railroad purposes, the value of the land taken must be determined, irrespective of any general benefits resulting to the owner from the construction of the road. *Carli v. Stillwater & St. P. R. Co.*, 16 Minn. 260, (Gil. 234.) That the land-owner made large profits by the sale of wood and ties to the company is not a benefit to be deducted in assessing the damages for taking lands for a railroad. *Minnesota Valley R. Co. v. Doran*, 17 Minn. 188, (Gil. 162.)

In proceedings to condemn an entire lot of land, an instruction to the jury that the question for them to determine was what was the value of the property in question on the day when the report of the commissioners was filed, and that it was their duty to return a verdict for the plaintiff for the amount so determined, (there being nothing in the case to show that the fee of the land, burdened by the easement which the company seeks to impose on it, would be of any more than nominal value,) is not such error as that this court will, on that ground, order a new trial. *Robbins v. St. Paul, etc., R. Co.*, 23 Minn. 286.

The owner of lands condemned is entitled to a personal judgment for the damages awarded against the company or party instituting such proceedings. *Robbins v. St. Paul S. & T. F. R. Co.*, 24 Minn. 191.

Whenever, in proceedings of this character, jurisdiction has once attached by due service of the requisite petition and notice upon all parties having or claiming any estate or interest in the property thereby affected, and an award is regularly made by the commissioners as to each claimant, the rights of the respective parties become definitely fixed, and such award, until modified or changed on appeal, is conclusive and binding, not only upon the parties of record, but upon their privies and grantees. *Trogden v. Winona, etc., R. Co.*, 23 Minn. 193.

See *Hursh v. First Div. St. Paul, etc., R. Co.*, 17 Minn. 439, 445, (Gil. 417;); *Warren v. First Div. St. Paul, etc., R. Co.*, 18 Minn. 384, 397, (Gil. 345.) In re *St. Paul & N. P. Ry. Co.*, 34 Minn. 227, 25 N. W. Rep. 345.

## § 23. (Sec. 22.) Appeal.

The title to lands taken for railroad purposes, under the provisions of this chapter, title 1, does not vest in the company until the time allowed for appeal from the award of commissioners has expired and no appeal has been taken; and the right to damages passes to one receiving a conveyance of the land after award and before the time for appeal elapses, and he may take such appeal in his own name. *Carli v. Stillwater & St. P. R. Co.*, 16 Minn. 260, (Gil. 234.)

If, in condemnation proceedings, the land-owner is not, as a matter of constitutional right, entitled to have his damages ascertained by a jury, the legislature may, on permitting him to appeal from the award of the commissioners, require that he give bonds to secure his appeal. If entitled to such jury trial, §§ 23 and 25 secure him the right, and § 24, Gen. St. 1866, requiring a bond, would, in such case, be treated as nugatory. *State v. Everett*, 14 Minn. 439, (Gil. 330,) distinguished; *Weir v. St. Paul, etc., R. Co.*, 18 Minn. 155, (Gil. 139.)

The fact that an appeal from the award of commissioners is taken by the owners alone, without the mortgagees joining therein, or that the jury did not, before plaintiff rested his case, examine the premises, is no ground for dismissing the appeal. *Knauff v. St. Paul, etc., R. Co.*, 22 Minn. 173; *Wilkin v. Same*, *Id.* 177.

The taking and prosecuting of an appeal to the district court from the award of commissioners in favor of the appellant, in condemnation proceedings, is effectual as a waiver of jurisdictional defects resulting from the fact that the proceedings before the



court and the commissioners had been had without notice to the appellant. *Rheiner v. Union Depot Street Ry., etc., Co.*, 31 Minn. 289, 17 N. W. Rep. 623.

Parties named in the petition for condemnation may, both before the commissioners and upon appeal from their award, controvert the allegations in the petition as to their title and estate, and show what their actual right and title are; and the issue thus made is triable by the commissioners, and, on appeal, by the court, in determining the measure of damages. *Brisbine v. St. Paul & S. C. R. Co.*, 23 Minn. 114.

One who has taken and prosecuted such an appeal may not afterwards pursue the inconsistent remedy of an action to restrain the corporation from the use of the land, upon the ground of such defect in the condemnation proceedings. *Rheiner v. Union Depot Co.*, *supra*.

See *Trogden v. Winona, etc., R. Co.*, 22 Minn. 198; *Wilmes v. Minneapolis & N. W. Ry. Co.*, 29 Minn. 242, 13 N. W. Rep. 39; and note to §§ 24, 25, *post*.

### § 24. (Sec. 23.) Same—Bond.

The owner appealed from the award of commissioners to the district court and the railroad, to obtain the right to construct its road, gave a bond, under this section, for the payment of the judgment of the court therein, and took possession of the land. From the district court the railroad company regularly appealed to the supreme court, giving a bond for costs, but not to stay proceedings. Held, that insufficiency of the bond given under this section, or insolvency of the company, would not authorize the supreme court to dismiss the appeal, or to require the filing of a new bond, or a deposit of the damages in court, as a condition of retaining the appeal. *Rippe v. Chicago, D. & M. R. Co.*, 22 Minn. 44.

The bond required by this section, given to prevent the construction of a railroad from being hindered, delayed, or prosecuted, is considered as securing the compensation as required by the constitution. *Weir v. St. Paul, etc., R. Co.*, 18 Minn. 155, (Gil. 139.)

Where an appeal is taken, and a bond on appeal, as prescribed by this section, conditioned to pay whatever amount may be required by the court therein, is given, the judgment authorized to be entered on the verdict is one not only declaring the company's right to the land, upon payment made, but also an absolute judgment in favor of the owner for the amount of compensation as fixed by the verdict; *Curtis v. St. Paul, S. & T. F. R. Co.*, 21 Minn. 497.

As to the effect of this section upon the form of the judgment to be rendered pursuant to § 26 of this chapter, see *Robbins v. St. Paul, etc., R. Co.*, 24 Minn. 191, 192.

See *Wilcox v. Railroad Co.*, 35 Minn. 439, 29 N. W. Rep. 148; *Minneapolis & N. W. R. Co. v. Woodworth*, 32 Minn. 453, 21 N. W. Rep. 476; *Witt v. St. Paul & N. P. Ry. Co.*, 35 Minn. 404, 35 N. W. Rep. 162.

### § 25. Appeals—Questions raised by—Assessment of damages.

On appeal the district court cannot dismiss the petition and subsequent proceedings in the case. *Rippe v. Chicago, D. & M. R. Co.*, 20 Minn. 187, (Gil. 166.)

The district court to which the appeal is taken may, upon proper application and showing by either party, change the place of trial to another county, the same as in other cases. *Lehmicke v. St. Paul, S. & T. F. R. Co.*, 19 Minn. 464, (Gil. 406;) *Curtis v. Same*, 20 Minn. 23, (Gil. 19.) Where an appeal is taken from the assessment of the commissioners to the district court in which the report of the commissioners has been filed, an order of such court changing the place of trial is not within the scope of an appeal from an order denying a new trial, because the first question might be raised by a *certiorari* to the judgment. *Lehmicke v. St. Paul, S. & T. F. R. Co.*, 19 Minn. 464, (Gil. 406.) Defendant instituted, in the district court of Ramsey county, proceedings under this chapter for the condemnation, for railroad purposes, of certain lands in Washington county. The commissioner's report was filed in the clerk's office of Ramsey county, and an appeal taken by the owner to the district court of that county. The place of trial was then, on the ground of convenience of witnesses, etc., changed to Washington county. Held that, on an appeal from an order denying a new trial, the ruling on the change of venue would not be reviewed. *Id.*

The appeal brings to the district court only the question of the amount awarded. Modes of raising the question of jurisdiction of the district court in such cases suggested. *Warren v. First Div. St. Paul, etc., R. Co.*, 18 Minn. 334, (Gil. 345.) Where the petition for commissioners describes the land to be condemned, names contesting claimant as sole owner, and trial is had before and award made by them, by consent of parties, upon that basis, an appeal from their award brings up only the question of the award. *Rippe v. Chicago, D. & M. R. Co.*, 23 Minn. 18. Upon the trial of an appeal before the jury, the sole question for its determination is the propriety of the amount awarded by the commissioners to respondents as compensation for their interest and estate in the property, so far as it was injuriously affected or taken by the company, and such compensation must be ascertained by the jury in reference to the same estate

and interest, and as of the same time as was done by the commissioners in making their award. *Trodden v. Winona, etc., R. Co., 22 Minn. 199.*

Upon the trial of an appeal the oath to be administered to the jury is the one prescribed by § 5, c. 72, to be administered to petit jurors, impaneled for the trial of any civil action or proceeding. *Knauff v. St. Paul, S. & T. F. R. Co., 22 Minn. 173; Wilkin v. Same, 22 Minn. 177.*

On an appeal by the railroad company the damages may, by the verdict, be either increased or diminished. *St. Paul, etc., R. Co. v. Murphy, 19 Minn. 500, (Gil. 433.)*

On the trial on appeal the question asked a witness, "To what use are these lots adapted?" is improper, because it refers to the condition of the lots at the time of the trial, and not at the time of the filing of the report. *Conter v. St. Paul, etc., R. Co., 22 Minn. 342.* Upon the trial of an appeal, it is error to permit a witness to testify as to how much less property was worth with the road located over it than it would be with the road running near, but not upon it. Such testimony suggests a wrong rule of damages. *Carli v. Stillwater & St. P. R. Co., 16 Minn. 260, (Gil. 234.)*

In proceedings by a railroad company, having its terminus at St. Paul, to condemn a strip of land in that city, between the foot of the bluff and the Mississippi river, the circumstance that such strip of land affords the only route by which the company can make a connection with other railways terminating at that city is proper to be considered by the jury in their award of compensation to the land-owner. *Brisbine v. St. Paul, etc., R. Co., 23 Minn. 114.*

The benefits to be deducted from the damages for taking land for railroad purposes are not such as are shared by the community at large, but those peculiar or special to the particular owner. *Weir v. St. Paul, etc., R. Co., 18 Minn. 155, (Gil. 139.)*

If the possession and use of the land, between the time of filing the award and the assessment by the jury, has been of actual value to the owner, the amount of such value should be ascertained by the jury, or court if the matter is tried without a jury, and deducted from the interest allowed. *Warren v. First Div. St. Paul, etc., R. Co., 21 Minn. 424.*

Upon appeal from an award of compensation by commissioners it is proper for a jury to make an assessment in one gross sum, although the commissioners have made separate assessments in respect to each lot. *Sherwood v. St. Paul, etc., Ry. Co., 21 Minn. 127.* The provision of defendant's charter in regard to proceedings for condemnation, in accordance with which the commissioners are to make an appraisal and award "in each case separately," does not require them (or the court or jury in case of an appeal) to make a separate appraisal and award as to each of several town lots appropriated, when such lots together form a compact body of land, and are used and occupied as an entirety; nor, in case a separate appraisal and award is made by the commissioners as to each of such lots, is the court or jury, upon appeal, required to make a separate appraisal and award as to each of the same. *Id.*

See *Wilcox v. St. Paul & N. P. R. Co., supra, § 24.*

## § 26. Judgment.

If, from the petition, the case settled, and the verdict, a judgment may be entered specifying clearly the relief granted, the verdict is sufficient. *St. Paul, etc., R. Co. v. Matthews, 16 Minn. 341, (Gil. 303.)*

In all cases of condemnation to public use, under title 1 of this chapter, the owner of lands is entitled to a personal judgment against the company or party instituting the proceedings for the damages awarded. *Robbins v. St. Paul, etc., R. Co., 24 Minn. 191.*

A bond having been given, on appeal taken, pursuant to § 23, the judgment authorized to be entered on a verdict is one not only settling and declaring the right of the company seeking to appropriate the property to the use thereof, upon payment made, but also in favor of the land-owner for the amount of compensation, as found by such verdict, and adjudging and declaring his absolute right thereto. *Curtis v. St. Paul, etc., R. Co., 21 Minn. 497.*

Upon an appeal from an award of commissioners under defendant's charter, it is sufficient that the judgment follow the verdict in adjudging a gross sum to plaintiffs, the entry of judgment for the amount assessed by the verdict being all that is required by such charter. *Sherwood v. St. Paul, etc., R. Co., 21 Minn. 128.*

The title to the premises sought to be taken for the use of the road does not vest in the railroad company, before judgment, upon the verdict or assessment. *Carli v. Stillwater, etc., R. Co., 16 Minn. 260, (Gil. 234, 238.)*

If the judgment on appeal in condemnation proceedings be defective in form, the remedy is not by *certiorari*, but by application to the court below. *St. Paul, etc., R. Co. v. Murphy, 19 Minn. 500, (Gil. 433.)*

§ 26 cited *Crolley v. Minneapolis, etc., Ry. Co., 30 Minn. 543, 16 N. W. Rep. 422.* See *Witt v. Railroad Co., 35 Minn. 404, 29 N. W. Rep. 161.*

## \*§ 28. Interest pending appeal.

In order to make the compensation to the owner just, the court has authority to enter, and should generally, enter, judgment for the amount assessed by the jury, with

interest from the date of filing the award of the commissioners to the time of entering judgment. *Warren v. First Div. St. Paul, etc., R. Co.*, 21 Minn. 424.

**\*§ 29. Failure to pay award or appeal—Effect.**

If such award, when no appeal is taken, is not paid within sixty days after the filing of said award, or in case an appeal is taken, within sixty days after the entry of final judgment, the proceedings shall be deemed to be abandoned by the party instituting the same, and the person in whose favor the award was made may have judgment entered against the corporation instituting the proceeding for damages, to be computed upon the award at the rate of ten per cent. from the date of the filing the award to the date of entering judgment. (1874, c. 28, § 3, as amended 1881, c. 57, § 1.)

[Gen. Laws 1881, *Ex. Sess.* c. 10, § 1, in terms amend § 29, c. 34, Gen. St. 1878, by adding thereto as follows: "And, at any time after the making of said order prescribing the location and manner of such crossing or connection, the petitioning corporation shall be entitled, without hinderance or obstruction, to proceed immediately to make and operate the same, upon filing with the clerk of said court a bond in such amount and with such sureties as shall be accepted by the corporation whose property is to be taken, or as shall, upon reasonable notice, be approved by the judge of the district court, conditioned to prosecute said petition with diligence, and to pay to the corporation, whose property is taken, whatever amount may be required by the judgment of the court in such proceeding, and to abide by any rule or order of court in relation to the matter in controversy." But the amendment is obviously intended to be added to § 29, c. 34, Gen. St. 1866, (§ 47, *post*, which see.)]

A railroad company appealed, giving the bond required by section 24, and taking possession. Afterwards the appeal was dismissed, at the instance of the company. Held: (1) The judgment dismissing the appeal was a "final judgment" within the meaning of § 29, as amended in 1881, (c. 57,) and the corporation was required by that statute to pay the award within 60 days thereafter. (2) The corporation having failed to make such payment, the act of 1881 authorized the entry of a judgment, upon motion of the land-owner, adjudging the condemnation proceedings abandoned, and awarding damages to him, computed upon the amount of the award, at the rate of 10 per cent. per annum. (3) The including of attorney's fees in such a judgment was unauthorized. *Minneapolis, etc., R. Co. v. Woodworth*, 32 Minn. 452, 21 N. W. Rep. 476.

**\*§ 31. Costs.**

Proceedings were instituted for the condemnation, for railroad purposes, of certain lands of plaintiff, commissioners appointed, award of damages filed, an appeal to the district court taken by both parties, and the appeal placed on the calendar for trial. During the term the railroad company, with the consent of the court, and against plaintiff's objections, dismissed the proceedings for condemnation, and had such dismissal entered of record. All the proceedings were regular. Held that, in the absence of a special contract, or positive rule of law, plaintiff was not entitled to recover of the railroad company for services, time, or expenses incurred in defending against such condemnation proceedings. *Bergman v. St. Paul, S. & T. F. R. Co.*, 21 Minn. 533.

In case of appeal the question of costs is to be determined upon a comparison of the gross amount awarded by the commissioners, for the land to which the appeal relates, with the gross amount allowed for the same by the court or jury. *Sherwood v. St. Paul, etc., Ry. Co.*, 21 Minn. 122.

See *Minneapolis & N. W. R. Co. v. Woodworth*, 32 Minn. 452, 21 N. W. Rep. 476; *Witt v. St. Paul & N. P. Ry. Co.*, 35 Minn. 404, 29 N. W. Rep. 161; and note to § 29, *supra*.

**\*§ 33. Failure to pay damages—Action to recover land.**

Assuming that the premises were entered and taken with the acquiescence of plaintiff, still his right of action to recover them, and for damages, was complete under the provisions of this section. *Kanne v. Minneapolis, etc., Ry. Co.*, 33 Minn. 421, 23 N. W. Rep. 854.

See *Blue Earth County v. St. Paul & S. C. R. Co.*, 28 Minn. 503, 11 N. W. Rep. 73.

**\*§ 34. Same—Answer—Offer of compensation.**

See *Witt v. St. Paul & N. P. Ry. Co.*, 35 Minn. 404, 29 N. W. Rep. 161; *Blue Earth County v. St. Paul & S. C. R. Co.*, 28 Minn. 503, 11 N. W. Rep. 73; *Morin v. St. Paul, M. & M. Ry. Co.*, 30 Minn. 100, 14 N. W. Rep. 460.

**\*§ 35. Same—Damages.**

In an action given by § 33, where the defendant corporation seeks to have the amount of plaintiff's damages assessed on the trial, pursuant to this section, such damages are to be assessed as of the time of the trial. *Morin v. St. Paul, etc., Ry. Co.*, 30 Minn. 100, 14 N. W. Rep. 460. The compensation of a land-owner for property taken for public use is to be estimated as of the time of the award of the commissioners, or, where the assessment is made by a jury, as of the time of trial. This rule is not changed by the fact that a railroad company has, without the consent of the land-owner, entered upon the premises and constructed its road prior to acquiring the right of way by appropriate legal proceedings. *County of Blue Earth v. St. Paul, etc., R. Co.*, 28 Minn. 504, 11 N. W. Rep. 73. As to the evidence admissible on the question of the value of the property taken, see *Id.*

Where the effect of the construction and operation of the railroad, through a particular section of the state, has been to enhance the general market value of real estate, this fact, as well as any other tending to the same result, will naturally and necessarily enter into the opinions and evidence of the witnesses as to the present market value of the particular tract in question on such trial. But in estimating the value of the premises, apart from the effect of their occupancy by the corporation, it is erroneous to instruct the jury "to consider what the value of the farm would be if the railroad was not on it, but if the railroad were in the immediate neighborhood." *Morin v. St. Paul, etc., Ry. Co.*, *supra*. Where, in such an action, the plaintiff failed to establish title except to an undivided interest, but the jury assessed and allowed him damages as the owner of the entire tract, it was held that a new trial should be granted. *Id.*

**\*§ 39a. Validity of proceedings—Action to determine.**

Whenever any person entitled to compensation for lands heretofore taken, or attempted to be taken, for railroad purposes, shall refuse or neglect to receive from the proper company or the receiver thereof, or otherwise, the compensation awarded therefor by commissioners acting or assuming to act in that behalf, upon the ground of the irregularity or illegality of the appointment of the commissioner, or of the award, or of any of the proceedings, or otherwise, the railroad company interested in the premises, or the receiver thereof, where no appeal from the award has been taken, may bring an action against such person for the purpose of determining the validity of such appointment, award, and proceedings, or either, and in such action the plaintiff may also allege that, if the proceedings are held invalid, the plaintiff is ready and willing to pay to the defendant full compensation for the land so taken or sought to be taken, to the extent of the defendant's interest therein. (1879, c. 77, § 1.\*)

**\*§ 39b. Procedure.**

If the defendant, in his answer, disputes the validity of such proceedings, or of such appointment or award, the court shall first determine such issue, and the nature of the defendant's title, and if the finding is adverse to the defendant, judgment shall be entered accordingly. If, however, it shall be determined that the defendant has an interest in or title to such property, and that such proceedings are invalid, the court shall so find, and shall also determine and find for the defendant the full value of his interest in the land so taken, or attempted to be taken, at the time of such finding: *provided, however*, that, on any or all of the issues raised, either party shall be entitled to a jury trial: *and provided, further*, that the plaintiff cannot recover costs or disbursements: *and provided, further*, that a judgment adverse to the defendant shall not preclude him from his rights in any award made by the commissioners. (*Id.* § 2.)

**\*§ 39c. Judgment—Payment—Effect.**

Upon a finding or verdict in favor of the defendant, and determining the compensation due him for the taking and use of his land for railroad pur-

\*"An act to authorize railroad companies, or receivers thereof, to determine the validity of proceedings appropriating land for railroad purposes, and to make compensation for such lands." Approved March 11, 1879.

poses, judgment shall be entered in substance as follows: That all the right, title, and interest of the defendant in the land in controversy be taken and appropriated for the use of the railroad, naming it, by the plaintiff, (if the company is plaintiff,) or (if the receiver is plaintiff) by the plaintiff to the use of and for the benefit of the company, upon the plaintiff paying to the defendant, or into court for the benefit of the party entitled thereto, within sixty days from the judgment, the compensation adjudged, with interest, costs, and disbursements, and that upon failure to so make such payment the action be dismissed. The effect of such payment shall be to vest in the railroad company, if the company is the plaintiff, or in the receiver for the company, if the receiver is plaintiff, all the right, title, and interest of the defendant in the lands so taken to the same use which the company could acquire by condemnation under their charter or the general laws of this state, and the court may enter an order or final judgment to that effect when such payment is made. (1879, c. 77, § 3.)

**\*§ 39d. Defendants—Joinder.**

The plaintiff may at his option join as defendants all parties having any interest in or lien upon the property, or making any claim thereto, and may also, in the same complaint, include two or more tracts of land owned or claimed by different parties, with the right, however, of the owners of different tracts to demand separate trials. (*Id.* § 4.)

**\*§ 39e. Procedure.**

The action given by this act shall, in all respects, except as herein otherwise provided, be governed by the same rules of practice and procedure as to service of summons, new trials, appeals, or otherwise as other actions brought to determine conflicting claims to real property under the laws of this state. (*Id.* § 5.)

**\*§ 39f. Railroad companies—Power to acquire property.**

That any railroad company now existing under the laws of Minnesota, or which has authority, under the laws of this state, to build and operate a railroad within this state, and any railroad companies which may hereafter be organized under the general laws of this state, shall have power to acquire, by purchase or condemnation, all necessary roadways, spur and side tracks, rights of way, depot grounds, yards, grounds for machine-shops, warehouses, elevators, depots, station-houses, and all other structures that may be necessary or convenient for the full enjoyment, use, and operation of its road, and may purchase, erect, maintain, and operate all such machine-shops, warehouses, elevators, depots, station-houses, and other structures, as may be necessary or convenient for the use, operation, or enjoyment of the road, and may make with any railroad company such arrangements for the use of any portion of its tracks and road-beds as it may deem necessary; and may, wherever and whenever it may be or become necessary for carrying out the purposes of such corporation, enter upon and cross over or under the tracks and road-beds of any other railroad corporation or company for the purpose of effecting a crossing upon, over, or under the same, or a connection with the same, and may enter upon, across, over, under, or along any other lands of all other railroad corporations, streets, and highways, with its own tracks, upon paying just compensation to the person or corporation injured thereby. (1879, c. 80, § 1.\*)

Under last clause, see *Illinois Cent. R. Co. v. Chicago, B. & N. R. Co.*, 13 N. E. Rep. 140.

\*"An act to authorize railroad companies to exercise the right of eminent domain in certain cases in this state." Approved March 6, 1879.

**\*§ 39g. Same—Extent.**

The power to condemn hereby granted shall embrace all roadways, spur and side tracks, rights of way, railroad crossings, depot grounds, yards, grounds for machine-shops, warehouses, elevators, station-houses, water-tanks, and all other buildings and structures, rights, privileges, and easements necessary to the construction, or necessary or convenient to the operation, of any of said railroads; also all lands, rights, privileges, and easements that are or may become necessary or convenient to the full enjoyment, use, maintenance, and operation of any of said railroads. (*Id.* § 2.)

**\*§ 39h. Same—How exercised.**

The condemnation proceedings hereby authorized, shall be instituted by said company and conducted in the same manner as other similar proceedings are or may hereafter be instituted and conducted by railroad companies in this state, under the general laws, except that the court, in its discretion, in and by the order appointing commissioners, may limit the easements to be acquired by reserving to the owner of the property over which the right of way is sought to be obtained such rights and privileges in and to the same as shall not be incompatible with the use for which the same is to be appropriated, to be exercised and enjoyed in such manner as not to injure or to interfere with the road track and structure of such railway company, or the free and legitimate use of the same for railway purposes: *provided*, that nothing in this act contained shall be construed as authorizing or empowering said railroad company, or any of them, to condemn, appropriate, or use any lands, property, or rights or franchises of any other railroad corporation, occupied or in use or necessary for the operation of its railroad, or the transaction of its business by such other corporation, except when the petitioning corporation shall elect to cross any such property and tracks, or either, by its tracks, and in such case the corporation electing to cross any such property and tracks, or either, may cross the same either over, under, or at grade, and then only by the construction of its tracks across the same. And in case where such election shall be made, the district court to which the petition shall be presented, shall at the time of the appointment of the commissioners, upon the request of either party, and upon such showing as the court may deem necessary and proper, prescribe the location and the manner in which such crossing or connection shall be made so as to effect the purpose of the petitioning corporation, and at the same time do the least injury to the corporation whose property is taken. (*Id.* § 3.)

**\*§ 39i. Construction of act.**

Nothing herein contained shall be construed to abridge the rights conferred on any railroad company by existing general laws of this state, or of any special laws of this state. (*Id.* § 4.)

**§ 42. (Sec. 28.) Telegraph and telephone companies—  
Use of public roads.**

Any telegraph or telephone corporation organized under this title has power and right to use the public roads and highways in this state, on the line of their route, for the purpose of erecting posts or poles on or along the same to sustain the wires or fixtures: *provided*, that the same shall be so located as in no way to interfere with the safety or convenience of ordinary travel on or over the said roads or highways. (*As amended* 1881, c. 73, § 1.)

The company owes the duty of maintaining the poles and wires in safe condition. *Nichols v. City*, 33 Minn. 430, 29 N. W. Rep. 868.

**\*§ 43. Railroad companies—Right of way over public lands.**

That a right of way is hereby granted over any swamp, school, internal improvement, agricultural college, or university lands held by the state, to any railroad company proposing to construct, or that has constructed, a railroad over or upon the same on the conditions and terms herein provided. (1878, c. 73, § 1, *as amended* 1879, c. 45, § 1; 1885, c. 42, § 1.)

**\*§ 44. Same—Width.**

Such right of way may be fifty feet in width on each side of the center line of the main tracks, except where a greater width is necessary to protect the tracks against snow-drifts, and in such case a width not exceeding one hundred and fifty feet in addition may be taken, subject to the approval of the governor as to the width to be taken. (1878, c. 73, § 2, *as amended* 1879, c. 45, § 2.)

**\*§ 45. Same—Plat—Payment—Deed.**

Any company desiring such right of way or depot, station grounds, and water stations, shall furnish to the governor a plat showing the line of the road and the right of way, and additional width requisite to protect the track against snow, and the depot, station grounds, and water stations proposed to be taken, with a calculation of the acres contained therein; and on payment to the state treasurer of the sum per acre equal to the appraised value of said land, if the same has been appraised, and, if not appraised, at such rate per acre as the governor and commissioner of the state land-office shall consider a fair appraisal, but not at a rate less than that fixed by the constitution of the state; and upon such payment being made the governor shall execute to such railroad company such deed or instrument in writing as shall convey the use of such right of way over and upon such land and the use of such land for depot, station ground, and water stations, so long as it shall be used and occupied for railroad purposes. (1878, c. 73, § 3, *as amended* 1879, c. 45, § 3.)

**\*§ 46. Same—Proceeds—Disposition.**

The fund so paid shall be credited to the proper fund to which such land belongs. (1878, c. 73, § 4, *as amended* 1879, c. 45, § 4.)

**\*§ 46a. University lands—Curative act.**

That any and all deeds for right of way purposes over university lands heretofore made by the state to railroad companies are hereby legalized. (1885, c. 42, § 2.)

**\*§ 46b. Railroad companies—Right of way over swamp lands.**

The right of way over any swamp lands which belong or which may hereafter belong to this state is hereby granted to any railroad company which was heretofore located and constructed or which may hereafter locate and construct its line of railroad over any such swamp lands to the extent of a strip of ground one hundred and fifty feet in width; that is to say, seventy-five feet in width on each side of the center line of the main track of such railroad. Such right of way shall attach upon the construction and filing of the plat of the road, and shall continue so long as the same is occupied and used for railroad purposes, and no longer. (1881, *Ex. Sess.* c. 69, § 1.\*)

**§ 46c. Same—Filing plat—Effect.**

Any railroad company or corporation desiring to avail itself of the concessions hereby made shall make a plat showing where it crosses such lands, and

\*"An act granting the right of way for railroads over the swamp lands of this state." Approved November 19, 1881.

file the same in the office of the state land commissioner, and thereupon the right of way over such lands to the extent aforesaid shall become vested in such corporation, its successor or assigns, without any further act or ceremony whatever. (*Id.* § 2.)

**§ 47. (Sec. 29.) Railroad companies—Right of way over highways, other railroads, etc.**

If it becomes necessary, in the location of any part of a railroad, to occupy any road, street, alley, or public way, or any part thereof, it shall be competent for the municipal or other corporation, or public officer or public authorities, owning or having charge thereof, and the railroad company, to agree upon the manner and upon the terms and conditions upon which the same may be used or occupied; or such company may appropriate so much of the same as may be necessary for the purposes of said road, in the same manner and upon the same terms as is herein provided for the appropriation of the property of individuals. And if any railroad company organized under this chapter shall elect, in the location of any part of its railroad, to cross, intersect, join, or unite its railroad with any other railroad of another company, before constructed, at any point on its route, and upon the grounds of such other railroad company, it shall have the right so to do; and if the two corporations cannot agree upon the amount of compensation to be made therefor, the same shall be ascertained and determined by commissioners, to be appointed by the court as herein provided for the appropriation of the property of individuals; and if the two corporations cannot agree as to the points and manner of such crossings, the district court to which the petition shall be presented shall at the time of the appointment of commissioners, upon the request of either party, and upon such showing as the court shall deem necessary and proper, prescribe the location and manner in which such crossing or connection shall be made so as to effect the purpose of the petitioning corporation; and at the same time do the least injury to the corporation whose property is taken. (*As amended* 1879, c. 35, § 3.)

[Chapter 10, Gen. Laws 1881, Ex. Sess., in terms amends § 29, c. 34, Gen. St. 1878, by adding thereto the following: "And at any time, after the making of said order prescribing the location and manner of such crossing or connection, the petitioning corporation shall be entitled, without hindrance or obstruction, to proceed immediately to make and operate the same, upon filing with the clerk of said court a bond in such amount and with such sureties as shall be accepted by the corporation whose property is to be taken, or as shall, upon reasonable notice, be approved by the judge of the district court, conditioned to prosecute said petition with diligence, and to pay to the corporation, whose property is taken, whatever amount may be required by the judgment of the court in such proceeding, and to abide by any rule or order of court in relation to the matter in controversy;" but the amendment is obviously intended to be made to § 29, c. 34, Gen. St. 1866, (§ 47, *supra*.)]

A municipal corporation is not relieved of the care and responsibility for the condition of one of its streets, merely by permitting a railway company to lay out and operate its track upon and along it. *Campbell v. City of Stillwater*, 32 Minn. 308, 20 N. W. Rep. 320.

The right a railroad company acquires in a highway by a compliance with the provisions of this section is a right simply to the public easement, so far as may be necessary for railroad purposes, and not a right to the servient estate of the owner of the fee. *Kaiser v. St. Paul, S. & T. F. R. Co.*, 22 Minn. 149.

A railroad company cannot acquire, under this section, by compliance with its provisions, a right to use a highway for any but railroad purposes. It has no right to occupy the same for the purpose of improving it for public travel by changing the grade or otherwise. *Id.*

The right to the use and occupancy of the highway acquired by the company under this section is good only as against the public right of way, and will not protect it against claims for damages sustained by the owner of the soil. *Id.*

Whether a dedication of a street is under the statute or at common law, the owner of



an abutting lot owns to the center, subject to the public easement. As against the owner, neither an act of congress nor of the legislature, nor a city ordinance sanctioned by a vote of the electors, can subject the land to any additional servitude without compensation. *Harrington v. St. Paul, etc., R. Co., 17 Minn. 215, (Gil. 188.)* A railroad upon a public street is an additional servitude, and where constructed and operated without the consent of the owner, or compensation to him, it is a trespass; and if it obstruct the use and comfortable enjoyment of his premises, rendering access to them unsafe, and work an injury to him distinct and different from that sustained by the public generally, it is a private nuisance. In such case an injunction will lie at the suit of the owner. *Id.* The public easement of a common street or highway does not include the right to construct and operate a railroad upon such street or highway, even where the charter in force when the street was dedicated, authorizes the company to construct its road upon and along, across, under, or over, any public or private highway, road, street, plank-road, or railroad, if the same shall be necessary. *Gray v. First Div. St. Paul, etc., R. Co., 13 Minn. 315, (Gil. 289.)* Constructing and operating a railroad upon a public street or highway is, as to the owner of the fee of the street, a taking of private property for public use, and it cannot be done without his consent, except upon compensation first made or secured. A railroad company which, without the consent of the owner, though by authority of the common council of the city, constructs and operates its road along a public street, is liable to the owner in trespass. *Adams v. Hastings, etc., R. Co., 13 Minn. 260, (Gil. 236.)* If the mere construction unlawfully of a railroad in front of one's lot, on his side of the street, necessarily, and without reference to any future use of the railroad, immediately lessens the value of the lots, the owner may recover for such diminution in value. So, if it cause the water to stand on his lot, and run into his cellar and well, though that may not occur for some time, he may recover for it; but he cannot recover damages on the theory of an additional servitude imposed on the street. *Id.* Lands dedicated for streets, levees, etc., cannot be taken for railroad purposes without compensation to the dedicator. The right to take them without compensation cannot be given by legislation. *Schurmeier v. St. Paul, etc., R. Co., 10 Minn. 82, (Gil. 59;)* *Brisbine v. St. Paul, etc., R. Co., 23 Minn. 114.*

In an action by the owner for using a public street as a railway he need not in his complaint negative that defendant has taken proceedings to ascertain and pay the compensation. *Gray v. First Div. St. Paul, etc., Ry. Co., supra.*

A railroad company has no absolute right, at its own mere election, to a crossing over another railroad. Its necessity must first be determined. In *re St. Paul & N. P. R. Co., 33 N. W. Rep. 701.* The provisions of section 17 in that regard are applicable to this section. *Id.*

The district court is not confined to the precise location named in petition. Identity of purpose of the crossing petitioned for, and of that prescribed, is sufficient. *State v. District Court, 35 Minn. 461, 29 N. W. Rep. 60.*

As to the right to make and operate crossing, notwithstanding appeal from order allowing it, see *Id.*

See *County v. Railroad Co., (Ill.) 10 N. E. Rep. 564.*

#### \*§ 47a. Highway crossings—Repair.

That all railway companies operating a line or lines of railways in this state, shall build or cause to be built and kept in repair good and sufficient crossings over such line or lines of railway at all points where any public highway is now or may hereafter be intersected by such line or lines of railway. (1887, c. 15, § 1.\*)

See *Chicago & G. T. Ry. Co. v. Hough, (Mich.) 28 N. W. Rep. 532; Whisky v. Railroad Co., Id. 811; City of Minneapolis v. Railroad Co., 35 Minn. 131, 28 N. W. Rep. 3; City v. Railroad Co., (Iowa,) 23 N. W. Rep. 905; Scanlan v. City, (Mass.) 2 N. E. Rep. 787.*

#### \*§ 47b. Sufficiency of crossing.

A good and sufficient crossing as required to be built and kept in repair, as denominated in section one [\*§ 47a] of this act, shall be and is hereby construed to be as follows, to-wit:

*First.* Of a grade of earth on one or both sides of the railroad track, as the location may require, a grade or grades of earth which shall extend along such track for a distance of not less than thirty-two feet, the middle point of which shall be at the middle point of the highway; and such grade shall be of such slope as shall be deemed necessary by the chairman of the board of su-

\*"An act requiring railway companies to build and [keep in] repair highway crossings." Approved March 7, 1887. § 7 repeals all conflicting acts and parts of acts.

pervisors, or other officer or officers having charge of the highways in the town, district, or village where such intersection is located.

*Second.* That plank shall be firmly spiked onto and for the full length of the ties used in the road-bed of such railway, where such crossing occurs; and such plank, when so laid, shall be no more than one inch apart, except where the rails prevent, in which the plank next inside of such rail shall be no more than two and one-half inches from the inside surface of such rail; and the thickness of the plank so used shall be equal to the height of the rail, that is to say, the upper surface of the plank shall be on a level with the upper surface of the rail; and all such plank shall extend along such railway the entire width of such highway grade. (*Id.* § 2.)

**\*§ 47c. Notice to build or repair.**

It shall be the duty of the officer or officers having charge of any public highway intersected by any line of railway to serve a written notice upon the nearest station agent or section foreman having charge of that portion of the railway where such intersection occurs, that such crossing as herein described shall be built or repaired. (*Id.* § 3.)

**\*§ 47d. Company to comply within thirty days.**

It shall be the duty of any railway company so receiving such notice to build or cause to be built a good and sufficient crossing, as described in section two of this act, within a period of thirty days from and after receiving such notice. (*Id.* § 4.)

**\*§ 47e. Removing snow.**

It shall be the duty of all railway companies owning or operating any line of railway within the limits of the state of Minnesota to at all times keep all public highways now or hereafter crossing such line of railroad clear of snow, so that the same shall at all times be in a safe and convenient condition for travel for a distance of one hundred feet each way from the center of said railroad along such highway. (*Id.* § 5.)

See *Wallace v. Railroad Co.*, (Mich.) 24 N. W. Rep. 870.

**\*§ 47f. Neglect—Penalty—Prosecution.**

Any railroad company which shall neglect to comply with the terms of this act shall be liable to pay damage to the city, village, or town in which the highway is situated in the sum of thirty dollars for such neglect, and a further sum of ten dollars per day for each and every day such railroad company fails or neglects to comply with the terms of this act; the same to be recovered in an action brought in the name of the city, village, or town, as the case may be. It is hereby made the duty of the county attorney to prosecute to judgment any claim arising under the foregoing provision, without charge to the said city, village, or town. (*Id.* § 6.)

**\*§ 54. Railroad fences and cattle-guards.**

This section, requiring railroad companies to fence their roads, and to build cattle-guards at wagon crossings, applies as well within the limits of incorporated cities and villages as to the country. *Greeley v. St. Paul, etc., Ry. Co.*, 33 Minn. 136, 22 N. W. Rep. 179. This statute is to be construed as allowing an exception where the company has no legal right to do the act, as where it would obstruct public streets or other public grounds. There is also an implied exception as to places required to be left open by public necessity or convenience, such as station or depot grounds used for the entrance or exit of passengers, or the receipt and delivery of freight. But this public convenience is the limit of the exception. *Id.* Mere difficulty or inconvenience to the company creates no exception, and will not relieve it from complying with the law. *Id.* As to fencing depot grounds, see *Indiana, B. & W. Ry. Co. v. Quick*, (Ind.) 9 N. E. Rep. 788; *Indiana, B. & W. Ry. Co. v. Sawyer*, (Ind.) 10 N. E. Rep. 105; *Chicago & E. I. R. Co. v. Guertin*, (Ill.)

4 N. E. Rep. 507. As to the duty of railroad companies to erect cattle-guards at places where it enters or leaves its fenced right of way, though the fenced lands are not used for pasture or cultivation, see *Robinson v. Railroad Co.*, (Iowa,) 25 N. W. Rep. 249.

It is the duty of railroad companies to build the fences and cattle-guards, although no rules therefor are prescribed by the county commissioners. *Gowan v. St. Paul, etc., R. Co.*, 25 Minn. 328.

Ordinarily, reasonable care and diligence do not require railroad companies to remove accumulations of snow and ice from cattle-guards. *Blais v. Railroad Co.*, 34 Minn. 57, 24 N. W. Rep. 558.

Sufficiency of fences, crossings, and cattle-guards, see *Shellabarger v. Railroad Co.*, (Iowa,) 23 N. W. Rep. 158; *Lee v. Railroad Co.*, Id. 299; *Liston v. Railroad Co.*, (Iowa,) 29 N. W. Rep. 445; *Smead v. Railroad Co.*, (Mich.) 24 N. W. Rep. 761; *Meeker v. Railroad Co.*, (Iowa,) 21 N. W. Rep. 120; *Whitsky v. Railroad Co.*, (Mich.) 28 N. W. Rep. 811.

See, generally, *Miller v. Railroad Co.*, (Iowa,) 24 N. W. Rep. 36; *Hovorka v. Railroad Co.*, 34 Minn. 281, 25 N. W. Rep. 595; *Varco v. Chicago, M. & St. P. Ry. Co.*, 30 Minn. 18, 13 N. W. Rep. 921; and note to \*§§ 55-57, *post*.

### \*§ 55. Neglect to fence—Injuries to animals.

The liability for injuries to domestic animals, in consequence of neglect to build and maintain fences, is not limited to injuries caused by collision with trains, but extends to any injury which is the natural and proximate consequence of such neglect; that is, any injury to animals getting upon the railroad, which might naturally and reasonably be expected to result from such neglect, in view of the character and condition of the railroad, and the uses to which it is put. *Nelson v. Chicago, etc., Ry. Co.*, 30 Minn. 74, 14 N. W. Rep. 360. But the statute does not change the general rules of law governing liability for negligence, so as to make a railroad company liable for every injury which would not have occurred had a fence been built, regardless of the fact whether the neglect to fence was the proximate or only the remote cause of such injury. As in other cases of negligence, the company is only liable for injuries of which the neglect to fence is the proximate cause, and which are the natural and proximate consequences of such neglect. *Id.*

Whenever the building of a fence would have prevented an accident to domestic animals, then the negligence of the railroad company in not fencing its road is the cause of the injury, and the company would be liable, regardless of the species of the animals. In the case of sheep or swine this would be a question of fact, depending on the size of the animals. *Halverson v. Minneapolis, etc., Ry. Co.*, 32 Minn. 88, 19 N. W. Rep. 392.

A railroad company which has failed to fence its road must run its trains upon the basis that cattle rightfully upon adjoining lands may stray upon the track, on account of the absence of the fence. The adjoining land-owner is not to be deprived of the use of his land by the failure of the company to fence, and in using the same he has a right to expect this course of conduct on the part of the company. *Schubert v. Minneapolis, etc., Ry. Co.*, 27 Minn. 360, 7 N. W. Rep. 366.

It is the condition of the road at the place where the animal entered upon the track that is material. *Indiana, B. & W. Ry. Co. v. Quick*, (Ind.) 9 N. E. Rep. 925.

The failure to fence a railroad at a point where it crosses a public street affords no right of recovery for injuries to animals occurring at that point. *Long v. Railroad Co.*, (Iowa,) 21 N. W. Rep. 122.

Railroad companies are not required to fence depot grounds. *Smith v. Minneapolis & St. L. R. Co.*, 33 N. W. Rep. 316; *McGrath v. Railroad Co.*, (Mich.) 24 N. W. Rep. 854. And see *Kobe v. N. P. R. Co.*, 36 Minn. 518, 32 N. W. Rep. 783; *Payton v. Railroad Co.*, (Iowa,) 30 N. W. Rep. 877.

As to the defense of contributory negligence in these cases, see *Johnson v. Chicago, etc., Ry. Co.*, 29 Minn. 425, 13 N. W. Rep. 673.

In the absence of negligence on the part of the company, it is not liable for injuries to stock which had passed on the track through an open gate-way. *Lemon v. Railroad Co.*, (Mich.) 26 N. W. Rep. 791.

Injuries resulting without fault of the company, the fence being otherwise sufficient, see *Baltimore & O. R. Co. v. Schultz*, (Ohio,) 1 N. E. Rep. 324.

As to gates and bars at places other than farm crossings, see *Hayt v. Railroad Co.*, (Mich.) 21 N. W. Rep. 367.

As to damage caused while plaintiff was using a gap in the fence for his own purposes, see *Clark v. Railroad Co.*, (Mich.) 23 N. W. Rep. 914.

As to injury to animals used by an employe of a contractor, by reason of their escape through a gap in the fence, left for the contractor's convenience, see *Accola v. Railroad Co.*, (Iowa,) 30 N. W. Rep. 503.

Proximate cause, see *Knight v. Railroad Co.*, (N. Y.) 1 N. E. Rep. 108; *Welty v. Railroad Co.*, (Ind.) 4 N. E. Rep. 410; *Burlington & M. R. Co. v. Shoemaker*, (Neb.) 25 N. W. Rep. 365. But compare *Liston v. Railroad Co.*, (Iowa,) 29 N. W. Rep. 445.

Sufficiency of complaint, see *Chicago, B. & Q. Ry. Co. v. Sims*, (Neb.) 24 N. W. Rep. 388; *Blomberg v. Stewart*, (Wis.) 30 N. W. Rep. 617.

The burden of proof rests upon the party alleging the insufficiency of a cattle-guard. *Smead v. Railroad Co.*, (Mich.) 24 N. W. Rep. 761.

Opinion of witness as to sufficiency of cattle-guard inadmissible. *Smead v. Railroad Co.* Id.

Evidence admissible to prove defective condition of cattle-guard, see *Miller v. Railroad Co.*, 36 Minn. 296, 30 N. W. Rep. 392.

Evidence having a reasonable tendency to show negligence in retaining defective bars, see *Hovorka v. Railroad Co.*, 34 Minn. 281, 25 N. W. Rep. 595.

Evidence sufficient to establish negligence. *Baltimore & O. R. Co. v. Schultz*, (Ohio,) 1 N. E. Rep. 324.

See, generally, *Kobe v. Railroad Co.*, 36 Minn. 518, 32 N. W. Rep. 733; *Greeley v. Railroad Co.*, 33 Minn. 136, 22 N. W. Rep. 179; *Burlington & M. R. Co. v. Shoemaker*, (Neb.) 25 N. W. Rep. 365; *Scott v. Railroad Co.*, (Iowa,) 24 N. W. Rep. 584; *Lathrop v. Railroad Co.*, (Iowa,) 28 N. W. Rep. 465, and notes to \*§§ 54, 56, 57

### \*§ 56. Same—Double costs.

This section is not unconstitutional, but is a legitimate exercise of legislative discretion. This legislation is not liable to the objection that it is unequal or partial legislation, for the reason that it is applicable to all railroad corporations in the state, and to all plaintiffs claiming damages for cattle killed through their negligence. *Johnson v. Chicago, etc., Ry. Co.*, 29 Minn. 426, 13 N. W. Rep. 673; followed, *Schimmele v. Chicago, etc., Ry. Co.*, 34 Minn. 216, 25 N. W. Rep. 347.

To entitle plaintiff to extra costs the action should not be commenced until after the expiration of the thirty days allowed for the payment or tender of damages. *Hooper v. Railroad Co.*, 33 N. W. Rep. 314.

In cases arising under this section double costs may be allowed in the district court, on appeal from a justice's court, in addition to the extra allowance made by the justice. *Schimmele v. Chicago, etc., Ry. Co.*, 34 Minn. 216, 25 N. W. Rep. 347.

See *Glandon v. Railroad Co.*, (Iowa,) 27 N. W. Rep. 457; *Liston v. Railroad Co.*, (Iowa,) 29 N. W. Rep. 445.

### \*§ 57. Same—General damages.

This section, since the amendment of 1877, (c. 73, § 1.) makes the obligation to construct fences, etc., provided by section 54, applicable to all railroad companies in the state. *Gillam v. Sioux City, etc., R. Co.*, 26 Minn. 268, 3 N. W. Rep. 353.

The provisions of sections 54 to 57 impose the duty to fence against cattle, horses, etc., generally, making the companies liable to all persons who suffer damage by reason of their neglect or failure so to do. No exemption from liability is intended in the case of estrays, or animals merely trespassing, though such exemption is implied where the fault or negligence of their owners contributes to the injury. (*Gillam v. Sioux City, etc., R. Co.*, 26 Minn. 268, 3 N. W. Rep. 353, followed.) *Watier v. Chicago, etc., Ry. Co.*, 31 Minn. 91, 16 N. W. Rep. 537. Merely permitting animals to run at large, in violation of a special law prohibiting it, in certain towns, and making their owners liable for trespasses by them, does not constitute such contributory negligence. There must be some act or omission of the owner or his agent proximately affecting the question of the exposure of the animals to danger, or contributing to the accident. (*Locke v. First Div.*, etc., R. Co., 15 Minn. 350, Gil. 283, distinguished.) Id.

This and the previous sections are inapplicable to the case of an infant straying on an unfenced railroad track. *Fitzgerald v. St. Paul, etc., Ry. Co.*, 29 Minn. 336, 13 N. W. Rep. 168.

For the neglect of a railroad company to fence its track as required by statute, the land-owner over whose farm the same is laid may recover as damages diminution of the rental value of the farm caused thereby. Such damages are not necessarily limited to what it would cost to build a fence. *Emmons v. Minneapolis & St. L. Ry. Co.*, 36 N. W. Rep. 340.

Damages incurred from loss of the use of plaintiff's land, see *Raridan v. Railroad Co.*, (Iowa,) 29 N. W. Rep. 599.

Sections 54 to 57, inclusive, are applicable to the *St. Paul & Duluth Railroad Company*. *Fleming v. St. Paul, etc., R. Co.*, 27 Minn. 111, 6 N. W. Rep. 443.

See *Emmons v. Railroad Co.*, 35 Minn. 503, 29 N. W. Rep. 202; *Quackenbush v. Railroad Co.*, (Wis.) 22 N. W. Rep. 519; *Hull v. Railroad Co.*, (Iowa,) 22 N. W. Rep. 940.

See notes to \*§§ 54-56, *supra*.

### \*§ 57a. Railroad farm crossings—Duty of constructing.

That whenever a railroad shall hereafter be laid out, opened, and fenced through the farm lands of any owner of such lands in this state, leaving parts of such lands on both sides of such railroad, the said railroad, or persons causing such railroad to be laid out, opened, and fenced, shall construct a necessary crossing or crossings, under, over, or across such railroad, for the passage

of stock to and from such parts of such land, but such crossings shall be so constructed as not to obstruct such railroad. (1837, c. 174, § 1.)\*

See *Van Vranklin v. Railroad Co.*, (Iowa,) 27 N. W. Rep. 761; *Louisville, N. A. & C. Ry. Co. v. Goodbar*, (Ind.) 2 N. E. Rep. 337; *Wabash Ry. Co. v. Williamson*, (Ind.) 3 N. E. Rep. 814; *Evansville & T. H. R. Co. v. Mosier*, (Ind.) 1 N. E. Rep. 197; *Clayton v. Railroad Co.*, (Iowa,) 25 N. W. Rep. 150.

**\*§ 57b. Same — Construction by owner — Drainage — Procedure.**

That wherever a railroad is now laid out, opened, or fenced through the farm lands of any such owner thereof, leaving a part of such farm lands on both sides of such railroad, such owner is authorized to construct a crossing under, over, or across such railroad, for the necessary passage of stock therein; and whenever any owner of lands adjacent to the right of way of any railroad company finds it necessary to drain the same, and to continue such drain or drains across the right of way of any railroad company, such owner is hereby authorized to construct such drain through the right of way, and under the track or tracks of such company; but said crossing and drains shall be constructed at said owner's expense, and in such a manner as not to obstruct or impair the public use of said railroad; and after so constructed the said crossing or crossings shall be maintained and kept in good repair at the expense of the owners of such railroad. In all cases, before constructing such crossing or drain, the owner of the land shall serve upon the railroad company a notice, in the manner provided for serving a summons in a civil action, stating in detail the work which such owner desires to perform under the provisions of this act. Within sixty days from the service notice the railroad company may do such work at the expense of such owner, and no such crossing or drain so constructed shall be opened for the use of such owner until all reasonable and proper expense of constructing the same shall have been paid in full. At the expiration of such sixty days, in case the railroad company fail to do such work, the owner may construct the same as aforesaid. (*Id.* § 2.)

See *Schmidt v. Minneapolis, L. & M. Ry. Co.*, 38 N. W. Rep. 487.

**\*§ 60. Railroad fires.**

This section does not change the character of the issue. The issue to be presented by the complaint and tried is the negligence of the company, or defects in its engines. The section merely raises a presumption which makes out the issue for plaintiff until rebutted. *Mahoney v. Railroad Co.*, 35 Minn. 361, 29 N. W. Rep. 6.

The lessor company is liable for a fire caused by a lessee company along the track. *Balsley v. Railroad Co.*, (Ill.) 8 N. E. Rep. 859.

The burden of proof rests upon the company to show affirmatively that it was not guilty of any negligence, either as to the construction, condition, or manner of operating its engine. *Karsen v. Milwaukee, etc., Ry. Co.*, 29 Minn. 12, 11 N. W. Rep. 123. And see *Niskern v. Railroad Co.*, 22 Fed. Rep. 811.

Admissibility of evidence offered in disproof of negligence. *Carter v. Railroad Co.*, (Iowa,) 21 N. W. Rep. 607; *Davidson v. Railroad Co.*, 34 Minn. 51, 24 N. W. Rep. 324.

The evidence tended to show that a fire started in the grass near and to the leeward of a railroad track, a few minutes after an engine had passed, and that no person, or other fire than that of the engine, was in the vicinity at the time. Held that this was sufficient to justify the jury in finding that the fire was scattered or thrown from the passing engine. (*Karson v. Milwaukee, etc., Ry. Co.*, *supra*, followed.) *Sibirud v. Minneapolis, etc., Ry. Co.*, 29 Minn. 58, 11 N. W. Rep. 146. The fact, unexplained, that a very unusual volume of sparks was thrown from a railroad engine, whereby fire was set to adjacent property, is evidence of negligence, where it also appears that the management of an engine has much to do with the throwing of sparks. *Johnson v. Chicago, etc., Ry. Co.*, 31 Minn. 57, 16 N. W. Rep. 488. A presumption of negligence arising under the statute, and the burden being upon the defendant to show carefulness in the management of the engine, the testimony alone of the engineer that he "handled the engine very carefully," but "not any differently from what I [he] generally did," is not such proof of carefulness, under the circumstances, as to compel a conclusion by the

\*"An act to provide necessary crossings for the passage of farm stock, and for drainage under railroad tracks." Approved March 7, 1837.

jury that there was no negligence. *Id.* From the fact that a railroad runs through a prairie country, with wild grass growing upon its right of way, and adjacent thereto, it cannot be said, as a matter of law, that it is not incumbent upon the railroad company to cut or destroy the wild grass upon its right of way and outside its road-bed. *Sibilrud v. Minneapolis, etc., Ry. Co.*, 29 Minn. 58, 11 N. W. Rep. 146.

See, further, as to the sufficiency of evidence of negligence, *Leland v. Railroad Co.*, (Iowa,) 23 N. W. Rep. 390; *Nelson v. Railroad Co.*, 35 Minn. 170, 28 N. W. Rep. 215; *Sibley v. Railroad Co.*, 32 Minn. 526, 21 N. W. Rep. 732; *Clarke v. Railroad Co.*, 33 Minn. 359, 23 N. W. Rep. 536; *Jones v. Railroad Co.*, (Mich.) 26 N. W. Rep. 662; *Seeley v. Railroad Co.*, (N. Y.) 7 N. E. Rep. 734. Evidence held to justify the presumption that a fire adjacent to a railroad track was occasioned by a locomotive, see *Gibbons v. Railroad Co.*, (Wis.) 28 N. W. Rep. 170.

See, also, *Sibley v. Northern Pacific R. Co.*, 32 Minn. 526, 21 N. W. Rep. 732; *Bowen v. Railroad Co.*, 36 Minn. 522, 32 N. W. Rep. 751.

**\*§ 60a. Switches—Construction.**

Any person or persons, railroad companies or corporations, owning or operating any railroad or railroads in this state, shall be and are hereby required on or before the first day of June, A. D. one thousand eight hundred and eighty-seven, to so adjust, fill, block, and securely guard the frogs, switches, and guard-rails on their roads in all yards, divisional and terminal stations, so as to thoroughly protect and prevent the feet of employes and other persons from being caught therein. (1887, c. 16, § 1.\*)

**\*§ 60b. Same—Violation of act—Penalty.**

Any person or persons, railroad company or corporation, owning and operating a railroad in this state, who shall fail to comply with the provisions of this act, shall be fined in a sum of not less than five hundred dollars, nor more than two thousand dollars, in the discretion of the court, for each offense, and the neglect of any such person, company, or corporation to comply with the provisions of this act shall be deemed a violation of the same. (*Id.* § 2.)

**\*§ 60c. Same—Damages.**

All railroad companies owning or operating railroads, or portions of railroads, in this state, shall, in addition to the penalties prescribed in this act, be liable for any damage resulting from the failure to comply with the provisions thereof, such damage to be recovered by the persons injured, or his or her legal representatives. (*Id.* § 3.)

**\*§ 60d. Negligence of co-employe—Liability of company.**

Every railroad corporation owning or operating a railroad in this state shall be liable for all damages sustained by any agent or servant thereof by reason of the negligence of any other agent or servant thereof, without contributory negligence on his part, when sustained within this state, and no contract, rule, or regulation between such corporation and any agent or servant shall impair or diminish such liability: *provided*, that nothing in this act shall be so construed as to render any railroad company liable for damages sustained by any employe, agent, or servant while engaged in the construction of a new road, or any part thereof, not open to public travel or use. (1887, c. 13.†)

A statute making railroad companies liable to their employes for injuries resulting from the negligence of co-employes is constitutional. *Bucklew v. Railroad Co.*, (Iowa,) 21 N. W. Rep. 103.

**§ 61. (Sec. 34.) Stations and crossings—Stopping trains.**

Every railroad corporation organized under this title shall cause all its trains of cars for passengers to stop upon each arrival at a station advertised by such corporation as a station for receiving passengers upon such trains, at least

\*"An act to provide for the better protection of railroad switches." Approved March 7, 1887.

†"An act to define the liabilities of railroad companies in relation to damages sustained by their employes." Approved February 24, 1887.

one minute; and also cause all its trains of cars to entirely stop not more than sixty rods, and not less than ten rods, before each arrival at the crossing of any other railroad; and every corporation, and every person in the employment of such corporation, that violates, or causes or permits to be violated, the provisions of this section, is liable to a forfeiture of not more than one hundred dollars, nor less than twenty dollars, to be recovered in a civil action before any justice of the peace of the county in which such violation occurs, upon the complaint of any person, one-half to go to the complainant, and the remainder to the use of common schools in the county; and such company is further liable in the full amount of damages done to property or person in consequence of any neglect on the part of its agents or employes to comply with the requirements of this section; and in all cases in which a forfeiture occurs, under the provisions of this section, the company, whose agents cause or permit such violation, shall be liable for the amount of such forfeiture, and in all cases the conductor upon such train shall be held *prima facie* to have caused the violation which may occur upon the train in his charge: *provided, however,* and in case such two railroads crossing each other, or in any way connecting at a common grade, shall, by any works or fixtures to be erected by them, or either of them, render it safe to pass over said crossings without stopping, and such works or fixtures shall first be approved by the railroad commissioner, and the plan of such works or fixtures for such crossing, designating the place of such crossing, shall have been filed with said railroad commissioner, then, and [in] that case, the foregoing provisions of this section requiring stoppage of trains at such crossings shall not apply; but if such railroad commissioner shall disapprove such plan, or fail to approve the same within twenty days of the filing thereof with him, such companies, or either of them, may apply in the county where such crossing is situated, to the district court in and for said county, or to a judge thereof in vacation, by petition in writing, setting forth the object of said application; and said court or judge shall thereupon appoint a time and place for the hearing of said petition, and a copy of the order appointing such time and place, together with a copy of said petition, shall be served on said railroad commissioner at least ten days before the day appointed for said hearing; and said district court or judge thereof in vacation shall have full power, upon the hearing of said petition, to grant the prayer thereof, or make such other order thereon as may be proper in the premises. (*As amended* 1885, c. 85.)

As to the duty of railroad companies to stop their trains at stations, and to furnish depot accommodations, see *People v. Railroad Co.*, (Ill.) 10 N. E. Rep. 657; *People v. Railroad Co.*, (N. Y.) 9 N. E. Rep. 856; *People v. Railroad Co.*, (N. Y.) 8 N. E. Rep. 369.

**\*§ 61a. Waiting-rooms to be provided.**

That all railroad corporations or companies operating any railroads in this state shall provide at all stations on their respective roads suitable waiting-rooms for the protection and accommodation of all passengers patronizing such railroads; and at all stations in villages of one thousand inhabitants or over, all such railroad companies or corporations shall provide a separate waiting-room for ladies, and a separate waiting-room for gentlemen, both of which said waiting-rooms shall be properly and comfortably furnished, heated, lighted, and ventilated, which said rooms shall each be at least equal in size to fifteen feet by eighteen feet square, with a height of ceiling at least ten feet above the floor, and that all villages of less than one thousand shall have at least one such waiting-room. And waiting-rooms shall in all cases, when necessary, be constructed of such greater size as to accommodate all passengers patronizing [any] such railroad at any station. (1885, c. 190, § 1.\*)

See authorities cited to § 61, *supra*.

\*"An act requiring railroad companies to provide suitable passenger waiting-rooms at cities, towns, and villages." Approved March 7, 1885. Took effect on and after June 1, 1885.

**\*§ 61b. Same—Failure—Penalty.**

Any such railroad company or corporation failing to comply with the provisions of this act shall forfeit and pay to the state of Minnesota a penalty of not less than five hundred dollars, nor more than one thousand dollars, for each and every violation of this act, and each period of thirty days that any such railroad company or corporation shall fail to comply with the provisions of this act at any such station shall be taken and deemed to be a separate violation of this act. (*Id.* § 2.)

**\*§ 61c. Same—Actions—Penalties.**

All suits commenced and prosecuted under this act shall be in the name of the state of Minnesota, and all penalties collected shall be paid into the state treasury. (*Id.* § 3.)

**\*§ 62a. Transferring cars—Facilities.**

All railway companies doing business in this state shall provide ample facilities for transferring cars from their track to any other joining, crossing, or intersecting railway track, except in special cases where the interests of the public does not demand it; and such cases shall be determined by the railroad and warehouse commissioners. (1887, c. 14, § 1.\*)

**\*§ 62b. Freight—Carriage—Transfer.**

All railway companies doing business in this state shall receive and transport freight over such route or routes as the shipper shall direct, at reasonable rates. Car-load lots shall be transferred without unloading from the cars in which the shipments were first made, unless transferred into or upon the connecting railway's cars, at actual cost, and without unreasonable delay to the shipper. (*Id.* § 2.)

**\*§ 62c. Same—Connecting lines—Rates—Division of earnings.**

When the route selected requires the use of the tracks of more than one railway company, the rate of transportation for the entire distance shall not exceed the rate for an equal distance over the tracks of a single company, except the addition of a reasonable rate of transfer. Where the different railway companies cannot agree upon the division of the earnings arising under this act, the board of railroad and warehouse commissioners shall adjust the same, taking into consideration the value of terminal facilities, and all the circumstances of the haul; but in no case shall the aggregate cost to the shipper be increased. But where the several railway companies making up the through route have different schedule of rates over their respective lines, the through rate shall be based upon the average of the schedule of rates on their respective lines. (*Id.* § 3.)

**\*§ 62d. Violation of act by company—Penalty.**

Any railway company willfully and maliciously refusing or neglecting to comply with the provisions of this act shall be fined not less than five hundred dollars, nor more than one thousand dollars, for the first offense, and not less than one thousand dollars for the second offense. (*Id.* § 4.)

**\*§ 62e. Same—Prosecutions by county attorney.**

Whenever any railway company shall violate the provisions of this act, it shall be the duty of the county attorney in whose county such offense is committed to institute proceedings against the offending company, in the district court, in the name and at the expense of the state, to enforce the provisions and penalties of this act. (*Id.* § 5.)

\*"An act to provide freedom of traffic in the state of Minnesota." Approved March 5, 1887. Took effect June 1, 1887.



**\*§ 62f. Violation of act by official—Penalty.**

Any railway official who willfully or maliciously refuses or neglects to comply with the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than one thousand dollars. (1887, c. 14, § 6.)

**\*§ 62g. Violation of § 62f—Procedure.**

Whenever the provisions of section six [\*§ 62f] of this act are violated, proceedings against the offender may be instituted upon information by the county attorney, or by indictment of the grand jury in the county where the offense is committed. (*Id.* § 7.)

**\*§ 62h. Fines—Disposition.**

All fines accruing from the enforcement of this act shall be covered into the state treasury for the benefit of the school fund. (*Id.* § 8.)

**\*§ 62i. Stock cars—Duty of furnishing.**

That all railroad companies doing business in this state shall furnish to shippers of live-stock, horses, cattle, sheep, or swine, stock or cattle cars for the transportation of live-stock, cattle, sheep, or swine, at proper points, to be designated by said railroad companies, on the line of such roads, and shall carry, convey, and transport such live-stock, cattle, sheep, or swine mixed on such cars, at the option and expense of the shipper for properly partitioning off such car for the transportation of such live-stock in such cars, to be transported to any point within this state, as may be shipped in said cars. (1887, c. 17, § 1.)\*

**\*§ 62j. Same—Violation—Penalty.**

Any violations of the provisions of this act, or any refusal on the part of any officer or any employe of any of the railroad companies of this state to furnish such cars, accept, transport, and convey such cars of mixed cattle to any point within this state, shall be deemed a misdemeanor, and upon conviction, in any competent court in this state having jurisdiction thereof, such company shall forfeit and pay the sum of not less than one hundred, or more than five hundred, dollars, to be recovered by the party aggrieved, in the name of the state. (*Id.* § 2.)

**\*§ 62k. Same—Rates.**

That the charge and rate of such cars of mixed live-stock for transportation, as aforesaid, may be the highest rate for transportation of either class or kind of such stock so transported in said mixed car-loads by said railroad company. (*Id.* § 3.)

**\*§ 63. Passenger and freight rates.**

That any railroad company or other corporation organized under the title to which this is an amendment may charge and receive, for the transportation of passengers and freight on their road, to-wit, for the passage of vessels or articles of commerce through their canals, locks, or other works, or for the use of water from their canals or other works for power purposes, such reasonable rate as may be from time to time fixed by said corporation, or prescribed by law. (1869, c. 78, § 2, as amended 1885, c. 72.)

**\*§ 68a. Railroad companies—Power to lease, etc.**

Any railroad corporation, either domestic or foreign, whether organized under a general law or by virtue of a special charter, may lease or purchase,

\*"An act regulating the rate of transportation for mixed car-loads of cattle, live-stock, etc., on the railroads of this state." Approved March 7, 1887.

or in any way become owner of or control, or hold the stock of, any other railroad corporation, when their respective railroads can be lawfully connected and operated together so as to constitute one continuous main line, with or without branches. (1881, c. 94, § 1.\*)

**\*§ 68b. Same—Articles of consolidation—Liabilities preserved.**

Any railroad corporation, whether organized under a general law or by virtue of a special charter of the state or territory of Minnesota, or under the laws of any other state or states or territory, whose lines of railroad now or hereafter constructed, within or without this state, can be lawfully connected and operated together to constitute one continuous main line, with or without branches, so as to admit of the passage of trains over them without break or interruption, may consolidate their stock and franchises upon such terms as may be agreed upon, so as to become one corporation by any name by them selected. Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock, in person or by proxy, at either a regular annual meeting thereof, or at a special meeting called for that purpose, by notice of at least thirty days, stating the object of such meeting, to be addressed to each of such stockholders when their place of residence is known, and deposited in the post-office, and published for at least three successive weeks in one newspaper in at least one of the cities or towns in which each of said corporations has its principal business office, or by the consent in writing of a majority of such stockholders annexed to such articles. A copy of such articles of consolidation and of the record of such approval, or of such consent, accompanied by lists of the stockholders of said corporation, and the number of shares held by each, duly certified by their respective presidents and secretaries, with the respective corporate seals thereto affixed of said corporations, shall be filed for record in the office of the secretary of state of this state, and of the state or states or territory by or under whose laws the said corporations, parties to such articles of consolidation, were created or exist, before any such consolidation shall have any validity or effect. Upon the filing for record of said copies the said corporations shall become merged in the new corporation, provided for in said articles, to be known thereafter by the corporate name therein adopted, and shall, within this state, succeed to all the rights, powers, franchises, contracts, privileges, immunities, liabilities, obligations, and duties, liabilities to or exemption from taxation, commutations, property, real, personal, and mixed, and things in action, as fully in all respects as the same were possessed by such old corporation or corporations at the time of such consolidation under the laws of this state; and such new corporation shall hold and enjoy the same, and all and every part thereof, without impairment or change, as fully in the same manner and to the same extent as if the said consolidation had not taken place: *provided*, that all rights of creditors, and all liens upon the property of either of said old corporations, shall be preserved unimpaired, and all the debts, liabilities, and duties of either of said consolidating corporations shall thenceforth attach to said new corporation, and be enforceable to the same extent and in the same manner as if such debts, liabilities, and duties had been originally incurred by it: *provided, further*, that all such corporations shall be subject to the laws of this state, and the jurisdiction of the courts of this state in the same manner and to the same extent as domestic corporations. (*Id.* § 2.)

Corporation formed by the consolidation of a domestic and foreign corporation is a domestic corporation. In re St. Paul & N. P. R. Co., 36 Minn. 85, 30 N. W. Rep. 432.  
See In re Minneapolis & St. L. Ry. Co., 32 N. W. Rep. 556.

\*“An act to authorize any railroad company to lease, purchase, or in any way to become owner of, or to control, any other railroad corporation, or to consolidate therewith.” Approved March 3, 1881.

**\*§ 68c. Consolidation of parallel lines prohibited.**

No railroad corporation shall consolidate with, lease, or purchase, or in any way become owner of, or control, any other railroad corporation, or any stock, franchises, rights, or property thereof, which owns or controls a parallel or competing line. (1881, c. 94, § 3.)

**§ 69. (Sec. 39.) Leasing roads, etc.**

A railroad corporation cannot escape the performance of any duty or obligation imposed by its charter or the general laws of the state, by leasing its road without the consent of the state. So, where a railroad corporation, without such consent, leased its road to another railroad corporation, which entered upon and controlled and managed the road, held, that the former corporation was liable for injuries to persons caused by negligent defects in its track at a highway crossing. *Freeman v. Minneapolis, etc., Ry. Co.*, 28 Minn. 443, 10 N. W. Rep. 594. Sp. Laws 1871, c. 71, § 1, do not consent to the defendant leasing its road unless to a railroad company of this state. Gen. St. 1878, c. 34, §§ 69, 106, do not consent to any lease by any railroad company of this state of its road to any Iowa railroad company unless the latter has complied with the provisions of section 106. *Id.*

See *State v. Minnesota Central Ry. Co.*, 36 Minn. 246, 30 N. W. Rep. 816; *Minneapolis & St. L. Ry. Co. v. St. Paul, M. & M. Ry. Co.*, 35 Minn. 265, 28 N. W. Rep. 705.

**\*§ 74. Railroad mortgages, etc.—Place of recording.**

That whenever any deed of trust, mortgage, or other incumbrance shall be made by any railroad company upon their road, lands, or property, the same shall be recorded in the office of the secretary of state in a book provided for that purpose. (1867, c. 58, § 1; *as amended* 1883, c. 66, § 1.)

**§ 79. (Sec. 42.) Railroad corporations—Increase of capital stock—Procedure.**

Whenever any railroad corporation heretofore or hereafter incorporated, whether under the provisions of this title or by special charter, shall, in the opinion of its board of directors, require an increased amount of capital stock, or whenever any incorporation created and incorporated under the provisions of this title, or adopting its provisions as hereinbefore provided, shall, in the opinion of its board of directors, require any other modification of its articles of association not inconsistent with the provisions of this title, such corporation may, if authorized by the holders of a majority of the stock then existing, increase its capital stock to the amount so deemed to be required, or make such other modification of its articles of association: *provided*, that if the corporation be one incorporated under the foregoing provisions of this title, or adopting its provisions as aforesaid, it shall file in the office of the secretary of state new articles setting forth the modifications of its said articles of association proposed, and the amount of such desired increase of stock, if any, and such new articles shall be duly recorded, and a reference made to the same on the margin of the record of the original certificate or articles; and thereafter such corporation shall be entitled to have such increased capital as is fixed by said new articles or such other modifications of the original articles of association as shall be therein specified; *and provided, further*, that if such corporation be one incorporated under or entitled to the benefit of special charter provisions, a certificate of such increase, embracing a copy of the resolutions of the board of directors and of the stockholders relating to such increase, and showing the date thereof, and the total capital stock of the company as thus increased, under the seal of the corporation, and attested by the president and secretary thereof, shall be filed in the office of the secretary of state and there recorded within \_\_\_\_\_ days after the date of the assent of the stockholders to such increase, and thereafter such corporation shall be entitled to have such increased capital stock as is provided for in and by said resolution. (*As amended* 1883, c. 5, § 1.)

**\*§ 79a. Same—Application to commission—Hearing.**

Whenever any railroad company shall desire to increase its capital stock, it shall make application to the railroad and warehouse commission in writing, setting forth the amount to which and the purpose for which it is desired to make such increase, whereupon the commission shall fix a time and place for hearing such application, and require such notice thereof to be given as they may deem reasonable. (1887, c. 265, § 1.)\*

**\*§ 79b. Same—Finding.**

The commission shall make a finding of all the essential facts presented to them in regard to such proposed increase of capital stock, and if the commission shall allow the increase applied for, they shall prescribe the manner in which and the terms upon which such stock shall be increased. If the commission refuse their approval to the issue of such capital stock, the reasons for such refusal shall be stated in their next annual report to the legislature, and in no case shall any capital stock be issued by any railroad corporation until the full amount of such stock shall have been paid to the corporation, in money, labor, or materials, actually used in the construction of the road of such corporation. (*Id.* § 2.)

**\*§ 79c. Same—Special authority necessary.**

No railroad company shall increase its capital stock except by special authority of the railroad and warehouse commission, as herein provided. (*Id.* § 3.)

**\*§ 79d. Acceptance of act unnecessary.**

It shall not be necessary for the provisions of this act to be accepted by any railroad company before the same shall become operative as an amendment to the charter of such company. (*Id.* § 4.)

**\*§ 82. General office within state.**

See *Horn v. Railroad Co.*, 34 N. W. Rep. 593.

**\*§ 87. Railroad foreclosure—Organization of new company.**

That in all cases where any railroad corporation of this state, whether created by special act of incorporation or organized under the provisions of this act, or of any legislative enactment of this state, or of the late territory of Minnesota, hath heretofore executed, or shall hereafter execute, any mortgage or deed of trust upon the whole or any part of its railroad, division or branch thereof, constructed or authorized to be constructed, with the franchises pertaining to the same, to secure the payment of its corporate bonds, and the road, franchises, and property covered by such mortgage or deed of trust may be foreclosed and sold, in accordance with the provisions of such trust deed and mortgage, for the use and benefit of the holders of such bonds, the purchaser at such sale, by virtue of such purchase, and the proper certificate thereof or conveyance thereon, shall become invested with all rights, benefits, privileges, property, immunities, franchises, and interests so foreclosed and embraced or included in the said mortgage or trust deed and the said sale, which were held at the time of the execution of such mortgage or deed of trust; or afterwards acquired by the company making such mortgage or deed of trust; and whether the said mortgage or deed of trust and sale shall have included the corporate franchises of such company or not, the said persons for whose benefit such purchase shall have been made as aforesaid may organize as hereinafter provided, and, from the time of such organization, shall be, to all intents and purposes, a corporation, with all and singular the corporate

\*"An act regulating the proceedings of railroad companies desiring to increase their capital stock." Approved March 7, 1887.

powers, rights, franchises, privileges, and immunities which were held at the time of the execution of such mortgage or deed of trust, or afterwards acquired, by the company making such mortgage or deed of trust, so far as applicable to the road and property so purchased; and in the management and operation of the road or lines, as well as in the use and enjoyment of the property, franchises, and interests thus acquired, and in the conduct of all business growing out of such purchase, shall be entitled to all and singular the same rights, powers, privileges, immunities, and advantages theretofore granted to or bestowed upon the corporation making such mortgage or deed of trust, which were applicable to the road, property, and franchises so purchased while held and controlled by the last-mentioned corporation; and may have, use, and exercise the same in their corporate capacity, under and through the organization herein provided for, in like manner in all respects as the corporation making such mortgage or deed of trust might or could have done, had no foreclosure or sale taken place.

### **Proceedings to effect organization.**

The person or persons so purchasing shall, by themselves or their authorized attorneys or proxies, meet within thirty days after the delivery of the conveyance under such sale, or certificate of sale delivered, at some place within this state, of which, and the time of such meeting, notice shall be published by the persons named as purchasers in such deed or certificate of sale, by publication in some of the daily newspapers of St. Paul, for at least ten days prior to the time of such meeting; at which time and place the said persons so purchasing shall adopt a corporate name for the proposed new organization, and may proceed without further notice and elect a board of not exceeding nine directors; and such board may thereupon elect a president, secretary, treasurer, and such other officers as the corporation making such mortgage or trust deed may theretofore or prior to such foreclosure have been authorized to elect, and adopt a corporate seal.

### **Rights, duties, and liabilities of new company.**

From the time of such election of officers, and the adoption of a corporate seal, the organization shall be deemed complete, and the company thus organized shall become and be a body corporate, under the name so adopted as aforesaid by the purchasers at the mortgage sale, and clothed as such with the rights, powers, privileges, franchises, immunities, and advantages hereinabove in such case provided. Subsequent elections of board of directors, and other powers and duties of the corporation so organized, shall be had and performed in accordance with the provisions of law in that behalf enacted, prior to such foreclosure, for the government of the corporation making such mortgage or deed of trust, and the same, together with all legislative acts relative to the corporation last mentioned, shall continue in force and be applicable to such corporation so organized. It shall be the duty of such new organization, within thirty days after such organization shall be perfected, to make and certify under its corporate seal, attested by its president and secretary, a statement showing the date of such organization, the corporate name by it adopted, the amount of its capital stock, issued and unissued, common and preferred, the names of its president, secretary, treasurer, and other general officers, the number and names of its directors so chosen at said meeting, and cause the same, together with the conveyance or certificate of sale made to the purchasers upon the foreclosure, to be recorded in the office of secretary of state of this state; and such record, or a certified copy of such record, of said proceedings, shall be legal evidence of the existence of such corporation or organization: *provided, further*, that nothing herein contained shall be construed to change or impair the force of any decree of foreclosure heretofore made, or any of the terms or provisions thereof: *provided, however*, that such

court shall provide in such foreclosure decree, or otherwise, that such purchaser or purchasers shall fully pay all sums due and owing by such defaulting and foreclosed railroad company to any servant or employe of such company, and to provide that such purchaser, and such new corporation so by them to be formed under the provisions of this act, shall complete all legal and subsisting contracts for sale of the lands of such company, and, upon performance on the part of any purchaser of such lands, to convey the real estate so purchased in pursuance of the contract or contracts so subsisting; and that such court also provide in such decree, or otherwise, so as to save and protect the possessory and other rights and property of any person, persons, or copartnership in and to any warehouse, side track, or other structure erected upon the right of way of such defaulting company, so as to save, preserve, and protect the equitable rights of all parties interested: *and provided, further*, that nothing in this act contained shall be construed as repealing, modifying, or impairing chapter one hundred and five or chapter one hundred and six of the Special Laws of eighteen hundred and seventy-four, or chapter forty-nine of the Special Laws of eighteen hundred and seventy-five, or any rights secured or intended to be secured or protected under said chapters, or either of them: *provided, further*, that in all cases where, under such foreclosure sale of any railroad, franchises, and property, the said railroad, property, and franchises shall be purchased at such sale, by any railroad company, heretofore or hereafter duly chartered, organized, or incorporated under the laws of this state, or of the late territory of Minnesota, that then such railroad company so purchasing shall not be required to comply with the provisions contained in said chapter thirty\* in regard to organizing as a corporation under such purchase; but said railroad corporation, so purchasing at such sale, shall, upon filing in the office of the secretary of state of the conveyance or certificate of sale received by it under such purchase, and by virtue thereof, be immediately vested with all and singular the corporate rights, powers, franchises, privileges, immunities, and advantages which were held at the time of the execution of such mortgages or deed of trust, or afterwards acquired by the company making the same, and applicable to the railroad and property so purchased, without any further act or ceremony; and such railroad company, so purchasing, shall thereupon and thereafter, in the management and operation of such railroad lines and property so purchased, and in the use and enjoyment thereof, and of the franchises, rights, powers, privileges, and immunities thereby acquired, become vested with all and singular the franchises, rights, powers, privileges, and immunities theretofore granted to or possessed by the corporation making such mortgage or deed of trust, and applicable to the railroad and property so purchased, to the same extent, and with the like effect, as if the same had been originally conferred upon such purchaser. (1876, c. 30, § 1, *as amended* 1879, c. 49, § 1.)

**\*§ 90. Laborers under contractors—Liability of company.**

See Grant v. Wolf, 34 Minn. 32, 24 N. W. Rep. 289.

**\*§ 91a. Railroads—Route—Alteration and extension.**

The board of directors of any railroad corporation may, by a vote of two-thirds of the whole number, at any time alter the route, or any part of the route, of their road, or any extension or branch thereof, or any part of their road, or any extension or branch as constructed, if it shall appear to them that the line can be improved thereby; but no railroad shall be so diverted from any county, town, city, or village which, in its corporate capacity, shall have extended aid to such road, either while in the hands of the then present owners or any former person or corporation, without the consent of such county,

\*Laws 1876, c. 30, (Gen. St. 1878, c. 34, \*§ 87.)

town, city, or village; and such consent shall be expressed by a vote of two-thirds of the legal voters of such county, town, city, or village, at an election to be had for that purpose. And no such alteration shall be made in any city or village after the road shall have been constructed therein, unless the same shall have been sanctioned by a vote of two-thirds of the council of such city or of the trustees of such village. Before making any such alteration, the board of directors shall designate the route thereof by a resolution, to be entered in its records, a copy of which shall be filed and recorded in the office of the secretary of state. Thereupon it shall have the same rights and privileges to build such road, as altered, as if it were the original line. (1881, c. 95, § 1.)\*

**\*§ 91b. Domestic railroad corporations—Exercise of franchise outside state.**

Any railroad corporation heretofore or hereafter organized, pursuant to any law of this state, may exercise all its rights, franchises, and privileges in any other state or territory of the United States, under and subject to the laws of the state or territory where it may exercise the same, and may use any additional or other powers or privileges applicable to the carrying of persons or property by railroad or steam-boat in such state or territory, or otherwise applicable to the doings of such corporations in such state or territory. (1881, c. 31, § 1.)

See *In re Minneapolis & St. L. Ry. Co.*, 32 N. W. Rep. 556.

**\*§ 91c. Railroads—Extensions and branches.**

Any railroad corporation may, under the provisions of this chapter,† extend its railroad from any point named in its charter or articles of incorporation, or may build branch railroads either from any point on its line of railroad, or from any point on the line of any other railroad, between such points connecting with its line of road, or to be connected therewith, or with any line of road such corporation may have acquired the use under lease for a term of not less than ten years. Before making such extension, or building such branch road, such corporation shall, by resolution of its board of directors, to be entered in the record of its proceedings, designate the route of such extension or branch, a copy of which, and a plat or map thereof, duly certified by such corporation under the seal thereof, signed and verified by the president and secretary of such company, and file the same in the office of the secretary of state of this state, who shall record the same in the book to be provided for such purpose. Whereupon such corporation shall have and exercise, with respect to such extension or branch, all the rights, powers, franchises, and privileges possessed by such corporation pertaining to its main or other line of railroad, but no right of way over any private property or any street or highway in this state shall be acquired in any other manner than as provided in this chapter; and all the provisions of this chapter shall apply thereto. And may receive municipal and other aid in the construction of such branch or extension as now or hereafter authorized by the General Laws of this state, provided that the provision of this act shall not apply to street railroads or street-railroad companies. (*Id.* § 2.)

**\*§ 91d. Rolling stock, etc.—Lien for purchase price.**

That in any written contract of or for the sale of railroad equipment or rolling stock, deliverable immediately or subsequently, at stipulated periods, by the terms of which the purchase money, in whole or in part, is to be paid in the future, it may be agreed that the title to the property so sold or con-

\*"An act to authorize railroad companies to alter their routes or the location of the lines of their roads." Approved March 7, 1881.

†Gen. St. 1878, c. 34.

tracted to be sold shall not pass to or vest in the vendee until the purchase money shall have been fully paid, or that the vendor shall have and retain a lien thereon for the unpaid purchase money, notwithstanding delivery thereof to and possession by the vendee: *provided*, that the terms of credit for the payment of the purchase money shall not exceed ten years from the execution of the contract. (1885, c. 210, § 1.)\*

**\*§ 91e. Same—Lease—Conditional sale.**

In any written contract for the leasing or renting of railroad equipment or rolling stock it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and to stipulate that the rentals received may, as paid, or when paid in full, be applied and treated as purchase money, and that the title to such property shall not vest in such lessee or vendee until the purchase money shall have been paid in full, notwithstanding delivery to and possession by such lessee or vendee, subject, however, to the proviso contained in section one of this act. (*Id.* § 2.)

**\*§ 91f. Same—Contracts—Requisites to validity.**

Every such contract specified in sections one and two shall be good, valid, and effectual, both in law and in equity, against all purchasers and creditors: *provided*—

*First.* The same shall be acknowledged by the vendee or lessee before some officer authorized by law to take acknowledgments of deeds.

*Second.* Such instrument shall be filed or recorded in the office of the registrar of deeds of the county in which at the time of execution thereof is situated the principal office or place of business of the vendee or lessee in this state, and in the office of the secretary of state of this state.

*Third.* Each locomotive, engine, or car so sold, or contracted to be sold, or leased, as aforesaid, shall have the name of the vendor or lessor, or the assignee of such vendor or lessor, plainly placed or marked on each side thereof, or be otherwise marked so as to indicate the ownership thereof. (*Id.* § 3.)

**\*§ 91g. Same—Existing contracts.**

This act shall not be held to apply to or invalidate any contract heretofore made, of the character described in the first or second section, but the same shall be and remain valid. (*Id.* § 4.)

**\*§ 91h. Same—Acknowledgments—Form.**

The acknowledgments of such contracts may be made in the form required as to conveyances of real estate. (*Id.* § 5.)

MUNICIPAL BONDS IN AID OF RAILROADS.

See *Harrington v. Town of Plainview*, 27 Minn. 224, 6 N. W. Rep. 777.

**\*§ 98. Municipal bonds—Agreement for issuing.**

[Repealed 1879, c. 34, § 2, and c. 72, § 1.]

An agreement by a town, under this section, to issue bonds to aid in the construction of a railroad, must, to be binding upon such town, be arrived at and perfected before the construction of the road, or piece of road, the construction of which the agreement is to aid. *State v. Town of Highland*, 25 Minn. 355.

Where a statute provides two modes, one valid and the other invalid, for authorizing the officers of a municipal corporation to issue bonds of the corporation, inasmuch as the bonds when issued need recite only that they were issued under the statute, without specifying in which of the two modes the officers were authorized to issue them; and as there might be *bona fide* holders of bonds so issued, an action for injunction at

\*"An act to secure manufacturers and owners of railroad equipment and rolling stock in making conditional sales and certain contracts for the lease thereof." Approved February 26, 1885. § 6 repeals all conflicting acts and parts of acts.



the instance of a proper party will lie to restrain the issuance of the bonds by the municipal officers under the invalid mode provided by the statute. *Harrington v. Town of Plainview*, 27 Minn. 224, 6 N. W. Rep. 777.

See *Town v. Railroad Co.*, 36 Minn. 517, 32 N. W. Rep. 745.

**\*§ 105a. Municipal bonds—Exchange for railroad bonds.**

Whenever any railroad company shall make a proposition to any county, town, incorporated city, or village in this state, asking such municipal corporation to issue its bonds as a bonus to aid in the construction of the railroad of such company, or offering to exchange the mortgage bonds of such railroad company for an equal amount of the municipal bonds of such municipal corporation, to be used in the construction of such railroad, if such proposition shall be made in the form prescribed in section four [\*§ 95] of this act, for making the proposition therein provided for, then it shall be the duty of the proper authorities of such municipal corporation to entertain and act upon such proposition, and to submit the same to the electors of said municipal corporation in the same manner as they are directed to entertain and act upon the other aforesaid proposition hereinbefore provided for in this act, and to submit the same to the electors of such municipal corporation. And when such proposition is submitted for the approval of the electors of such municipal corporation, if it shall be approved by a majority of said electors who shall vote upon such proposition, then the proper authorities of said municipal corporation shall issue the bonds of such corporation to said railroad company in accordance with the provisions of this act and the conditions contained in such proposition. (1879, c. 34, § 1.\*)

**\*§ 106. Iowa companies.**

See note to § 69, *supra*.

**\*§ 106a. Illinois companies—Extension into Minnesota.**

That any railroad company, heretofore organized under the laws of the state of Illinois, is hereby authorized to extend and build its road into the state of Minnesota, from a point on the southern state line between ranges numbered seven and ten to the north line of Fillmore county; and such railroad company shall have and possess all the powers, franchises, and privileges, and be subject to the same liabilities, of railroad companies organized and incorporated under the general laws of this state: *provided*, such non-resident company shall first file a duly-certified copy of its articles of incorporation with the secretary of this state, and shall comply with the laws of Minnesota as to filing and recording its articles of incorporation, and shall keep an office in this state in the same county in which its railroad is or is proposed to be built, and shall be liable to civil process, to be sued and to sue, as provided by law: *and provided, also*, that it is made a special and express condition hereof that if such company, organized under the laws of Illinois, shall avail itself of the provisions of this act, said company shall be and are hereby declared estopped and prevented from removing, and shall be deemed to have elected to waive any and all rights which said company may have under the laws of the United States to have any suit or proceeding to which such company is a party removed from the state courts to the court of the United States. (1879, c. 78, § 1.)

**\*§ 108a. Telegraph companies—Declared common carriers.**

Persons, companies, and corporations engaged in the business of transmitting messages by telegraph lines are hereby declared to be common carriers,

\*"An act to amend c. 106 of the Laws of 1877, entitled 'An act to authorize municipal corporations to aid in the construction of railroads.'" § 1 adds § 16, (\*§ 105a, *supra*.) to said act of 1877. Said c. 106 is contained in \*§§ 92-105, Gen. St. 1878.

and as such shall serve the public without discrimination or preference, at reasonable rates of compensation. (1885, c. 208, § 1.\*)

**\*§ 108b. Same—Transmission and delivery of messages—Liability.**

In the transmission and delivery of messages such persons, companies, and corporations shall be liable for want of ordinary care, any contract, notice, or condition to the contrary notwithstanding; and any notice, condition, or contract stipulating for exemption from consequences of lack of ordinary care shall be void. (*Id.* § 2.)

**\*§ 108c. Same—Duty in delivering messages.**

When the party to whom a message is addressed resides or does business within the corporate limits of any city or village where a telegraph office is located, at the point of destination, the same shall be promptly delivered at his place of residence or business, if known. In other cases he shall be notified by next mail where he can find same. (*Id.* § 3.)

**\*§ 108d. Same—Order of transmission.**

Messages delivered to the owner or agent of any telegraph line operated in this state, in whole or in part, shall be transmitted in the order they are received: *provided, however*, that any messages directing the movement of railroad trains, in case of sickness or death, and those relating to the administration of criminal laws and government dispatches, shall take precedence, if the officer or person sending the same shall so request. (*Id.* § 4.)

**\*§ 108e. Same — Messages — Transmission and delivery — Negligence—Liability.**

If any person, persons, company, or corporation owning or operating a telegraph line, in whole or in part, within this state, shall fail to transmit any message within a reasonable length of time, or if it is shown due diligence has not been exercised, after reception thereof for that purpose, or shall fail to deliver the same to the party to whom the same is addressed, if known, as provided for in section three of this act, within a reasonable length of time after the same shall have arrived at the point of destination, shall be liable in a civil action, at the suit of the party injured, for all actual damages sustained by reason of such neglect or omission, with the legal costs of suit to be recovered in such action, before any court having competent jurisdiction. (*Id.* § 5.)

**\*§ 108f. Same—Messages—Indorsing time of receipt.**

Any telegraph company delivering a message shall state plainly upon such message the date and the hour at which such message was received at the original point for transmission. (*Id.* § 6.)

TITLE 2.

CORPORATIONS FOR PECUNIARY PROFIT OTHER THAN THOSE NAMED IN TITLE 1.

See *Schmidt v. Hennepin County Barrel Co.*, 35 Minn. 511, 29 N. W. Rep. 200; *Auerbach v. Le Sueur Mill Co.*, 28 Minn. 291, 9 N. W. Rep. 799; *Sullivan v. Murphy*, 23 Minn. 6.

\*"An act to regulate the business of operating telegraph lines, and imposing penalties for misconduct of owners and agents of such lines." Approved March 7, 1885.

§ 109. (Sec. 45.) Incorporation—Purposes—Powers—  
Building associations—Execution of articles by  
executors, etc.

Any number of persons, not less than three, who have or shall, by articles of agreement in writing, associate, according to the provisions of this title, under any name assumed by them, for the purpose of engaging in or carrying on the business of mining, smelting, or manufacturing iron, copper, or other minerals; or for producing the precious metals; or for quarrying and marketing any kind of ore, stone, slate, or other mineral substance; or for constructing, leasing, or operating docks, warehouses, public halls, elevators, or hotels; or saving-fund, loan, or building association, (or association for buying, owning, improving, selling, and dealing in lands, tenements, and hereditaments;) or for manufacturing gas, or any kind of manufacturing, lumbering, agricultural, mechanical, mercantile, chemical, transportation, or other lawful business, and who have or shall comply with the provisions of this title, shall, with their associates, successors, and assigns, constitute a body corporate and politic, under the name assumed by them in the articles of agreement: *provided*, no company shall take a name previously assumed by any other company. Any such association or corporation for buying, owning, improving, selling, and dealing in lands, tenements, and hereditaments, real, mixed, and personal estate and property, shall have, and may exercise and enjoy, all the franchises, rights, powers, and privileges of a corporation, as provided in this title and act; and the same is made capable and authorized in law and in equity to have, own, purchase, receive, possess, and retain, to itself and successors, lands, tenements, and hereditaments, real, personal, and mixed estate and property, and to use and enjoy the same, and the same improve by erecting and constructing thereon dwelling-houses and other buildings, erections, and structures, and otherwise to enhance, build upon, and improve the same, to every extent, and in such manner and for such purpose as may become necessary, or as such association or corporation may deem proper or advantageous; and to sell, convey, lease, let, mortgage, or otherwise dispose of, charge, or incumber such lands, tenements, and hereditaments, real, mixed, and personal property and estate, or any of the same, or any right or interest therein, at pleasure, and in such manner and on such terms as such corporation or association may determine by order of its directors, or establish by its by-laws; and for that purpose to make and deliver, and in like manner accept and receive, all necessary and proper deeds, conveyances, mortgages, leases, and other contracts and writings obligatory, and to have and exercise all necessary rights, franchises, muniments, estate, powers, and privileges necessary to that end; and such association or corporation is authorized to loan money and funds, and secure such loan by mortgage, or other security, and any premium taken by such association for the preference or priority of such loans, or for the preference or priority on any sale or disposition of its lands, tenements, or hereditaments, real, personal, or mixed property or estate, or any premium for preference or priority taken by any mutual building association for any loan of its funds by such building association, shall not be deemed interest within the meaning of any law of this state; nor shall any excess of such premiums over any rate of interest permitted by the laws of this state be deemed or held, in any court of law or equity, to be usury. Any association organized under this title is authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, and to hold, any real estate upon which such associates or association may have or hold, any mortgage or judgment or lien or other incumbrance, or in which such associates or association may have an interest; and the real estate so purchased, to sell, convey, lease, or mortgage, at pleasure, to any person or persons, or purchasers whatever: *provided, however*, that no mutual building association, nor asso-

ciation for buying, selling, and dealing in lands, tenements, and hereditaments, shall loan its funds except to its own members. The executors or trustees under any will, or one or more of such executors or trustees, who are authorized, requested, or directed by the provisions of any will to organize a corporation for any of the purposes mentioned in this section, or the general laws of this state, may, individually or as executors, or together with the legatees mentioned in the will, or one or more of such executors, trustees, or legatees, may sign, execute, and acknowledge articles of incorporation under the provisions of the act of which this is amendatory for the purpose of carrying out the intention of the testator, and for forming and organizing such corporation, and in such case may transfer and convey to such corporation any property of the testator mentioned and referred to in such will; and said executors, trustees, or legatees, or such of them as shall execute the articles of incorporation, may subscribe to the stock of such corporation to the amount of the value of the property mentioned and referred to in such will; and such executors or trustees may convey the same to such corporation in payment of the stock so issued and subscribed without application to or authority from any court. (*As amended* 1878, c. 10, § 1; 1887, c. 71.)

**\*§ 111. Stockholders—Personal liability.**

[Repealed 1881, Ex. Sess. c. 73, § 1.]

See *Johnson v. Fischer*, 30 Minn. 173, 14 N. W. Rep. 799.

**§ 112. (Sec. 47.) Minimum amount of capital stock—Shares.**

The amount of capital stock of any such corporation shall in no case be less than ten thousand dollars, and shall be divided into shares of not less than ten dollars, nor more than one hundred dollars, each, except that the capital stock of mutual building and loan associations may be divided into shares of two hundred dollars each; and the capital stock and number of shares may be increased at any regular or special meeting of the stockholders. (*As amended* 1873, c. 14, § 1; 1881, c. 57, § 2; 1883, c. 4, § 1.)

**§ 114. (Sec. 49.) Shares—Transfer—Lien.**

Provisions of this kind are intended solely for the protection and benefit of the corporation. They do not incapacitate a shareholder from transferring his stock, without any entry upon the corporation books. Except as against the corporation, the owner and holder of shares of stock may, as an incident of his right of property, transfer the same as any other personal property of which he is owner. *Baldwin v. Canfield*, 26 Minn. 43, 1 N. W. Rep. 261, 276.

The lien attaches whether the debt accrued before or after he acquired the stock. *Schmidt v. Barrel Co.*, 35 Minn. 511, 29 N. W. Rep. 200.

MANUFACTURING COMPANIES.

**\*§ 120. Incorporation.**

Whether ice companies are "manufacturing corporations," see Attorney General v. *Belle Isle Ice Co.*, (Mich.) 26 N. W. Rep. 311; *People v. Knickerbocker Ice Co.*, (N. Y.) 1 N. E. Rep. 669.

**\*§ 121. Capital stock—Shares.**

The amount of capital stock of every such corporation shall be fixed and limited by the stockholders in their articles of association, and shall be divided into shares of not less than fifty and not more than one hundred dollars each, but every such corporation may increase its capital stock and number of shares therein at any meeting of the stockholders specially named for that purpose. (1873, c. 11, § 2, *as amended* 1883, c. 105, § 1.)

Where a corporation has power to increase its capital stock, the power is held in trust for the subsisting stockholders in proportion to the original stock held by them,

so that each of such stockholders has a right to an opportunity to subscribe for and take the new or increased stock in proportion to the old stock held by him. *Jones v. Morrison*, 31 Minn. 140, 16 N. W. Rep. 854. A vote at a stockholders' meeting directing the new stock to be sold, without giving a stockholder such opportunity, unless he consents to it, is void as to him. *Id.*

**\*§ 122. Articles of association—Amendment.**

The purpose for which every such corporation shall be established shall be distinctly and definitely specified by the stockholders in their articles of association, and it shall not be lawful for said corporation to direct its operations or appropriate its funds to any other purpose: *provided*, that such articles of association may be amended in any respect which might have been lawfully made a part of such original articles, at any meetings of such stockholders, by a majority vote of all the shares of stock represented in such corporation, upon giving notice of a meeting of such stockholders to be held for the purpose of making such change, in the same manner as provided in section four of this act for the first meeting of the corporation, except that notice of change shall not be waived as therein provided. Proof of the publication of such notice and change, made by filing the affidavit of the publisher, and a certified copy of the proceedings making such change, shall be filed in the office of the secretary of state, in the same manner as provided for the filing of the articles of incorporation of such association therein: *provided*, that whenever, after the adoption, filing, and publication of the articles of association, and the making and recording of the certificate provided for by this act, and the creation thereby of a body corporate, the said corporation shall resolve to alter, modify, or change any of its articles of association, such corporation may, by resolution duly passed at any regular meeting of the stockholders thereof, adopt a new article or articles altering, modifying, or changing any of the original articles: *provided, further*, that no such new or amended articles shall change the general nature of its business, or be operative or valid to alter, modify, or change such original articles, until the same shall be published and the certificate of the purposes for which said corporation is formed as set forth in such new or amended articles, in the same manner and with the like formalities that the original articles are now required to be published and the certificate thereof recorded; and when so adopted, published, and the certificate aforesaid recorded, the said amended articles shall be substituted for and take the place of the original articles so amended. (1873, c. 11, § 3, *as amended* 1875, c. 17, § 1, *and* 1879, c. 8, § 1.)

See *Jones v. Morrison*, 31 Minn. 147, 16 N. W. Rep. 854.

**\*§ 124. Board of directors.**

The authority of the directors is subject to the implied condition that it shall be exercised solely in pursuance of the company's chartered purposes, and for the benefit of the stockholders. *Jones v. Morrison*, 31 Minn. 147, 16 N. W. Rep. 854.

**\*§ 128. Publication of articles—Filing certificate.**

Failure to file the certificate does not affect the lawful character of the corporation. *In re Shakopee Iron, etc., Works v. Cole*, 33 N. W. Rep. 219.

**\*§ 131. Annual certificate.**

[Repealed 1883, c. 106.]

**\*§ 132. General powers.**

It is competent for a manufacturing corporation organized under this title, to execute promissory notes to evidence the debts it may be authorized to contract. *Sullivan v. Murphy*, 23 Minn. 6.

A corporation organized under the provisions of this title, and which adopted as one of its articles of association a provision fixing a limit to the amount of indebtedness which might be incurred by the corporation, had power to create debts in the ordinary transaction of its business, and to give its negotiable note for such indebtedness. *Auer-*

bach v. Le Sueur Mill Co., 28 Minn. 291, 9 N. W. Rep. 799. Where a private corporation has authority to issue negotiable paper, such paper, when issued, possesses the legal character ordinarily attaching to commercial paper; and a holder in good faith, before maturity, and for value, may recover, although in this particular case the power of the corporation was irregularly exercised or was exceeded. Under the statute, the seal of the corporation affixed to an instrument made by it, and which is otherwise a negotiable note, does not impair its negotiability. (Id.)

**\*§ 135. Stock—Transfer—Lien.**

See note to section 114, *supra*, and *Becher v. Wells Flouring-Mill Co.*, 1 Fed. Rep. 276.

**\*§§ 136, 137. Increase of stock—Certificate.**

See *Shakopee Iron, etc., Works v. Cole*, 33 N. W. Rep. 219.

**\*§ 138. Omission to file annual certificate—Penalty.**

[Repealed 1883, c. 106.]

COMPANIES FOR MINING AND SMELTING ORES AND MANUFACTURING METALS.

See *Ross v. Kelly*, 36 Minn. 38, 29 N. W. Rep. 591, 31 N. W. Rep. 219.

**\*§ 144. Authority to form corporations.**

Any number of persons, not less than three, desiring to form a corporation for the purpose of mining, smelting, reducing, refining, or working ores or minerals, or for working coal mines or stone quarries, and marketing the materials, or for manufacturing brick or stone, or iron, steel, copper, or other metals, or for the purpose of buying, working, selling, and dealing in mineral or other lands, or for the whole or any part of said purposes, may do so upon complying with the provisions of this act; and any corporation so formed shall be entitled to the rights and privileges, and be subject to the duties and obligations, herein prescribed, and shall have perpetual succession. (1876, c. 28, § 1, *as amended* 1881, c. 27, § 1.)

**\*§ 145. Articles—Contents.**

[Amendment of 1881, c. 27, § 2, repealed 1881, Ex. Sess. c. 14, § 2. See \*§ 146.]

**\*§ 146. Same—Execution in duplicate—Filing and record—Amendment—Evidence—Powers of corporation.**

Such articles shall be executed in duplicate, one of which shall be deposited for record in the office of the register of deeds of the county where said company shall establish its principal office, and the other with the secretary of state; and upon being so deposited said corporation shall be deemed to exist under this act, for the purposes specified in said articles, as a manufacturing and mechanical corporation, under the constitution and laws of this state; and may sue and be sued in the corporate name, and in such corporate name may contract and be contracted with, and transact and carry on the business mentioned in said articles; and may purchase, acquire, hold, use, sell, transfer, convey, rent, and lease all such real and personal property and effects as may be necessary or convenient for the purposes of said corporation. A certified copy of said articles, from the said register of deeds or from the secretary of state, shall be evidence, in all courts, of such corporation. Said articles of incorporation may be amended at any time, in any respect, within the purview of this act, by a majority vote in amount of the stockholders, and by depositing such amendment for record in the office where the articles of incorporation are deposited for record. (1876, c. 28, § 3, *as amended* 1881; *Ex. Sess. c. 14, § 1.*)

**\*§ 147. Capital stock—Shares—Right to vote.**

The amount of capital stock of any such corporation shall in no case be less than ten thousand dollars, and shall be divided into shares of such sum not greater than one hundred dollars each, as may be prescribed in the articles of incorporation, or by resolution or by-law of the company; and each share shall be entitled to one vote upon all questions at all meetings of the stockholders, and may be represented by the holder thereof in person or by his proxy under written appointment. (1876, c. 27, § 4, *as amended* 1881, c. 27, § 3.)

**\*§ 149. Stock—Transfer.**

Such corporation may sell at less than par value shares of stock purporting to be fully paid, and, if there be no fraud, the creditors of the corporation have no recourse against the holders of such stock for the difference between the par value and the price for which it was sold. *Ross v. Kelly*, 36 Minn. 33, 29 N. W. Rep. 591, 31 N. W. Rep. 219.

**\*§ 151. Stock in other companies—Right to hold.**

Any corporation organized under this act may take, acquire, and hold stock in any other corporation, if a majority in amount of the stockholders shall so elect. (1876, c. 28, § 8, *as amended* 1881, c. 27, § 4.)

**\*§ 152. Real estate of corporation—Sale, mortgaging, etc.**

Any corporation organized under this act may mortgage, sell, or lease its real estate, or any part thereof, if authorized or approved by a majority in amount of its stockholders, but not otherwise. (1876, c. 28, § 9, *as amended* 1881, c. 27, § 5.)

## CO-OPERATIVE ASSOCIATIONS.

**\*§ 159. Capital stock—Increase and diminution.**

The amount of capital stock of such association shall be fixed and limited in its articles of association, and it may be any sum not exceeding one hundred thousand dollars. The association may increase or diminish its amount and its number of shares at any meeting of the stockholders especially called for that purpose, and, within thirty days after the passage of any vote increasing or diminishing its capital stock, cause such vote to be recorded in the clerk's office in the place where its business is carried on; but no share shall be issued for less than its par value. (1870, c. 29, § 5, *as amended* 1881, *Ex. Sess.* c. 13, § 1.)

**\*§ 160. Statements of condition, etc.**

[Repealed 1881, *Ex. Sess.* c. 13, § 2.]

**\*§ 165. Profits on earnings—Distribution.**

There shall be such distribution of the profits on earnings of such associations among the workmen, purchasers, members, and stockholders as shall be prescribed by the by-laws at such times therein prescribed, and as often, at least, as once in twelve months. (1870, c. 29, § 11, *as amended* 1881, *Ex. Sess.* c. 13, § 3.)

## LOAN COMPANIES.\*

**\*§ 165a. Formation—Purpose—Powers.**

Any number of persons, not less than three, citizens of this state, may associate themselves by an agreement in writing, and become incorporated for the purpose of loaning money, either for themselves or as agents for others, upon bonds, promissory notes, or other obligations which are secured by mort-

\* "An act entitled 'An act to provide for the organization of corporations empowered to loan money on real-estate mortgages and other real-estate securities, for themselves and others.'" Approved March 3, 1885.

gage upon real estate situated within the state or elsewhere, and in the negotiation of such loans for themselves or for other persons or corporations, and, in connection with such business, either for themselves or others, to purchase, acquire, hold, sell, hypothecate, assign, transfer, and convey any obligations of such corporation, or of any person or other corporation, which are secured by mortgage or other real-estate security, and to collect, foreclose, compound, compromise, release, satisfy, and discharge the same of record; and any such corporation shall also have and possess all the power and authority of an association for buying, owning, improving, selling, and dealing in lands, tenements, and hereditaments, under title two of chapter thirty-four of the General Laws of this state, and the amendments thereof. (1885, c. 270, § 1.)

**\*§ 165b. Application of laws.**

The provisions of section two, three, four, seven, eight, nine, ten, and eleven of title one, chapter thirty-four, and of sections one hundred and twelve to one hundred and nineteen, both inclusive, of title two, as amended, shall apply to and be observed by corporations organizing and conducting business under this act. (*Id.* § 2.)

**\*§ 165c. Existing corporations.**

Any corporation heretofore duly organized under said title two of chapter thirty-four, for the purpose of loaning money upon real-estate security, shall have the power and authority conferred by this act upon corporations which may hereafter organize thereunder. (*Id.* § 3.)

### TITLE 3.

#### CORPORATIONS OTHER THAN THOSE FOR PECUNIARY PROFIT.

See *Foster v. Moulton*, 35 Minn. 458, 29 N. W. Rep. 155.

**§ 166. (Sec. 54.) Incorporation—Purposes.**

Any number of persons, not less than three, may associate themselves and become incorporated for the purpose of establishing and conducting colleges, seminaries, lyceums, library associations, or any scientific, medical, legal, agricultural, benevolent, or missionary society, fire-department association, cemetery association, memorial association, or any Masonic, Odd Fellow, Good Templar, Temple of Honor, Division of the Sons of Temperance, or similar societies for the promotion of temperance, or social or moral reform, or any society for the purpose of instruction or mutual improvement in any art or science, or for literary or social culture, as provided herein. (*As amended* 1870, c. 28, § 1; 1872, c. 52, § 1; 1879, c. 30, § 1; 1881, c. 75, § 1; 1885, c. 8.)

A savings association, formed for the pecuniary profit of its members, is not a benevolent or charitable society, within the meaning of Pub. St. c. 17, §§ 56, 57. *Sheren v. Mendenhall*, 23 Minn. 92.

See, as to an association held not a "benevolent society," *State v. Critchett*, 32 N. W. Rep. 787.

**§ 167. (Sec. 55.) Articles of incorporation — Contents — Record.**

They shall adopt and sign articles containing—

*First.* The name of the corporation, its general purpose and plan of operation, and its place of location.

*Second.* The terms of admission to membership, and the amount of monthly, quarterly, or yearly contributions required of its members.

*Third.* If there is capital stock, the number of shares, and the amount constituting a share.

*Fourth.* The officers of the corporation or society, with time and place of electing or appointing the same, and the number of trustees or directors, if



any, who are to conduct the transactions of the society during the first year of its existence: *provided*, that societies for the promotion of temperance, or social or moral reform, may hold their annual meetings for the election of officers and the transaction of other business at such time and place in the state as a majority of the members thereof may by vote determine; and any temperance or other such society heretofore organized may hold their annual meetings at any time or place so determined, anything in its original articles of incorporation or by-laws to the contrary notwithstanding.

Said articles shall be recorded in the registry of deeds of the county where the corporation or society is located, and in the office of the secretary of state. (*As amended 1881, c. 75, § 2.*)

See *Foster v. Moulton*, 35 Minn. 458, 29 N. W. Rep. 155.

**\*§ 168a. Amendment of articles.**

That the members of any body corporate, which has been or may be incorporated pursuant to the provisions of title three of chapter thirty-four of the General Statutes one thousand eight hundred and sixty-six, or of an act entitled "An act for the incorporation of colleges, seminaries, churches, lyceums, libraries, and other societies for benevolent, charitable, scientific, and missionary purposes," approved March fifth, A. D. one thousand eight hundred and fifty-three, or of an act entitled "An act for the incorporation of institutions of learning," approved July fourteenth, A. D. one thousand eight hundred and fifty-eight, or of chapter two of an act entitled "An act to provide for the creation and regulation of corporations," approved August twelfth, A. D. one thousand eight hundred fifty-eight, or of any acts amendatory of any of the aforesaid laws, may amend the articles of incorporation of such body corporate by adopting, at any regular or duly-called meeting thereof, by a majority vote of the members, any articles of amendment which would have been lawful if they had been adopted as a part of such original articles. The term of continuance of any such corporation may, by amendatory articles adopted either before or after the expiration of its charter by limitation, be extended for an additional period not greater than that fixed by the original articles; and in such case all the acts and transactions of any such corporation, and all conveyances, devises, or bequests to it of any real or personal property occurring in the interval between the expiration of its original charter by limitation and its renewal or extension as aforesaid, and whether before or after the passage of this act, shall be of the same effect and validity as though the term of continuance named in the original articles had not expired. (1883, c. 111, § 1.)

**\*§ 168b. Same—Certificate—Filing and recording.**

Any body corporate, amending its articles of incorporation, as provided in section one of this act, shall cause to be prepared a certificate stating the time when and the respect in which such articles were amended, which certificate shall be subscribed and sworn to by the president or other chief executive officer, and also by the secretary of such body corporate, and filed and recorded in the same manner as said original articles were required by law to be filed and recorded; and thereupon such amendments shall be and become a part of the articles of such body corporate. (*Id.* § 2.)

**\*§§ 169, 170, 171, 172. Amendment of articles of certain corporations.**

[Repealed "without prejudice to any proceedings heretofore had under the same." 1883, c. 111, § 3.]

**§ 181. (Sec. 65.) Orphan asylum as guardian.**

The judge of probate of any county, after publishing a notice, once in each week for three successive weeks, of his intention, at a time and place named,

so to do, and after hearing, at the time and place named, all persons appearing for or against the appointment, may, when it appears to him necessary and proper, appoint an orphan asylum, incorporated under the laws of this state, as the guardian during its minority of any destitute minor residing or found in his county, whose parents are dead or under legal incapacity, or unable to provide and care properly for such child, or have abandoned or neglected for the space of six successive months to provide for such child; subject, however, to the duty, on the part of such asylum so appointed, to properly care and provide for such child while it exercises such charge, custody, and control over it: *provided*, that said asylum shall not be obliged to give any bond for the performance of its duties as such guardian. (*As amended*, 1881, c. 54, § 1.)

**§ 182. (Sec. 66.) Orphan asylum— Authority to care for destitute children.**

That any orphan asylum aforesaid, without any action by a probate court, may also assume and have the charge, custody, control, and guardianship during its minority of any destitute minor residing or found in this state, whose parents are from any cause incapacitated or unable to provide or care properly for such minor, whenever the consent of the parents or of the parent in charge of such child is obtained; subject, however, to the duties specified in the foregoing section: *provided*, that this act shall not be construed to prevent or otherwise impair the right of all minor persons over the age of fourteen years to choose their own guardian, as provided by law. (*Id* § 2.)

**SOCIETIES FOR RELIGIOUS INSTRUCTION AND MUTUAL IMPROVEMENT.\***

**\*§ 183a. Purposes of incorporation.**

Any number of persons, not less than three, may associate themselves and become incorporated as camp or grove meeting associations, Sunday-School assemblies, or any society for religious instruction or worship, or mutual improvement in moral, literary, or social culture, as provided herein. (1881, c. 138, § 1.)

**\*§ 183b. Articles of incorporation—Contents.**

They shall adopt and sign articles containing—

*First.* The name of the corporation, its general purpose and plan of operation, and its place of location.

*Second.* The amount of the capital stock, the number of shares, and the amount constituting a share.

*Third.* The officers of the corporation or society, with time and place of electing or appointing the same, and the number of directors, and the places of residence of each. (*Id.* § 2.)

**\*§ 183c. Capital stock—Subscription—Recovery.**

The directors or trustees may call in the subscription to the capital stock of such corporation by installments, in such proportion and at such times and places as they shall think proper, by giving such notice thereof as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of sixty days after the same shall have become due and payable, and he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder in any proper action for that purpose, or may declare the amount or

\*“An act to incorporate camp or grove meeting associations, Sunday-School assemblies, or any society for religious instruction or worship, or mutual improvement in moral, literary, or social culture.” Approved March 3, 1881.

amounts previously paid on part-paid stock forfeited for the use and benefit of the corporation. (1881, c 138, § 3.)

**\*§ 183d. Articles—Record—Effect—Corporate powers.**

Such articles shall be executed in duplicate, one of which shall be deposited for record in the office of the register of deeds of the county where said corporation or society is located, and the other with the secretary of state; and upon being so deposited the persons named therein shall become a body corporate, with power to sue and be sued, to have a common seal, which may be altered at pleasure, to establish by-laws, and to make all rules and regulations deemed expedient for the management of its affairs in accordance with law, and not incompatible with an honest purpose; and may acquire by purchase, gift, grant, or devise, and to hold, use, sell, transfer, convey, rent, and lease or mortgage, real and personal property. (*Id.* § 4.)

**\*§ 183e. Capital stock—Increase—Shares.**

The amount of capital stock in any such corporation shall in no case be less than five thousand dollars, and shall be divided into shares of not less than ten dollars, nor more than fifty dollars, each; but the capital stock and number of shares may be increased at any regular meeting of the stockholders. (*Id.* § 5.)

**\*§ 183f. Profits—Distribution.**

There shall be such distribution of the net profits or earnings of such corporation or society among the full paid-up stockholders as shall be described by the by-laws at such times therein prescribed. (*Id.* § 6.)

**\*§ 183g. Corporate property—Exemption from taxation.**

All such real or personal property belonging to such corporation or society expressly dedicated and set apart as being necessary for their proper occupancy and use and enjoyment, and not leased or otherwise used with a view to profit, shall be exempt from taxation. (*Id.* § 7.)

**\*§ 183h. Board of directors—Powers—By-laws.**

The board of directors or trustees shall have power, from time to time, to make, constitute, ordain, and establish such by-laws, rules, and regulations as they shall judge proper for election of their officers, for prescribing their respective functions, the amount of bonds they shall be required to give as they may deem proper, and the mode of discharging their respective duties; for the regulation of the time of meeting of the directors or trustees; for prohibiting noisy, rude, or indecent behavior, or trespassing on unforbidden grounds, or hitching horses to trees, fences, or buildings, or cut, break, injure, or remove any ornamental or other tree or other property on the premises belonging to or leased by such corporation or society; for imposing fines and penalties for the violation of any by-law, rule, or regulation, and the mode of proceeding to enforce the collection of the same; and, generally, for transacting, managing, and discharging the affairs of the corporation: *provided*, that the same be not repugnant to the constitution or the laws of this state. (*Id.* § 8.)

**\*§ 183i. Same—Peace officers.**

The board of directors or trustees shall have power to appoint such peace-officers as may [be] deemed necessary for the purpose of keeping order on the grounds and premises of the corporation, which officers shall be paid by said corporation, if the directors or trustees of the same deem it proper or necessary so to do, for their services; and while on duty as such they shall have the same power, authority, and immunities which justices of the peace, police officers, constables, and other peace officers under the laws of this state pos-

sess or enjoy; and they shall have power to enforce obedience, on said grounds and premises, to any rule or regulation of the directors or trustees for the protection of property or the preservation of quiet and good order. (*Id.* § 9.)

**\*§ 183j. Opening streets through corporate lands.**

That no streets or roads shall be opened through the lands of such corporation or society, except by and with the consent of the board of directors or trustees of the same. (*Id.* § 10.)

AGRICULTURAL SOCIETIES.

**\*§ 191. State fair grounds—Ramsey county empowered to convey to state.**

The board of county commissioners of the county of Ramsey are hereby empowered and authorized to convey to the state of Minnesota the following described real property, situate in the county of Ramsey and state of Minnesota, to-wit: the south-east quarter of section twenty-one, and the east half of the east half of the south-west quarter of section twenty-one, of township twenty-nine, range twenty-three, of said county,—and which said property when so conveyed shall be held by the state of Minnesota forever, for the following public purposes and no other, viz.: For the purpose of exhibiting thereon, under the management of the State Agricultural Society, or its successors, annually, the agricultural, stock-breeding, horticultural, mining, mechanical, industrial, and other products and resources of the state of Minnesota, including proper exhibits of the arts, sciences, and all other public displays pertinent to or attendant upon exhibitions and exposition of human art, industry, or skill. (1885, c. 174, § 1.\*)

**\*§ 191a. Annual exposition—Powers of society.**

There shall be annually held by said State Agricultural Society, upon the premises hereinbefore described, at such times and for such period as the said society may prescribe, such exposition and exhibit of the products of the state of Minnesota aforesaid as the said State Agricultural Society may provide for; and said society is hereby empowered to make all the needful rules and regulations for the government of said expositions, in providing for the same, and in providing for and paying such premiums at such expositions as they shall see fit, and in such manner as they may desire, and to do and exercise upon said premises any and all acts which they now or hereafter lawfully may do, and are empowered to invite the co-operation of any other state, territory, or country, in said exposition. (*Id.* § 2.)

See *Farrier v. State Agricultural Society*, 32 N. W. Rep. 554.

**\*§ 191b. State Agricultural Society—Control of premises—Offices.**

The custody and control of said premises, together with any adjoining property which may be added thereto, is hereby vested in the said State Agricultural Society, and the general offices of said society shall be located and maintained upon said premises, and said society is hereby authorized, required, and empowered to maintain said offices upon said premises, wherein shall be contained the property and records of said society, and the entire care, custody, management, and control of said premises and structures thereon shall be vested in said society. (*Id.* § 4.)

\*"An act to provide for annual exhibits of the agricultural, stock-breeding, horticultural, mining, mechanical, industrial, and other products and resources of the state of Minnesota, and in aid of the purposes of the State Agricultural Society, and to appropriate moneys and property for such purposes." Approved March 2, 1885.

The preamble recites the offer of the county of Ramsey to donate the lands referred to for the purposes of the act. § 3 appropriates \$100,000 for the erection of permanent buildings, etc.

**\*§ 191c. Same—Powers.**

The said State Agricultural Society is hereby authorized and empowered to make any and all regulations, rules, and provisions, not inconsistent with law, which shall, in their judgment, be necessary or proper for the government, management, and control of the said premises, and all expositions to be held thereon, and all such needful rules and regulations concerning the government and department of the public thereon which may be requisite or proper. (1885, c. 174, § 5.)

**\*§ 191d. Appropriations—Expenditure.**

Any and all moneys expended by the said State Agricultural Society for premiums for exhibits or other displays, or which may hereafter be appropriated by the state to said society for such purposes, shall be expended upon and for such expositions and displays as shall be held by the said society upon the premises aforesaid. (*Id.* § 6.)

**\*§ 191e. Property—Power of incumbering.**

Nothing in this act or in the said instrument of donation to the state shall be construed or taken as giving said state or said society or its successors any power or authority to charge or incumber said property, at any time, in any manner whatever. (*Id.* § 7.)

**\*§ 192. State Agricultural Society—How composed—Voting by proxy.**

That hereafter the State Agricultural Society shall be composed of the following members:

*First.* Three delegates to be chosen and appointed by each of the county and district agricultural societies in this state; and in case any such society shall fail or neglect to choose and appoint such delegates, then, and in that event, the president, secretary, and treasurer of such society shall, by virtue of their office, be members of the State Agricultural Society.

*Second.* Honorary life-members who, by reason of eminent services in agriculture, or in the arts and sciences connected therewith, or of long and faithful services in the society, or of benefits conferred upon it, may, by a two-thirds vote, at any of its annual meetings, be elected as such.

*Third.* The president *ex officio* of the following societies and associations: The State Horticultural Society; the State Amber Cane Society; the State Dairymen's Association; the State Forestry Association; the Southern Minnesota Fair Association; the State Poultry Association; the State Bee-Keepers' Association; and the president and secretary of the State Farmers' Alliance.

*Fourth.* The president of any state society or association within the state having for its object the promotion of any branch of agriculture, stock-raising, or improving, or mechanics relating to agriculture: *provided*, that all such societies and associations shall maintain an active existence, and hold annual fair, and shall have paid out as much for premiums as they receive from the state, and have an annual membership of twenty-five or more members: *and provided, further*, that in the election of officers, and upon all questions pending at any meeting of said State Agricultural Society, each of the persons above mentioned, except life-members, upon the payment of one dollar, may vote in person or by proxy, provided, such proxy is from the same county. (1887, c. 181, § 1.)\*

\*"An act to reorganize the State Agricultural Society, and confer police powers upon the board." Approved March 3, 1887. § 11 repeals §§ 1, 2, 3, 4, c. 142, Gen. Laws 1883, and all acts and parts of acts inconsistent with the provisions of this act. Gen. Laws 1883, c. 142, § 7, repealed c. 13, Gen. Laws 1868, (Gen. St. 1873, c. 34, §§ 191-194.)

For amendment of 1869 to \*§ 193, see *post*, page 1053.

**\*§ 193. Board of managers.**

The board of managers of the State Agricultural Society shall consist of six members, who shall be chosen at the annual meeting thereof, as hereinafter provided. (*Id.* § 2.)

**\*§ 194. Annual meeting—Officers—Election.**

The annual meeting of the State Agricultural Society shall be held in the state house, or such other place in the city of Saint Paul as may be selected by the board of managers, on the second Tuesday in January of each year, at which time the following officers shall be elected, namely: a president, two vice-presidents, and two managers, which said managers shall serve three years each, and shall take the places of the present managers as their respective terms of office expire, so that two members shall be chosen each year, and each member shall hold his office three years, and the board consist of six members. (*Id.* § 3.)

**\*§ 194a. Board of auditors.**

The governor of the state of Minnesota, *ex officio*, and three members from the state at large, who shall, after the passage of this act, be appointed by the governor, with the advice and consent of the senate, shall constitute a board of auditors, who shall examine all transactions of the State Agricultural Society and report to the legislature at each session. (*Id.* § 4.)

**\*§ 194b. Secretary and treasurer.**

The president, vice-president, and board of managers shall, on the third Tuesday in January of each year, elect a secretary and treasurer of said society, who shall each hold his office for the term of one year, and until his successor is elected and qualified. (*Id.* § 5.)

**\*§ 194c. Same—Duties.**

The secretary shall be required to make an annual report to the governor before the tenth day of December in each year, showing in detail the proceedings of the society for the current year, and such other information as shall be of interest to the public; also showing the financial condition of the society, which report shall be submitted to the governor of the state, and printed annually in like manner as other reports of state officers. (*Id.* § 6.)

**\*§ 194d. Management.**

The president, vice-presidents, and board of managers shall control the affairs of the State Agricultural Society, any five of whom shall constitute a quorum, and shall make by-laws for its government, which shall be submitted to the board of auditors, and if approved by them shall be the law regulating its transactions. (*Id.* § 7.)

**\*§ 194e. Peace-officers—Appointment—Oath—Powers.**

The president of the society shall have authority to select and appoint, at or before the time of holding its annual fair, as many persons to act as special police officers as may in his judgment be necessary to secure peace and good order on and about the premises where such fair is held, for and during the time of holding the same, which said appointment shall be made and evidenced by a written certificate thereof, dated and signed by the president of such society in his official capacity. Such police officers shall, before entering upon the discharge of the duties of their office, take and subscribe the usual oath of office before some officer authorized to administer oaths; said oath of office to be indorsed on such certificate of appointment. The police officers so appointed and qualified as aforesaid shall each have and exercise, during the time stated in their respective certificates of appointment, all the power and authority of constables at common law, and shall have, in addition thereto,

full power and authority to arrest, without warrant, any and all persons found violating, on or about the grounds or premises of said society, any law of the state of Minnesota, and summarily remove the person or persons and property of such offenders from the grounds and premises of such society, and take such offenders before any court of competent jurisdiction, to be dealt with according to law, and shall also have power and authority to expel from the grounds and premises of said society any and all persons who refuse to obey or conform to any by-law of said society, and may also summarily remove therefrom the property and effects of all such persons. (1887, c. 181, § 8.)

**\*§ 194f. Ex-officio peace-officers.**

The president, vice-presidents, and members of the board of managers shall each have, by virtue of his office, the same power to make arrests and remove the persons and property of offenders that is conferred upon special police officers by the next preceding section. (*Id.* § 9.)

**\*§ 194g. Official badge—Duty of wearing.**

The president, vice-presidents, members of the board of managers, and police officers aforesaid, shall each wear some appropriate badge of office while acting in their official capacity as such officers. (*Id.* § 10.)

**\*§ 194h. Appropriations for state society.**

That the sum of four thousand dollars be annually appropriated out of any moneys in the state treasury not otherwise appropriated, to aid the State Agricultural Society in paying premiums. The said sum shall be paid by the state treasurer on the order of the president and secretary of the State Agricultural Society.\* (1883, c. 142, § 5.)

**\*§ 194i. Appropriation for county societies.**

That the sum of twelve thousand dollars be annually appropriated out of any moneys in the state treasury, not otherwise appropriated, to county agricultural societies and joint-stock societies holding agricultural fairs, and Minnesota butter, cheese, dairy and stock associations, *pro rata*, and to be paid out in premiums at the fairs of such societies, and the further sum of two thousand dollars be annually appropriated to the Southern Minnesota Fair Association, to be paid by the state treasurer on the order of the president and secretary of the Southern Minnesota Fair Association; † *provided, that such moneys shall be paid only to such societies as shall have complied with the proviso in section one.* ‡ Said moneys shall be paid to such county

\* Gen. Laws 1887, c. 224, appropriates \$50,000 for paying balance due on buildings.

† This last appropriation (\$2,000) is directed by the amendment (1885, c. 77) to be inserted after the word "societies" in the sixth line. The sixth line is printed above in italics beginning with the word "societies."

‡ § 1 referred to, (repealed 1887, c. 181, § 11,) provided as follows: "§ 1. That hereafter the State Agricultural Society shall be composed of the following members: The president, secretary, and treasurer, or three delegates, to be appointed by each of the county and district agricultural societies in this state; life-members, who shall pay the sum of ten dollars at one payment, and honorary life-members, who, by reason of eminent services in agriculture, or in the arts and sciences connected therewith, or long and faithful services in the society, or benefits conferred on it, may, by a two-thirds vote [at] any of its annual meetings, be elected as such. Nothing herein contained shall be construed as annulling any existing life or annual membership in the State Agricultural Society. And the president of each of the following societies as *ex officio* members, namely: The State Horticultural Society; the State Amber Cane Society; the State Dairyman's Association; the State Forestry Association; the Southern Minnesota Fair Association; and, when they shall have filed their articles of incorporation with the secretary of state, the State Wool-Growers' Association; the State Poultry Association; the State Bee-Keepers' Association, and the president of any society within the state having for its object the promotion of any branch of agriculture, stock-raising or improving, or mechanics relating to agriculture: *provided, that this shall apply only to such societies and associations as shall maintain an active existence and hold an annual fair, and have paid out as much for premiums as they receive from the state, and an annual membership of twenty-five or more members: and provided, further, that in the election of officers, and upon any question pending at any meeting of said society, each of the persons above mentioned may vote in person or by proxy, provided the proxy is from the same county, provided they have first paid their annual dues of one dollar each.*"

agricultural and joint-stock societies upon the order of the president and secretaries thereof, respectively, upon the filing with the state auditor a sworn statement showing the holding of their fairs aforesaid, and payment of as much for premiums as they receive from the state, according to the provisions of this act; and the secretary of the State Agricultural Society shall, on or before the tenth day of April in each year, certify to the state auditor a list of all county agricultural and joint-stock societies that have complied with section one of this act. (1883, c. 142, § 6, *as amended* 1885, *cc.* 77, 44.)

CHAMBERS OF COMMERCE AND BOARDS OF TRADE.\*

**\*§ 197. Purposes of incorporation.**

That any number of persons, not less than three, in any organized city, village, town, or county in this state, may associate themselves and become incorporated as either a chamber of commerce, or as a board of trade, or both, for the purpose of advancing the commercial, mercantile, manufacturing, or agricultural interests of such city, village, town, or county; for inculcating just and equitable principles of trade; for establishing, maintaining, and enforcing uniformity in the commercial usages of such city, village, town, or county; for acquiring, possessing, and discriminating useful business information; and for adjusting the controversies and misunderstandings which may arise between individuals engaged in trade and business; and for promoting the general prosperity of the locality of such organization. (1883, c. 138, § 1, *as amended* 1887, c. 87.)

**\*§ 198. Powers.**

All persons so associating shall proceed in accordance with the provisions of title one of chapter thirty-four of the General Statutes of the State of Minnesota, so far as the same are or may be applicable, and every such corporation shall be endowed with the following, in addition to its ordinary power, *viz.*

**Arbitration.**

*First.* Said corporation may constitute and appoint committees of reference and arbitration, and committees of board of appeal, who shall be governed by such rules, by-laws, and regulations as may be prescribed by said corporation, for the settlement of such matters of difference as may be voluntarily submitted for arbitration by members of the said corporation, or by other persons not members thereof. The acting chairman of either of said committees or boards, when sitting as arbitrators, may administer oaths to the parties and witnesses, and, upon request of any party to such arbitration, any clerk of any court of record, on payment of his fees therefor, shall issue subpoenas for the attendance of witnesses and production of papers before said committees, and the same may be served and obedience thereto enforced in like manner as process requiring attendance before the court issuing the same.

**Same—Award—Claims to real estate — Submission—Hearing.**

*Second.* When any such submission shall have been made in writing pursuant to the rules and by-laws of such corporation, and no appeal therefrom

\*"An act entitled 'An act to authorize the incorporation of persons as a chamber of commerce or a board of trade; and to legalize corporations already organized under existing or amended laws.'" Approved February 27, 1883. § 4 repeals c. 20, Gen. Laws 1868, (\*§§ 197-199, Gen. St. 1878,) and c. 37, Gen. Laws 1881, which amended the act of 1868, "saving all existing rights; but this repeal shall not affect any corporation or corporations heretofore organized, or attempted to be organized, under said acts; and corporations heretofore organized, or attempted to be organized, under said acts, are hereby legalized, and shall have all the power or authority, rights and jurisdiction, herein conferred upon associations to be organized under this act, the same as though regularly organized hereunder to the extent of the county in which they may have been organized, or attempted to be organized."



taken within the time fixed by said rules or by-laws, or when a final award shall have been rendered on appeal duly taken, such submission, with the award, and, in cases of appeal, the final award, may be filed in the office of the clerk of the district court in and for the county in which such corporation is located, and thereupon the prevailing party may, upon notice of at least eight days, apply to said court, at any general or special term thereof, for an order confirming such award, and directing judgment to be entered thereon. Upon such hearing, if the application be opposed, like proceedings shall be had as are provided in sections eleven to eighteen, inclusive, of chapter eighty-nine of the General Statutes of Minnesota, relating to arbitrators, and, except as otherwise herein provided, all provisions of said chapter subsequent to the filing of the award in the office of the said clerk shall be applicable to awards rendered by said committees and boards created pursuant to this act. No such submission shall be made respecting the claim of any person to any real estate, or any interest therein, or lien thereon. Neither party shall have power to revoke a submission made under the rules of said corporation without the consent of the other, and, after due submission, if either neglects to appear before said committees and prosecute or defend, as the case may be, according to said rules, the committee or board may proceed to hear and determine the cause on the evidence produced by the other party. The form of submission and the mode of procedure, until the filing of the award in the office of the clerk of said court, shall be substantially such as are prescribed by the rules and by-laws of such corporation: *provided, always*, such submission shall be in writing, signed by both parties, and set forth in plain and concise language the facts on which the controversy depends; and when they are not agreed upon the facts, the submission may be in the form of a complaint and answer, and, if needful, a reply. The filing of such pleadings, signed by the party, with the secretary of such corporation, shall be deemed a submission on the part of the party filing the same.

### **Inspectors of weights and measures.**

*Third.* Said corporation shall have power to appoint one or more persons, as they may see fit, to examine weights, scales, and measures, to weigh, gauge, or inspect flour, grain, produce, provisions, liquor, lumber, or any other article of produce or traffic commonly dealt in by the members of such corporation, and the certificate of such person or inspector as to the quality, quantity, grade, or condition of any such article, or the brand or mark upon it, or upon any package containing such article, or upon any car or other vehicle of transportation thereof, shall be evidence between buyer and seller of the quantity, grade, quality, or condition of the same, or of any part of the same, and shall be binding upon the members of said corporation, or others interested, and requiring or assenting to the use or employment of such weights, measures, gauges, scales, or inspectors. Nothing herein contained, however, shall compel the employment by any one of any such appointee, nor shall any person not a member of such corporation be held to have assented to the provisions of this section, or to the rules and by-laws of any such corporation, or the employment of any person or inspector named in this section, unless such assent shall have been in writing, and subscribed by the party or person, or the agent of such party or person, to be affected thereby.

### **Fines.**

*Fourth.* Said corporation may inflict fines upon any of its members, and collect the same, for breach of its rules, regulations, or by-laws. Said fines may be collected by action of debts before a justice of the peace, or in any court of record having jurisdiction of the amount of the fine, in the name of the corporation, or by temporary suspension or permanent removal from membership, or removal from office therein.

**Real estate—General powers.**

*Fifth.* Said corporation shall have full power and authority to bargain for, purchase, take, hold, and acquire, by gift, devise, or otherwise, and use, improve, rent, mortgage, lease, sell, and convey any real estate or personal property whatever, in any manner considered by such corporation most conducive to the interests and prosperity of such corporation, to the same extent as natural persons. It may prescribe the terms and conditions of its membership, the mode of admission of members, the number and mode of election of its officers, the appointments of its agents and employes, and their functions and duties, and generally as to the management and transaction of its business and affairs, either by by-laws or resolutions; and when the business of the corporation is managed by or through a board of directors or other body, such board or body shall be considered as vested with, and may exercise, all the powers of the corporation, unless otherwise limited and restricted by the by-laws of such corporation; and such board of directors or other body, whenever by it deemed necessary, may raise money for the purposes of the corporation by assessments upon the members thereof; and the payment of such assessments may be enforced by a sale or forfeiture of the membership of any member failing to pay the same, in such manner as the by-laws or rules may provide; but the aggregate of all assessments made in any one year shall not exceed the sum of one hundred dollars upon each member, unless a majority of the members of the corporation shall vote in favor of such extra assessment. (1883, c. 138, § 2, as amended 1885, c. 52.)

**\*§ 199. Existing organizations—Amendment of articles.**

The articles of association of any corporation organized under this act, or of any association heretofore organized, or attempted to be organized, under the laws of this state, whether existing or repealed, may be amended so as to conform to this act, or in any manner consistent with this act, by the resolution of such corporation, or of its board of directors or other managing board. The said resolution shall be certified by the president or other chief executive officer of such corporation, and also by the secretary; and such certificate shall specify the time when and the respect in which such articles were so amended; and the said certificate and resolution shall be filed, published, and recorded in the same manner as herein provided for the said original articles of association, and thereupon such amendments shall be and become a part of the articles of such body corporate, with the same force and effect as if such amendments had been adopted as part of such original articles: *provided, always*, that corporations heretofore organized for the purposes contemplated by this act, or hereafter organized under the same, may, from time to time, amend their articles of association, either in relation to the qualification of or admission to membership; or the number or election of its officers, or their duties, by a resolution of its board of directors or other managing body, without the filing, record, or publication of such resolution. (1883, c. 138, § 3.)

**KNIGHTS OF PYTHIAS.\*****\*§ 208a. Incorporation.**

That any subordinate lodge instituted under the authority of the grand lodge of said order in this state, or of the supreme lodge of the world, or any division, section, or grand lodge in this state, instituted under the authority of the supreme lodge of the world of said order, may become incorporated in the manner provided herein. (1885, c. 150, § 1.)

\*"An act to provide for the incorporation of subordinate lodges, divisions, and sections, and grand lodges of the order of Knights of Pythias." Approved March 7, 1885.

**\*§ 208b. Certificate—Recording.**

Such subordinate lodge, division, section, or grand lodge shall cause to be prepared a certificate which shall contain:

*First.* The charter name and number of such lodge, division, section, or grand lodge.

*Second.* The time when and authority by which such lodge, division, section, or grand lodge was instituted.

*Third.* The names of the charter members as they appear on the charter or dispensation for a charter of such lodge, division, section, or grand lodge.

*Fourth.* The location of such lodge, division, section, or grand lodge.

*Fifth.* The names of the elective officers of such lodge, division, section, or grand lodge, who hold said offices at the time of incorporation.

Such certificate shall be under the seal of such lodge, division, section, or grand lodge, and shall be signed by presiding officer, secretary, and trustees thereof, and shall be recorded in the office of the register of deeds of the county where such lodge, division, section, or grand lodge is located and meeting at the time of such incorporation, and in the incorporation of a grand lodge said certificate shall also be recorded in the office of the secretary of state. (1885, c. 150, § 2.)

**\*§ 208c. Powers.**

Upon filing such certificate in the manner provided in section two hereof, such lodge, division, section, or grand lodge shall become a body corporate under its charter name and number, and shall have power to sue and be sued by its corporate name, and in such name to acquire or receive by purchase, gift, grant, or bequest any property, real, personal, or mixed, and the same to hold, transfer, sell, mortgage, convey, loan, let, or otherwise use, in accordance with the laws and usages of said order; but said corporation shall have no power to divert any gift, grant, or bequest from the specific purpose designated by the donor. (*Id.* § 3.)

**\*§ 208d. Corporate seal.**

The seal of said lodge, division, section, or grand lodge shall be its corporate seal. (*Id.* § 4.)

**\*§ 208e. Surrender of charter, etc.**

Whenever the charter of any such subordinate lodge, division, or section shall have been surrendered, or taken away by the grand lodge of this state, or the supreme lodge of the world, or whenever, by the laws and usages of the said order, such subordinate lodge, division, or section shall have become defunct, the corporate powers of such subordinate lodge, division, or section shall cease and determine, except that such corporation, as such, shall have power to sell, convey, and dispose of such of its property as is not designed for and used exclusively by said order, and collect debts due it, and, except as used in the payment of its debts, all property and effects of every nature shall be delivered up to the grand lodge of this state, if the same shall have become incorporated, in trust for the supreme lodge of the world, or for its own use and benefit, as the laws of said order shall determine. (*Id.* § 5.)

**ANCIENT ORDER OF HIBERNIANS.\*****\*§ 208f. Incorporation.**

That any state board now or hereafter organized, or existing in this state, under the authority of the national officers and national directory of the An-

\*"An act to authorize and empower the Ancient Order of Hibernians of the United States of America to become incorporated." Approved March 2, 1883.

cient Order of Hibernians of the United States of America, or any division of said order in this state, now or hereafter organized or existing under authority of said national officers and directory, or under authority of said state board of said order, may become incorporated in the manner following, to-wit, (*Sp. Laws 1883, c. 263, § 1:*)

**\*§ 208g. Certificate—Recording.**

Such state board, or each such division of said order, shall cause to be prepared, a certificate which shall contain:

*First.* The charter name of such board or of such division and the number thereof.

*Second.* The time when and the authority under which said board or said division was organized.

*Third.* The names of the charter members of said board or of said division.

*Fourth.* The location of said board or of said division.

*Fifth.* The names of the officers composing said board or the names of the officers of said division at the date of said incorporation.

Said certificate shall be signed by said officers of said board or of said division, and be acknowledged as deeds are required by law to be acknowledged, and shall be under the seal of said board or of said division; and cases where said board or said division have no common seal, a seal may be adopted and used as such, at the date of said incorporation, and said board seal or said division seal shall be its corporate seal. Said certificate shall thereupon be recorded in the office of the secretary of state, and also in the office of the register of deeds in and for the county in which said board or said division is located. (*Id.* § 2.)

**\*§ 208h. Powers.**

Upon the filing for record of said certificate in said offices of the secretary of state, and of said register of deeds, each said state board of said division, under its charter name and number, shall be and become a body corporate, with full power to sue and be sued by its corporate name, and in such name to acquire or receive by purchase, gift, grant, or bequest or otherwise, any property, real, personal, or mixed, and the same to hold, transfer, sell, mortgage, convey, loan, let, or otherwise use, in accordance with the laws and usages of said order. (*Id.* § 3.)

**\*§ 208i. Surrender of charter, etc.**

Whenever the charter of any such state board or any such division shall be surrendered to or taken away by said national directory of said Ancient Order of Hibernians of the United States, or if any such division shall cease to exist as a part of said order for any cause, its corporate powers shall thereupon cease and determine: *provided*, that such corporation shall be continued for such time as will enable it to sell and dispose of its property, collect its debts, and pay its liabilities, not exceeding in all three years. But no such corporation shall have power to apply any such property to uses not sanctioned by the rules and by-laws of said order. (*Id.* § 4.)

CURATIVE ACT.

**\*§ 208j. Incorporation under title 3, and corporate acts legalized.**

That when proceedings for incorporation under title three of chapter thirty-four of the General Statutes of one thousand eight hundred and seventy-eight have heretofore been had or taken by any persons, and the corporation so formed or attempted to be formed has entered upon the transaction of business without having filed its articles of incorporation for in the office of the secre-

tary of state, or with the register of deeds of the proper county, the said proceedings for such incorporation, if otherwise conformable to law, are hereby legalized and made of the same validity and force, on and after the filing and recording thereof as required by law, and all acts, contracts, or proceedings of such corporation, its trustees, officers, and agents, are hereby legalized and confirmed and made of the same validity as though such articles had been filed in the office of the secretary of state, and the register of deeds for the proper county, before any such business has been transacted. (1885, c. 233.\*)

## TITLE 4.

## RELIGIOUS CORPORATIONS.

See Goldsmidt v. First M. E. Church, 25 Minn. 202; Meyer v. Trustees of German, etc., Church, 33 N. W. Rep. 786.

## § 209. (Sec. 68.) Organization.

Corporations *de facto*. Trustees v. Froislie, 35 N. W. Rep. 260.

## § 211. (Sec. 70.) Notice of election.

A written notice of the time and place when such election shall take place, signed by at least five persons entitled to vote thereat, shall be posted in some conspicuous spot at or about such place of worship at least fifteen days before the day of election, and such notice shall be duly entered upon the permanent records of the society if the organization be completed. (*As amended* 1881, c. 36, § 1.)

## § 212. (Sec. 71.) Election—How conducted—Certificate.

The persons; when assembled at such time and place, at least five being present, shall organize by appointing a chairman and clerk, who together shall receive and count the votes, and determine the qualifications of voters, and they shall immediately after the election certify under their hands and seals the names of the persons elected to serve as trustees, in which certificate the name by which the said trustees and their successors in office shall forever thereafter be called and known shall be particularly mentioned and specified. (*Id.* § 2.)

## § 214. (Sec. 73.) Trustees—Control of temporalities—Seal.

See Little v. Willford, 31 Minn. 176, 17 N. W. Rep. 282.

## § 220. (Sec. 79.) Term of office of trustees.

The said trustees shall hold their offices for three years, and until their successors are elected; and immediately after their first election, as hereinbefore provided, the said trustees shall be divided by lot into three classes, numbered one, two, and three; and the seats of the first class shall be vacated at the end of the first year, of the second class at the end of the second year, and of the third class at the end of the third year; and, as near as may be, one-third part of the whole number of trustees may be annually chosen. (*As amended* 1881, c. 36, § 3.)

## \*§ 221. (Sec. 80.) Same—Expiration — Notice of election.

The clerk of said trustees shall, at least fifteen days before the expiration of the term of office of any of the said trustees, give notice of the election of their successors, specifying in such notice the names of the trustees whose terms of office are about to expire, and the time and place of such election,

\*"An act to legalize the proceedings for the incorporation of certain societies under title 3 of chapter 34 of the General Statutes 1878." Approved March 5, 1885.

which notice shall be posted as required in the first section of this act; and, in addition to such notice, the minister, or some other officer of such church or society, shall give public notice of such election to the congregation at least one week before said election, and the provisions of this section shall apply to filling all vacancies by death, resignation, or removal. (*Id.* § 4.)

§ 222. (Sec. 81.) Election of trustees.

[Repealed 1881, c. 36, § 5.]

§ 225. (Sec. 84.) Salary of minister.

Contract with pastor, see Trustees v. Froislie, 35 N. W. Rep. 260.

§ 226. (Sec. 85.) Sale, etc., of real estate.

The question of regular notice of the meeting goes merely to the authority of the trustees as agents, and a sale authorized at a meeting of which the requisite notice was not given is valid when ratified. Facts held to amount to a ratification, Trustees v. Froislie, 35 N. W. Rep. 260.

\*§ 227. Existing societies.

See Meyer v. Trustees, 33 N. W. Rep. 736.

\*§ 228a. Conveyances in trust for M. E. Church, legalized.

In all cases where deeds or conveyances have heretofore been made of lands, or interest in lands in this state; to any person or persons, or to the trustees of any Methodist Episcopal Church of said state, in trust to be used, maintained, kept and disposed of as a place of divine worship for the use of the ministry and membership of the Methodist Episcopal Church in the United States, such deeds or conveyances are hereby declared legal and valid, and the legal title or interest in such lands shall be deemed vested in such person or persons or trustees: *provided*, that where any of such lands have been occupied by any Methodist Episcopal Church organization duly incorporated for the term of five years, such church organization shall be deemed the equitable owner thereof, and such lands shall not be disposed of without the consent of the board of trustees representing such organization. (1887, c. 169.)\*

§ 231. (Sec. 90.) Incorporation—Procedure.

The members of any church or religious society, not less than three, who, by its discipline or otherwise, does not desire to organize and become incorporated under the foregoing provisions of this chapter, may organize and become a body corporate, capable of suing and being sued, holding, purchasing, and receiving title by devise, gift, grant, or other conveyance of and to any property, real or personal, with power to mortgage, sell, or convey the same, or any part or portion thereof, by adopting and signing articles containing—

*First.* The name of the corporation, its general purpose and plan of operation, and its place of location.

*Second.* The terms of admission and qualification of membership, and the selection of officers, and the filling of vacancies, and the manner in which the same is to be governed and managed. Such articles shall be recorded in the office of the register of deeds for the county in which the corporation is located, and in the office of the secretary of state; and thereupon such corporation will have all the powers hereinbefore specified, and may adopt and establish by-laws, and make all rules and regulations deemed necessary and expedient for the management of its affairs in accordance with law.

Whenever and as often as it may be deemed advisable or desired by the

\*"An act to validate certain conveyances heretofore made of lands in trust to be used, maintained, kept, and disposed of as a place of divine worship for the use of ministry and membership of the Methodist Episcopal Church in the United States." Approved March 7, 1887.

bishop of any religious denomination within the state of Minnesota to have created or organized any religious corporation within this state, for the purpose and with the powers hereinafter specified, he shall associate with him the vicar general of the diocese to which he, (such bishop,) belongs, and the pastor of such denomination of the parish wherein any such corporation is to be located, which place must be within the diocese to which such bishop belongs, and the said bishop, vicar general, and pastor, or a majority thereof, shall thereupon select or designate and associate with them two lay members of any such denomination, and the said five persons, upon adopting and signing in duplicate, under their hands and seals, duly-acknowledged articles of incorporation, reciting the fact of the association and selection of such laymen as aforesaid, and containing the name, general purpose, and place of location of such corporation, and having one of said articles recorded in the office of the register of deeds for the county within which the place of location of any such corporation is situated, and the other filed in the office of the secretary of state of the state of Minnesota, and their successors, shall thereupon become a body corporate, with all the rights, powers, and privileges of other religious corporations constituted under this chapter, together with the powers and privileges in this act enumerated, and shall be capable of suing and being sued, holding, purchasing, and receiving title by devise, gift, grant, or other conveyance, of and to any property, real or personal, with power to mortgage, sell, or convey the same, or any part thereof, and may adopt and establish by-laws, and make all rules and regulations necessary or expedient for the management of its affairs in accordance with law. The persons who may hold the offices, respectively, of bishop and vicar general of such denomination, in the diocese of such denomination, in which any such corporation is located, together with the pastor of such denomination of the parish where such corporation is located, being the pastor who shall subscribe said articles, and his successors in said office of pastor, forever, shall, by virtue of their respective offices, each of them always be members of said corporation; and no person who shall subscribe said articles as bishop, vicar general, or pastor, and no successor in office of any such person, shall continue to be a member of any such corporation after he or they shall have ceased to hold such office respectively. The two laymen thus selected, and the persons who may be chosen as their successors, as hereinafter provided, shall constitute the other members of said corporation. The two laymen so designated in such articles of incorporation shall remain members thereof for the term of two years from the date of such articles, and until their successors are chosen in their place, respectively, and the term of office of any lay corporator shall be for the term of two years from the time of his appointment and until his successor is chosen in his place. The laymen thus to serve as corporators shall always be chosen by said other three corporators, viz., by the bishop, vicar general, and pastor, or by any two of them; and said three last-named corporators shall have power at all times, whenever a vacancy shall occur in said membership as to either of said lay corporators, and as often as any such vacancy shall for any cause occur, whether by the expiration of the time of holding, by resignation, death, or otherwise, to fill any such vacancy; every such appointment to be in writing, and entered of record in the minutes of the corporation. Any lay corporator may at any time resign his office of corporator, and cease to be a member of said corporation; such resignation and acceptance to be always entered on the minutes of said corporation. Should there be at any time a vacancy in the office of bishop of said diocese, or should there be, for any reason, at any time, a person other than the bishop appointed in his stead to administer the spiritual and temporal affairs of said diocese therefor, or during the time of such vacancy, or such suspension of the authority of the bishop, the administrator of said diocese, or such other person as may be appointed, according to the rules of said denomination, to

preside over and administer the spiritual and temporal affairs of said diocese, shall, while he is such administrator or appointee, be a member of said corporation, with all the powers as such corporator that are by this act vested in such bishop, and in his place and stead; but his membership shall at once cease whenever such vacancy in the office of bishop shall be filled, or such bishop shall be no longer incapacitated to act by reason of such suspension of his authority. Should any diocese or dioceses, now or hereafter created, of any religious denomination, within which any such corporation belonging to such denomination is or may hereafter be located, be at any time subdivided according to the rules and practice of such denomination, and one or more new dioceses be formed therefrom, or from parts thereof, the bishop and vicar general of any such new diocese, and their successors in office, shall, as soon as appointed and instituted, by virtue of their respective offices, forthwith be and become members of any such corporation or corporations located in such new diocese, with all the rights, duties, privileges, powers, and obligations of such members as herein or in the articles of incorporation provided, and the bishop and vicar general of the diocese in which such corporation or corporations were located prior to such subdivision shall thenceforth cease to be members of any such corporation so located within such new diocese; and all the provisions of this section shall apply to any such new diocese, and to any such corporation or corporations therein located, with the same force and effect as to corporations now or hereafter located in any diocese now existing. Religious corporations for taking, holding, receiving, and disposing of any real or personal property for the use or benefit of any diocese now or hereafter existing of any religious denomination within this state, and for administering the temporalities of such diocese, and for the further purposes and with the powers hereinafter specified, may be created and organized in the manner and with powers, privileges, and franchises, as follows: The bishop of any such diocese wherein any such corporation is to be located shall associate with him the vicar general and chancellor of such diocese, and they, or a majority of them, shall select or designate and associate with them two other persons, who shall be members of such religious denomination and residents of such diocese, and the said five persons, upon adopting and signing in duplicate, under their hands and seals, articles of incorporation by them duly acknowledged, reciting the fact of the association and selection of such two persons by said bishop, vicar general, and chancellor as aforesaid, and containing the name, general purpose, and place of location of such corporation, and having one of said articles recorded in the office of the register of deeds for the county within which the place of location of any such corporation is situated, and the other filed in the office of the secretary of state of this state, and their successors, shall thereupon be and become a body corporate, with power to take, hold, receive, and dispose of any real or personal property for the use and benefit of such diocese, and for the use and benefit of the religious denomination therein creating such diocese, and to administer the temporalities of such diocese, and to establish and conduct schools, seminaries, colleges, or any benevolent, charitable, religious or missionary work or society of such religious denomination within such diocese, together with the powers and privileges in this act enumerated, and all the rights, powers, and privileges of other religious corporations constituted under this chapter; and shall be capable of suing and being sued, holding, purchasing, and receiving title by devise, gift, grant, or other conveyance of and to any property real or personal, with power to mortgage, sell, and convey the same, or any part thereof, and may adopt and establish by-laws, and make all rules and regulations necessary or expedient for the management of its affairs in accordance with law. The persons who may hold the offices respectively of bishop, vicar general, and chancellor of such religious denomination within and for such diocese, and their successors in office forever, shall, by virtue of their re-



spective offices, each of them, always be members of such corporation; and no person who shall subscribe to such articles as bishop, vicar general, or chancellor, and no successor in office of any such person, shall continue to be a member of any such corporation after he or they shall have ceased to hold such office respectively. The two persons so selected by said bishop, vicar general, and chancellor, and the persons who may be chosen as their successors, as hereinafter provided, shall constitute the other members of said corporation; and the two persons so selected and designated in such articles of incorporation shall remain members thereof for the term of two years from the date of such articles, and until their successors are chosen in their places respectively; and the term of office of such two persons and their successors shall be two years from the time of their appointment, and until their respective successors are chosen in their place, and shall have accepted such office. The successors respectively of such two persons so selected by said bishop, vicar general, and chancellor, and so signing such articles of incorporation as corporators, shall always be chosen by said other three corporators, viz., by the bishop, vicar general, and chancellor, or by any two of them; and said three last-named corporators shall have power at any time, whenever a vacancy shall occur in said membership, as to said corporator so selected, and as often as any such vacancy shall for any cause occur, whether by expiration of the time of holding, by resignation, death, or otherwise, to fill any such vacancy. Every such appointment to be in writing and entered of record in the minutes of the corporation; such appointees to be members of such religious denomination and residents of the diocese in which the corporation is located. Any corporator so selected may at any time resign his office of corporator, and cease to be a member of such corporation; such resignation and acceptance thereof to be always entered on the minutes of said corporation. Should there be at any time a vacancy in the office of bishop of said diocese, or should there be for any reason at any time a person other than the bishop appointed in his stead, to administer the spiritual and temporal of said diocese therefor, or during the time of such vacancy or such suspension of the authority of the bishop, the administrator of said diocese, or such other person as may be appointed according to the rules of said denomination to preside over and administer the spiritual and temporal affairs of said diocese, shall, while he is such administrator or appointee, be a member of said corporation, with all the powers as such corporator that are by this act vested in such bishop, and in his place and stead; but his membership shall at once cease whenever such vacancy in the office of bishop shall be filled, or such bishop shall be no longer incapacitated to act by reason of such suspension of his authority.

The provisos of section eighty-five of this chapter, being section two hundred and twenty-six of chapter thirty-four of General Statutes of one thousand eight hundred and seventy-eight, are not to be construed as applying to or in any manner affecting corporations organized under this section. A member or director of any corporation organized under this section may appoint, in writing signed by him, a proxy to represent and act for him, and in his name and stead to vote at any meeting of such corporation or of the board of directors thereof. (*As amended* 1876, c. 34, § 1; 1877, c. 81, § 6; 1878, c. 15, § 1; 1879, c. 2, § 1; 1881, *Ex. Sess.* c. 18, § 1; 1883, c. 41; 1887, c. 27.)

**\*§ 231a. Reorganization under § 231—Procedure.**

Any religious corporations heretofore organized under and pursuant to the provisions of any other statute, or section or sections of statute, than section two hundred and thirty-one of chapter thirty-four of the General Statutes, A. D. one thousand eight hundred and seventy-eight, as amended by subsequent legislation, may reorganize under said section by complying with the terms of said section: *provided*, that before any action is had for that purpose,

a resolution authorizing the trustees of said corporation to organize under said section two hundred and thirty-one shall be adopted at a meeting of said society called for that purpose, notice of the time, place, and object, which shall be given four successive Sabbaths on which such society stately meet for public worship, immediately preceding the time specified for said meeting, and proof of the fact of such notice, meeting, and resolution may be made by affidavit of one of the trustees, or of any of the members of the society cognizant of the facts. Such affidavit shall be recorded with the certificate of organization under said section two hundred and thirty-one, in the office of the register of deeds of the county where said corporation is located, and in that of the secretary of state; and said corporation, as so organized, shall succeed to and retain, own, hold, and enjoy all the property, real and personal, of said corporation as originally organized, to the same extent and in the same manner as if such organization [reorganization] had not taken place. (1881, *Ex. Sess.* c. 63.)\*

**\*§ 231b. Articles under § 231—Legalization.**

In all cases in which three or more persons have heretofore united in executing articles of incorporation under the provisions of article two hundred and thirty-one of chapter thirty-four of the General Statutes of eighteen hundred and seventy-eight, and where the said articles of incorporation have not been executed in the presence of witnesses, but have been otherwise duly executed and recorded in the office of the register of deeds of the proper county and in the office of the secretary of the state, as provided by law, the said articles of incorporation are hereby declared to be legal and valid, and the respective records thereof effectual to all intents and purposes as well as if such articles of incorporation had been executed with two subscribing witnesses. (1887, c. 153.†)

**\*§ 231c. Religious organizations—Method of incorporation.**

That any diocesan council, synod, presbytery, conference, association, consociation, or other general organization for ecclesiastical or religious purposes, existing in any church or religious denomination in this state, and which, according to the polity, constitution, canons, customs, discipline, or usages of such church or denomination, is composed of or represents several parishes, congregations, or particular churches, may organize as or form a corporation, with perpetual succession, in the manner hereinafter provided. (1885, c. 151, § 1.‡)

**\*§ 231d. Same—Resolution—Contents.**

For that purpose it may adopt a canon or resolution, in which shall be stated—

*First.* Its purpose to organize and form a corporation under this act.

*Second.* The name of the corporation, and its general purposes and powers, not inconsistent with the laws of this state.

*Third.* The name of the church or religious denomination to which the body so organizing a corporation shall belong, the name by which such body shall have been known, and the district or territorial limits over which it exercises jurisdiction.

*Fourth.* The number and official titles of the officers (such as president, directors, trustees, or otherwise) through whom such corporation shall act,

\*"An act relating to religious corporations." Approved November 15, 1881.

†"An act to legalize certain articles of incorporation." Approved March 7, 1887.

‡"An act concerning religious corporations." Approved February 26, 1885.

and by whom and in what manner such officers shall be elected or appointed, the length of their official terms respectively, and the general duties, powers, and authority of such officers respectively.

*Fifth.* The names and post-office address of those appointed or elected as the first directors, trustees, and other officers of the corporation. (1885, c. 151, § 2.)

**\*§ 231e. Resolution—Verification—Approval of attorney general—Recording.**

A copy of such canon or resolution, certified to by the presiding officer of the body passing the same, and verified by the affidavit of its secretary or clerk, shall be presented to the attorney general, whose duty it shall be to examine the same, and, if found to be in all respects in conformity with the provisions of this act, he shall so certify, and thereupon the same, with his said certificate thereon, shall be filed in the office of the secretary of state, who shall record the same at length in a suitable book to be kept in his office for that purpose; and he shall thereupon issue his certificate that, the provisions of this act having been complied with, the said corporation has become duly incorporated according to law; and thereupon the same shall be a body corporate. The secretary of state shall keep in a book in his office an alphabetical index or list of such corporations formed under this act. (*Id.* § 3.)

**\*§ 231f. Same—Amendment.**

The body organizing such corporation, or its successor, may, by canon or resolution passed by it at two regular successive sessions thereof, and certified and verified (including the certificate of the attorney general as aforesaid) and recorded in the office of the secretary of state, as provided in the last preceding section, amend or modify the canon or resolution under which such corporation was organized in respect to the jurisdictional limits of such corporation, or to the number, official titles, terms of office of, or the manner of electing or appointing the officers of, such corporation, or of their respective duties, powers, and authority, or to the purposes and powers of the corporation not inconsistent with the laws of this state, and not in anywise impairing any trusts or rights of property theretofore vested in such corporation. (*Id.* § 4.)

**\*§ 231g. Powers of corporation.**

Any corporation formed under this act may adopt a corporate seal, make contracts, establish by-laws, rules, and regulations for the management of its business, sue and be sued by its corporate name, and may acquire real and personal property by purchase, gift, grant, devise, or bequest, and hold and employ the same for religious, charitable, or educational purposes, and may invest, transfer, or mortgage the same, and may also receive in trust for any parish, mission, local church society, or congregation, whether incorporated or not, any property, real or personal, which may be given, granted, transferred, devised, or bequeathed to it for the use of such parish, mission, local church society, or congregation, for religious, charitable, or educational purposes, and may hold the same, and the rents, issues, and profits thereof, (accounting from time to time as may be required for such rents, issues, and profits,) until such parish, mission, local church society, or congregation shall, being then incorporated, demand a conveyance of such property so held in trust as aforesaid; and any property now held in trust by any person, corporation, or trustees, for the use and benefit of the religious body or organization forming a corporation under this act, or any of its component parts, or any of its such parishes, missions, societies, congregations, or local churches, may, with the consent of the beneficiary, be conveyed to, and the title thereto vested in, the said corporation as the successor in such trust. (*Id.* § 5.)

**\*§ 231h. Power to incumber property.**

No corporation organized under this act shall have power in any manner to create any lien upon or incumber any property held by it in trust as aforesaid. (*Id.* § 6.)

**\*§ 231i. Act subject to future legislation.**

This act is subject to any limitation or modification which may be hereafter enacted by general laws, as to the amount of real estate and personal property to be held by the corporations respectively provided for herein. (*Id.* § 7)

**\*§ 232a. Articles of incorporation — Alteration, amendment, etc.**

Whenever any religious corporation existing under the laws of this state shall desire to alter, modify, or change any of its articles of incorporation, such corporation may, by resolution duly passed at any regular or special meeting of the directors or trustees thereof, adopt a new article or articles altering, modifying, or changing any of the articles of incorporation thereof, or adding to the same: *provided, however*, that such alteration, modification, or amendment shall not be contrary to or in conflict with the law under and by virtue of which said corporation was organized and exists. (1879, c. 92, § 1.)

**\*§ 232b. Same—Recording—Effect.**

No such new or amended articles of incorporation shall be operative or valid to alter, modify, or change such original articles of incorporation, or otherwise, until the same shall be adopted and recorded in the same manner and with like formalities as the original articles of incorporation are now required to be adopted and recorded; and when so adopted and recorded, the said new, amendment, altered, or modified articles shall be substituted for and take the place of the original articles of incorporation so altered, amended, modified, or changed. (*Id.* § 2.)

**\*§ 232c. Religious societies—Consolidation.**

Any two or more churches, congregations, or religious societies now organized and incorporated, or which may hereafter be organized or incorporated, and who employ the same minister or pastor, may consolidate, reorganize, and become a body corporate, as one church, congregation, or religious society, by complying with the provisions of the laws of this state, in regard to the incorporation of religious societies, and the further provisions of this act. (1887, c. 133, § 1.\*)

**\*§ 232d. Same—Notice of meeting—Proof.**

Before any action is had for that purpose, a resolution authorizing such consolidation and reorganization shall be adopted by at least two-thirds of the members present and voting, at a meeting of each of said churches, congregations, or societies, called for that purpose, notice of the time, place, and object of which meeting shall be given four successive Sabbaths, on which such society stately meets for public worship, immediately preceding the time specified for such meeting; and proof of the fact of such notice, meeting, and resolution may be made by affidavit of one of the trustees or any of the members of the society cognizant of the facts. Such affidavit shall be recorded with the certificate or articles of incorporation of such consolidated church, congregation, or society, when the same shall be recorded in the office of the register of deeds of the county where said consolidated church, congregation, or society has its place of public worship, or in the office of the secretary of state, or in both of said offices, as the case may be. (*Id.* § 2.)

\*"An act to authorize the consolidation of religious corporations." Approved February 25, 1887.

**\*§ 232e. Same—Previous joint worship.**

After the adoption of such resolution or resolutions, and before such consolidation and reorganization shall take effect, said several churches, congregations, or societies shall for at least eight Sabbaths worship together as one congregation, church, or society, proof of which fact may be made in like manner provided for proving the resolution mentioned in section two hereof. (1887, c. 133, § 3.)

**\*§ 232f. Consolidation — Effect — Powers of new corporation.**

Said churches or religious societies, when consolidated, reorganized, or incorporated as herein provided, shall forever thereafter be known as a body corporate by the name and style adopted and mentioned in the new certificate or articles of incorporation, and shall have and exercise the same powers as other religious corporations may now have and exercise, according to the mode and manner of incorporation adopted; and shall succeed to and retain, own, hold, and enjoy all the property, real and personal, of said several corporations as originally organized, to the same extent and in the same manner as if such reorganization had taken the same by purchase: *provided*, that nothing herein contained shall operate to dissolve said original corporations until said new corporation or reorganization shall be fully perfected. (*Id.* § 4.)

**\*§ 238a. Incorporation of religious societies legalized.**

In all cases where any church, congregation, or religious society has been actually formed and in existence for the space of one year or more, holding stated meetings for public worship, and where there has been filed for record in the office of the register of deeds of the proper county any certificate or statement of the election or appointment of the first or of any subsequent trustees of such church, congregation, or religious society, signed either by the president or secretary of any meeting at which such trustees were elected or appointed, or by the priest, rector, pastor, or preacher of such church, congregation, or religious society, and, whether such certificate or statement is or is not authenticated by any affidavit or acknowledgment, such church, congregation, or religious society shall be held in law to be, and to have been from its organization, a religious corporation possessed of all the rights, powers, and privileges of religious corporations, duly organized under and pursuant to the provisions of title four of chapter thirty-four of the General Statutes of this state by the name by which such church, congregation, or religious society has been generally called and known; and all donations, purchases, sales, and conveyances of real or personal property heretofore made to or by any such church, congregation, or religious society are hereby declared to be legal, valid, and effectual as fully as if such church, congregation, or religious society had been regularly incorporated in accordance with the provisions of said title four of chapter thirty-four of the said General Statutes; and all contracts, conveyances, deeds, and acts of the acting trustees of any such church, congregation, or religious society are hereby declared to be as legal, valid and effectual, in all cases where they have been authorized or acquiesced in by such church, congregation, or religious society, as if such church, congregation, or religious society had been at the time regularly incorporated under the said statute, and as if such trustees had been regularly elected or appointed as such. (1881, *Ex. Sess. c. 65, § 1.\**)

\* "An act to validate the organization of religious corporations, and their dealings in respect to property, where such corporations have been defectively organized heretofore." Approved November 22, 1881. By § 2 "this act shall not affect the rights of any person in respect to any litigation now pending in any court."

**\*§ 238b. Proceedings to change name legalized.**

That all proceedings of any religious corporation by which it may have heretofore changed its name, or attempted so to do, and which proceedings were invalid, are hereby declared to be valid and binding, and of the same force and effect as though such proceedings had been duly authorized by law. (1885, c. 152.)\*

**\*§ 238c. Incorporation validated.**

Any church, congregation, or religious society which heretofore may have attempted to become incorporated under any of the laws of this state, but which, for informality or other cause, is not now legally incorporated, is hereby incorporated, and invested as such church, congregation, or society, with all the rights, privileges, and immunities now enjoyed by religious corporations under the general laws of this state. (1887, c. 134, § 1.†)

## TITLE 5.

## CEMETERY ASSOCIATIONS AND PRIVATE CEMETERIES.

**§ 249. (Sec. 101.) Power to hold real property—Survey and map—Enlargement of cemetery—Eminent domain.**

Any association incorporated agreeably to the provisions of this title, may take by purchase or gift, and hold, within the county in which the certificate of their incorporation is recorded, not exceeding one hundred and sixty acres of land, to be held and occupied exclusively for a cemetery for the burial of the dead, and for purposes necessary or proper thereto; such land, or such portion thereof, as may from time to time be required for that purpose, shall be surveyed and divided into lots of such size as the trustees direct, with such avenues, alleys, and walks as the said trustees deem proper; and a map of such survey shall be filed and recorded in the registry of deeds of the county in which the lands lie. And whenever any such corporation which is the owner of a burying-ground or place of sepulture wishes to enlarge the limits of the same, and cannot agree with the owner or owners of the land proposed to be taken for such purpose, application may be made to the district court of the judicial district and in the county wherein said land is situated, giving twenty days' notice thereof to the owner or owners by leaving a copy with him or them, or at their usual place of abode; and said court shall appoint a committee of three disinterested persons, who, having been sworn faithfully and impartially to discharge the duties of their appointment, and after giving at least five days' notice to the owner or owners of the time and place of their meeting, shall proceed to examine the premises, and determine on the propriety, public necessity, and convenience of such enlargement, and upon the quantity, boundaries, damage, and value of the land which they shall deem proper to be taken for that purpose, and make report thereof in writing to said district court by filing the same in the office of the clerk thereof; and shall give the same notice of the filing of their report as of their meeting; and the parties interested may appear before said court, and be heard thereon, at such time as the court shall appoint. And if said committee shall report that such enlargement is proper, and that public convenience and necessity require the same, and the court shall accept such report, the decision of such court thereon shall have the effect of a judgment; and execution may be issued thereon accordingly in favor of the person or persons to whom damages may

\*"An act to validate the proceedings of religious corporations." Approved February 26, 1885.

†"An act relating to religious societies." Approved March 7, 1887.

be assessed, for the amount thereof; but said land shall not be taken or inclosed, or used for that purpose, until the damages so assessed shall be paid to said owner or owners, or deposited with the treasurer of the county for his or their use, which shall be done within thirty days after such report shall be accepted; and the title to said land shall thereupon become vested in such association; and a copy of the report of said committee, and of the judgment of the court thereon, certified by the clerk thereof, together with a certificate of the payment of the damages determined by the committee, sworn to by the president and treasurer of said association, shall be recorded in the office of the register of deeds of the county in which such premises are situated; and such record shall be notice to all parties of the title of said corporation therein, and may be read as evidence of such title in all the courts of this state. Such association may also purchase, or take by gift, and hold personal property, and may sell the same, and apply the proceeds thereof to the purposes mentioned in section one hundred and seven of this title, and no other; and all real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order or the embellishment of any lot or grounds, situated within the inclosure of such association, shall remain forever to the uses to which the same shall have been given or granted, according to the true intent of the grantor. (*As amended* 1870, c. 30, § 2; 1885, c. 7.)

§ 259. (Sec. 109.) **Exemption from taxation.**

The exemption extends to assessments for local improvements. *State v City of St. Paul*, 36 Minn. 529, 32 N. W. Rep. 781.

§ 260. (Sec. 110.) **Cemetery lots — Inalienable — Conveyance to association — Interment.**

Whenever the lands of any such association are laid out in lots, and such lots, or any of them, are transferred to individual proprietors, and, after there has been an interment in any lot so transferred, such lot from the time of such interment shall forever thereafter be inalienable, and shall, upon the death of the proprietor, descend to the heirs of such proprietor forever; but any one or more of such heirs may release to any other of the said heirs his or their interest in the same. A copy of such release shall be filed with the clerk of the town or village or of the city, or with the register of deeds of the county within which such lot, or the greater portion thereof, shall be situated. The body of any deceased person shall not be interred in such lot unless it is the body of a person having at the time of such decease an interest in such lot, or of a relative of some person having such interest, or the wife of such person, or the husband of such person, or the relative of such husband or wife, except by consent of all persons having an interest in such lot: *provided*, that the person or persons who shall be invested with the title to any such lot or lots, or part thereof, may at any time sell, convey, and release any such lots, or parts thereof, to the cemetery association maintaining the cemetery in which such lots are situate; a copy of the instruments of conveyance to be filed as above provided in case of releases from one heir to another. And such cemetery association shall have power to use any funds under its control for such purpose, and shall hold and shall have power to convey any such lots, or parts thereof, to other purchasers in the same manner and with the same effect as it holds and can convey any other of its cemetery lots. But this proviso shall not allow or authorize the conveyance, by persons invested with the title thereto, to such association of any piece of ground in which the body of any deceased person theretofore there lawfully interred shall actually remain interred at the time of such attempted conveyance: *provided, further*, that in any case where, by special laws, instruments conveying title to cemetery lots in any cemetery are authorized to be filed or recorded otherwise than as above

provided, a filing or recording within the provisions of such special law shall constitute a sufficient filing or recording within the terms of this section. (*As amended 1887, c. 86.*)

PERMANENT CARE AND IMPROVEMENT FUNDS.\*

**\*§ 260a. "Permanent care and improvement fund"—Establishment.**

That any association formed under the provisions of title five of chapter thirty-four of the General Statutes of A. D. one thousand eight hundred and seventy-eight, which shall have established and shall be maintaining a cemetery of more than twenty acres in extent, within five miles of any city of over fifty thousand inhabitants, may, by a two-thirds vote of the trustees of such association, which vote may be taken at any regular meeting of such trustees, provide, in accordance with the terms of this act, for the establishment of a permanent fund, the income whereof shall be devoted to the care, maintenance, and improvement of such cemetery, which fund shall be known as the "Permanent Care and Improvement Fund" of such cemetery association. (1887, c. 168, § 1.)

**\*§ 260b. Board of trustees—How constituted—Failure to qualify—Powers.**

Upon such vote, the trustees of such association shall proceed to choose by ballot and appoint by deed of the association a board of trustees of such fund. Such board shall consist of not less than three, nor more than five, persons, (the exact number to rest in the discretion of the said trustees of the association.) Such trustees of said fund must be citizens and freeholders of the state of Minnesota during all the time they exercise the powers of such trust. Upon the election, appointment, and qualification, as herein provided, of the said trustees of such fund, all the title to the funds included in said trust, and all the rights, powers, authorities, franchises, and trusts whatsoever thereunto appertaining, shall at once vest in them; or, in case of the failure of any of those so chosen and appointed to qualify within thirty days after their appointment, then the same shall vest in the one or more who shall so qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, the one or more who shall so have qualified shall forthwith fill all vacancies in the said board of trustees of such fund by choosing and appointing by deed persons to be such trustees upon qualification. And such trustees of the fund shall have power in the same manner to revoke any choice and appointment, and to appoint any other person to be such trustee in any case where one chosen and appointed shall fail to qualify, as herein provided, within thirty days after appointment. All appointments to fill vacancies and all revocations must be made unanimously. (*Id.* § 2.)

**\*§ 260c. Trustees—Term of office.**

The tenure of office of the trustees of such fund shall be for life. (*Id.* § 3.)

**\*§ 260d. Same—Bond—Renewal.**

Before exercising, holding, or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the cemetery association for which the trust is maintained a bond in a sum not less than five thousand dollars, and at least equal to one-third the amount of the fund at the

\*"An act to provide for the establishment of permanent funds for the care, maintenance, and improvement of cemeteries." Approved March 7, 1887.



time of giving such bond, with good and sufficient sureties thereto, who shall justify in the aggregate in at least double the amount of such bond; the same to be conditioned for the due and faithful performance of his trust until July first of the next even-numbered year after the year in which such bond shall be given, and until said trustee shall give a new bond as hereinafter provided. Upon the first day of July in each even-numbered year, each trustee shall give a new bond, conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided. Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for which such trust exists, or some part thereof, shall be situate, and shall be filed with the treasurer of such cemetery association. Any failure so to renew bonds within thirty days after the time hereinbefore provided shall be a sufficient ground of removal of any trustee within the discretion of competent jurisdiction, upon application of any person interested. (1887, c. 168, § 4.)

**\*§ 260e. Same—Vacancies.**

In case of the death, resignation, disability, or removal of any member or members of such board of trustees of said fund, the survivors or survivor of them shall forthwith choose and appoint a trustee or trustees to fill such vacancy or vacancies, in the same manner as above provided, in case of an original vacancy. (*Id.* § 5.)

**\*§ 260f. Same—Rights of surviving trustees—New trustees.**

In case of the death, resignation, disability, or removal of one or more of the trustees of such fund all the rights, titles, powers, authorities, franchises, and trusts whatever existing in such trustees at the time of such death, resignation, disability, or removal shall at once, without any further act or conveyance, vest in the survivors or survivor, until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board so reconstituted. All newly-appointed trustees shall at once, upon qualification, succeed to an equal share in all the rights, titles, powers, authorities, franchises, and trusts belonging to such board; and the same shall always be vested in the members of such board as actually constituted. (*Id.* § 6.)

**\*§ 260g. Failure of trustees—Reconstituting board.**

In case of the death, removal, resignation, or disability of all the members of such board, the said rights, titles, interests, authorities, powers, franchises, and trusts, until the organization of a new board of trustees, shall vest in the district court in which such cemetery, or the greater part thereof, shall be situate. In such case such board of trustees may be reconstituted by the said district court, on application of any person interested, on such notice to other persons interested as such court may order. The trustees so appointed to and accepting such trust shall become vested with all the aforesaid titles, estates, interests, authorities, powers, franchises, and trusts belonging thereunto, upon qualification as hereinbefore provided. In case of any vacancy or vacancies continuing in the board of trustees of such fund for the period of one year, such vacancy or vacancies may be filled by the said district court in like manner. All trustees appointed by such court, under the provisions of this section, shall have all the rights, powers, authorities, and franchises as trustees appointed under the other sections of this act. Any owner of an interest in any lot in the cemetery cared for by such trust, and any trustee of the association of such cemetery, and any trustee of the fund, shall be deemed to be sufficiently interested to make any application provided for in this section or in section four of this act. (*Id.* § 7.)

**\*§ 260h. Trust companies as trustees.**

The trustees of any such cemetery association may, in place and stead of appointing such board of trustees of such fund, designate any corporation organized under chapter one hundred and seven of the General Laws of the state of Minnesota for the year one thousand eight hundred and eighty-three, and its successors, as trustees of such fund. In event of the extinction of such corporation and its successors, or its or their failure or inability to perform the duties of such trust, or its or their removal from such trusteeship, proceedings may be had before the district court aforesaid for the appointment of other such corporation as trustee, or of a board of trustees such as hereinbefore provided for, in the same manner as provided in section seven, in the case of a failure of trustee. (*Id.* § 8.)

**\*§ 260i. Instruments of appointment—Recording.**

All instruments of appointment of trustees of such fund shall be recorded with the secretary of the association establishing the fund. (*Id.* § 9.)

**\*§ 260j. Accumulation of fund—Limitation.**

From and after the vote to establish such permanent care and improvement fund by the trustees of any cemetery association, as provided, in section one hereof, twenty per cent. of all the proceeds arising from the sale of cemetery lots by such association shall be paid over quarterly, on the first days of January, April, July, and October in each year, to the trustees of such fund, until such fund shall reach the sum of four hundred thousand dollars, or four thousand dollars per acre of the cemetery thereby to be cared for. If at any time there shall remain in the hands of such association unexpended money over and above all liabilities of the association, the board of trustees of such association may, by a two-thirds vote, appropriate the whole or any portion of any such unexpended moneys to such permanent care and improvement fund: *provided*, that such fund shall never, in any case, be allowed to exceed either five hundred thousand dollars, or five thousand dollars per acre of the cemetery thereby to be cared for. And when such fund shall reach such amount, all appropriations and payments thereto whatsoever shall cease. (*Id.* § 10.)

**\*§ 260k. Principal of fund—Disposition of income.**

The principal of such fund shall in all cases remain intact and inviolate. But the trustees of such fund shall on the first of January and first of July in each year turn over to the treasurer of such association all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees. (*Id.* § 11.)

**\*§ 260l. Income—Application—Unexpended balances.**

Such income so paid over shall be used, in the discretion of the trustees of such association, solely for the care, maintenance, and improvement of such cemetery, its grounds and avenues leading thereto, except as herein provided. In event of any portion of the income so paid over remaining unexpended and unappropriated for one year after its being so paid over to the treasurer of such association, it shall be returned to the trustees of such fund, and become a part of the principal of such fund. (*Id.* § 12.)

**\*§ 260m. Investing principal.**

The principal of such fund may be invested in the way in which savings banks of the state of Minnesota are permitted to invest their funds, and not otherwise. (*Id.* § 13.)

**\*§ 260n. Trustees—Compensation.**

The members of the boards of trustees of such permanent care and improvement fund shall each receive per diem compensation of five dollars for each

day actually employed in the duties of such trust; but no trustee shall receive more than one hundred dollars as such compensation in any one year. The fees of such members of the board of trustees shall be paid out of the general funds of the cemetery association until such trust fund shall reach one hundred thousand dollars or two thousand dollars for each acre of the cemetery cared for thereby. Thereafter the same shall be paid out of the income of such fund. When a corporation shall act as trustee as hereinbefore provided, it may receive from the association for its services in the care of such fund, [out of the income of such fund,] not more than five per cent. of such income. (1887, c. 168, § 14.)

**\*§ 260o. Secretary.**

When such fund is in the care of a board of trustees, the secretary of the cemetery association shall act as secretary of such board, and shall keep a full record of their proceedings. (*Id.* § 15.)

**\*§ 260p. Trustees—Annual report.**

The trustees of such fund shall annually, on the first day of November, make a full report of the condition of such fund to the trustees of the cemetery association, and such report shall always be kept, by the secretary of such association, open to the inspection of any person owning any interest in any lot in the cemetery cared for by such fund. (*Id.* § 16.)

## TITLE 6.

### INSURANCE COMPANIES.

**\*§ 267. Object of act.**

The provisions of the act of 1872 (c. 1) supersede the insurance law of 1868, (c. 22.) *Bowlin v. Hekla Ins. Co.*, 36 Minn. 433, 31 N. W. Rep. 859.

**\*§ 274. Definitions—"Agent."**

See *Bowlin v. Hekla Ins. Co.*, 36 Minn. 433, 31 N. W. Rep. 859.

**\*§ 291. Conditions precedent to commencing business.**

Before any insurance company shall commence business in this state, the following conditions must be complied with:

*First.* It must be fully organized.

*Second.* If it be a company not of this state, a copy of its charter, duly accepted, or its declaration of organization or deed of settlement, duly approved, in section 3, and duly certified by the insurance commissioner or other proper officer of its own state or nation, with his certificate that the company is entitled to assume risks and issue policies therein, together with the stipulation respecting service of process in this state, required by section twenty-one of this title, and a statement of the place where it is located, must be filed with the insurance commissioner of this state.

*Third.* Upon complying with the foregoing conditions, and all laws of this state applicable to such companies, the insurance commissioner may issue a certificate to such company authorizing it to become, for the purpose of transacting its business, a domestic corporation within this state so long as it shall not violate the laws thereof, and until the same expires by the limitations of this act or the laws of this state. (1872, c. 1, tit. 3, § 3, as amended 1885, c. 183, § 3.)

**\*§ 292. Insurance agents—Authority—Unauthorized business—Penalty.**

No person shall act as agent in this state for any company not of this state, in any manner whatever relating to risk, until the last section has been com-

plied with on the part of the company, and he has received from the insurance commissioner an agent's certificate of authority stating that the foregoing requirements have been complied with, a record of the issuance of which certificate shall be kept in the office of the commissioner. Renewal certificates must be obtained by agents within sixty days from the first day of January in each year. Any person acting as agent of an insurance company, or doing or attempting to do business in any way relating to obtaining insurance in this state for any insurance company or companies without such agent's certificate of authority, in violation of this section, or after said certificate shall have been revoked, shall be deemed guilty of a misdemeanor, and be subject to a fine, on conviction, of not less than twenty-five, or more than one hundred, dollars for each offense, to be paid into the treasury of the county where the offense was committed. In case of the non-payment of any such fine, the court shall have power to punish the offending party by imprisonment in the county jail for a period not exceeding three months. It shall be the duty of the insurance commissioner to notify the county attorney of the proper county in writing of any offense under this section which may come to his knowledge; and it shall thereupon become the duty of such county attorney to at once cause proceedings to be instituted for the punishment thereof. All persons or agents soliciting fire or inland risks in this state shall be residents of this state; but this section shall not be construed to apply to special or general agents of insurance companies not soliciting risks. (1872, c. 1, tit. 3, § 7, as amended 1873, c. 16, § 4, and 1879, c. 54, § 1.)

**\*§ 294a. Application of \*§ 294.**

That the provisions of section two hundred and ninety-four of chapter thirty-four of the General Statutes of this state shall not apply to any conveyance heretofore made to or by, or hereafter made by, any foreign corporation, created and organized with power under its charter to acquire, hold, and convey real property in a fiduciary capacity. (1883, c. 92, § 1.\*)

**\*§ 297. Annual statement—Blanks—Publication.**

Every insurance company doing business in this state must transmit to the insurance commissioner a statement of its condition and business for the year ending on the thirty-first of December, which statement shall be rendered within thirty days thereafter, except in case of life companies, whose statements shall be rendered within forty days thereafter. Said statement must be published at least three times in a daily or weekly newspaper of general circulation, printed and published in either Hennepin or Ramsey counties in this state, and having a *bona fide* circulation of two thousand copies or more, or in the county where the state agency of such insurance company is located. Statements for publication shall be made out on blanks furnished by the insurance commissioner, and under his direction, and the insurance commissioner's certificate of authority to do business in the state shall be published in connection with the said statement of each company doing business in this state. Proof of publication, to-wit, the printer's affidavit of the fact, shall be filed with the insurance commissioner in all cases. In case such statement is not published by the company or its agent, and proof of publication filed as required, within sixty days from the date of filing the statement with the insurance commissioner, it shall be the duty of the insurance commissioner to have the same published as provided by this section, and collect the cost of said publication from the company. (1872, c. 1, tit. 3, § 12, as amended 1874, c. 25, § 1; 1881, c. 59, § 1; 1883, c. 17, § 1; 1885, c. 79.)

\*§ 2 provides that "this act shall not apply to any action or proceeding heretofore brought and now pending to determine the validity of any such conveyance."

## \*§ 298. Same—Form and contents.

The annual statements required by the last section must be in form, and state the particulars as follows:

*First.* The amount of the capital stock of the company actually paid in.

*Second.* The property or assets held by the company, specifying—

1. The value, as nearly as may be, of the real estate held by said company.
2. The amount of cash on hand and deposited in banks to the credit of the company, specifying in what banks the same are deposited.

3. The amount of cash in the hands of agents and in course of transmission.

4. The amount of loans, secured by mortgages and bonds constituting the first lien on real estate, on which there shall be less than one year's interest due or owing.

5. The amount of loans on which interest shall not have been paid within one year previous to such statement.

6. The amount due the company on which judgments have been obtained.

7. The amount of stocks of this state, of the United States, of any incorporated city of this state, and of any other bonds or stocks owned by the company, specifying the amount, number of shares, and par and market value of each kind of stock on the day of making statement.

8. The amount of stocks held thereby as collateral security for loans, with the amount loaned on each kind of stock, its par value, and market value on day of making statement.

9. Amount of interest due and accrued not paid.

*Third.* The liabilities of such company, specifying—

1. The amount of losses due and yet unpaid.
2. The amount of claims for losses resisted by the company.
3. The amount of losses incurred during the year, including those claimed and not yet due, and including the probable amount of those reported to the company upon which no action has been taken: *provided*, that all such losses incurred in the state of Minnesota shall be reported separately and apart from those incurred in any other state or country.

4. The amount of dividends declared and due, and remaining unpaid.

5. The amount of dividends, if any, declared, but not yet due.

6. The amount of money borrowed, and security, if any, given for the payment thereof.

7. All other existing claims against the company.

8. The gross amount of risks taken during the past year.

9. The amount of risks taken in the state of Minnesota during the past year.

10. The whole amount of risks outstanding.

11. The amount of outstanding risks in the state of Minnesota.

12. The whole amount of unearned premiums on outstanding risks.

13. The amount of unearned premiums on outstanding risks in the state of Minnesota.

*Fourth.* The income of the company during the preceding year, specifying—

1. The whole amount of cash premiums received.

2. The amount of premiums received on policies issued in the state of Minnesota.

3. The whole amount of interest money received.

4. The amount of interest money received on loans in the state of Minnesota.

5. The whole amount of income received from other sources.

*Fifth.* The expenditures during the preceding year, specifying—

1. The whole amount of losses paid during the past year, stating how much

of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement.

2. The amount of losses paid upon risks taken in the state of Minnesota, during the past year, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement.

3. The amount of dividends paid during the past year.

4. The whole amount of salaries paid officers and agents of the company.

5. The amount of salaries paid officers and agents employed in the state of Minnesota.

6. The whole amount of commissions and fees paid officers and agents.

7. The amount of commissions and fees paid officers and agents employed in the state of Minnesota.

8. The whole amount of all and any other expenses not herein enumerated.

9. The amount of taxes paid, specifying separately and apart the amount paid in this state.

10. The amount of fees of all and every kind paid the treasurer of the state of Minnesota, specifying date, for what purposes, and amount.

*Sixth.* The number of agents and other officers employed in the state of Minnesota.

*Seventh.* The amount of cash premiums received in such city, town, and village in the state of Minnesota, having an organized fire department therein, provided that this subdivision shall apply only to fire insurance companies. (1872, c. 1, tit. 3, § 13, as amended 1885, c. 187, § 1.)

**\*§ 298a. Municipal clerk — Certificate as to fire department.**

The recorder or clerk of any city, town, village, or other municipal corporation having an organized fire department shall, on or before the thirty-first day of October in each year, make and file with the insurance commissioner his certificate, stating the existence of such department, the number of steam, hand, or other engines, hook and ladder trucks, and hose carts in actual use, the number of organized companies, and the system of water supply in use by such department, together with such other facts as such insurance commissioner may require. (1885, c. 187, § 2.)

**\*§ 298b. Insurance commissioner—Annual statement blank —Certificate to auditor.**

The insurance commissioner shall embody in his annual statement blank a blank form, with the names of the towns thereon entitled to benefits under this act, and require the companies to report, at the time of making their annual statements, the amount of premiums received by them during the year ending December thirty-first in each and all of the several towns named in said blank, and thereafter, and before the first day of July, the insurance commissioner shall certify to the state auditor the names of the towns, cities, villages, or other municipal corporations which have organized fire departments as reported to him under section two of this act, and the amount of premiums received by said companies in each of said towns, cities, villages, or other municipal corporations, of tax paid in such year by said companies upon such premiums. (*Id.* § 3.)

**\*§ 298c. Auditor's warrant.**

The auditor, at the end of the fiscal year, [shall] issue and deliver to the treasurer of any such city, town, village, or other municipal corporation his warrant upon the treasurer of state for an amount equal to one-half of the said tax so paid by such fire insurance companies upon the premiums by them

received in any such city, town, village, or other municipal corporation, as specified in the said certificate of said insurance commissioner. (1885, c. 187, § 4.)

**\*§ 298d. Same—Payment.**

The treasurer of state is hereby authorized and directed to, and upon the presentation to him of the said warrant of said auditor he shall, pay to the treasurer of any such city, town, village, or other municipal corporation, out of the general revenue fund of this state, the amount in such warrant specified. (*Id.* § 5.)

**\*§ 298e. Disposition of fund.**

The moneys so paid to any city, town, or village, under the provisions of this act, shall be by it set aside as a special fund, and may be appropriated and disbursed in the same manner that other funds belonging to such city, town, or village are appropriated or disbursed, but only for the following purposes, viz.: *First*, for the support and relief of firemen injured or disabled while in the discharge of their duties; *second*, for the equipment and maintenance of such fire departments: *provided*, that the *pro rata* proportion of the amounts due cities of ten thousand population and upwards to be paid to the treasurers of incorporated relief associations of said cities instead of to the officers as specified in section five of said laws.\* And the money thus paid shall be expended solely for the support and the relief of sick, injured, or disabled firemen, and their widows and orphans, and not for the purpose of equipment or maintenance of any fire department whatever. And this amendment† shall in nowise interfere with the purposes of the law relating to cities, towns, and villages of a less population than ten thousand. (*Id.* § 6, as amended 1887, c. 44.)

**\*§ 298f. Municipalities entitled to benefits of act.**

No city, town, or village shall be entitled to any of the benefits arising from this act unless its fire department shall have been in actual existence for one year prior to the filing of the certificate required by section two of this act, and unless such department shall have had for such period, as a part of its equipment, at least one steam, hand, or other fire-engine, or hook and ladder truck, or hose cart. (1885, c. 187, § 7.)

**\*§ 298g. Failure to file certificate.**

If the certificate required by section two of this act is not filed with the insurance commissioner on or before October thirty-first in any year, the city, town, or village so failing to file such certificate shall be deemed to have waived and relinquished its right for such year to the appropriation herein provided for. (*Id.* § 8.)

**\*§ 299a. Inquiries to companies—Failure to answer—Penalty—Approval of policies.**

The commissioner of insurance is hereby authorized and empowered to address any inquiries to any insurance company, or the secretary thereof, in relation to its doings or condition, or any other matter connected with its transactions, and it shall be the duty of any company so addressed to promptly reply in writing to any such inquiries. Every fire insurance company organized under any law of this state, or any other state, failing to make and deposit such statements, or to reply to any inquiry of the said commissioner of insurance, shall be subject to the penalty of five hundred dollars, and an ad-

\* *Viz.*, Gen. Laws 1885, c. 187, (\*§ 298d, *supra*.)

† *Viz.*, of 1887, which adds the proviso and the following provisions.

ditional five hundred dollars for every month that such company shall continue thereafter to transact any business of insurance. Every insurance company organized without this state, and doing business herein, failing to make and deposit such statements, or who shall willfully neglect to make a full and true reply to such inquiries as may relate to its manner of doing business, or to its assets, pecuniary responsibility, or to other matters connected with or relating to its business transactions, shall be subject to like penalties and a revocation of its authority to do business in this state. The said commissioner of insurance shall have power to examine the form of policy contract proposed to be issued by any company, association, or corporation applying to be permitted to transact the business of insurance in this state, and may refuse to admit any company to this state, or to renew the annual authority of any company previously admitted, whenever the form of policy contract issued or proposed to be issued does not permit the cancellation of the same at the request of the insured, on equitable terms. (1879, c. 86, § 1.\*)

**\*§ 315. Commutation tax.**

All insurance companies organized under the laws of any other state or nation, doing business in this state, shall annually pay to the state two per cent. on all premiums received in cash and other obligations [except what are denominated insurance deposit notes, representing dividends of the company and the assessable premium notes of mutual fire insurance companies] in this state, by their agents or otherwise, during the year ending on the preceding thirty-first day of December, which sum shall be in lieu of all other taxes to be collected from said companies in this state, except upon the real or personal property owned by said companies in this state, which shall be taxed the same as like property owned by individuals, and not otherwise; and all insurance companies chartered by the territory or state of Minnesota, or organized under the general laws of the state, shall pay to the state two per cent. on their premium receipts in this state, and shall also pay taxes and assessments upon real estate owned by them within the state, in like manner and in like amount as real estate owned by individuals is taxed and assessed, and no additional taxes shall be collected of such companies other than the fees provided by law. It shall be the duty of the insurance commissioner, on the last week day of each month, to certify to the auditor of state the names of the insurance companies which have filed their annual statements with him during the current month, together with a statement of their premium receipts in this state the preceding year, and the amount of tax due thereon. The auditor shall then make his draft on the companies so certified by the insurance commissioner for two per cent. of their said premium receipts, as required by this section, and place the same in the hands of the state treasurer for collection. In case of the refusal of any insurance company to pay such tax, the insurance commissioner shall at once revoke its authority to do business in this state, and shall not renew the same while said tax remains a charge against said company. (1872, c. 1, § 28, *as amended* 1876, c. 23, § 1; 1883, c. 16, § 1.)

As to the effect of this section to take away the authority of the common council of the city of St. Paul to exact a license fee from an insurance company, see *Prince v. City of St. Paul*, 19 Minn. 267, (Gil. 226.)

**\*§ 315a. Application of act.**

This act shall not be held to apply to township mutual fire insurance companies, organized under the laws of this state, nor to mutual aid associations, benefit associations, or co-operative life insurance societies, wherever organized. (1883, c. 16, § 2.)

\*"An act regulating the cancellation of fire insurance policies." Approved March 10, 1879. Took effect from and after July 1, 1879.



**\*§ 316a. Unauthorized business—Penalty—Service of summons.**

That every insurance company that does any business in this state without having complied with the law governing insurance companies shall forfeit and pay to the state of Minnesota the sum of one thousand dollars for each and every offense, to be recovered in a civil action in the name of the state. Service of summons in any action against an insurance company not incorporated under and by virtue of the laws of this state shall, in addition to the mode now prescribed by law, be valid and legal, and of the same force and effect as personal service on a private individual, if made by delivering a copy of the summons and complaint, or the summons alone, to any person who shall solicit insurance on behalf of any such insurance corporation, or property owner, or who transmits an application for insurance or a policy of insurance to or from any such insurance corporation, or who makes any contract for insurance, or collects or receives any premium for insurance, or who adjusts or settles a loss, or pays the same for such insurance corporation, or in any manner aids or assists in doing either. (1887, c. 137, § 1.\*)

**\*§ 316b. Prosecutions by commissioner.**

That it is hereby made the duty of the commissioner of insurance to prosecute to final judgment in the name of the state, or to compromise, settle, or compound, every fine, penalty, or forfeiture incurred by an insurance corporation by its failure to comply with, or for its violation of, any law of the state, of which he may be credibly informed. (*Id.* § 2.)

**\*§ 316c. Disposition of money.**

All sums collected, paid, or received by virtue of sections one and two of this act shall be paid into the state treasury, less the costs of collection of the same. (*Id.* § 3.)

**\*§ 316d. Excess lines of insurance.**

The insurance commissioner, however, may issue to an agent who is regularly commissioned to represent one or more fire or fire and marine insurance companies, authorized to do business in this state, a certificate of authority to place excess lines of insurance in companies not admitted to do business in the state; *provided, however*, that the party desiring such excess of insurance shall first file an affidavit with the insurance commissioner, stating that he has exhausted all the insurance obtainable from authorized companies. (*Id.* § 4.)

**\*§ 316e. Agents—Reports.**

Every agent so licensed shall report under oath to the insurance commissioner, on the first day of June and December of each year, the amount of premiums obtained by him for such insurance, and pay to said commissioner a tax of five per cent. thereon; and he shall also file an approved bond with said commissioner in the sum of two thousand dollars for the faithful discharge of his duties. (*Id.* § 5.)

**\*§ 316f. Insurance against hail, etc.**

That any insurance company, chartered and doing a general fire or marine insurance business, either by virtue of any special charter of the territory or state of Minnesota, or under the general laws of such territory or state, or which may hereafter be incorporated for such purpose under the laws of said state, be, and is hereby, authorized and empowered to also insure against

\*"An act concerning insurance companies, and to authorize the commissioner of insurance to sue for and collect penalties." Approved March 7, 1887.

loss or damage by hail, tornado, cyclones, and wind-storms, and to make contracts and policies accordingly. (1885, c. 185.)\*

FIRE INSURANCE COMPANIES.

**\*§ 318. Surplus required of mutual companies.**

No mutual fire insurance company, not of this state, shall do business in this state unless it shall be possessed of at least two hundred thousand dollars of actual cash surplus over and above all liabilities, including the reinsurance reserve fund required by the laws of this state. But mutual insurance companies of other states may be admitted in case the state where such insurance companies are located admit the mutual insurance companies of this state, by complying in all respects with the conditions and obligations imposed by such states on the mutual insurance companies of this state. (1872, c. 1, *tit.* 4, § 2, *as amended* 1877, c. 45, § 1; 1881, c. 61, § 1.)

**\*§ 329. Reserve fund.**

Any fire insurance company or association already organized under the laws of this state, doing a farm business only, may continue to do such business by investing the accumulations of such company or association to the amount of thirty thousand dollars, as provided in section two hundred and eighty-nine, title six, chapter thirty-four, of the General Statutes of A. D. one thousand eight hundred and seventy-eight, which shall be held as a contingent, safety, and reserve fund for the security of the assured, and shall be in lieu of all other funds and reserves whatsoever. And for the further security of the assured, such company or association may increase its contingent, safety, and reserve fund by issuing shares of stock, constituting each shareholder a member, who shall be entitled to one vote for each share of stock held, and, when the capital and accumulations amount to one hundred thousand dollars, such company or association may insure any and all kinds of property for such time and on such conditions as it may determine. (1872, c. 1, *tit.* 4, § 13, *as amended* 1876, c. 19, § 1; 1885, c. 60.)

TOWN INSURANCE COMPANIES.

**\*§ 338. Organization and powers.**

It shall be lawful for any number of persons, not less than twenty-five, residing in adjoining towns in this state, not exceeding in number twenty-five towns, who shall collectively own property of not less than twenty-five thousand dollars, to form themselves into a company or corporation for mutual insurance against loss or damage by fire, hail, lightning, or storms, which corporation may sue and be sued, contract or be contracted with, plead or be impleaded, in any court in this state, and possess the usual powers and duties of corporations, and the corporate name thereof shall embrace the name of the town in which the business office of said corporation shall be located. The words "adjoining towns," as used in this section, shall be held to mean not only the towns immediately adjoining the town in which the business office of the corporation is located, but the towns which adjoin these also, contiguously or at their corners. (1875, c. 83, § 1, *as amended* 1877, c. 69, § 1; 1878, c. 36, § 1; 1879, c. 40, § 1, c. 26, § 1, c. 50, § 1; 1881, c. 20, § 1; 1883, c. 67, § 1.)

**\*§ 343. Loss—Proceedings.**

Every member of such company, who may sustain loss or damage by fire or lightning, shall immediately notify the president of such company, or, in case

\*"An act to authorize all insurance companies doing general fire or marine insurance business under the laws of Minnesota to insure against hail, tornado, cyclones, and wind-storms." Approved March 2, 1885.

of his absence, the secretary thereof, who shall forthwith convene the directors of such company, whose duty it shall be, when so convened, to appoint a committee of not less than three, nor more than five, members of such company, to ascertain the amount of such loss, of which committee the secretary of said company shall be *ex officio* member, and he shall have authority to administer oaths to witnesses that may be called by said committee to testify in relation to such loss; and, in case of the inability of the parties to agree upon the amount of such damage, the claimant may appeal to the judge of the district court of such county, whose duty it shall be to appoint three disinterested persons as a committee of reference, who shall have full authority to examine witnesses, and to determine all matters of dispute, who shall make their award in writing to the president, or, in his absence, to the secretary of such company, which award thereon shall be final. The said committee of reference shall each be allowed the sum of two dollars per day for each day's service so rendered, and the sum of five cents per mile for every mile necessarily traveled in the discharge of such duties, which shall be paid by the claimant, unless the award of such committee shall exceed the sum offered by the company in liquidation of such loss or damage, in which case said expenses shall be paid by the company. (1875, c. 83, § 6, *as amended* 1887, c. 79.)

**\*§ 347. Locality of insurance—Insurable property.**

No company formed under this act shall insure any property out of the limits of the town or towns in which the said company is located; nor shall they insure any property other than detached dwellings and their contents, and farm buildings and their contents, and live-stock, and hay and grain in the bin or stack; nor shall they insure any property within the limits of any incorporated city in this state, except such property as is located upon lands actually used for farming purposes. (1875, c. 83, § 10, *as amended* 1885, cc. 67, 84.)

**\*§ 349. Secretary—Annual statement.**

It shall be the duty of the secretary of every company as aforesaid to prepare a statement showing the condition of such company on the day preceding their annual meeting; which statement shall contain the amount insured, the number of policies issued, and such other matters pertaining to the interest of the company as may be deemed important, which statement shall be filed in the office of the town clerk of the town in which said company may be located on or before the fifteenth day of January in each year, and which statement shall also be read to the members of said company at their annual meeting. (1875, c. 83, § 12, *as amended* 1885, c. 45.)

**\*§ 350. Withdrawal of members—Notice.**

Any member of such company may withdraw therefrom at any time by giving notice in writing to the president, or, in his absence, to the secretary thereof, and paying his share of all claims then existing against said company; and the directors, or a majority thereof, shall have power to annul any policy by giving notice in writing to that effect to the holder thereof. And it shall also be the duty of the secretary, whenever any member of such company shall withdraw from his membership therein, to notify every other member thereof of such withdrawal, by recording the same at full length in a separate book to be kept by him in his office for that purpose, called a "withdrawal book." (1875, c. 83, § 13, *as amended* 1881, c. 29, § 1.)

**\*§ 354a. Amending articles of incorporation.**

Any insurance company heretofore or hereafter organized under chapter eighty-three of the General Laws of eighteen hundred and seventy-five, entitled "An act authorizing the formation of town insurance companies," may, at any regular annual meeting of its members, by a majority vote of

those present, amend its articles of association so as to include in its organization other adjoining towns within the county not already included therein. Companies already organized, embracing towns in two or more adjoining counties, may annex not to exceed three adjoining towns from any county adjoining the county in which the business office of the company is located. Amended articles of association must be signed, executed, approved, and filed the same as original articles. (1881, c. 117, § 1.)\*

MILLERS' AND MANUFACTURERS' INSURANCE CORPORATIONS.†

\*§ 354b. **Organization—Purposes—Powers.**

Any number of persons, not less than nine, being actual residents of this state, and engaged in the business of milling or manufacturing therein, and owning property within this state of the aggregate value of not less than one hundred thousand dollars, may, upon the terms and restrictions hereinafter contained, form themselves into a company for the purpose of insuring, upon the plan of mutual insurance, mills, manufactories, elevators, and the contents and products thereof; and the companies so formed shall possess the usual powers, and be subject to the liabilities, of corporations. (1881, c. 91, § 1.)

\*§ 354c. **Articles of incorporation—Recording.**

Such persons shall organize by adopting and signing articles of incorporation, which shall be recorded in the office of the register of deeds of the county where the principal place of business is to be, and in the office of the secretary of state, and be published as required by law in the case of other corporations. (*Id.* § 2.)

\*§ 354d. **Same—Contents.**

Such articles of incorporation shall contain—

1. The name of the corporation.
2. The general nature of the business to be transacted.
3. The principal place of business of such company.
4. The time of commencement and period of continuance of such corporation, which shall not in any case exceed fifty years.
5. The general terms and conditions of membership.
6. The names and the residence of the persons forming the corporation.
7. The designation of the officers in whom the management of the corporation shall be vested; the time and manner of electing the same; and the names of the first board of directors.

8. Such other provisions or articles not inconsistent with law as the members forming such corporation shall deem proper or necessary to define the manner in which such corporate power shall be exercised. (*Id.* § 3.)

\*§ 354e. **Application of § 4, c. 34.**

The provisions of section four of chapter thirty-four of General Statutes one thousand eight hundred and seventy-eight shall apply to and be observed by all corporations organized under this act. (*Id.* § 4.)

\*§ 354f. **Powers.**

Such corporations shall have power to make contracts of insurance on the plan of mutual insurance, in this state and elsewhere, with any person, against loss or damage by fire or lightning, on any mill; manufactory, elevator, or

\*"An act relating to town insurance companies." Approved March 3, 1881.

†"An act authorizing the formation of millers' and manufacturers' mutual insurance companies." Approved February 23, 1881.

the contents or products thereof, for such premiums or consideration, and under such regulations, as it may in its by-laws prescribe; to prescribe the manner and form of the admission of members, and their withdrawal; to make all necessary regulations concerning insurance of property, and the appraisal and payment of losses, and alter and amend the same at pleasure, subject to the restrictions hereinafter prescribed; to fix the compensation of its officers, define their duties and obligations, and to require bonds for the faithful performance of their duties; to exercise such other powers as shall be necessary to effect the objects of such corporations. (1881, c. 91, § 5.)

**\*§ 354g. Directors—Residence—Meetings.**

A majority of the members of the board of directors shall be residents of the state of Minnesota, and all meetings of such board shall be held within the state. (*Id.* § 7.)

**\*§ 354h. Prerequisites to commencing business.**

No company organized under this act shall commence business until agreements have been entered into for insurance with at least eighty applicants, the premiums on which shall amount to not less than fifty thousand dollars, of which ten thousand dollars at least shall have been paid in cash, and the notes of solvent parties founded on actual and *bona fide* applications for insurance shall have been received for the remainder. No one of the notes received as aforesaid shall amount to more than one thousand dollars, and no ten [two] notes shall be given for the same risk, or be made by the same person or firm, except when the whole amount of such notes shall not exceed one thousand dollars; nor shall any such note be represented as capital stock, unless a policy be issued upon the same within thirty days after the organization of the company, upon a risk which shall not be for a shorter period than twelve months. No note shall be accepted as part of the capital stock for the purposes of commencement of business unless accompanied by a certificate of a justice of the peace, or supervisor of the town, or one of the aldermen of the city, where the person making such note shall reside, that the person making the same is in his opinion pecuniarily good and responsible for the same, or by other evidence to the satisfaction of the insurance commissioner of the responsibility of the maker or makers thereof. (*Id.* § 8.)

**\*§ 354i. Application of general laws.**

All general laws of the state containing provisions applicable to all classes of companies, and to fire insurance companies, so far as the same relate or can apply to companies making mutual insurance, on a mutual plan, shall apply to and be observed by all companies organized under this act. (*Id.* § 9.)

**\*§ 354j. Certificate of authority—When issued.**

When any company shall be organized as herein provided, and its organization submitted to and approved by the attorney general, and shall have furnished the insurance commissioner proof of its compliance with section eight hereof, it shall be entitled to receive from said insurance commissioner a certificate that it is entitled to assume risks and issue policies in this state upon the property above specified for any term not exceeding five years, and not to extend beyond the duration of this corporation, and for an amount not to exceed ten thousand dollars in any one risk. (*Id.* § 10.)

**\*§ 354k. By-laws—Rates—Payment of premiums.**

Such company may by its by-laws prescribe the forms and conditions of the policies, and the same alter at pleasure; may fix the rates of insurance upon different classes of property so insured, and may provide for varying the same according to the exposure or risk of the several parcels of property insured; may determine the proportion of premium to be paid in advance, and to be secured

by premium notes, and vary the same as the experience of such company shall make it necessary, but shall not so reduce the advance payments as to reduce the amount of cash reserve below ten per cent. of the whole capital, nor in any event below ten thousand dollars. (*Id.* § 11.)

**\*§ 354l. Membership of insured—Premiums—Payment—Recovery—Payment of losses.**

Every person insured by such corporation shall pay, at the time of receiving his policy, such sum in money, and give his premium note for such further sum, as may be required; and every person effecting insurance in any company organized under this act, and the heirs, executors, and assigns of such person continuing to be so insured, shall thereby become members of such corporation during the period of insurance, and shall be bound to pay for losses and such necessary expenses as may accrue in the management of such company, in proportion to the amount of such premium note. The directors shall, as often as they may deem necessary after receiving notice of any loss or damage by fire and ascertaining the same, or after the rendition of any judgment against such company for loss or damage, settle and determine the sums to be paid by the several members thereof on their respective portions of such loss, and give notice thereof in such manner as the by-laws may require; and the sums so determined shall be paid to the officers of such company within thirty day after the publication or delivery of such notice. If any member shall for the space of such thirty days, after such notice, neglect or refuse to pay the sum assessed upon him as his proportion of any loss as aforesaid, or of the expenses of such company, such company may sue for and recover judgment for the whole amount of such premium note or notes, with costs of suit; but execution shall only issue for assessments and costs as they accrue. If the whole amount of premium notes shall be insufficient to pay the loss occasioned by fire or fires, in such case the sufferers insured by the said company shall receive, towards making good their respective losses, a proportional share of the whole amount of such notes, according to the sums by them respectively insured; but no member shall ever be required to pay for any loss more than the whole amount of his premium note. (*Id.* § 12.)

**\*§ 354m. Power of incurring liabilities.**

Except for the payment of losses, as provided for in policies, and with the limitations thereon hereinabove provided for, no corporation organized under this act shall incur any debt or liability whatever. (*Id.* § 13.)

**\*§ 354n. Actual and contingent funds.**

The amounts received for cash premiums and payments, together with the investments and accumulations thereof, remaining on hand at any time, shall constitute the actual funds of such corporations, the amounts due on premium notes shall constitute the contingent fund, and the aggregate of such funds the capital, of such corporations, for all the purposes for which said terms are made, as provided for in this act. (*Id.* § 14.)

**\*§ 354o. Insurance on all-cash plan.**

Whenever the capital of any company heretofore or hereafter organized, under the provisions of chapter ninety-one of the General Laws of eighteen hundred and eighty-one of the state of Minnesota, shall amount to the sum of two hundred thousand dollars, of which amount not less than forty thousand dollars shall be actual funds, as defined in said act, such company may assume risks on the all-cash plan, and issue policies against loss or damage by fire or lightning on any property, real or personal, to an amount not exceeding five per centum of its capital; and, on making to the insurance commissioner proof of such amount of capital, shall be entitled to receive from him

a certificate stating that it is entitled to assume risks and carry policies as herein provided. (1885, c. 180.)\*

CO-OPERATIVE LIFE, ENDOWMENT, AND CASUALTY INSURANCE ASSOCIATIONS.†

\*§ 369a. **Incorporation.**

Any number of persons, not less than nine, residents of the state of Minnesota, hereafter desiring to form an organization, fraternal or non-fraternal, for the purpose of transacting the business of life, casualty, or endowment, or both life, casualty, and endowment, insurance, upon the co-operative or assessment plan, may associate themselves together, and effect such organization as hereinafter prescribed, and not otherwise. (1885, c. 184, § 1.)

Applicable to associations whose attempted incorporation under prior statutes was unauthorized and ineffectual. *State v. Steele*, 34 N. W. Rep. 903. See *Id.* as to presumptions in favor of authority of directors of such associations.

As to a "mutual benefit association" held, as between its members, a corporation *de facto*, see *Foster v. Moulton*, 35 Minn. 453, 29 N. W. Rep. 155.

\*§ 369b. **Declaration—Contents—Execution.**

Such persons shall file in the office of the insurance commissioner a declaration, signed by each of the corporators, and duly acknowledged before an officer authorized under the laws of this state to take the acknowledgment of deeds, and shall therein express their intention to form an organization for the transaction of life, endowment, or casualty insurance, upon the co-operative or assessment plan, which said declaration shall also contain the proposed name of the association, corporation, or society, (which shall not be the same as, nor too closely resemble the name of, any other corporation organized under the laws of this state,) the place where the principal office for the transaction of its business shall be located, which shall be at some place within this state; the mode and manner in which the corporate powers granted by this act are to be exercised; the mode and manner of electing the trustees, directors, or representatives, or other persons, by whatsoever name or title designated, who are to have and exercise the general control and management of its affairs and all its funds; which election shall be in such manner as shall be prescribed by the by-laws of such corporation, association, or society, or, in case of fraternal societies, by representatives chosen by subordinate lodges, councils, or bodies, who shall be members of such society, and a majority of them citizens of this state. (*Id.* § 2.)

Articles signed by but two persons held not good as original articles. *State v. Critchett*, 32 N. W. Rep. 787.

\*§ 369c. **Same—Filing and recording.**

Upon the filing in the office of said commissioner of the declaration required by the next preceding section, together with the sworn statement by two of said corporators that at least fifty persons, eligible under the proposed laws of such corporation, association, or society to membership therein, have made application in writing for such membership, the same shall be referred to and examined by the attorney general of the state, and if by him found conformable to the requirements of this act, and not inconsistent with the constitution and laws of the United States, and of this state, he shall certify accordingly, and return the same with his certificate of such conformity to said commissioner; and thereupon said commissioner shall cause the said declaration, with the certificate of the attorney general, to be recorded in a book to be kept

\*"An act relating to millers' and manufacturers' mutual insurance companies." Approved February 28, 1885.

†"An act to provide for incorporation and regulation of co-operative or assessment life, endowment, and casualty insurance associations and societies." Approved March 9, 1885. Took effect on April 1, 1885.

for that purpose, and shall deliver to such corporation, association, or society a certified copy of the papers so filed and recorded in his office, and of the certificate of the said attorney general, together with the license of said commissioner to such corporation, association or society to engage in the business proposed in said declaration; and upon such certified copy and license being filed in the office of the clerk of the county where the association is to be located, the said corporators, and those that may thereafter become associated with them, or their successors, shall be constituted a body politic and corporate, and lawfully entitled to commence its business; and any copy of any paper referred to in this act, certified by said commissioner, may be used in evidence with the same effect as the original. (*Id.* § 3.)

**\*§ 369d. By-laws—Seal.**

The corporators, trustees, directors, members, or representatives, as the case may be, of any association, corporation, or society organized under this act, shall have power to make such by-laws, not inconsistent with the constitution or laws of this state or of the United States, as may be deemed necessary for the government of its officers and the conduct of its affairs, and the same, when necessary, to alter and amend; and they and their successors may have a common seal, and may change and alter the same at their pleasure. (*Id.* § 4.)

**\*§ 369e. Associations subject to act.**

Any corporation, association, or society which issues any certificate, policy, or other evidence of interest to, or makes any promise or agreement with, its members, whereby, upon the decease of a member, or the maturity of a certificate, any money or other benefit, charity, relief, or aid is to be paid, provided, or rendered by such corporation, association, or society, to the legal representatives of such member, or to the beneficiary designated by such member, which money, benefit, charity, relief, or aid are derived from voluntary donations, or from admission fees, dues, and assessments, or any of them, collected or to be collected from the members thereof, or members of a class therein, and interest and accretions thereon, or rebates from amounts payable to beneficiaries or heirs; and wherein the paying, providing, or rendering of such money or other benefit, charity, relief, or aid is conditioned upon the same being realized in the manner aforesaid; and wherein the money or other benefit, charity, relief, or aid so realized is applied to the uses and purposes of such corporation, association, or society, and the expenses of the management and prosecution of its business,—shall be deemed to be engaged in the business of life or endowment insurance upon the co-operative or assessment plan, and shall be subject only to the provisions of this act. (*Id.* § 5.)

**\*§ 369f. Same.**

Any corporation, association, or society which issues any certificate, policy, or other evidence of interest to, or makes any promise or agreement with, its members, whereby, upon the sickness or other physical disability of a member, or by reason of having attained a certain age, any money or other benefit, charity, relief, or aid is to be paid, provided, or rendered by such corporation, association, or society, to such member or beneficiary designated by him, which money, benefit, charity, relief, or aid are derived from voluntary donations or from admission fees, dues, and assessments, or any of them, collected or to be collected from the members thereof, or members of a class therein, and interest and accretions thereon; and wherein the paying, rendering, or providing of such money or other benefit, charity, relief, or aid is conditioned upon the same being realized in the manner aforesaid; and wherein the money or other benefit, charity, relief, or aid is applied to the uses and purposes of such corporation, association, or society, and the expenses of the management and prosecution of its business,—shall be deemed to be engaged in the business of



casualty insurance upon the co-operative or assessment plan, and shall be subject only to the provisions of this act. (1885, c. 184, § 6.)

**\*§ 369g. Annual reports—Contents—Deposit of securities.**

Every such corporation, association, or society doing a life, endowment, or casualty insurance business upon the co-operative or assessment plan, as herein defined, shall, on or before the first day of February of each year, make and file with the commissioner of insurance of this state a report of its affairs and its operations during the year ending on the thirty-first day of December immediately preceding. Such reports shall be upon blank forms provided by such commissioner, and shall be verified under oath by the duly-authorized officers of such corporations, associations, or societies, and shall be published, or the substance thereof, in his annual report, by such commissioner, and shall contain answers to the following questions:

*First.* Number of certificates or policies issued during the year, or members admitted.

*Second.* Amount of indemnity effected thereby.

*Third.* Number of death losses.

*Fourth.* Number of death losses paid.

*Fifth.* The amount received from each assessment in each class for the year.

*Sixth.* Total amount paid policy-holders, beneficiaries, legal representatives, or heirs.

*Seventh.* Number of death claims for which assessments have been made.

*Eighth.* Number of death claims compromised or resisted, and brief statement of reason.

*Ninth.* Does society charge annual dues?

*Tenth.* How much on each one thousand dollars annually, or *per capita*, as the case may be?

*Eleventh.* Total amount received, and the disposition thereof.

*Twelfth.* Does the society use moneys received for payment of death claims to pay expenses of society, in whole or in part? and, if so, state the amount so used.

*Thirteenth.* State total amount of salaries paid to officers.

*Fourteenth.* State total amount (including commissions) paid to agents.

*Fifteenth.* State total amount paid medical examiners and employes.

*Sixteenth.* State total expenses of management of business.

*Seventeenth.* Does society guaranty fixed amount to be paid, regardless of amount from assessments, dues, admission fees, and donations?

*Eighteenth.* If so, state amount guarantied, and the security for such guaranty.

*Nineteenth.* Has the society a reserve fund?

*Twentieth.* If so, how is it created, and for what purpose, the amount thereof, and how invested?

*Twenty-First.* Has the society more than one class or division?

*Twenty-Second.* If so, how many, and the amount of indemnity in each?

*Twenty-Third.* Number of members in each class or division.

*Twenty-Fourth.* If organized under the laws of this state, state under what law, and at what time.

*Twenty-Fifth.* If organized under the laws of any other state, state such fact, and the date of organization.

*Twenty-Sixth.* Number of policies or memberships lapsed during the year.

*Twenty-Seventh.* Number in force at beginning and end of year in each class or division, if more than one.

*Twenty-Eighth.* Aggregate maximum and minimum and average age of membership in each class or division in the society.

*Twenty-Ninth.* The assets applicable to life, endowment, or casualty insurance other than reserve fund, and how invested.

*Thirtieth.* Amount received from all sources for life, endowment, or casualty insurance, and the disposition thereof.

No deposit of securities with the commissioner shall be required from such corporation, association, or society. Any corporation, association, or society refusing or neglecting to make such report, or to make payment of any of the fees mentioned in section fifteen of this act, may, upon the suit of said commissioner, be enjoined by the district court from carrying on any business until such report and payment shall be made, and until the cost of such action be paid. (*Id.* § 7.)

**\*§ 369h. Principal office—Designation—Service of process.**

Every such corporation, association, or society doing business within this state, except such as have already made such designation, and every such association hereafter commencing business within this state, shall, before doing business therein, designate some one place within this state as the principal office in this state of such association, and some person residing in the same city, village, or town where such office is located, as a person upon whom service of legal proceedings and papers may be made, as upon such association, such designation to be made by an instrument under the hand of the president and secretary or other duly-authorized officers of such association, filed in the office of the superintendent of the insurance department of this state; and any legal process affecting such association, corporation, or society served on the commissioner of insurance of this state shall have the same effect as if personally served on the association or its authorized attorney. Whenever service of any such legal process is made on the commissioner of insurance he shall at once notify by mail the association, corporation, or society affected thereby. If the person designated as above provided shall die, or remove from such place, another person shall be appointed in his place within thirty days; and such attorney, or location of principal office, may, at the option of such association, corporation, or society, be changed at any time. Notice of any change of the office of such association, or any new or different designation of a person upon whom service may be made as above provided, shall, under the hand of such president and secretary or other officer, be filed with the commissioner aforesaid within thirty days after such change or new designation is made. Upon failure to comply with any of the provisions of this section within thirty days after written notice by said commissioner of such default, and requiring such compliance, such association shall cease to do business in this state until compliance therewith; and any officer, agent, or representative of such association who shall collect any moneys or issue any certificate carrying on said business during such failure, after the expiration of such notice, to comply with those requirements, shall be liable to punishment as hereinafter provided. (*Id.* § 8.)

**\*§ 369i. Foreign corporations—Certificate of authority—Renewal—Revocation—Investigation.**

No such corporation, association, or society, organized under the laws of any other state or territory of the United States, or the District of Columbia, or foreign countries, except such secret fraternal societies having subordinate lodges or councils as are now authorized to transact business within this state, with the consent of such commissioner, shall transact business therein until it has received from the commissioner of insurance a certificate of authority, a record of the issue of which shall be filed in the office of said commissioner. It shall be the duty of said commissioner annually to issue to such foreign corporation, association, or society renewal certificates of authority to continue its business if its annual report is satisfactory to him, which certificate shall be filed in the office of the clerk of the county where its principal office is located in this state, within sixty days after filing such annual report; and

no such foreign corporation, association, or society, excepting such secret fraternal societies having subordinate lodges or councils as are now authorized as aforesaid, shall be authorized to continue such business after the expiration of such sixty days, unless such certificate shall have been so received and filed. Whenever the insurance commissioner shall have reason to doubt the solvency of any such foreign corporation or association, he may, at the expense of such corporation or association, cause an examination of its books and papers to be made; and if, in his judgment, such examination establishes the fact that such corporation or association is not financially sound, or is conducting its business fraudulently, or if it should fail to make the statement required by this act, he may revoke the authority of such corporation or association, and prohibit it from doing business in this state, until it can again comply with the provisions of this act; and it shall be the duty of said commissioner to refuse such certificate of authority, or the renewal thereof, to any such foreign corporation, association, or society, when, by the laws of the state or territory under which the same is organized, corporations, associations, or societies of this state, doing a life, endowment, or casualty business upon the co-operative or assessment plan, are not permitted to transact such business in such other state or territory. When any other state or territory shall impose any obligation upon such corporation, association, or society of this state, or their agents transacting business in such other state or territory, the like obligations are hereby imposed on similar corporations, associations, or societies of such other state or territory, and their agents or representatives transacting business in this state; and such corporation, association, or society of such other state or territory, and their agents or representatives, shall pay all licenses, fees, or penalties to and make deposits with the state treasurer: *provided*, that nothing herein contained shall be construed to authorize any such foreign corporations, association, or society, except such fraternal secret societies having subordinate lodges or councils now authorized as aforesaid, to transact such business within this state, without obtaining the consent of such commissioner thereto, and the renewal certificate of authority aforesaid. (1885, c. 184, § 9.)

**\*§ 369j. Continuance of charter—Failure to perfect organization.**

Every charter created by or under this act for the purposes aforesaid shall continue until revoked by the judgment of a court of competent jurisdiction: *provided, always*, that charters hereafter to be filed in the insurance department shall be considered as abandoned and become inoperative and void, unless the incorporators perfect their organization thereunder, and issue certificates of membership within the period of one year from the date of filing such charter (*Id.* § 10.)

**\*§ 369k. Existing associations—Reincorporation.**

Any existing corporation, association, or society transacting business of life, endowment, or casualty insurance, upon the co-operative or assessment plan, and incorporated under the laws of this state, may reincorporate under the provisions of this act by filing with said commissioner the declaration required by the second section of this act, signed and duly acknowledged by a majority of its board of directors, trustees, or managers, and the certificate of conformity from the attorney general of the state; whereupon the said commissioner shall record and deliver to such corporation, association, or society a certified copy of such declaration, and such certificate, together with his license to transact business; and upon the same being filed in the office of the clerk of the county wherein the principal office for the transaction of its business is located, the same shall thereupon be deemed to be incorporated under the provisions of this act: *provided, always*, that nothing in this act con-

tained shall be construed as requiring or making it obligatory upon any such existing corporation, association, or society to reincorporate under the provisions of this act; and any such existing corporation, association, or society may continue to exercise all rights, powers, and privileges not inconsistent with this act, pursuant to its articles of association or incorporation, the same as if reincorporated under this act. (*Id.* § 11.)

**\*§ 369l. Inspection and visitation—Action by attorney general.**

All such corporations, associations, or societies, together with their books, papers, and vouchers, shall be subject to visitation and inspection by the commissioner of insurance or such person or persons as he may designate. If said commissioner shall be of the opinion that such corporation, association, or society shall be restrained from doing business, he shall report the same, with the facts upon which such opinion is based, to the attorney general, whose duty it shall be, if he shall be of the opinion that the facts warrant such report, to apply to the district court, at a special term thereof, within the judicial district in which the principal place of business of such corporation, association, or society within this state is located, for an order requiring the officers of such corporation, association, or society to show cause, at a reasonable time and place, within such district, why such corporation, association, or society should not be restrained from continuing to transact business, with power to the said court to adjourn the hearing thereof from time to time, not exceeding, however, sixty days in the aggregate. Such corporations, associations, or societies shall be entitled to be heard, and to a trial by jury, of the facts stated in said report, and to examine papers and witnesses under oath in the usual mode of trials of actions; and the verdict of said jury shall be conclusive upon the propriety of restraining such continuance of business upon such report and opinion, and judgment shall be entered upon such verdict in the same manner as in ordinary actions. (*Id.* § 12.)

**\*§ 369m. Insurance commissioner—Inquiries by.**

The commissioner of insurance is hereby authorized and empowered to address any inquiries to any of the corporations, associations, or societies referred to in this act, in relation to its doings or condition, or any other matter connected with its transactions relative to the business contemplated by this act; and it shall be the duty of the officers of the corporation, association, or society so addressed to promptly reply in writing to all such inquiries, under the oath of its president and secretary, or other officers, if required. (*Id.* § 13.)

**\*§ 369n. Insurance commissioner—Fees—Disposition.**

There shall be paid to the commissioner of insurance by every corporation, association, society, person, or persons, to whom this act shall apply, the following fees: For filing and recording the declaration herein required, the sum of ten dollars; for filing the annual statement, the sum of ten dollars; for each certificate of authority and certified copy thereof, the sum of one dollar; for making copy of paper filed in his office, the sum of twenty cents per folio of one hundred words, and for affixing the seal of said office to such copy and certifying the same, one dollar; for expenses of examination by the department, the commissioner shall be paid the necessary and actual outlay for railroad fare and hotel bills, not to exceed, for any organization, the sum of fifty dollars in any year. All fees collected by the commissioner shall be returned to the state by him, the same as now required by law in the case of life companies. (*Id.* § 14.)

**\*§ 369o. Annual meetings—Rights of members—Application of general laws.**

All corporations, companies, societies, organizations, or associations of this or any other state or country transacting the business of life, endowment, or casualty insurance on the co-operative or assessment plan, as referred to in the fifth and sixth sections of this act, are hereby made subject to all the provisions of this act, and all corporations, companies, societies, organizations, or associations organized and having its principal office within this state shall hold, within the county in which the principal office is located in this state, a stated annual meeting of their members or policy-holders, or representatives of local boards or subordinate bodies, in such manner and subject to such regulations, restrictions, and provisions as the constitution or by-laws of the same may provide. In cases of secret or fraternal societies having a grand or supreme body, such meeting of the grand or supreme body may be at such time and place as shall be designated by such grand or supreme body. At such meeting a full and specific report of all receipts and expenditures of the preceding year, or since the last meeting, as the case may be, shall be submitted. Notice of each such meeting shall be given in such manner as the by-laws may direct, but not less than five days before such meeting, to each director, member, and policy-holder, except that in lieu thereof such notice may be given to a subordinate body of a society having a grand or supreme body, or to a local board subordinate to the association. The books and papers of such association shall, at all reasonable times, be opened for examination by members or their representatives. All associations, societies, companies, corporations, or organizations now transacting, or hereafter desiring to transact, the business of life, endowment, or casualty insurance in this state, upon any other plan than that defined in and by sections five and six of this act, shall comply with all the provisions of the general life and health insurance laws. (1885, c. 184, § 15.)

**\*§ 369p. Notice of assessment.**

Each notice of assessment made by any corporation, association, or society transacting the business of life, endowment, or casualty insurance, upon the co-operative or assessment plan, made upon its members, or any of them, shall truly state the cause and purpose of such assessment. (*Id.* § 16.)

**\*§ 369q. Exemption from execution.**

The money or other benefit, charity, relief, or aid to be paid, provided, or rendered by any corporation, association, or society authorized to do business under this act shall be exempt from execution, and shall not be liable to be seized, taken, or appropriated by any legal or equitable process to pay any debt or liability of a member. (*Id.* § 17 )

**\*§ 369r. Officers and agents—Misconduct—Penalty.**

Any officer or agent of any corporation, association, or society, whose duty it is to make any report or perform any act as provided in this act, who shall neglect or refuse to comply with any of the provisions of this act in respect thereto, or who shall make in any report or statement aforesaid any intentionally false or fraudulent statement, and any person who shall act within this state as agent, solicitor, or collector for any such corporation, association, or society, which shall have failed, neglected, or refused to comply with or violated any of the provisions of this act, or shall have failed or neglected to procure from said commissioner the certificate of authority to transact business in this state, as required by law, shall, for such acts committed during such period of default, be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than

five hundred dollars, or by imprisonment in a county jail of not less than ten days, nor more than one year, or both such fine and imprisonment, in the discretion of the court. (*Id.* § 18.)

**\*§ 369s. Exemptions from act—Reserve fund.**

Nothing in this act contained shall be construed to require any society or any subordinate lodge or body of any secret or fraternal or industrial society now organized in this state paying only sick benefits not exceeding two hundred and fifty dollars in the aggregate to any one person in any one year, or a funeral benefit or relief to those dependent on a member, not exceeding three hundred and fifty dollars, to make any report thereof as herein contemplated; nor to require the subordinate lodges or councils or other bodies, by whatever name known, of fraternal or secret or industrial societies, to make and file reports with the commissioner of insurance, when the money, benefit, charity, relief, or aid is payable by the grand or supreme body of the same, and is derived from assessments upon such subordinates or their members; but such reports shall be made and filed by such grand or supreme body. Nor shall anything in this act prevent the creation of a reserve fund by any corporation, association, or society transacting the business of life, endowment, or casualty insurance, upon the co-operative or assessment plan, which funds or its accretions, or both, are to be used for the payment of assessments or death losses, or for benefits. Nothing in this act contained shall be construed to affect the grand or subordinate lodges of the Independent Order of Odd Fellows as they now exist, nor to any grand order [or] subordinate lodge of Free and Accepted Masons. (*Id.* § 19.)

**\*§ 369t. Agents and physicians—False representations—Penalty.**

Any solicitor, agent, or examining physician, who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining any money or benefit in any corporation, association, or society transacting the business of life, endowment, or casualty insurance upon the co-operative or assessment plan in this state, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section nineteen of this act. (*Id.* § 20.)

**\*§ 369u. Stated meetings—Quorum—Failure to elect officers—By-laws.**

At the stated meeting for the election of officers, trustees, directors, or managers, a majority of the persons entitled to vote at such meeting shall not be necessary to a quorum; nor shall failure to elect on the day designated for such meeting dissolve any corporation under this act; but it shall be lawful to hold such election on a subsequent day on the same notice as required for the stated meeting. No newspaper publication of a by-law regulating any election shall be necessary to its validity. (*Id.* § 21.)

MARINE INSURANCE COMPANIES.

**\*§ 372. Foreign companies—Deposit required.**

No foreign marine insurance company shall do business in this state unless it has on deposit with the commissioner of this state the sum of two hundred thousand dollars, invested and valued as prescribed in section four of title three, or unless it has complied with the next section. (1872, c. 1, tit. 6, § 3, as amended 1881, c. 8, § 1.)

## INSURANCE COMPANIES OTHER THAN LIFE, FIRE, AND MARINE.

**\*§ 374<sup>1</sup>. Authority to transact business.**

That no company or association formed under the laws of this state, or any other state or foreign government, shall directly or indirectly transact the business of insurance in this state other than that provided for by law in the departments of life, fire, and marine insurance, without receiving a certificate of authority from the commissioner of insurance. (1881, c. 123, 1.)\*

**\*§ 374<sup>2</sup>. Minimum paid-up capital—Deposit of securities.**

No such company or association shall be authorized by the commissioner of insurance to transact business herein unless possessed of an actual paid-up capital of at least one hundred thousand dollars, and a deposit of at least one hundred thousand dollars with the state treasurer of the state or with the chief financial officer or commissioner of insurance of the state where such company or association is organized, duly assigned to such officer in trust for the benefit of all policy-holders. Said deposit shall consist of bonds or stocks of the United States or of the state where such company or association is organized, or of bonds and mortgages on improved, unincumbered real estate worth double the sum loaned thereon. The market value of said deposited securities shall at all times be equal to one hundred thousand dollars. No deposit in this state shall be required under this act of any foreign insurance company other than life, fire, and marine, which files with the insurance commissioner proper evidence that it has not less than one hundred thousand dollars deposited with the proper officer of some other state of the United States for the benefit of all its policy-holders in the United States. (1881, c. 123, § 2, *as amended* 1883, c. 18, § 1.)

**\*§ 374<sup>3</sup>. Application of general laws—Computation of reserve fund—Revocation of authority.**

Such companies or associations shall be required to comply with the laws of this state regulating the business of life insurance in respect to the appointment of an attorney to receive process, making annual statements of financial condition, the payment of taxes, and with all the other requirements as far as applicable. The commissioner of insurance shall compute the reserve fund to be held by such companies or associations by taking fifty per centum of the premiums received upon all risks not expired at the time of making such computation. Whenever the capital of any company or association authorized under this act shall become impaired to the extent of fifteen per cent., or shall otherwise become unsafe, it shall be the duty of the commissioner of insurance to cancel the authority of such company or association. (1881, c. 123, § 3.)

**\*§ 374<sup>4</sup>. "Company," etc., defined.**

The words "company" or "association," as used in this act, shall be construed to mean any company, association, corporation, partnerships, individual or association of individuals, doing or attempting to do business herein under any charter, compact, or agreement, or statute of this state, or any other state, involving a guaranty, contract, or pledge of insurance other than life, fire, or marine underwriting. (*Id.* § 4.)

**\*§ 374<sup>5</sup>. Agents—License.**

It shall not be lawful for any person to act within this state, as agent or otherwise, in receiving or procuring applications, or in any manner, directly

\*"An act to authorize and regulate within this state the business of insurance other than life, fire, and marine." Approved March 5, 1881.

or indirectly, to aid in transacting the business of insurance permitted by this act, without procuring from the commissioner of insurance a certificate of authority. Such authority shall designate the name of the person authorized, and the name of the company or association for which he is to act as agent, and the special kind of insurance to be solicited. (*Id.* § 5.)

**\*§ 374<sup>6</sup>. Violation of act—Penalty—Prosecutions—Duty of county attorney.**

Every violation of any of the provisions of this act shall subject the party violating to a penalty of two hundred and fifty dollars for each violation, which shall be sued for and recovered in the name of the state of Minnesota by the county attorney of the county in which the party violating shall reside, upon complaint of any individual, and the penalty, when recovered, shall be paid into the treasury of such county. In case of non-payment of such penalty, the party so offending shall be liable to imprisonment for a period not exceeding six months, in the discretion of any court having cognizance hereof. It shall be the duty of the commissioner of insurance to notify the county attorney of the proper county in writing of any offense under this act which may come to his knowledge; and it shall thereupon become the duty of such county attorney to at once cause proceedings to be taken for the punishment thereof. In case any county attorney shall willfully neglect or refuse to perform his duty under the provisions of this act, he shall be liable to a penalty of one hundred dollars for each and every offense; and the governor may, in case of any such neglect or refusal, appoint some other person or persons to perform the duties prescribed by this act, who shall, upon being so appointed, have like powers and duties under this act as county attorney. And in case of such appointment of any person in place of the county attorney to prosecute for violation of this act in any county, the county commissioners shall allow and pay to such prosecuting attorney a reasonable compensation for all services performed by him as such prosecutor. (*Id.* § 6.)

**\*§ 374<sup>7</sup>. Application of act.**

This act shall not be held to apply to hail, wind, or live-stock insurance companies, now or hereafter organized under the laws of this state, nor to mutual aid associations, benefit societies, or co-operative life insurance societies, wherever organized. (1881, c. 123, § 7, *as amended* 1881, *Ex. Sess.* c. 22, § 1.)

REAL-ESTATE TITLE INSURANCE COMPANIES.

**\*§ 374<sup>8</sup>. Incorporation—Powers.**

Any ten or more persons may associate themselves together in the manner prescribed by title two of chapter thirty-four of "General Statutes one thousand eight hundred and seventy-eight," with a capital of not less than five hundred thousand dollars, nor more than one million dollars, for the purpose of examining titles to real estate, and of guarantying or insuring owners of real estate and others interested therein, or having liens or incumbrances thereon, against loss by reason of defective titles, incumbrances, or otherwise; and corporations so established shall have the same powers and privileges, and be subject to the same duties, liabilities, and restrictions, as other corporations established under the said title, save that the liability of said corporations upon policies of insurance shall not be construed as constituting part of the liability thereof within the meaning of said act; nor shall such corporations be subject to the laws specially relating to insurance corporations, except as heretofore provided. (1887, c. 135, § 1.\*)

\*"An act regulating and confirming the formation of real-estate title insurance companies." Approved February 28, 1887.



**\*§ 374<sup>9</sup>. Guaranty fund.**

Every such corporation shall set apart a sum not less than two-fifths of the amount of its capital stock, but in no case less than two hundred thousand dollars, as a guaranty fund, and shall invest the same in the kinds of securities prescribed by section three of chapter three of the General Laws of Minnesota for one thousand eight hundred and eighty-five; and no corporation shall issue any guaranty or policy of insurance until such sum has been so set apart and invested. Such guaranty fund shall be kept and applied for the security and payment of losses and expenses which may be incurred by reason of the guaranty or insurance made as aforesaid, and shall not be subject to other liabilities of the corporation so long as any such guaranty or insurance is outstanding. In case an increase in the amount of its capital stock shall be made by any such corporation, two-fifths of such increase of the capital stock shall be set apart and added to the guaranty fund thereof, and kept and invested as aforesaid. Whenever, on account of loss or otherwise, the amount of the guaranty fund of such corporation shall fall below such sum as is so required to be set apart and invested by this act, no further guaranty or insurance shall be issued until the deficiency below the amount so required has been supplied. (1887, c. 135, § 2.)

**\*§ 374<sup>10</sup>. Annual statement — Insurance commissioner — Powers.**

Every such corporation shall on or before the first day of March in each year, file in the office of the insurance commissioner a statement of the amount of its policies outstanding on the preceding thirty-first day of December, made out in such form as said insurance commissioner shall direct, and which statement shall also specify the amount and kinds of securities and investments held by said corporation. Such statement shall be signed and sworn to by the president, vice-president, or treasurer, and by one director, of such corporation, and such corporations shall be taxed in like manner as domestic insurance companies are. The insurance commissioner shall have the same power and authority to visit and examine all corporations established hereunder, and to compel a compliance with the provisions of law governing them, as he may by law exercise in relation to domestic insurance companies. (*Id.* § 3.)

**\*§ 374<sup>11</sup>. Filing certificate of organization — Certificate of authority.**

No corporation which shall be organized under this act shall make any contract or issue any policy of guaranty or insurance until it has filed with the insurance commissioner a copy of the record of its certificate of organization in the office of the secretary of state, and obtained from the insurance commissioner his certificate that it has complied with the laws applicable to it, and is duly authorized to do business. (*Id.* § 4.)

**\*§ 374<sup>12</sup>. Existing corporations legalized.**

Any corporation heretofore organized under the laws of this state, for the purpose among others of carrying on, and which has begun, or actually has entered upon the preparation for, the business of real-estate title insurance, and has heretofore filed its articles of incorporation in the office of the secretary of state of Minnesota, is hereby in all respects legalized and confirmed, and shall be entitled to all the privileges and franchises in this act provided; and may complete the guaranty investment hereinbefore provided for within six months after the passage of this act, without prejudice to the right to do business meanwhile. (*Id.* § 5, as amended 1887, c. 55.)

## HAIL, TORNADO, CYCLONE, AND HURRICANE INSURANCE COMPANIES.

**\*§ 374<sup>13</sup>. Formation.**

Any number of persons, not less than twenty-five, residing in this state, who shall collectively own real estate herein of not less than twenty-five thousand dollars in value, may associate themselves and become incorporated for the purpose of mutual insurance against loss or damage by hail, tornadoes, cyclones, and hurricanes, by complying with the provisions of this act. (1885, c. 186, § 1.\*)

**\*§ 374<sup>14</sup>. Articles of incorporation—Contents.**

They shall organize by adopting and signing articles of incorporation, which shall contain—

*First.* The name of the corporation, which shall not be the same as that previously assumed by any other corporation in the state.

*Second.* The general nature of its business, and the place of the principal office or head-quarters.

*Third.* The names and residence, and the value of the real estate owned by the persons respectively so associating to form such corporation.

*Fourth.* The time of the commencement and the period of the duration of such corporation.

*Fifth.* The number, names, and places of residence of the directors, and of the president, secretary, and treasurer, of such corporation, for the first year of its existence, and the time and place of the election of their successors. (*Id.* § 2.)

**\*§ 374<sup>15</sup>. Same—Execution and filing.**

Such articles shall be acknowledged by the persons signing the same in the manner by law provided for the acknowledgment of deeds, and shall be filed for record in the office of the secretary of state. (*Id.* § 3.)

**\*§ 374<sup>16</sup>. Same—Approval—Certificate of authority.**

The secretary of state shall, before recording such articles, submit the same to the attorney general, who shall examine said articles, and if he find the same to have been executed in conformity to law, he shall indorse the word "approved" thereon; and date, sign, and return the same to the secretary of state, who shall thereupon record the same in the records in his office, and shall issue under his hand and official seal and deliver to the said corporation his certificate to the effect that such corporation has been duly incorporated under the provisions of this act, and is authorized to transact business from and after the date thereof. Such certificate shall be recorded in the office of the register of deeds of the county wherein such corporation shall have its principal office, and said certificate and records, and any certified copies of such records, shall be received in all of the courts of this state as *prima facie* evidence that such corporation has been duly organized and created under the laws of the state of Minnesota. (*Id.* § 4.)

**\*§ 374<sup>17</sup>. Certificate—Effect—Powers of corporation.**

Upon the issuance of such certificate, the persons therein named shall be and become a corporation, and authorized to transact the business of mutual insurance against loss or damage to property by hail, tornadoes, cyclones, and hurricanes, in such manner and upon such terms as in and by its by-laws may be provided. It shall have perpetual succession, sue and be sued, contract

\* "An act authorizing the formation of companies for mutual insurance against loss and damage by hail, tornadoes, cyclones, and hurricanes." Approved March 2, 1885.

and be contracted with, implead and be impleaded, by its corporate name in any of the courts of this state, and shall possess the usual powers and be subject to the usual duties of corporations. (1885, c. 186, § 5.)

**\*§ 374<sup>18</sup>. Directors—Term of office—Officers.**

The general management of the business of said corporation shall be vested in directors, each of whom shall, during his term of office, be a policy-holder in said corporation. Such directors shall be elected annually, and shall hold their offices for one year, and until their successors are elected and qualified. The directors shall choose from their own number a president, secretary, and treasurer, whose respective terms of office shall be one year, and whose duties and compensation shall be such as may be in the by-laws of the corporation provided. (*Id.* § 6.)

**\*§ 374<sup>19</sup>. By-laws.**

Such corporation, before commencing its business, shall prepare and adopt by-laws which shall describe the duties of its officers, the manner, place, and time of electing them, the directors, the scheme and manner of transacting its business, and such other rules and regulations as may be deemed essential for the government of the corporation and the management of its affairs. Such by-laws shall not be amended, changed, suspended, or repealed except in the manner therein set forth, and a copy of the same, and of any subsequent amendments thereto, or changes therein, shall be by the secretary forthwith filed with the commissioner of insurance, who shall safely keep the same in his office. (*Id.* § 7.)

**\*§ 374<sup>20</sup>. Policies.**

Such corporation is authorized to issue policies of insurance, signed by its president and secretary, agreeing to pay to the person assured thereby all loss and damage to the property insured, which he may sustain by hail, tornadoes, cyclones, and hurricanes for a period of not more than five years, and not exceeding in amount the sum specified in such policy. (*Id.* § 8.)

**\*§ 374<sup>21</sup>. Policy-holders—Rights and liabilities.**

Every holder of a policy of such insurance shall be a member of the corporation. He shall have the right to participate in the election of directors, and shall be eligible to election to any office in such corporation. He shall be liable to the corporation for his *pro rata* share of all losses and damages by hail, tornadoes, cyclones, and hurricanes sustained by any other member, and also for his *pro rata* share of the expenses of the management of the business of such corporation; and shall also be bound and subject to the by-laws thereof. (*Id.* § 9.)

**\*§ 374<sup>22</sup>. By-laws—Insurance regulations.**

The corporation shall, in and by its by-laws, provide for the manner in which such insurance shall be effected, and the terms and conditions thereof; the time and manner in which losses by it sustained under its policies of insurance shall be determined, proved, adjusted, and paid; the time and manner in which assessments shall be made upon its members for their respective *pro rata* share of such losses, and the time, manner, and place in which and the person to whom such assessments shall be paid. It shall also, in and by its by-laws, provide such other regulations, terms, and conditions as it may be necessary for effectively and fully carrying out its scheme of insurance, and the said by-laws in force at the time of the date of any policy of insurance, insured by the corporation, shall have the force and effect of law in the determination of all questions and claims arising under such policy between the holder thereof and the said corporation. (*Id.* § 10.)

**\*§ 374<sup>23</sup>. Withdrawal and suspension of members.**

The said corporation shall also, in and by its by-laws, provide the manner, terms, and conditions upon which any member thereof may withdraw or be suspended or expelled therefrom. (*Id.* § 11.)

**\*§ 374<sup>24</sup>. Annual statement.**

The secretary of the corporation shall prepare and submit to the members thereof, at each annual meeting, a detailed statement of the condition of such corporation, and its transactions for the preceding year, showing the date and number of policies issued, to whom the same were issued, and the amounts respectively insured thereby; the number of assessments made during the year, and the amount actually paid in upon each assessment respectively; the losses sustained during the year, and whether the same have been paid or adjusted, or remain unpaid or unadjusted, or are disputed; the number of members of the corporation, the number of new members received during such year, their names, and residence of members who have withdrawn or been suspended or expelled from the corporation during the year; the policies and respective numbers thereof which have been canceled during the year, and an itemized statement of the expenses of such corporation during the year; and of the amount and condition of its funds, and such other matters as may be of interest to the members. A copy of such annual statement shall, within thirty days after such meeting, be filed with and preserved by the insurance commissioner. (*Id.* § 12.)

**\*§ 374<sup>25</sup>. Duration of corporation.**

No corporation formed under this act shall continue for a longer period than thirty years. (*Id.* § 13.)

**\*§ 374<sup>26</sup>. Insurable property.**

No corporation formed under this act shall insure any property outside of the state of Minnesota, nor any property other than detached dwellings and farm buildings, and their contents, and live-stock while on the premises or running at large, and hay, grain, and other farm products while growing or while in the shock, stack, bin, crib, or granary upon such premises; nor shall it insure any property whatever in any incorporated city or village. (*Id.* § 14.)

**\*§ 374<sup>27</sup>. Members—Right of inspection.**

All the books, papers, and files of any such corporation shall at all times be open to the examination of any member thereof, or his agent or attorney; and any such member, agent, or attorney shall at all times have the right to make such copies of such books, papers, and files as he may wish to have. (*Id.* § 15.)

**\*§ 374<sup>28</sup>. Articles—Amendment.**

The articles of association may be amended in any respect which might have been lawfully made a part of such original articles at any annual meeting of the members of the corporation, upon a vote of two-thirds of the members present at such meeting. (*Id.* § 16.)

## TITLE 8.

## GENERAL PROVISIONS.

**§ 404. (Sec. 155.) General powers—Meetings without state—Officers—Classification of directors.**

All corporations, when no other provision is specially made, may have a common seal, which they may alter at pleasure. They may elect all neces-

sary officers, fix their compensation, and define their duties and obligations; and make by-laws and regulations consistent with the laws of the state, for their own government, and for the due and orderly conduct of their affairs, and the management of their property. The members of any corporation now or hereafter organized under the provisions of this chapter, and the directors and managers thereof, may meet and transact business without the state the same as within the state; but no corporation or association created or existing, or which shall exist, under this act, shall cease or expire from neglect on the part of the corporation to elect directors or officers at the time mentioned in their by-laws; and all officers elected by such corporation or association shall hold their offices until their successors are duly elected. Any corporation in this state, whether created by special act, or organized under any general or special law of the territory or state of Minnesota, or doing business within this state by virtue of or under any legislative enactment of said territory or state, may, by resolution of its board of directors, classify its directors into three classes, each of which shall be composed as nearly as may be of one-third of the whole number of directors; the term of office of the first class to expire at the date of the next annual election thereafter; of the second class, at the date of the second annual election thereafter; of the third class, at the date of the third annual election thereafter. At each annual election thereafter a number of directors shall be elected for three years, equal to the number whose term of office shall then expire. All other vacancies shall be filled in accordance with the by-laws: *provided*, that if no election be had at the time of holding the annual election, the old directors shall hold their offices until their successors are elected and enter upon their duties. (*As amended* 1870, c. 26, § 2; 1881, c. 15, § 1.)

**§ 411. (Sec. 162.) Power to convey land.**

Under this section every corporation may convey lands to which it has a legal title, without restriction as to the mode in which the power shall be exercised. *Morris v. Keil*, 20 Minn. 531, (Gil. 474.)

**§ 412. (Sec. 163.) Shares not to be issued for less than par.**

Corporations having capital stock divided into shares, unless specially authorized, shall not issue any shares for a less amount to be actually paid in on each share than the par value of the shares first issued: *provided*, that railroad and navigation and manufacturing corporations, and corporations for buying, holding, improving, selling, and dealing in lands, tenements, hereditaments, real, mixed, and personal estate and property, created or organized under this chapter, or under any charter or special act of incorporation heretofore passed, shall have power to create, issue, and dispose of such an amount of special, preferred or full-paid stock of the capital stock of such corporation as may be deemed advisable by the board of directors of such corporation. (*As amended* 1867, c. 18, § 2; 1887, c. 49.)

**§ 415. (Sec. 166.) Dissolution—Banks.**

When a majority in number or interest of the members of a corporation desire to close their concerns, they may apply by petition to the district court of the county where the corporation has its principal place of business, setting forth in substance the grounds of their application; and the court, after such notice as it deems proper to all parties interested, may proceed to hear the matter, and, for reasonable cause, adjudge a dissolution of the corporation. Corporations so dissolved shall be deemed and held extinct, in all respects, as if their charters had expired by their own limitation: *provided*, that, in case of the dissolution under this section of any bank incorporated under the laws of this state, a duly-certified copy of the order of the court adjudging such dissolution shall be at once transmitted by said court to the state auditor or

other officer having power to authorize the existence of banks, and such copy of such order shall be duly filed in the office of such state officer. (*As amended* 1887, c. 70.)

**§ 416. (Sec. 167.) Continuance for three years.**

Exemption from taxation during the three years, of lands acquired under the land-grant act of 1857. *Minnesota Cent. Ry. Co. v. Donaldson*, 35 N. W. Rep. 725.

**\*§ 421a. Foreign corporations—Power to hold lands, etc.**

Any foreign corporation, which now is or hereafter may be created, in whole or in part, for the buying or selling of or dealing in lands in this state, or in the promotion of immigration to, or the settlement or occupation of, any lands in this state, may loan its funds to persons, whether its members or not, and take and enforce securities therefor, and may acquire, take, hold, convey, use, or occupy real, personal, or mixed property of every name and nature, within this state, and make contracts and transact all lawful business consistent with the objects and purposes of said corporation; and said corporation shall in all respects be subject to the laws of this state, and in all suits or proceedings by or against said corporation it shall be deemed for all purposes a domestic corporation: *provided*, that no such corporation shall acquire or hold at any one time more than one hundred thousand acres of land in this state, and that all lands acquired by it shall be sold within twenty-one years after their acquisition, except such lands as may be acquired by it under mortgage foreclosure, or forfeiture of contracts for the sale thereof, which shall be disposed of by it within fifteen years after such acquisition or forfeiture: *and provided, further*, said corporation shall appoint an agent or attorney residing within this state, upon whom all process may be served, which appointment shall be filed in the office of the secretary of state. (1881, c. 125, § 1.\*)

[See *post*, c. 75, \*§ 41a *et seq.*]

**\*§ 421b. Foreign corporations—Application for removal of cause—Penalty.**

Where, by the General or Special Laws of this state, relating or in any way appertaining to any foreign corporation, it is provided in substance or effect that in suits and proceedings upon causes of action arising in this state, in which such corporation shall be a party, such corporation shall be deemed to be a domestic corporation, it is hereby provided that, if such corporation shall make application to remove any such suit or proceeding into the United States circuit or district or federal court, it shall be liable to a penalty of not less than one hundred dollars, nor more than ten thousand dollars, for each application so made and for each offense so committed for making such application, the same to be recovered by suit in the name of the state of Minnesota. The county attorney of the proper county may, and the attorney general, upon any complaint being made to him, shall, institute the necessary action to recover such penalty. (1885, c. 183, § 1.†)

As to the constitutionality of this statute, see *Chicago, M. & St. P. Ry. Co. v. Becker*, 32 Fed. Rep. 849.

The statute does not affect the right of the corporation to maintain an action in the state court which it commenced after having discontinued an action in the federal court. *Northwestern Mut. Life Ins. Co. v. Brown*, 36 Minn. 108, 31 N. W. Rep. 54.

**\*§ 421c. Same.**

In addition to the penalty above prescribed, such corporation shall forfeit all right to transact business within this state, and shall be liable to a penalty of not less than one thousand dollars, nor more than ten thousand dollars,

\*"An act relating to foreign corporations." Approved March 4, 1881.

†"An act relating to foreign corporations doing business in this state." Approved March 9, 1885.

per day for each and every day that it shall do business within this state after such forfeiture, which penalty shall be collected in the manner provided for in the above and preceding section. (1885, c. 183, § 2.)

[§ 3 amends \*§ 291, subsec. 3, *ante.*]

**\*§ 421d. Same—Insurance company—Revocation of certificate.**

If any insurance company or association shall make application to remove any case from the state court into the United States district, circuit, or federal court, or do any act or thing not authorized by law, all right of such company or association to transact any business whatever in this state shall cease, and it shall be the duty of the insurance commissioner, if the certificate mentioned in section three of this act has been issued to such company or association, to revoke the same. (*Id.* § 4.)

**\*§ 421e. Same—Penalty.**

If any insurance company or association shall make application to remove any case from the state court into the United States circuit or district or federal court, for each such application it shall be liable to the penalty provided for in section one of this act, to be collected as therein provided for; and if such company or association shall, when not duly authorized, do or transact any business within this state, it shall forfeit and be liable to the penalty provided for in section two of this act, to be collected as therein provided. (*Id.* § 5.)

**\*§ 421f. Foreign corporation—Rights and liabilities.**

No foreign corporations now or hereafter doing business in this state shall have, possess, or exercise any right, privileges, or immunities not possessed by domestic corporations; but, unless otherwise provided by law, shall in all respects be deemed, if it shall remain in [this] state for sixty days next ensuing after the passage of this act, to be a domestic corporation, and entitled to all the rights, privileges, and immunities of domestic corporations, subject to all laws of this state which are now in force or may be hereafter enacted. (*Id.* § 6.)

**\*§ 421g. Same—Federal courts—Action in—Penalty.**

No foreign corporation shall commence, prosecute, or maintain any action, suit, or proceeding upon any cause of action arising within this state in the United States circuit, district, or federal court, nor make application to remove any such a claim, suit, or proceeding into any federal court, nor do any other act not permitted to a domestic corporation. Any corporation that shall violate any of the provisions of this section shall forfeit and be liable to the penalty provided in section one of this act, to be collected as therein provided for; and if any such corporation shall thereafter transact any business within this state it shall forfeit and be liable to the penalty [provided] in section two of this act, to be recovered as herein provided. (*Id.* § 7.)

**\*§ 421h. Removal of cause—Forfeiture.**

Whenever any foreign corporation doing business in this state shall transfer any case from a state to a federal court, contrary to the provisions of this act, it shall thereby forfeit any permission or license, express or implied, heretofore granted, obtained, or enjoyed, or hereafter to be granted, obtained, or enjoyed, to do business in this state; and it shall thereafter be unlawful for any such company to do any business whatever in this state; and all rights, privileges, immunities, or franchises heretofore granted to or enjoyed by, or which shall hereafter be granted to or enjoyed by, any such company, shall thereupon and thereby be and stand revoked, denied, and withdrawn. Every contract made by any such company, after its right

to do business in this state shall have terminated as herein provided, shall be null and void: *provided, however*, that such contract may be enforced by and in favor of any person who entered into said contract in good faith, and without notice that said company's right to do business in this state had ceased. It shall be unlawful for any such railway company, after having taken a transfer of any case whereby, under the provisions of this act, its right to do business in this state shall have terminated, to run any locomotive, car, or train of cars on any railway in this state, and it shall be liable for all damages done by it in the performance of said unlawful act to any person or property. (*Id.* § 8.)

**\*§ 421i. Same—Certified copy of papers—Filing.**

Whenever any case shall be transferred by any foreign incorporation, the clerk of the court from which the transfer is taken shall immediately make a certified copy of the pleadings therein, and of the petition for removal, and of the order of removal, if any, and a certificate of the date of the filing of the petition, and of the date of the order of removal, if any, and transmit the same to the railroad commissioner of this state, if the removal is taken by a railway or telegraph company, and to the commissioner of insurance, if the removal is taken by an insurance company, and to the secretary of the state, if the removal is taken by any other company. Said officer shall preserve said papers in a convenient form for reference. (*Id.* § 9.)

**\*§ 421j. Limitation of act.**

Nothing in this act shall be construed to deny to any foreign corporation any right of removal, or lay any penalty upon any removal taken by it which it might have taken had it been a domestic corporation. (*Id.* § 10.)

**\*§ 421k. Amendment of articles—Extension of term.**

Any corporation heretofore or hereafter organized under any law of this state may amend its articles of incorporation in any respect which might have been made part of said original articles, and may renew the term of its corporate existence from time to time, not exceeding the term originally limited therefor, by adopting a resolution expressing such proposed amendment or renewal, by a two-thirds vote of all its members, shareholders, or stockholders, present and voting at any regular meeting of such corporation, and filing and publishing such resolution in the manner provided for filing and publishing its original articles. (1885, c. 155.\*)

**\*§ 421l. Certain corporations and corporate acts legalized.**

That in any case where there has been heretofore an attempted formation and organization or renewal of any corporation under any of the general laws of this state, and the persons so attempting to form or organize or renew any corporation have actually adopted, signed, and filed in the office of the secretary of state articles of association in which the business specified to be carried on by them as such corporation was such as might lawfully be carried on under said laws, and have in fact proceeded as such corporation, under the corporate name assumed by them, to transact and carry on such business, and in the pursuit thereof have in good faith received and transferred by conveyance to or from such body corporate in such corporate name any property, real or personal, such attempted formation and organization or renewal in each and every such case is hereby legalized and declared a valid and effectual formation and organization or renewal of a corporation under the names assumed from and after the time of the actual filing, as aforesaid, of such articles, notwithstanding the omission of any other matter or thing by law pre-

“An act to provide for the extension of the term of corporations.” Approved March 7, 1885.



scribed to be done or observed in the formation, organization, or renewal thereof; and any and all conveyances of property, real or personal, in good faith and lawful form, made to or by any such body in the corporate name so assumed, are hereby legalized and declared as valid and effectual, for the purposes intended thereby, as if such body corporate had been originally, in all things, duly and legally incorporated: *provided*, that no such corporation, nor any of the acts or doings thereof, shall be or are hereby validated unless such so-called corporation has filed in the office of the secretary of state, and also in the office of the register of deeds of the county in which is the principal place of business of said corporation, its articles of incorporation. (1881, *Ex. Sess. c. 62.\**)

**\*§ 421m. Same.**

That in case where there has been heretofore an attempted formation and organization or renewal of any corporation under any of the general laws of this state, and the persons so attempting to form or organize or renew any corporation have actually adopted, signed, and filed, in the office of the secretary of state, articles of association, in which the business specified to be carried on by them as such corporation was such as might lawfully be carried on under said laws, and have in fact proceeded as such corporation, under the corporate name assumed by them, to transact and carry on such business, and in the pursuit thereof have in good faith received and transferred by conveyance, to or from such body corporate, in such corporate name, any property, real or personal, such attempted formation and organization or renewal, in each and every such case, is hereby legalized and declared a valid and effectual formation and organization or renewal of a corporation under the names assumed, from and after the time of the actual filing, as aforesaid, of such articles, notwithstanding the omission of any other matter or thing by law prescribed to be done or observed in the formation, organization, or renewal thereof; and any and all conveyances of property, real or personal, in good faith and lawful form, made to or by any such body in the corporate name so assumed, are hereby legalized and declared as valid and effectual for the purposes intended thereby, as if such body corporate had been originally, in all things, duly and legally incorporated: *provided*, that no such corporation, nor any of the acts or doings thereof, shall be or are hereby validated, unless such so-called corporation has filed in the office of the secretary of state, and also in the office of the register of deeds of the county in which is the principal place of business of said corporation: *and provided, further*, nothing in this act shall be construed to discharge any liability of any person upon any contract of said corporation heretofore made in its articles of incorporation. (1885, c. 156.†)

**\*§ 421n. Same.**

That in any case where there has been heretofore an attempted formation and organization or renewal of any corporation, under any of the general laws of this state, and the persons so attempting to form or organize or renew any corporation have actually adopted, signed, and filed in the office of the secretary of state articles of association, in which the business specified to be carried on by them as such corporation was such as might be lawfully carried on under said laws, and have in fact proceeded as such corporation, under the corporate name assumed by them, to transact and carry on such business, and in the pursuit thereof have in good faith received and transferred by conveyance to or from such body corporate, in such corporate name, any property, real or personal, such attempted formation and organization or

\*"An act to cure defective organizations of corporations and for the protection of rights acquired thereunder." Approved November 18, 1881.

† Title same as to section preceding. Approved March 9, 1885.

renewal in each and every such case is hereby legalized and declared a valid and effectual formation and organization or renewal of such corporation under the name assumed, from and after the time of the actual filing as aforesaid of such articles, notwithstanding the omission of any other matter or thing by law prescribed to be done or observed in the formation, organization, or renewal thereof. And any and all conveyances of property, real or personal, in good faith and lawful form made to or by any such body, under the corporate name so assumed, are hereby legalized and declared as valid and effectual for the purpose intended thereby, as if such body corporate had been originally in all things duly and legally incorporated. *provided*, that no such corporation, nor any of the acts or doings thereof, shall be or are hereby validated, unless such so-called corporation has filed in the office of the secretary of state, and also in the office of the register of deeds of the county in which is the principal place of business of said corporation, its articles of incorporation. (1887, c. 132.\*)

## TITLE 9.

## MASONIC BODIES.

**\*§ 422. Incorporation.**

That any subordinate lodge of Free and Accepted Masons, or commandery of Knights Templar, instituted under the authority of the grand lodge of Free and Accepted Masons, or of the grand chapter of Royal Arch Masons, or grand commandery of Knights Templar of the state of Minnesota, or of the grand lodge, grand chapter or grand commandery of the United States, may become incorporated in the manner provided herein. (*Added* 1883, c. 45, § 1.†)

**\*§ 423. Certificate—Contents—Recording.**

Such subordinate lodge, chapter of Royal Arch Masons, or commandery of Knights Templar, shall cause to be prepared a certificate which shall contain:

*First.* The charter name and number of such lodge, chapter, or commandery.

*Second.* The time when and the authority by which such lodge, chapter, or commandery was instituted.

*Third.* The names of the charter members of such lodge, chapter, or commandery.

*Fourth.* The name, if a lodge, of its worshipful master, senior warden, junior warden, and secretary; if a chapter, its high priest, king, scribe, and secretary; if a commandery, of its eminent commander, generalissimo, captain general, and recorder, for the current term of such lodge, chapter, or commandery. Such certificate shall be under the seal of such lodge, chapter, or commandery, and signed by the worshipful master, senior warden, junior warden, and secretary of such lodge, or by the high priest, king, scribe, and secretary of such chapter, or by the eminent commander, generalissimo, captain general, and recorder of such commandery, and shall be recorded in the office of the register of deeds of the county where such lodge, chapter, or commandery is located. (*Id.*)

**\*§ 424. Same—Filing—Corporate powers.**

Upon filing such certificate in the office of such register, such lodge, chapter, or commandery shall become a body corporate under its charter name and number, and shall have and possess all the powers of corporations at common law, and shall have power to sue and be sued by its corporate name, and in

\*"An act to legalize certain corporations." Approved March 2, 1887.

†"An act to amend chapter thirty-four of the General Statutes of 1878, to provide for the incorporation of Masonic bodies." Approved March 2, 1883.

such name to acquire or receive, by purchase, gift, grant, devise, or bequest, any property, real, personal, or mixed, and the same to hold, sell, transfer, mortgage, convey, loan, let, or otherwise use in accordance with the laws and usages of said order; but said corporation has no power to divert any gift, grant, or bequest from the specific purpose designated by the donor. (*Added* 1883, c. 45, § 1.)

[No section enumerated as § 425.]

**\*§ 426. Surrender of charter, etc.**

Whenever the charter of any such lodge, chapter, or commandery shall be surrendered to or taken away by said grand lodge, grand chapter, or grand commandery of this state, or whenever by the laws and usages of said orders such subordinate lodge, chapter, or commandery shall become defunct, the corporate powers of such lodge, chapter, or commandery shall cease and determine, except that such corporation, as such, shall have power to sell, convey, and dispose of its property, and collect debts due it, and all such property and debts shall be delivered up to the grand lodge, grand chapter, or grand commandery of this state; or, in the discretion of such grand lodges, be disposed of in accordance with the laws of said order. (*Id.*)

TITLE 10.

GRAND ARMY POSTS.

**\*§ 427. Incorporation.**

That any post of the Grand Army of the Republic of the state of Minnesota may become incorporated in the manner provided herein. (*Added* 1885, c. 115.)

**\*§ 428. Certificate—Contents—Recording.**

Such post shall cause to be prepared a certificate which shall contain—

*First.* The charter name and number of such post.

*Second.* The time when and the authority by which such post was instituted.

*Third.* The names of the charter members of such post.

*Fourth.* The name of its commander, senior vice-commander, junior vice-commander, and adjutant for the current term of such post.

Such certificate shall be signed by the commander, senior vice-commander, junior vice-commander, and adjutant of such post, and shall be recorded in the office of the register of deeds of the county where such post is located. (*Id.*)

**\*§ 429. Filing certificate—Corporate powers.**

Upon filing such certificate in the office of such register of deeds such post shall become a body corporate, under its charter name and number, and shall have and possess all the powers of corporations at common law, and shall have power to sue and be sued by its corporate name, and in such name to acquire or receive by purchase, gift, grant, devise, or bequest any property, real, personal, or mixed, and the same to hold, sell, transfer, mortgage, convey, loan, let, or otherwise use in accordance with the laws and usages of said order; but said corporation has no power to divert any gift, grant, or bequest from the specific purpose designated by the donor. (*Id.*)

**\*§ 430. Dissolution.**

When the charter of any such post shall be surrendered or taken away, or whenever, by the laws and usages of said order, any such post shall become defunct, the corporate powers of such post shall cease and determine, except such corporation, as such, shall have power to sell, convey, and dispose of its property, and collect debts due it, the proceeds to be disposed of in accordance with the laws of said order. (*Id.*)

## ANNUITY, SAFE-DEPOSIT, AND TRUST COMPANIES.\*

**\*§ 431. Formation.**

Any number of persons, not less than fifteen, may associate themselves, and become incorporated for the purpose of transacting business as an annuity, safe-deposit, and trust company, upon complying with the provisions of this act; and any company so formed, and its successors, shall be entitled to the rights and privileges, and subject to the duties and obligations, herein prescribed, and shall have perpetual succession. (1883, c. 107, § 1.)

**\*§ 432. Application of laws — Unauthorized engagement in business—Penalty.**

The provisions of sections two, three, four, seven, eight, nine, ten, and eleven of title one, chapter thirty-four, of the Statutes of Minnesota, shall apply to and be observed by persons organizing under this act, except as herein otherwise provided, and except that no corporation heretofore organized, or hereafter to organize, under this act, shall be required to state in its articles of association the amount of indebtedness or liability to which such corporation shall at any time be subject. It shall not be lawful for any corporation hereafter organized, or for any association, partnership, or individual, except corporations authorized under this act, to advertise or put forth any sign as either a trust, annuity, guaranty, or safe-deposit company, or in any way to solicit, receive, or do business as either a trust, annuity, guaranty, or safe-deposit company; and any such corporation, association, partnership, or individual, who shall offend these provisions, shall forfeit and pay for any such offense the sum of one hundred dollars for every day such offense shall be continued, to be sued for and recovered in the name of the people of this state, by the district attorneys of the several counties, in any court having cognizance thereof, for the use of the poor chargeable to said county in which such offense shall be committed. It shall be the duty of the secretary of state, and of the register of deeds of the several counties, to refuse to receive or file in their respective offices any article of association for incorporation under any general law of this state (except under this act) which conflicts with the foregoing provision. (*Id.* § 2, as amended 1885, c. 3, § 1.)

**\*§ 433. Capital stock — Minimum amount — Increase — Shares.**

The amount of the capital stock of any such corporation hereafter organized shall not be less than five hundred thousand dollars, but the same may be increased at any time by a resolution of two-thirds of the directors to any amount not exceeding two million dollars; and the same shall be divided into shares of one hundred dollars each. (1883, c. 107, § 3, as amended 1885, c. 3, § 2.)

**\*§ 434. Prerequisites to engaging in business — Deposit of securities.**

No such corporation hereafter organized shall be authorized to transact any business or exercise any powers as such until five hundred thousand dollars of its capital stock shall have been subscribed for, and two hundred thousand dollars on account of said stock shall have been actually paid in, invested, and deposited as hereinafter provided. Said two hundred thousand dollars shall be invested in bonds of the United States, or of the state of Minnesota, or

\*"An act to authorize the organization and incorporation of annuity, safe-deposit, and trust companies." Approved March 5, 1883.

in the bonds of other states, which shall have the approval of the state auditor or public examiner; or in the bonds or obligations of the city of St. Paul or Minneapolis, or in the bonds or obligations of any incorporated city of the state containing a population of not less than five thousand souls, which bonds have not been issued as a bonus for, or purchase of, or subscription to, any railroad or other private enterprise, and whose total bonded indebtedness does not exceed five per centum of the then assessed valuation of the real and personal property of such city; or in the bonds of any organized county in this state containing a population of not less than ten thousand souls, which bonds have not been issued for any of the purposes aforesaid, and whose total bonded indebtedness does not exceed five per centum of the then assessed valuation of the real and personal property of such county; or in bonds or promissory notes, secured by first mortgages or deeds of trust, upon unincumbered real estate situated within this state, worth double the amount of the obligation so secured. And any corporation which has been heretofore organized and qualified to do business under this act shall be allowed at any time hereafter to increase its deposits of such securities with the state auditor, so that the whole deposit of such corporation shall amount to two hundred thousand dollars, and not less than one-fourth of its capital stock. (1883, c. 107, § 4, *as amended* 1885, c. 3, § 3.)

**\*§ 435. Same—Certificate of deposit—Minimum deposit—Interest on securities.**

Whenever any such corporation hereafter organized shall have so invested two hundred thousand dollars of its paid-in capital, and shall assign, transfer, and deliver to the state auditor the said securities, and all evidence of such investments so made, he shall execute and deliver a certificate of such deposit; and thereupon the said corporation may commence and carry on business under the provisions of this act. Whenever the capital stock of such corporation exceeds eight hundred thousand dollars, the amount of such deposit with the state auditor shall at all times be equal to one-fourth of said capital stock. The state auditor and his successors shall hold the said securities as collateral security for the depositors and creditors of said corporation, and for the faithful execution of any trusts which may lawfully be imposed upon and accepted by such corporation; such corporation may from time to time withdraw the said securities from said state auditor, or any part thereof, upon their depositing with him other securities of equal amount and value, and of the kinds specified in section four, so that an equal amount and value of such securities shall at all times during the existence of such corporation remain in the possession of the state auditor for the purposes aforesaid, and, until otherwise ordered by a court of competent jurisdiction, the said state auditor shall pay over to such corporation the interest, dividends, or other income which he shall collect upon such securities, or he may authorize the said company to collect the same for its own benefit. (1883, c. 107, § 5, *as amended* 1885, c. 3, § 4.)

**\*§ 436. Board of directors—Qualifications—Term of office.**

All the corporate powers of such company shall be exercised by a board of directors of not less than nine nor more than twenty-seven in number, and such officers and agents as they shall elect or appoint. A majority of such directors must be citizens of this state, and each director must own at least ten shares of the capital stock. The articles of association shall state the names and places of residence of the first board of directors, of whom the first one-third thereof shall serve for three years, the second one-third thereof shall serve for two years, and the balance thereof shall serve for one year, from the date fixed for the commencement of such corporation. In case any of the persons so named shall not become stockholders to the amount required to

qualify, or if they shall fail or refuse to qualify from any cause, the directors who shall so qualify may elect qualified stockholders to fill such vacancies; and thereafter, at each annual meeting of the stockholders, directors shall be elected to serve three years in place of those whose terms shall then expire. (1883, c. 107, § 6.)

**\*§ 437. Annual elections—Notice—Failure to elect—Vacancies.**

The annual election shall be held at the office of the company upon a day to be fixed by the articles of association, and notice of which meeting shall be given by publication at least ten days prior to said date in a public newspaper printed and published at the county-seat of the county in which such company has its principal place of business. In case of a failure to elect on that day, or on a day to which such annual meeting may be adjourned, the directors whose regular terms do not then expire shall proceed to elect such number of directors as may have failed of election, who shall with them constitute the board of directors. Any vacancy in the office of director may be filled by the board until the next annual election. (*Id.* § 7.)

**\*§ 438. Board of directors—Powers—Officers—Bond.**

The board of directors shall, at their annual meeting, elect from their own number a president and vice-president, and they shall also appoint a secretary and such other officers and agents as they may find necessary to the transaction of the business of the company. They shall define the general powers, authority, and duty of such officers and employes by by-laws or resolutions, fix the conditions, form, and amount of their bonds, and approve the same; but no such officer, agent, or other employe from whom a bond shall be required by the directors shall enter upon the discharge of his duties until he shall have entered into a bond to the corporation, conditioned for the honest and faithful discharge of his duties, in such sum, conditions, and sureties as may be approved by the directors, nor until such bond, so approved, has been filed in the office of the state auditor. (*Id.* § 8.)

**\*§ 439. Corporate powers.**

Any such corporation, so organized and authorized to transact business, shall have all the general powers and privileges of a corporation, as the same are declared in title eight of chapter thirty-four of the Statutes of Minnesota; and in addition thereto shall have power and authority—

**Powers concerning property.**

*First.* To acquire, lease, purchase, own, hold, use, and improve, and for that purpose mortgage, lease, sell, and convey, such real estate and personal property as may be necessary for the convenient transaction of its business, and for the use and occupation of its officers, agents, employes, and the safe-keeping of its assets, deposits, and property held in trust. Any estate or interest in real estate which such corporation shall acquire under or by virtue of the foreclosure of any deed of trust, mortgage, or other security, or by the compromise, compounding, or settlement of any obligation or security, or otherwise, in the course of its legitimate business, whether as owner or trustee, it may continue to own, hold, use, occupy, lease, bargain, sell, and convey the same, as the directors may deem best for the interests of such company or of the particular estate or trust to which the same belongs; and to that end it may become a purchaser at any foreclosure sale, or sale under decree or judgment to which it is a party, as trustee or otherwise. But no part of its capital, accumulations, deposits, trust funds, property, or securities owned or held by such company, in trust or otherwise, shall be invested in real estate, except as herein authorized, unless the same is done under and by virtue of a

particular contract, agreement, or other instrument, which shall confer a special power and authority so to do, and then only with and to the extent of the moneys or funds thereby provided and belonging to such particular trust; and for the general transaction of its business to make and deliver, and in like manner to accept and receive, all necessary and proper deeds, conveyances, mortgages, leases, and other contracts and writings obligatory, and to have exercise all necessary rights, franchises, muniments, estate, powers, and privileges necessary to that end; and such corporation is authorized to loan money and funds, and secure such loans by mortgage; and shall have power to purchase notes, bonds, mortgages, and other evidences of indebtedness, and to sell and assign such notes, bonds, mortgages, and other evidences of indebtedness and other securities, and to convert them into cash or other securities.\* (*As amended* 1885, c. 3, § 5; 1887, c. 74, § 2.)

### Trusts—Agencies.

*Second.* To take, accept, and hold, by the order, judgment, or decree of any court of record of this state, or of any other state, or of the courts of record of the United States, or by gift, grant, assignment, transfer, devise, legacy, or bequest, from or with any public or private corporation, or persons whomsoever, any real estate or personal property, upon trusts created in accordance with, or which shall not conflict with, the laws of this state or of the United States, and to execute and perform [any] and all such legal and lawful trusts in regard to the same, upon the terms, conditions, limitations, and restrictions which may be declared, imposed, established by, or agreed upon, in and by such order, judgment, decree, gift, grant, assignment, transfer, devise, legacy, or bequest. To accept from and execute for, or on behalf of, trusts for married women, in respect to their separate property, real or personal, and antenuptial settlement, or otherwise to act as agent for them in the management of such property. To act as agent for the purpose of transferring, issuing, registering, or countersigning the certificates of stock, bonds, coupons, or other evidences of debt of any corporation, association, person, city, county, state, or other authority, or to receive and pay out moneys in redemption of the bonds, coupons, or other evidences of indebtedness of such public or private corporations or persons.

### Deposits—Effect of deposit by trustee.

*Third.* To take, accept, and hold on deposit, or for safe-keeping, any and all moneys, bonds, stocks, and other securities, or personal property whatsoever, which any state, county, city, or town officer, or any railroad or other corporation, public or private, or private person, shall be authorized or required, by law or otherwise, to deposit in a bank or other safe deposit, or to pay into or deposit in any court of record of this state. And whenever any state, county, city, or town officer, or any railroad or other corporation, public or private, or any executor, administrator, or guardian, assignee, receiver, trustee, or person acting in a trust capacity of whatsoever nature, or any individual, shall be authorized or required, by law or otherwise, to pay into or deposit in any court of record of this state any moneys, bonds, instruments in writing, stock, or other securities, or personal property whatsoever, the same may instead thereof be paid into or deposited with any corporation, organized and acting under this act, which shall be designated for that purpose by the court into which said moneys, bonds, instruments in writing, stocks, or other securities and personal property would otherwise be authorized or

\* The last clause of the amendment of 1885, authorizing such corporations "to insure owners of real-estate mortgages and others interested in real estate from loss by reason of defective titles, liens, and incumbrances," was repealed by the amendment of 1887, which further provides: "But this repeal shall not effect or be construed as referring to any company which has been heretofore organized under said act as so amended."

required to be paid or deposited. Whenever any executor, administrator, guardian, assignee, receiver, trustee, or any person acting in any trust capacity whatsoever, shall deposit any moneys, bonds, instruments in writing, stocks, or other securities, or any personal property whatsoever, belonging to his trust, with any corporation organized and acting under this act, and shall take the receipt of such corporation therefor, he and his sureties shall thereafter be relieved and discharged from all liability therefor until the same shall again be delivered by said corporation to him or to his successors. (*As amended 1885, c. 3, § 6.*)

#### **As trustee, receiver, executor, etc.**

*Fourth.* To act as trustee, assignee, or receiver, in all cases where it shall be lawful for any court of record, officer, corporation, or person to appoint a trustee, assignee, or receiver, and to be appointed, commissioned, and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person or estate of any minor or minors, or of the estate of any lunatic, imbecile, spendthrift, habitual drunkard, or other person disqualified or unable from any cause to manage their estate. And it shall and may be lawful for any probate court, surrogate, or orphans' court, or other court of record having jurisdiction of the estate and wills of decedents, or of the persons or estates of minors, or of other persons under guardianship, either within or without this state, to appoint and commission any such corporation which holds the certificate of the state auditor, showing that it is entitled to transact business in this state as the executor of any last will and testament, or as trustee of any trust under any will, or as the administrator of the estate of any decedent, or as the guardian of the person and estate of any minor, or of the estate of any imbecile, lunatic, spendthrift, habitual drunkard, or other person disqualified or unable from any cause to manage his or her estate, in all cases where, under the laws of this state, such court could lawfully appoint and commission any natural person as such executor, administrator, guardian, or trustee; and in all such cases no bond or other security, or oath or other qualification, shall be necessary to enable such corporation to accept such appointments and trusts.

#### **As agent or attorney in fact.**

*Fifth.* To act as the general agent and attorney in fact for any public or private corporation, or person in the management and control of real estate or personal property, its sale or conveyance, in the negotiation of and sale of mortgages or other securities, the satisfaction and discharge of record of such mortgages or other securities, the collection of rents, payment of taxes, and generally to act for and represent corporations or persons under powers and letters of attorney in all respects as a natural person could do.

#### **Investments.**

*Sixth.* The directors of any such corporation shall have discretionary power to invest all moneys received by it on deposit or in trust, in any such personal securities as are not hereinafter expressly prohibited; and it shall be held responsible to the owners or *cestui que trust* of such moneys for the validity, regularity, quality, value, and genuineness of all such investments and securities at the time the said investments are so made, and for the safe-keeping of the evidences and securities thereof. But if any special direction, agreement, or trust is imposed upon, made, or conferred in and by the order, judgment, or decree of any court, or by the terms and conditions of any last will and testament, or other document, contract, deed, conveyance, or other written instrument, as to the particular manner in which, or the particular class or kind of securities, funds, or property, whether real or personal, the same shall be invested in, then the said corporation shall follow and carry out such



order, judgment, decree, or other appointment, contract, deed, conveyance, or other written instrument. And in such case such company shall not be held liable or responsible for any loss, damage, or injury which may occur or be incurred by any person or *cestui que trust* by reason of its performance of such trust as aforesaid.

#### **Transfer of trusts.**

*Seventh.* It shall and may be lawful for any trustee of any trust-estate now existing, or which may hereafter exist or be created, and whether before or after acceptance thereof, and whether the same has been or shall be created or conferred by any will or testament, or by contract, conveyance, deed of trust, or agreement, whatsoever, to surrender and resign such trust in favor of any such corporation organized and doing business under this act which will accept the same, and to convey and deliver to such corporation all the property and assets of and pertaining to the said trust, and subject to all unexecuted trusts imposed upon or pertaining to the same; upon the condition, however, that the grantor, *cestui que trust*, and all parties in any manner interested in the execution and performance of such trust, shall join in, sign, seal, acknowledge, and deliver an instrument in writing, whereby they shall consent to the said transfer, and the release and discharge of such original or acting trustee, and the appointment of such corporation as his successor as such, or if either of the parties to the original trust shall have deceased, or shall not join in the said written consent and transfer for any cause, or if the said original trust was created under a last will and testament, or under an order or decree of any court of record, then such transfer of such trust shall not be valid except upon the judgment or decree of such court of record as would have jurisdiction of an action to remove the acting trustee of such trust, and the full compliance with all the terms and conditions of such judgment or decree.

#### **Compensation—Interest.**

*Eighth.* For the faithful performance and discharge of any such trust, duty, obligation, or service so imposed upon, conferred, and accepted by any such corporation, it shall be entitled to ask, demand, and receive such reasonable compensation therefor as the same shall be worth, or such compensation as may have been or may be fixed by the contract or agreement of the parties, as well as any and all advances necessarily paid out and expended in the discharge and performance thereof, and to charge legal interest on such advances unless otherwise agreed upon; and any compensation or commission paid, or agreed to be paid, for the negotiation of any loan or the execution of any trust by any such annuity, safe deposit, and trust company, shall not be deemed interest within the meaning of any law of this state. Nor shall any excess thereof over any rate of interest permitted by the laws of this state be decreed or held in any court of law or equity to be usury. (1883, c. 107, § 9, amended as above.)

#### **As assignee for benefit of creditors, etc.—Surety—Bond.**

*Ninth.* It shall be lawful for any such corporation which has made the deposit and received the certificate of the state auditor, as provided in section five of said act, to become the assignee under any assignment for the benefit of creditors, or to act as receiver, or to accept any other trust which it is authorized to accept under said act, whether conferred by any person, corporation, or court, without giving any bond or other security, which would be otherwise necessary under the laws of this state, to enable a natural person to execute any such trust. It shall also be lawful for any such trust company to become the sole surety upon any bond or undertaking, for or on behalf of any person or persons or corporation, in any suit, action, or special proceeding, in any court in this state, where a bond or undertaking shall be neces-

sary, under the laws of this state, or in any other matter, municipal or otherwise, where a bond or undertaking shall be required, without any other bondsman or surety, and without justification or qualification. In a case where a bond, or new sureties to a bond, may be required by a judge of any probate court of this state, from an executor, administrator, guardian, or other trustee, or by the judge of any other court of record, or by the provisions of any statutes of this state, from any person acting or to act as assignee, receiver, or in any other trust capacity whatsoever, if the value of the estate or fund is so great that the judge of the court having jurisdiction of the proceedings in which such bond or new sureties shall be required, deems it inexpedient to require security in the full amount prescribed by law, he may direct that any securities for the payment of money belonging to the estate or fund be deposited, subject to the order of such trustee, executor, administrator, guardian, assignee, receiver, or other person acting in a trust capacity, countersigned by a judge of said court, with any trust company duly organized and qualified to do business under this act. After such deposit has been made, said judge may fix the amount of the bond, with respect to the value of the remainder only of such estate or fund. A security thus deposited shall not be withdrawn from the custody of said trust company, and no person other than the proper officer of the trust company shall receive or collect any of the principal or interest secured thereby without the special order of a judge of said court, duly entered in the records of such court. Such an order can be made in favor of the trustee appointed only where an additional bond has been given by him, or upon proof that the estate or fund has been so reduced by payments, distribution, or otherwise, that the penalty of the bond originally given will be sufficient in amount to satisfy the provisions of law relating to the penalty thereof, if the security so withdrawn is also reckoned in the estate or fund. (*Added 1885, c. 3, § 7.*)

#### **Bond not required.**

*Tenth.* Any such corporation, which has been heretofore or may hereafter become incorporated and organized, and made the deposit, and received or shall hereafter receive the certificate of the state auditor as provided in said section five of said act of one thousand eight hundred and eighty-three, or of said amendatory act of one thousand eight hundred and eighty-five, and which shall have or shall hereafter be appointed as executor of, or trustee under, any last will and testament, or as administrator of any estate, or as guardian of the estate of any minor, spendthrift, or other person under guardianship, or as assignee, receiver, or as trustee to execute any other trust, by any court, or by any municipal or other public corporation or person, and which shall have accepted and entered upon, or shall hereafter accept and enter upon, the duties of any such trust, shall thereafter be fully qualified to fully discharge and perform such trust, without entering into or giving any sale bond, replevin bond, attachment bond, injunction and appeal-bond, or other bond undertaking, or security whatsoever, which a natural person would be required to furnish or enter into in the progress of the execution of any will, or the settlement of any estate, or in any suit, action, or special proceedings, or sale of real or personal property during the performance of any such trust, in any court in this state. (*Added 1887, c. 74.*)

#### **Executors, etc.—Resignation in favor of company.**

*Eleventh.* Any executor, administrator, or guardian, now or hereafter to be appointed, may resign his trust in favor of a corporation organized and doing business under this act, and thereupon such corporation may be appointed in place of such executor, administrator, or guardian, by any court which has jurisdiction of the subject-matter of such trust, upon such terms and conditions as such court may prescribe. (*Id.*)

**\*§ 440. Investment of trust funds—Accounting.**

Any sum of money not less than one hundred dollars, which shall be collected or received by any such corporation in its capacity of executor, administrator, or guardian, or upon any deposit under any order of any court of record, and which money shall not be required for the purposes of such trust, or is not to be accounted for within one year from date of such collection, receipt, or deposit, shall be invested by such corporation as soon as practicable, and in such securities as are mentioned in section four of said act, and the net interest and profits of such investments, less the reasonable charges and disbursements of said corporation in the premises, shall be accounted for and paid over as a part of such trust; and the net accumulations of such interest and profits thereon shall likewise be invested and reinvested as a part of such principal. And such investments shall be received and allowed by the probate or other court in the settlement of such trust. (1883, c. 107, § 10, as amended 1885, c. 3, § 8.)

**\*§ 441. Prohibited dealings — Indebtedness of agents — Penalty.**

No such corporation shall engage in any banking, mercantile, manufacturing, or other business, except such as is hereby expressly authorized. It shall not loan its funds, moneys, capital, trust funds, or other property whatsoever, to any director, officer, agent, or employe [thereof,] nor shall any such director, officer, agent, or employe become in any manner indebted to said corporation by means of any overdraft, promissory note, account, indorsement, guaranty, or other contract whatsoever; and any such director, officer, agent, or employe, who shall become so indebted to said corporation, shall be deemed guilty of the crime of embezzlement to the amount of such indebtedness, from the time such indebtedness shall be created, and upon conviction thereof shall be punished in the manner prescribed by the laws of the state for the crime of embezzlement of a like amount. The execution and delivery of the official bond required from such officer, agent, or employe shall not be considered as an indebtedness for the purposes of this section. (1883, c. 107, § 11.)

**\*§ 442. Powers of court—Annual report.**

Any such corporation shall be subject at all times to the further orders, judgments, and decrees of any court of record from which it shall have accepted any trust, appointment, or commission as to such trust, and shall render to such court such itemized and verified accounts, statements, and reports as may be required by law, or as such courts shall order in relation to such particular trust. It shall also be subject to the general jurisdiction and authority of the district court of the county in which the principal place of its business is situated. It shall render to the public examiner a full and detailed annual account of its condition on or before the \_\_\_\_\_ day of \_\_\_\_\_ in each year, and such further accounts, either total or partial, or in relation to any particular investments, trusts, funds, or other business, as the said public examiner may from time to time direct or request; and a condensed statement of such annual account, approved by the public examiner, shall be published by said corporation in a public newspaper printed and published in the county in which its principal place of business is located, and if none, then in such newspaper as the public examiner may direct. (*Id.* § 12.)

**\*§ 443. Public examiner—Duties.**

It shall be the duty of such public examiner, at least once in six months, and as often as he may deem necessary, to assume and exercise over any such corporation, its business, officers, directors, and employes, all the power and authority conferred upon him over banks and other moneyed corporations under the laws of this state; and, in the event of his inability to act in the prem-

ises, the state auditor may discharge and perform all the duties of the public examiner in relation to such corporation. (*Id.* § 13.)

**\*§ 444. Violation of law—Procedure.**

If it shall appear to the said public examiner or state auditor, from any examination made by either of them, or from any report of any examination made by them, that said corporation has committed a violation of its charter, or of the law, or that it is conducting business in any unsafe or unauthorized manner, he, or either of them, shall, by an order under his hand and seal of office, addressed to such corporation, direct the discontinuance of such illegal or unsafe practices, and conformity with the requirements of its charter and of the law, and with safety and security in its transactions. And whenever any such corporation shall refuse or neglect to make such report or account as may be lawfully required, or to comply with any such order as aforesaid, or whenever it shall appear to the said examiner, or to the state auditor, acting for him, that it is unsafe or inexpedient for any such corporation to continue to transact business, he shall communicate the facts to the attorney general, who shall thereupon be authorized in [to] institute such proceedings against any such corporation as are now, or may hereafter be, provided by law in the case of insolvent corporations, or such other proceedings as the case may require. (*Id.* § 14.)

**\*§ 445. Bonds—Fidelity companies as sureties.**

Whenever any state or county officer, depository of the public funds, or any other person, firm, company, or corporation who may be required or permitted by law now or hereafter to make, execute, and give a bond or undertaking with security conditioned for the faithful performance of any duty, or for the doing or not doing of anything specified in said bond or undertaking, any board of auditors or of commissioners, or any person or persons who are now or shall hereinafter be required to approve the sufficiency of any such bond or undertaking, may in their discretion accept such bond or undertaking, and approve the same whenever the conditions of such bond or undertaking are guaranteed by a company duly organized, or authorized to do business under the laws of this state, and authorized to guaranty the fidelity of persons holding positions of public or private trust; and all such corporations are hereby vested with full power and authority to guaranty such bonds and undertakings. The penal sum of all bonds given under this act by depositories of the public funds shall at all times be sufficient to cover the full amount of funds to be deposited with such depository; but this act shall not prevent a justification on the part of such company through its officers as required by law of other sureties: *provided*, that nothing herein contained shall apply to bonds given in criminal cases. (1887, c. 201.)\*

\*"An act to provide for and to facilitate giving of bonds required by law." Approved March 8, 1887.