

79

THE

GENERAL STATUTES

OF THE

STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

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THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE
CONSTITUTION, THE ACT OF ADMISSION INTO THE UNION, AND

Sections 1 to 4821 of the General Statutes

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TITLE 1.

CORPORATIONS EMPOWERED TO TAKE PRIVATE PROPERTY FOR PUBLIC USES.

(1) PROVISIONS APPLICABLE TO ALL SUCH CORPORATIONS.

See, also, §§ 3391-3436.

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

See also, *Carl 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. 220.

§ 2592. Works of internal improvement—Who may be incorporated — Powers — Restrictions—Right of purchase by city or village, when.

Any number of persons, not less than five, may associate for incorporation and become incorporated under and according to this title for the construction, maintenance and operation of any work or works of internal improvement requiring the taking of private property, or any easement therein, for public use, including railways, telegraph lines, canals, slack-water or other navigation upon any water course, bay or lake, dams to improve or create a water supply or power for public use, and any work or works with all requisite subways, pipes and other conduits for supplying the public with water, gas light, electric light, heat or power; and any citizens of the United States, not less than nine in number, owning any railway now or hereafter constructed for public use within this state for transportation of persons or property, or organized for the purpose of maintaining and operating under any lease or contract a railroad constructed for like public use, may, by making and filing articles of association under and according to this title, acquire and enjoy the rights, powers, privileges and franchises herein-after granted, and may, by filing in the office of secretary of state a resolution of such corporation expressing its intent to construct, maintain and operate any branch line, become empowered to construct, maintain and operate the same in connection with its main line, subject, however, to the provisions of this title and the general laws of this state, and any corporation formed hereunder may construct, maintain and operate telegraph lines along or over its lines of railroad, and any corporation formed hereunder or under any act hereby amended, may charge and collect a reasonable compensation for its service. But no corporation formed under this title shall have any right to construct, maintain or operate upon or within any street, alleys or other highway of any city or village, a railway of any kind or any subway, pipe

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line or other conduit for supplying the public with water, gas light, electric light, heat, power or transportation or any improvement of whatsoever nature or kind, without first obtaining a franchise therefor from such city or village according to the terms of its charter and without first making just compensation therefor, as herein provided. Provided, that the state of Minnesota shall at all times have full power and authority to supervise and regulate the business methods and management of any corporation existing and operating hereunder, and shall also have full power and authority at all times to fix the compensation which shall or may be charged or received by any corporation existing and operating hereunder. And any corporation organized under this act shall be subject to any condition from time to time imposed by such village or city, through its board of trustees or city council. And provided further, that the common council of any city and the board of trustees of any village at the end of each and every five years from and after the granting of any franchise for the construction of any street railway, telephone, water works, gas and electric light, heat or power works, or any or all of them, shall have the right, when authorized so to do by a two-thirds vote of the electors of such municipality as hereinafter provided, to acquire the same by purchase and thereafter operate the same, upon paying to the company, corporation or person owning the franchise the full and true cost and value thereof, to be determined by the usual proceedings for acquiring public property for public use under the right of eminent domain upon petition of the authorities of such municipality. Except that none of the commissioners so appointed to appraise the same shall be residents of said municipality, and except further, that all the property, if any thereof, owned by the corporation in interest under and in connection with said franchise shall be included in such proceeding and purchased and acquired hereunder. Before any such property shall be acquired by any municipality or such proceedings be instituted the proposition to acquire the same shall be submitted to a vote of the electors of said municipality at a special election called for that purpose within the three months immediately prior to the expiration of any five years of said franchise and then only when authorized by two-thirds of the votes cast at said election. The consideration paid for any such works or property acquired under this provision shall be first applied to the payment of any bonds upon the property or works acquired and the balance if any to the person, company or corporation owning said franchise.

(G. S. 1866, c. 34, § 1, as amended 1875, c. 14, § 1; G. S. 1878, c. 34, § 1; 1885, c. 18; 1887, c. 161; 1889, c. 221; 1893, c. 74, § 1.)

See In re St. Paul & N. P. Ry. Co., 36 Minn. 85, 30 N. W. Rep. 433.

§ 2593. Articles of incorporation—Filing and record.

They 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 also in the office of the secretary of state, in books kept for such purposes.

(G. S. 1866, c. 34, § 2; G. S. 1878, c. 34, § 2.)

For fees to be paid into the state treasury, see §§ 3391, 3392.

§ 2594. Contents of articles—Publication.

Said articles shall contain:

First—The name of the corporation, the general nature of the business, and the principal place, if any, of the transacting the same.

Second—The time of commencement and the period of continuance of said corporation.

Third—The amount of capital stock of said corporation, and how to be paid in.

Fourth—The highest amount of indebtedness or liability to which said corporation shall at any time be subject.

Fifth—The names and places of residence of the persons forming such association for incorporation.

Sixth—The names of the first board of directors, and in what officers or persons the government of the corporation and the management of its affairs shall be vested, and when the same are elected.

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Seventh—The number and amount of the shares in the capital stock of said corporation.

And shall be published for four successive weeks in some newspaper printed and published at the capital of the state, or in the county where such corporation is organized: provided, that in cases where articles of incorporation have been adopted and signed, or may hereafter be adopted and signed, as provided in sections two and three of this chapter, and filed for record in the office of the secretary of state, the publication of the same for one week in some newspaper printed and published at the capital of the state, or in some newspaper printed and published in the county where such corporation is organized, shall be a sufficient publication under this chapter; and upon filing an affidavit of proof of such publication in the office of the secretary of state, the persons named in such articles shall thereupon become a corporation, with the authority and powers in this chapter provided and intended.

(G. S. 1866, c. 34, § 3, as amended 1874, c. 60, § 1; G. S. 1878, c. 34, § 3.)

Corporation de facto, East Norway Lake Church v. Froislie, 37 Minn. 447, 35 N. W. Rep. 260.

Subd. 4. See Weed v. Little Falls & D. R. Co., 31 Minn. 154, 16 N. W. Rep. 851.

As to the necessity of filing the affidavit, see Christian v. Bowman, 49 Minn. 99, 51 N. W. Rep. 663.

§ 2595. 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.

(G. S. 1866, c. 34, § 4, as amended 1873, c. 12, § 1; G. S. 1878, c. 34, § 4; 1885, c. 9.)

*See § 2738.

For certificate of incorporation to be issued by secretary of state, see §§ 3394, 3395.

For act providing for extension of term of corporations, see § 3400.

The common-law rule that all stock must be subscribed before any subscription is binding is not abrogated by this section. Masonic Temple Ass'n v. Channell,

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43 Minn. 353, 45 N. W. Rep. 716. See *Arthur v. Clarke*, 46 Minn. 491, 493, 49 N. W. Rep. 252.

As to amendment of articles, see *Mercantile Statement Co. v. Kneal*, cited in note to § 2503.

§ 2596. Duration of companies—Renewals of.

No such corporation shall be formed for more than fifty years in the first instance, but any such corporation heretofore or hereafter formed or organized, under any general or special act, may be renewed from time to time for the period of not longer than fifty years each, provided three-fourths of the votes cast at any regular election held for that purpose, are in favor of such renewal, and those desiring such renewal purchase the stock of those opposed thereto at its value; and provided, further, that railroad corporations formed pursuant to the provisions of this chapter may continue and be formed for any time the corporators may designate or provide in the articles of association. Provided, that the provisions hereof shall cease and lapse and all rights under its charter shall be void as to the St. Croix boom corporation after a period of three years from the passage of this act, unless a good substantial dam, for the holding of logs and the improvement of navigation, shall be constructed and in operation across the St. Croix river at or near the head of Dabney's rapids.

(G. S. 1866, c. 34, § 5, as amended 1875, c. 14, § 2; G. S. 1878, c. 34, § 5; 1880, c. 237, § 1.)

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.

§ 2597. By-laws to be posted.

A copy of the by-laws of the corporation, with the names of all its officers appended thereto, shall be posted in the principal place of business, and be subject to public inspection.

(G. S. 1866, c. 34, § 6; G. S. 1878, c. 34, § 6.)

§ 2598. Statement to be posted.

A statement of the amount of the capital stock subscribed, the amount of capital actually paid in, and the amount of indebtedness of the company, in a general way, shall also be kept posted up in like manner, which statement shall be corrected as often as any material change takes place in relation to any part of the subject-matter of such statement.

(G. S. 1866, c. 34, § 7; G. S. 1878, c. 34, § 7.)

See *Nolan v. Hazen*, 44 Minn. 478, 479, 47 N. W. Rep. 155.

§ 2599. Transfer of shares—Stock-book.

The transfer of shares is not valid, except as between the parties thereto, until it is regularly entered on the books of the company, so far as to show the names of the persons by and to whom transferred, the numbers or other designation of the shares, and the date of the transfer; but such transfer shall not in any way exempt the person making such transfer from any liabilities of said corporation which were created prior to such transfer. The books of the company shall be so kept as to show intelligibly the original stockholders, their respective interests, the amount which has been paid in on their shares, and all transfers thereof; and such books, or a correct copy thereof, so far as the items mentioned in this section are concerned, shall be subject to the inspection of any person desiring the same.

(G. S. 1866, c. 34, § 8; G. S. 1878, c. 34, § 8.)

See, also, §§ 3415-3419.

See note to § 2799.

A sale and transfer of stock, though not entered on the books, take precedence of a subsequent attachment in behalf of a creditor of the seller. *Lund v. Wheaton Roller Mill Co.*, 50 Minn. 36, 52 N. W. Rep. 268.

See *Nolan v. Hazen*, 44 Minn. 478, 479, 47 N. W. Rep. 155.

§ 2600. Individual liability of stockholders.

The private property of each stockholder in any corporation formed as here-in provided is liable for corporate debts in the following cases:

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First.—For all unpaid installments on stock owned by him, or transferred for the purpose of defrauding creditors.

Second.—For a failure by the corporation to comply substantially with the provisions aforesaid as to organization and publicity.

Third.—When he personally violates any of the provisions of this title in the transaction of any business of the corporation as officer, director or member thereof, or is guilty of any fraud, unfaithfulness or dishonesty in the discharge of any official duty.

(G. S. 1866, c. 34, § 9, as amended 1875, c. 15, § 1; G. S. 1878, c. 34, § 9.)

Where the stockholders of a corporation are liable for its debts under § 3, art. 10, of the Constitution, or under §§ 2600-2602 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 the original section 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 §§ 2600-2602, 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.

See *Spilman v. Mendenhall* (Minn.) 57 N. W. Rep. 468.

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 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.)

When a creditor has obtained judgment against a corporation, and the execution has been returned unsatisfied, he may sue a stockholder to enforce his individual liability without joining the corporation; and, in case of the death of the stockholder, the creditor may prove his claim against the estate in the probate court. *Nolan v. Hazen*, 44 Minn. 478, 47 N. W. Rep. 155.

If the insolvent corporation is in the hands of a receiver, the creditor cannot in his own behalf sue a stockholder for stock not paid for. *Merchants' Nat. Bank of Chicago v. Northwestern Manuf'g & Car Co.*, 48 Minn. 361, 51 N. W. Rep. 119.

See *Minnesota Thresher Manuf'g Co. v. Langdon*, 44 Minn. 37, 46 N. W. Rep. 310; *Patterson v. Stewart*, 41 Minn. 84, 87, 42 N. W. Rep. 926.

Liability of unpaid subscriptions does not continue after transfer of stock, except where the transfer is to defraud creditors. The transferee is liable for the unpaid subscriptions. *Spilman v. Mendenhall* (Minn.) 57 N. W. Rep. 468.

§ 2601. Property of stockholders, when to be levied on.

The private property of no stockholder shall be levied on under the preceding section, unless such stockholder, as well as the corporation, is duly served with process in the action, and the issue involving his individual liability as aforesaid raised and determined; and in no case whatever shall such property be levied on while sufficient corporate property can be found to satisfy the execution or any part thereof.

(G. S. 1866, c. 34, § 10; G. S. 1878, c. 34, § 10.)

See note to § 2600.

§ 2602. Proceedings of officer with execution.

The officer holding an execution which may be levied on private property, as aforesaid, shall make demand of payment thereon of the president, secretary, or some officer of the corporation, acting, or who was one of the last acting officers thereof; and if he does not forthwith pay said execution, or point out corporate property that may be levied on, the officer shall indorse the fact of such demand, refusal or neglect upon said execution, and thereupon may levy the same upon the private property of the stockholder served

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and impleaded as aforesaid. Such levy may be made to satisfy any balance due upon the execution after levy upon corporate property, or part-payment out of corporate funds.

(G. S. 1866, c. 34, § 11; G. S. 1878, c. 34, § 11.)

See note to § 2600.

§ 2603. Existing corporations may reorganize under this title.

Any corporation of the class specified in section one of this title, heretofore organized or attempted to be organized under former general laws, may conform their articles to the provisions of this title, and re-file the same with the secretary of state, as herein provided, and thereafter, without any other act or ceremony, shall become entitled to all the rights, benefits and privileges, conferred herein; and all grants, transfers and conveyances, by the state or any citizen or corporation, to any such corporation, heretofore made, are hereby confirmed unto such corporation, and shall, upon the filing of their articles under this title, be deemed to accrue and enure to the benefit of such corporation as thus organized, without any other act or ceremony whatever.

(G. S. 1866, c. 34, § 12; G. S. 1878, c. 34, § 12.)

§ 2604. Right of way—Right to overflow.

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 or 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.

(G. S. 1866, c. 34, § 13; G. S. 1878, c. 34, § 13; as amended 1885, c. 18; 1887, c. 161, § 2.)

* § 2644, also, is applicable to all companies organized under this title.

See, also, §§ 2670, 2675.

As to power conferred on Northern Pacific Railroad, see Laws 1879, c. 83.

As to power conferred on St. Paul & Duluth Railroad Company, see Laws 1879, c. 82.

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.*

The commencement and pendency of condemnation proceedings do not constitute a taking of property, for which, under the constitution, compensation must be "first paid or secured." *Duluth Transfer Ry. Co. v. Northern Pac. R. Co.*, 51 Minn. 218, 53 N. W. Rep. 366.

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.)

A landowner may oppose proceedings as respects his own land, on the ground

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that the taking is unnecessary. In re Minneapolis Ry. Terminal Co., 38 Minn. 157, 36 N. W. Rep. 105.

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, 35 N. W. Rep. 345.

See Carli v. Stillwater & St. P. R. Co., 16 Minn. 260. (Gil. 234;) In re St. Paul & N. P. Ry. Co., 37 Minn. 164, 168, 33 N. W. Rep. 701.

A railway company, condemning a village lot, takes to the center of the street. Witt v. St. Paul & N. P. Ry. Co., 38 Minn. 122, 35 N. W. Rep. 862.

What constitutes a public use for which a railway company may condemn. Chicago, B. & N. R. Co. v. Porter, 43 Minn. 527, 46 N. W. Rep. 75; Kettle River R. Co. v. Eastern Ry. Co., 41 Minn. 461, 43 N. W. Rep. 469.

§ 2605. Petition for appointment of commissioners.

Such corporation may present to the district court in and for the county in which any lands or real estate proposed to be taken shall be situate, a petition signed by the president and secretary of such corporation, setting forth a description of the enterprise to be prosecuted by them, and describing with reasonable certainty and accuracy, by map, plat or otherwise, the lands, property and estate which it will be necessary to appropriate, take, use or overflow for the purposes of such enterprise in said county, setting forth the name of each and every owner, incumbrancer, or other person interested in the same or any part thereof, so far as the same can be ascertained by the public records, and by view of the premises or other inquiry touching the occupation thereof, and praying the appointment of three competent, disinterested persons as commissioners to ascertain and determine the compensation to be made to such owner or owners respectively, and to all tenants, incumbrancers, and others interested, for the taking or injuriously affecting such land or real estate.

(G. S. 1866, c. 34, § 14, as amended 1872, c. 53, § 1; G. S. 1878, c. 34, § 14.)

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, *quere*. Curtis v. St. Paul, S. & T. F. R. Co., 20 Minn. 28, (Gil. 19.)

Condemnation proceedings against a part only of several tenants in common confer no right to take the property as against the other cotenants. State v. District Court First Judicial District, 52 Minn. 307, 53 N. W. Rep. 1157.

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 §§ 2614, 2615; In re St. Paul & N. P. Ry. Co., 37 Minn. 164, 168, 33 N. W. Rep. 701; Hanford v. St. Paul & D. R. Co., 43 Minn. 104, 42 N. W. Rep. 596, and 44 N. W. Rep. 1144.

§ 2606. Service of notice on persons interested.

A notice stating briefly the objects of the petition, and containing a description of the lands proposed to be taken, and stating the time and place when and where the same will be presented to the court, shall be served on each and every person named therein as owner, incumbrancer, tenant, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering a copy of such notice to each of the persons so named therein, if a resident of this state, or, in case of the absence of such person, by leaving a copy of such notice at his or her usual place of abode, with some person of suitable age and discretion then resident therein. In case of domestic corporations, such service may be made upon the president, secretary or any director or trustee of such corporation; in case of minors, on their guardian; or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor; in case of idiots, lunatics or distracted persons, on their guardian or committee; or in case no guardian or committee shall have been appointed, then on the person in whose care or charge they are found; in case of feme covert, on the husband as well as the feme covert. In all cases where the owner or person claiming an interest in such real property is a non-resident of this state, or where the residence of such owner or person is unknown, and an affidavit by the agent or attorney of the corporation shall be filed, showing that such owner or person is a non-

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resident of this state, or that, after diligent inquiry, his residence is unknown, or cannot be ascertained by such deponent, service of such notice may be made by the publication thereof in any newspaper published in the county where such lands are situate, once a week for three successive weeks; and in case no newspaper shall be published in said county, then such publication may be had in a newspaper published at the seat of government of this state; and such publication shall be deemed service upon each of such non-resident persons; or persons whose residence is unknown. Due proof of the service of such notice, by the affidavit of the person serving the same, or by the printer's affidavit of publication, shall be filed with the clerk of such district court before the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served; but all persons having been served with notice as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In cases where the enterprise shall be located through or upon school or university lands, or any other lands belonging to this state, such notice shall be served upon the secretary of state or his assistant, and the commissioners shall award damages to the state, in like manner as to private persons or corporations.

(G. S. 1866, c. 34, § 15, as amended 1872, c. 53, § 2; G. S. 1878, c. 34, § 15.)

See §§ 2670, 2675.

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 § 5202 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 rendered 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." *Rheinert 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 Minn. 506, 33 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); In *re St. Paul & N. P. Ry. Co.*, 37 Minn. 164, 168, 33 N. W. Rep. 701.

§ 2607. Adjournments.

The court may, upon the application of the petitioner, or of any owner or party interested, for reasonable cause adjourn the proceedings from time to time, and may order new or further notice to be given to any party whose interest may be affected.

(G. S. 1866, c. 34, § 16, as amended 1872, c. 53, § 3; G. S. 1878, c. 34, § 16.)

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§ 2608. Hearing—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-

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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.

(G. S. 1866, c. 34, § 17, as amended 1872, c. 53, § 4; G. S. 1878, c. 34, § 17; 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 *Klauft v. St. Paul, S. & T. P. R. Co.*, 22 Minn. 173, and cases cited to § 2605; *In re St. Paul & N. P. Ry. Co.*, 37 Minn. 164, 167, 168, 170, 33 N. W. Rep. 701.

On the hearing, the petitioner must prove its incorporation. *Chicago, B. & N. R. Co. v. Porter*, 43 Minn. 527, 46 N. W. Rep. 75.

Appearance of the landowner before the commissioners, and appeal from the award, is a submission to the jurisdiction and a waiver of irregularities in the appointment of the commissioners. *Whitely v. Mississippi Water-Power & Boom Co.*, 38 Minn. 523, 38 N. W. Rep. 753.

If the petition and order show no intent to acquire the right to remove lateral support, it is to be presumed that the commissioners did not allow damages for so doing. *McCullough v. St. Paul, M. & M. Ry. Co.*, 52 Minn. 12, 53 N. W. Rep. 802.

§ 2609. 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.

(G. S. 1866, c. 34, § 19, as amended 1872, c. 53, § 6; G. S. 1878, c. 34, § 18; 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. *Brisbane 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.

No action lies against a railway company for injuries to premises in the vicinity from noise, smoke, etc., arising from properly operating its railroad on its own land, or on land in which the plaintiff has no interest. *Carroll v. Wisconsin Cent. R. Co.*, 40 Minn. 168, 41 N. W. Rep. 661.

See *Adams v. Chicago, B. & N. R. Co.*, 39 Minn. 286, 39 N. W. Rep. 629; *Lamm v. Chicago, St. P., M. & O. R. Co.*, 45 Minn. 71, 47 N. W. Rep. 455.

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. 508, (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. 288, (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.*

A witness may be asked the difference between the value of the farm with and its value without the railroad across it. *Sigafoos v. Minneapolis, L. & M. Ry. Co.*, 39 Minn. 8, 38 N. W. Rep. 627.

In what cases distinct parcels will be considered as one tract for purposes of condemnation. *Cameron v. Chicago, M. & St. P. Ry. Co.*, 42 Minn. 75, 43 N. W. Rep. 785; *Koerper v. St. Paul & N. P. Ry. Co.*, 142 Minn. 340, 44 N. W. Rep. 195.

Damages are to be assessed for the injury to the entire tract, as of the time of the assessment. *Kremer v. Chicago, M. & St. P. Ry. Co.*, 51 Minn. 15, 52 N. W. Rep. 977.

See *Duluth & W. R. Co. v. West*, 51 Minn. 163, 53 N. W. Rep. 197.

Where a portion of a farm sought to be condemned is chiefly valuable as a gravel pit, damages may be assessed at its value as such, but the injury to the

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remainder of the farm should not be considered. *Cameron v. Chicago, M. & St. P. Ry. Co.*, 51 Minn. 153, 53 N. W. Rep. 199.

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 considering benefits to that portion of an entire tract not taken, only such as result directly and peculiarly to the particular tract are to be allowed. *Whitely v. Mississippi Water-Power Co.*, 38 Minn. 523, 38 N. W. Rep. 753.

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.*, 22 Minn. 286.

As to the compensation to the owner of land abutting on a street where the railway is laid out in front of the lot. *Papooshek v. Winona & St. P. R. Co.*, 44 Minn. 195, 46 N. W. Rep. 329.

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. *Trolden v. Winona, etc., R. Co.*, 22 Minn. 198.

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.

§ 2610. Petition, map, etc., to be filed.

Within three months after completing their said examination, and the making of said appraisal and assessment of damages, the said commissioners shall file the said petition, a copy of their appointment and oath, together with a full report of their doings in the premises, accompanied by a map showing the route and location of the proposed canal, telegraph line, railroad or improvement, in the office of the clerk of the court in the county where said application for the appointment of said commissioners was made,

and shall notify the parties interested in such report that the same is made and filed. Such notice shall be served upon the respective parties in the same manner as the notice provided for by section fifteen of said chapter as amended by this act: provided, that if any such party shall have appeared by attorney, service may be made upon such attorney.

(G. S. 1866, c. 34, § 20, as amended 1872, c. 53, § 7; G. S. 1878, c. 34, § 19.)

§ 2611. Payment of damages, how made.

Upon the filing of said report, the petitioners, or any officers of, or other persons duly appointed by, said corporation, may make payment of the damages assessed to parties entitled to the same, in manner following:

First. To parties laboring under no disability.

Second. To guardians of infants, husbands or trustees of femes covert.

Third. To guardians of insane persons, idiots, lunatics and persons under other disability; and receipts for such payments filed in the office of the clerk aforesaid shall estop the parties giving them, and their principals when they act in a representative capacity, from all further claims or proceedings in the premises. Payments to parties residing in the state, but not in the county or counties through which said canal, line, road or improvement runs, as well as to infants, insane persons, and other persons under disability who have no guardians, and payments to parties residing out of the state, and to persons whose names are unknown, and to persons who refuse to receive the payments when tendered, shall be made by depositing the same with the clerk of said court, to be paid out under the direction of the judge thereof; and such deposit shall have the same effect as the first-mentioned receipts, unless an appeal is taken by the party entitled thereto.

(G. S. 1866, c. 34, § 21; G. S. 1878, c. 34, § 20.)

§ 2612. Appeals from assessment, how taken.

Appeals from the assessments made by the commissioners may be taken and prosecuted in the court where the report of said commissioners is filed, by any party interested, and a written notice of such appeal shall be served upon the appellee, in the same manner as a summons in a civil action is served: provided, that such notice shall be served at least twenty days before the hearing of said appeal; and provided further, that no appeal under this title shall be taken after the expiration of thirty days from the time of the notification of the filing of the report aforesaid.

(G. S. 1866, c. 34, § 22; G. S. 1878, c. 34, § 23.)

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. 239, 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

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the ground of such defect in the condemnation proceedings. *Rheiner v. Union Depot Co.*, *supra*.

See *Trogden v. Winona, etc., R. Co.*, 23 Minn. 198; *Wilmes v. Minneapolis & N. W. Ry. Co.*, 29 Minn. 242, 13 N. W. Rep. 39; and note to §§ 2613, 2614.

Effect of appeal as a waiver of prior irregularities. *Whitely v. Mississippi Water-Power Co.*, cited in note to § 2605.

§ 2613. Same—Construction may go on, when.

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The construction of such road, line, canal, or the prosecution of such improvement, shall not be hindered, delayed or prevented by the prosecution of any appeal: provided, the corporation execute and file with the clerk of the court in which the appeal is pending, a bond to be approved by said clerk, with sufficient sureties, conditioned that the persons executing the same shall pay whatever amount may be required by the judgment of the court therein, and abide any rule or order of the court in relation to the matter in controversy.

(G. S. 1866, c. 34, § 23; G. S. 1878, c. 34, § 24.)

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.*, 23 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 § 2615, 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.

§ 2614. Appeals, how tried and determined.

Appeals shall bring before the appellate court the propriety of the amount of damages in respect to the parties to the appeal; and unless the parties otherwise agree, the matter shall be submitted to a jury and tried as other appeal cases are tried, and the court or jury, as the case may be, shall reassess the damages aforesaid, making the verdict conform to the justice and facts of the case; but the rule for ascertaining and fixing such damages shall be based upon the same principles that the commissioners are required to adopt in originally appraising and determining such damages.

(G. S. 1866, c. 34, § 25; G. S. 1878, c. 34, § 25.)

On appeal the district court cannot dismiss the petition and subsequent proceedings in the case. *Rippe v. Chicago, D. & M. R. Co.*, 20 Minn. 157, (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. 434, (Gil. 406); *Curtis v. Same*, 20 Minn. 28, (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. 384, (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. *Trogden 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 § 5638 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. 153, (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, § 2613.

§ 2615. Judgment—Contents and effect—Payment.

Upon verdict or assessment, judgment shall be entered, declaring that, upon payment of the verdict or assessment, and costs, if any, the right to construct said canal line, railroad or improvement, to overflow the lands, property and real estate, and do the act in controversy in said appeal, and to take, use and appropriate any property in controversy on said appeal for the purposes aforesaid, shall, as against the parties interested in such verdict or assessment, be and remain in said corporation, their successors and assigns forever; and payments of such judgments may be made as payments of assessments by the commissioners are made, as hereinbefore provided.

(G. S. 1866, c. 34, § 26; G. S. 1878, c. 34, § 26.)

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 § 2613, 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,

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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.)

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

§ 2616. Record evidence of title to land taken, how perfected.

Any corporation organized under this title may perfect record evidence of title to the property and estate taken for the purposes of any canal, line, railroad or improvement authorized hereby, by causing the clerk of the court, when the report of said commissioners is filed and confirmed, and the award of damages is paid, to make certified copies of such report or any part thereof, so far as it affects or relates to any real estate or interest therein, situate in any county through which said improvement runs; and such certified copy, accompanied by a map showing the location of the land taken, when recorded in the office of the register of deeds of the county in which such real estate is situated, shall be effectual to fully pass title to such real estate, or the interest therein taken, by said commissioners to said corporation; and such record shall be notice to all parties of the title of said corporation therein, and such record may be read as evidence of such title in all the courts of this state, except in cases where valid appeals are taken from the report of said commissioners, and in such cases the judgment of the court upon such appeal, after the damages are paid, may be recorded in the office of register of deeds of the county where the said real estate or interest therein and affected by said judgment, is situated, and such record shall be notice and evidence of title in like manner and effect as the record of certified copies found in said report.

(G. S. 1866, c. 34, § 27; G. S. 1878, c. 34, § 39.)

§ 2617. Passenger and freight rates.

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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; G. S. 1878, c. 34, § 63; as amended 1885, c. 72.)

This provision does not constitute such a contract with a corporation created under the act as to deprive the legislature of the power to regulate charges made by it. *Minneapolis E. Ry. Co. v. State*, 134 U. S. 467, 10 Sup. Ct. Rep. 473.

§ 2644 is also applicable to all companies organized under this title.

(2) WATER-POWER COMPANIES.

§ 2618. Use of highways.

That any corporation organized under the general laws of this state, for the purpose of building any canal for the creation of water-power for manufacturing purposes, may have the power, if it becomes necessary in the location of any part of said canal, to occupy or cross any road, street, alley or public way, or any part thereof, upon the terms and conditions, and in a manner which may be agreed upon between said corporation and the public authorities of the county, city, town or village in which such road, street, alley or public way is situated.

(1874, c. 59, § 1; G. S. 1878, c. 34, § 49.)

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§ 2619. Right to flow land, etc.

Any corporation heretofore or hereafter organized for the purpose of developing or improving the water-power on any of the watercourses of this state, and applying the same to manufacturing purposes, and whose articles of association conform to the provisions of section three of this title, may obtain the right to overflow, drain, or otherwise use, enjoy or damage, by reason of any dam, lock, sluice, wastegate, or other erection necessary for the convenient prosecution of their enterprise, all or any lands, rights, easements, or other property damaged thereby, by proceeding as in this title provided.

(1875, c. 16, § 1; G. S. 1878, c. 34, § 107.)

(3) COMPANIES FOR CONSTRUCTING AND MAINTAINING WATER WORKS.

See, also:

Sections

- 1085. Subd. 11. Cities authorized to establish public reservoirs, etc.
- 1091. All cities authorized to issue bonds for constructing or purchasing waterworks.
- 1094. Subd. 3. Same.
- 1186. City council may permit the laying of watermains and pipes in streets, alleys, etc.
- 1224. Subd. 10. Council of certain villages authorized to establish waterworks.
- 1225. All villages authorized to establish, purchase, or lease waterworks, when.
- 1226. Legalizing certain village contracts.
- 1299. Subd. 11. Council in villages of over 3,000 inhabitants authorized to establish waterworks, or to grant franchise for the same purpose.

§ 2620. Right of eminent domain.

All municipal corporations in this state, and all corporations organized for the purpose of supplying any town, city or village in this state, or the inhabitants thereof, with water, are hereby authorized to exercise the power of eminent domain, and to condemn, take and use private property for the use of such corporations when necessary or convenient to carry out the purposes and objects of said corporation.

(1889, c. 65, § 1.1)

§ 2621. Same.

Whenever such municipal or other corporation in the construction of its water works, or in enlarging or extending the same, shall deem it desirable to condemn, take, use or occupy private property in the construction of its said works, or in making new lines of work, said corporation may condemn, take and use said private property, first making just compensation therefor, and proceed as hereinafter provided.

(Id. § 2.)

§ 2622. Same—Other powers.

Whenever such corporation in the construction of its water works, or in extending its said water works, or in making new lines of work, shall deem it necessary it may, as hereinafter provided, draw water from any river, lake or creek by means of pipes, ditches, drains, conduits, aqueducts or other means of conducting water so as to connect such rivers, lakes or creeks with its said works, and may erect and construct dams, bulk-heads, gates and other needed structures and means of controlling said water and its protection and, in general, do any other act necessary or convenient in accomplishing the purpose contemplated by this act.

(Id. § 3.)

¹ An act to authorize all municipal corporations and corporations organized for the purpose of constructing and maintaining water works for the purpose of supplying any town, city or village with water, to condemn and take private property for the use of such corporation, and to enter upon private property for the purpose of making surveys and locating such water works. Approved April 8, 1889.

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§ 2623. Same—Survey—Map.

Whenever such corporation shall propose to construct or extend its said works, or shall propose to extend its line of works so as to connect with any river, lake or creek, and to direct the water of any river, lake, creek or body of water within its said water works, it shall proceed as follows: The said corporation shall cause to be made a survey of the line along which it proposes to construct or extend said works and of all lands or other property to be affected by flowage, drainage or by the construction of ditches, drains, conduits, aqueducts or otherwise, and for that purpose such corporation may, by its officers and agents, enter upon any land for the purpose of making such surveys and measurements or for obtaining any other necessary information relative to the construction or extension of said water works, doing no unnecessary damage to said real estate. After such survey shall have been made and such line located it shall cause to be made a map showing the location of said line, extension and improvements, and the lands necessary to be taken for such construction, extension or improvement, and all lands or other property to be affected by flowage, drainage or otherwise. Said map shall be verified under oath by the surveyor making the same as just and correct, as he verily believes. Said map shall also be acknowledged by the mayor, clerk or recorder, or other proper officer of such city, town or village so seeking to condemn and take such real estate, or by the president, secretary or director of the corporation so seeking to condemn and take such real estate, and thereupon said map shall be filed as a record in the office of the register of deeds in and for the county in which said real estate so sought to be condemned, taken and used is situate, and a duly certified copy of said map shall be filed in the office of the clerk of the district court in said county.

(Id. § 4.)

§ 2624. Same—Petition for appointment of commissioners.

After the making and filing of the map and certified copy thereof in the office of register of deeds and clerk of the district court in the county where said real estate so sought to be condemned and taken is situate, the corporation so intending and desiring to condemn, take and use said real estate, may present to the district court in and for said county in which said lands so proposed to be taken, condemned and used shall be situate, a petition signed by the president and secretary of such corporation, or by the mayor, recorder or other executive officer of said city, town or village, setting forth a description of said enterprise to be prosecuted by them, and describing with reasonable certainty and by reference to said map or plat, or otherwise, the lands, property and estate which it will be necessary to appropriate, take, use, overflow, drain or otherwise affect, setting forth the name of each and every owner, encumbrancer, or other person interested in the same or any part thereof, so far as the same can be ascertained by the public records, and by view of the premises, or other inquiry touching the occupation thereof, and praying the appointment of three competent disinterested persons as commissioners to ascertain and determine the compensation to be made to such owner or owners, respectively, and to all tenants, encumbrancers and others interested, for the taking or injuriously affecting such lands or real estate.

(Id. § 5.)

§ 2625. Same—Notice—Service on residents and non-residents—On secretary of state—Proof of service—Publication.

A notice stating briefly the object of the petition and containing a description of the lands proposed to be taken, and stating the time and place, when and where the same will be presented to said court, shall be served on each and every person named therein as owner, encumbrancer, tenant or otherwise interested therein, at least ten days previous to the time designated in said notice for the presentation of said petition. Such service shall be made by delivering a copy of said notice to each person named therein if

a resident of this state, or in case of the absence of such person, by leaving a copy of such notice at his or her usual place of abode, with some person of suitable age and discretion then resident therein. In case of domestic corporation such service may be made upon the president, secretary or any director or trustee of such corporation; in case of minors or their guardians, or in case no guardian shall have been appointed, then on the person who has the care and custody of such minor; in case of idiots, lunatics or distracted persons, on their guardian or committee; or in case no guardian or committee shall have been appointed, then on the person in whose care or charge they are found; in case of feme covert, on the husband as well as on the feme covert.

In all cases where the owner or persons claiming an interest in such real property is a non-resident of this state, or where the residence of such owner or person is unknown and an affidavit by the agent or attorney of the corporation shall be filed showing that such owner or person is a non-resident of this state, or that, after diligent inquiry, the residence is unknown, or cannot be ascertained by such deponent, service of such notice may be made by the publication thereof in any newspaper published in the county where such lands are situate once a week for three successive weeks; and in case no newspaper shall be published in said county, then such publication may be had in a newspaper published at the seat of government in this state, and such publication shall be deemed service upon each of such non-resident persons, or persons whose residence is unknown. Due proof of the service of such notice, by the affidavit of the person serving the same or by the printer's affidavit of publication, shall be filed with the clerk of such district court before the presentation of such petition. Want of service of such notice shall render the subsequent proceedings void as to the person not served; but all persons having been served with the notice as herein provided, either by publication or otherwise, shall be bound by the subsequent proceedings. In cases where the enterprise shall be located through or upon school or university lands, or any other lands belonging to this state, such notice shall be served upon the secretary of state or his assistant, and the commissioners shall award the damages to the state in like manner as to private persons or corporations.

(Id. § 6.)

§ 2626. Adjournments—Hearing—Order of court—Commissioners.

The court may, upon the application of the petitioner or owner or party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new or further notice to be given to any person whose interest may be affected. At the hearing of said petition, if the court shall have satisfactory proof that all parties interested in the lands described in said petition have been duly served with said notice, as above prescribed, the court may then proceed to determine, first, whether the public interests require the prosecution of said enterprise set forth and described in said petition; second, as to whether it is necessary in the prosecution of said enterprise to take, condemn, use, overflow, drain or otherwise appropriate, injure or use said real estate mentioned and described in the petition, or any part thereof, the said court may, in its discretion, authorize the condemning, taking, using of the whole or any part of the real estate mentioned and described in said petition. When the court is satisfied by competent proof, it shall make an order, which shall be entered in the minutes of said court, and filed in the office of the clerk thereof, determining whether the public interests require the prosecution of the enterprise set forth and described in the petition, and the real estate necessary to be taken and condemned under said proceedings. The court may 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 taking or injuriously affecting any such land or real estate, and specifying the time and place of the first meeting of said commissioners, and fixing their compensation.

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Before entering upon their duties, such commissioners shall severally take and subscribe an oath, before some person qualified to administer oaths, faithfully and impartially to discharge the duties of their appointment.

(Id. § 7.)

§ 2627 Duty of commissioners.

The commissioners so appointed shall meet at the time and place mentioned in the order appointing them, and proceed to examine all of the real estate described in said petition and map proposed to be used or taken for said improvement, or so much thereof as is designated in the order of the court to be taken, injuriously affected, appropriated or used in said improvement, construction or extension of said water works, and shall hear the allegation and testimony of all persons interested, and proceed to make in each case a separate assessment of damages which will result to any parties, persons, corporation or company, by reason of the construction or extension of said water works, or the taking, using or injuriously affecting said real estate, and shall determine, appraise and award to the owners of such land, property, easement, or any other right proposed to be taken or injuriously affected, the amount of damages arising to them respectively from the taking or injuriously affecting their said lands, property, right or estate thereof, for the purposes of said enterprise or improvement.

(Id. § 8.)

§ 2628. Report of commissioners—Notice to parties interested.

Within sixty days after completing their examination and the making of said appraising and assessments of damages, the said commissioners shall file a report of their doings in the premises in the office of the clerk of said court, accompanied by all papers, maps and records placed in their hands as such commissioners, or received by them in the course of the discharge of their duties, and thereupon the corporation so seeking to condemn, take and use said lands, shall notify all parties interested in such report that the same is made and filed, and such notice shall be served as provided for by section six of this chapter; provided, that if any such party shall have appeared by attorney service may be made upon such attorney.

(Id. § 9.)

§ 2629. Payment of damages, how made.

Upon the filing of said report, the petitioners or any officers of or other persons duly appointed by said corporation, may make payment of the damages assessed to parties entitled to the same, in the manner following:

First. To parties laboring under no disability.

Second. To guardians of infants, husbands or trustees of femes covert.

Third. To guardians of insane persons, idiots, lunatics and persons under other disability; and receipts for such payments filed in the office of the clerk aforesaid shall stop the parties giving them, and their principals when they act in a representative capacity, from all further claims or proceedings in the premises. Payments to parties residing in the state, but not in the county where said real estate sought to be condemned is situate, as well as to infants, insane persons, and other persons under disability who have no guardians; and payments to parties residing out of the state, and to persons whose names are unknown, and to persons who refuse to receive the payments when tendered, shall be made by depositing the same with the clerk of said court, to be paid out under the direction of the judge thereof; and such deposits shall have the same effect as the first-mentioned receipts, unless an appeal is taken by the party entitled thereto.

(Id. § 10.)

§ 2630. Damages may be paid into court, when.

Whenever the title to any tract of land is deemed to be in doubt, and such commissioners have assessed damages for the taking or injuriously affecting a part thereof, the corporation so seeking to condemn, take or use said lands, may make and file with the clerk of said court an affidavit of one of the officers or attorney of such corporation, to the effect that there exists

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reasonable doubt as to who is entitled to such damages or any portion thereof, and upon making and filing such affidavit may pay into court the amount of damages so assessed and allowed to any tract or parcel mentioned in said affidavit and the report of said commissioners; and thereupon said corporation shall be released and discharged from any further liability therefor, unless upon appeal the owner should recover a greater amount of damages, and in that case only for the amount in excess of the sum so paid into court. Any person claiming title to said real estate, or claiming to be entitled to any money so paid into court, may apply to the court therefor, and upon furnishing evidence satisfactory to the court that the person so applying is entitled to the said money so paid into court or any part thereof, the court shall make an order directing the payment to such claimant the portion of such money as he should be found entitled to. But if, upon such application, the court should determine that the title to the tract or tracts specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced, and the conflicting claim to such real estate determined according to law.

(Id. § 11.)

§ 2631. Appeal—Notice—Bond.

Appeals from the assessment made by the commissioners may be taken and prosecuted in the court where the report of such commissioners is filed, by any party interested, and a written notice of such appeal shall be served upon the appellee in the same manner as a summons in a civil action is served. Such notice shall be served at least twenty days before the hearing of said appeal, and no appeal shall be taken after the expiration of thirty days from the time of the notification of the filing of the report aforesaid, and the construction of said water works, or the extension thereof, or the extension of the line of said works, shall not be hindered, delayed or prevented by the prosecution of said appeal, provided the corporation execute and file with the clerk of the court in which said appeal is pending a bond to be approved by said clerk with sufficient surety conditioned, that the person executing the same and surety shall pay whatever amount may be required by the judgment of the court therein, and abide any rule or order of the court in relation to the matter in controversy. Said appeal shall bring before the appellate court the propriety of the amount of damage in respect to the parties to the appeal, and unless the parties otherwise agree the matter shall be submitted to the jury and tried as other appeal cases are tried, and the court or jury, as the case may be, shall reassess the damages aforesaid.

(Id. § 12.)

§ 2632. Judgment—Interest—Proceedings vacated, when.

Upon verdict or assessment judgment shall be entered declaring that upon payment of the verdict or assessment and costs, if any, the right to construct said water works or the extension thereof, and to do the acts in controversy in said appeal, or to take, use and appropriate the real estate sought to be condemned for the purposes set forth in the petition shall, as against the parties interested in the verdict or assessment, be and remain in said corporation, its successors and assigns forever, and payment of such judgment may be made as payments of assessments by the commissioners are made, as herein provided. All awards for compensation and damage for the taking of lands for public use on behalf of such companies where no appeal is taken shall draw interest at the rate of seven per cent per annum from the time of the filing of such award until paid, and where an appeal is taken the verdict in such appeal shall draw interest at a like rate until paid. If such award, when no appeal is taken, is not paid within sixty days after the filing of such award, or in case an appeal is taken within sixty days after the entering of such final judgment, the court before whom such proceedings were initiated and such award filed or judgment entered shall, upon motion of the owner of the property sought to be condemned, vacate and set aside such proceedings, including the award and judgment, if any, and when such proceedings are discontinued by the corporation, or vacated and set aside by the judge or court, the owner of such property, or his heirs or

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legal representatives, shall have the right to recover from the corporation initiating such condemnatory proceedings, reasonable costs and expenses, including counsel fees.

(Id. § 13.)

(4) COMPANIES FOR DRIVING LOGS.

§ 2633. Powers—Lien—Consolidation with foreign companies.

Any corporation formed under this title in whole or in part for the improvement of any stream and driving logs therein, or for holding or handling logs therein which shall have taken prior possession of such stream, or any considerable portion thereof, upon which portion no other person or corporation has erected any dams or other improvements, and which may have need of improvement for that purpose, shall have power to improve such streams and its tributaries by clearing and straightening the channels thereof, closing sloughs, erecting sluiceways, booms of all kinds, side rolling, sluicing and flooding dams or otherwise if necessary, but shall in no case, in any manner, materially obstruct or impede navigation upon such stream or erect any dam or other obstruction below the head of steamboat navigation. Every such corporation which shall so improve a stream and so keep in repair, and operate its works so as to render driving logs thereon reasonably practicable and certain, may charge and collect reasonable and uniform tolls upon all logs, lumber and timber driven, sluiced or floated on the same, and may take possession of all logs put into such stream or upon rollways, so as to impede the drive when the owners thereof or their agents shall not have come upon the stream adequately provided with men, teams and tools for breaking the rollways and driving such logs in season for making a thorough drive down such stream without hindering the main drive; and shall also, at the request of the owner of any logs and timber put into said streams, take charge of the same, and drive the same down and out of such stream, or down such stream so far as their improvements may extend, and charge and collect therefor of the owner or party controlling said logs and timber, reasonable charges and expenses for such services. And such corporation shall for all such tolls, costs and expenses have a lien on the logs for which same was incurred, and may seize, in whoever possession found, and hold a sufficient amount thereof to pay the same, and make sale thereof upon giving ten days' notice in the manner provided for notifying sales on execution upon the judgment of justice of the peace, or may enforce such liens as other liens are enforced by proper proceedings for that purpose, or may ask, demand, sue for, collect and receive from the owner or owners of such logs the amount due for any such tolls. No injunctive order shall be granted to prevent the use or enjoyment of any such improvement, or abate any such dam necessary thereto unless such corporation shall fail for sixty days after judgment, from which no appeal has been taken, to pay any damages recovered for any injury done by or in consequence of its works. Any corporation formed for the improvement of a stream, which is in whole or in part a boundary between this and an adjoining state, and authorized to drive logs or maintain booms or dams in such stream, shall have authority to purchase and hold stock in corporation or corporations in such adjoining state created for similar purposes upon the same stream, or to consolidate or otherwise unite with such corporation or corporations in such adjoining state, whenever the purposes for which the corporation in this state is organized can be better effected thereby. Provided, that no such purchase or consolidation or other union shall be made without the assent of holders of two-thirds of the capital stock of such first named company. Provided, that all dams and other works erected under the authority given by this act shall be so constructed, used and operated as to facilitate and expedite the driving and handling logs and lumber upon the stream upon which the same may be erected, and the corporation making such improvements hereunder shall have no right to stop logs destined for points below its works on said stream except where dams have been constructed to accumulate water for sluicing logs and flushing the river below

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77-NW 989
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71-M - 207
75-M - 335

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the same, and in such case shall not detain logs in any part of the river so as to form a jam or prevent the prompt delivery of logs destined for points below the works constructed under authority of this act. (1889, c. 221, § 2.)

2634
77-NW 990

§ 2634. Existing corporations subject to act.

2634
75-M - 339

The provisions of this act shall apply as well to corporations heretofore organized for the purposes specified in section two of this act as to those hereafter organized for such purpose.

(Id. § 3.)

(5) TELEGRAPH COMPANIES.

See, also:

Sections

1299.

Subd. 11. Council in villages of over 3,000 inhabitants authorized to control the erection of poles and the running of wires thereon in streets, alleys, etc.

Subd. 40. Same—To control suspension of electric wires, or to require them to be placed beneath the street.

1682-1688.

Taxation of telegraph lines.

6231.

Lien for labor or material for construction, alteration, or repair of any line of telegraph.

6239.

Sale of line of telegraph upon execution to satisfy judgment establishing lien.

6750.

Subd. 7. Misdemeanor to injure or destroy a line of telegraph, etc., when.

6752.

Misdemeanor to divulge a telegraphic message, etc., when.

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66-M - 272

§ 2635. Are common carriers.

Persons, companies, and corporations engaged in the business of transmitting messages by telegraph lines are hereby declared to be common carriers, and as such shall serve the public without discrimination or preference, at reasonable rates of compensation.

(1885, c. 208, § 1; G. S. 1878, v. 2, c. 34, § 108a.)

§ 2636. 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.

(1885, c. 208, § 2; G. S. 1878, v. 2, c. 34, § 108b.)

2637
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§ 2637. Duty in delivering message.

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.

(1885, c. 208, § 3; G. S. 1878, v. 2, c. 34, § 108c.)

§ 2638. Transmission of messages—Precedence of certain messages.

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.

(1885, c. 208, § 4; G. S. 1878, v. 2, c. 34, § 108d.)

* An act to amend title 1 of chapter 34 of the General Statutes of 1878, relating to corporations. § 4 repeals inconsistent acts.

* 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.

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§ 2639. Same—Liability in civil action, when.

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.

(1885, c. 208, § 5; G. S. 1878, v. 2, c. 34, § 108e.)

In an action against a telegraph company for failing to transmit and deliver a message, damages for mental suffering cannot be recovered. The common-law rule is not changed by Laws 1885, c. 208. *Francis v. W. U. Tel. Co.* (Minn.) 59 N. W. Rep. 1078.

§ 2640. Same—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.

(1885, c. 208, § 6; G. S. 1878, v. 2, c. 34, § 108f.)

§ 2641. Use of public roads by telegraph and telephone* companies.

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.

(G. S. 1866, c. 34, § 28; G. S. 1878, c. 34, § 42; as amended 1881, c. 73, § 1.)

*See, also:

Sections

1230. Legalizing franchises granted by villages for telephone lines.

1299. Subd. 11. Council in villages of over 3,000 inhabitants authorized to control the erection of poles and the running of wires thereon in streets, alleys, etc.

Subd. 40. Same—To control suspension of electric wires, or to require them to be placed beneath the street.

Subd. 47. To control the erection and operation of telephone exchanges.

1682-1688. Taxation of telephone companies.

6231. Lien for labor or material for construction, alteration, or repair of any line of telephone.

6239. Sale of line of telephone upon execution to satisfy judgment establishing lien.

The company owes the duty of maintaining the poles and wires in safe condition. *Nichols v. City*, 33 Minn. 430, 23 N. W. Rep. 803.

(6) RAILROAD COMPANIES.

See, also:

Sections

256. Word "railroad" in any law applies to all railroads of whatever gauge.

379-403. Railroad and warehouse commission.

509-518. Commission to redeem and refund Minnesota state railroad adjustment bonds.

1085. Subd. 7. Power of city council to regulate speed of trains.

1094. Subd. 2. Cities may charge railroad for use of bridge constructed by them.

1125. Collection from railway company of assessment for local improvement.

1224. Subd. 11. Power of council of certain villages to prevent obstruction of streets, etc., with railway cars.

Subd. 12. Power of council of certain villages to regulate speed of trains.

1299. Subd. 6. Power of council of villages of over 3,000 inhabitants to prevent obstruction of streets, etc., by railroad cars.

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See, also:
Sections

- 1299. Subd. 7. Powers of council of such villages to direct construction of railroad tracks, to regulate speed of trains, etc.
- Subd. 47. Power of council of such villages to control operation of all railroads within corporate limits.
- 1342. Collection from railroad company of assessment for local improvement in such villages.
- 1643-1651. Taxation of railroad lands.
- 1667-1669. Percentage of gross earnings in lieu of other taxes.
- 1670. No extensions or branches to be operated until after notice to railroad and warehouse commission.
- 1671-1676. Collection of railroad taxes.
- 1673. Annual report of gross earnings.
- 1630. Annual report of land sales.
- 1836-1869. Obstructing highways by railroad cars.
- 1880. Use of railroad right of way by the public.
- 2104-2105. Disposition of unclaimed goods.
- 2107-2109. Disposition of unclaimed baggage.
- 2242-2243. Maximum day's labor of locomotive engineers and firemen.
- 2617. Reasonable passenger and freight rates may be charged.
- 2772. When municipality issues bonds in aid of railroad, it may require stock of company in exchange.
- 2777. Municipality to designate person to vote its stock at annual meeting.
- 2785-2792. Sale of transportation tickets.
- 5399. Action for dissolution of railroad company.
- 6231. Lien for price of construction or repair of line of railroad.
- 6239. Sale of line of railway upon execution to satisfy judgment establishing lien.
- 6248. Lien of common carrier.
- 6451. Person who, by negligent use of machinery, etc., occasions death of a human being, guilty of manslaughter.
- 6455. Person in charge of steam engine, etc., employed on a railway, guilty of manslaughter in second degree, when.
- 6477. Subd. 5. Use of force by carrier of passengers lawful in expelling passenger from railway car, when.
- 6596. Employés of railroads empowered to arrest persons swindling by cards, etc.
- 6597. Copy of law concerning "three-card monte" men, etc., to be posted in public conveyances.
- 6598. Penalty for neglect of conductor to arrest card swindlers.
- 6603. Person in charge of steam engine upon railway guilty of misdemeanor, when.
- 6634. Misdemeanor to employ engineer who cannot read.
- 6636. Misdemeanor for certain railway employés to be intoxicated, when.
- 6637. Misdemeanor for engineer of locomotive not to whistle and ring bell at road crossings.
- 6633. Willful neglect of duty by officers, agents, or servants of railway company a misdemeanor, when.
- 6635. Railway car included in the term "building," as used in the subdivision of the Penal Code on burglary.
- 6637. Forgery of passage ticket upon railway.
- 6712-6713. Grand larceny to steal from railway car.
- 6767. Offense for officer or agent of railway company to issue fictitious bills of lading, etc.
- 6772. Offense to obstruct or injure railroad tracks, etc.
- 6784. Offense to use explosives near car, when.
- 6845. Jurisdiction over public offenses committed on railroad trains.
- 6885-6889. Opening railroad gates, breaking railroad fences, etc.
- 6890. Walking or riding on railroad bridges.
- 6891-6892. Malicious injury to railroads.
- 6895. Misdemeanor for railroad employés to injure baggage, etc., when.
- 6941-6942. Use of profane, vulgar, or indecent language or of firearms in railway cars prohibited.
- 6944-6945. Disorderly conduct in railroad car prohibited.
- 6962. Misdemeanor for employers to require surrender of any right of citizenship.
- 6965-6966. Regulating the labor of railroad employés.
- 7075-7079. Quarantining passengers, baggage, and cars exposed to acute contagious diseases.
- 7637. Contracts between railroad and telegraph companies.

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See, also:
Sections

- 7754. Railroad company may be assessed for construction of ditch, drain, or embankment in drainage district.
- 7789. Railroad company may sign petition for drains.
- 7814. Lands owned by railroad company liable to pay for construction of county ditch, drain, or water course.
- 7827. Railroad lands may be reassessed for construction of such ditch, drain, or water course.
- 7835. Collection of such assessments from railroad companies.
- 7851. Contribution by Great Northern Railway for opening closed water courses, etc., in Red river valley.
- 8003-8004. All persons entitled to equal enjoyment of facilities of public conveyances on land and water, regardless of previous condition of servitude.

§ 2642. Right of way over highways—Connection with other railroads, how made—Order of court—Bond.

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. 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.

(G. S. 1866, c. 34, § 29; G. S. 1878, c. 34, § 47; as amended 1879, c. 35, § 3; 1881, Ex. S. c. 10.)*

*See State v. District Court, 35 Minn. 461, 29 N. W. Rep. 60.

See § 2645.

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, 33 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 neces-

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sary 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.*, 15 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.*, 37 Minn. 164, 33 N. W. Rep. 701. The provisions of § 2605 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. 481, 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.

The corporation whose land is taken is only entitled to have the place and manner of the crossing so ordered as to be as little injurious to it as is consistent with the accomplishment in a reasonable manner of the purpose with regard to the interests of both corporations and of the public. *In re Minneapolis & St. C. Ry. Co.*, 39 Minn. 162, 39 N. W. Rep. 65.

See, also, *Winona & S. W. Ry. Co. v. Chicago, M. & St. P. Ry. Co.*, cited in note to § 2647.

This section does not authorize the granting of a license to construct a private railway across a street. *Gustafson v. Hamm* (Minn.) 57 N. W. Rep. 1054.

§ 2643. Entry for preliminary surveys.

For the purpose of making preliminary surveys and examinations over and upon any contemplated route, such corporation, its agents, servants or employes, may enter upon land, doing no unnecessary damage.

(G. S. 1866, c. 34, § 30; G. S. 1878, c. 34, § 50.)

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§ 2644. Power to take, hold, and convey property.

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Any corporation organized under this title is authorized to obtain by purchase, gift or contract, all the rights of way, tow-paths, flowage and property hereinbefore provided for, and hold all property, real and personal, necessary and convenient for the successful prosecution of the enterprise. That such corporation may acquire and hold, by purchase or otherwise, the rights of way and other property acquired for the necessary construction, use or operation of the line of railroad to be operated by said corporation as may be provided in its articles of incorporation; and may acquire title to and hold, in fee-simple or otherwise, and convey any real estate granted or intended to be granted, or that may be granted, by this state, or by act of congress or otherwise, to aid in the construction of such line or lines of railroad to be operated by such corporation, in trust or otherwise, as may be provided by law or by the terms and provisions of any such grant, with like powers of disposition as are or may be conferred upon natural persons, and with like obligations to execute the trust and perform the conditions specified in such grants.

(G. S. 1860, c. 34, § 31, as amended 1875, c. 14, § 3; G. S. 1878, c. 34, § 51.)

§ 2645. Power to acquire property, how—To cross other roads.

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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; * G. S. 1878, v. 2, c. 34, § 39f.)

See *In re St. Paul & N. P. Ry. Co.*, 37 Minn. 164, 168, 33 N. W. Rep. 701.

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

§ 2646. Same—Power to condemn—For what purposes.

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79-NW 304

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.

(1879, c. 80, § 2; G. S. 1878, v. 2, c. 34, § 39g.)

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

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63-NW 1038

2647

61-M - 509

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76-M - 74

§ 2647. Same—Condemnation proceedings.

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.

(1879, c. 80, § 3; G. S. 1878, v. 2, c. 34, § 39h.)

The court may require the petitioning company to construct and maintain a device to enable trains to pass the crossing without danger of collision. *Winona & S. W. Ry. Co. v. Chicago, M. & St. P. Ry. Co.*, 50 Minn. 300, 52 N. W. Rep. 637.

§ 2648. 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.

(1879, c. 80, § 4; G. S. 1878, v. 2, c. 34, § 39i.)

§ 2649. Damages to be paid into court, when.

That where the commissioners appointed by the proper court to assess damages in any case or proceeding by any railroad company to acquire the right of way or appropriate property, have made or may hereafter make their assessment of such damages, and their report to the court, as provided by law, it shall be lawful for such railroad company to pay the amount of damages assessed to each tract the ownership and title to which is deemed to be in doubt, into such court in which such proceedings are pending, upon filing with said clerk an affidavit made by an officer or attorney of such railroad company, to the effect that there exists a reasonable doubt as to who is entitled to such damages or any portion thereof; and upon making such payment into court of the damages assessed and allowed to any tract or parcel mentioned in said affidavit, such railroad company shall be released and discharged from any and all further liability therefor, unless, upon appeal, the owner should recover a greater amount of damages, and in that case only for the amount in excess of the sum paid to such court.

(1877, c. 85, § 1; G. S. 1878, c. 34, § 21.)

§ 2650. Claims for money paid into court, how determined.

Any person claiming to be entitled to any other money paid into court as provided by section one of this act, may apply to the court therefor, and,

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upon furnishing evidence satisfactory to the court that he is entitled to the same, the court shall make an order directing the payment to such claimant the portion of such money as he shall be found entitled to; but if, upon such application, the court should determine that the title to the tract or tracts specified in the application of such claimant was in such condition as to require that an action be commenced to determine the conflicting claims thereto, he shall refuse such order until such action is commenced, and the conflicting claims to such real estate determined according to law.

(1877, c. 85, § 2; G. S. 1878, c. 34, § 22.)

§ 2651. Interest on awards and verdicts.

All awards for compensation and damages for the taking of land for public use on behalf of railroad corporations, where no appeal is taken, shall draw interest at the rate of seven per cent. per annum from the date of the filing of such awards until paid; and where an appeal is taken, the verdict in such appeal shall draw the like rate of interest until paid.

(1874, c. 28, § 1; G. S. 1878, c. 34, § 27.)

§ 2652. Taxes, assessments, and interest pending appeal.

Where an appeal is taken from such awards, and verdict rendered, the court shall add to such verdict all taxes and local assessments imposed upon the property sought to be condemned since the initiation of the condemnatory proceedings, and paid by the owners of the property, and also, in case the property has not been occupied by the owner from the time of the filing of the award, interest upon the amount fixed by the verdict, from the date of such filing, at the rate of seven per cent per annum; and the payment of any such tax or assessments by such owner shall be conclusive evidence of the legality and validity in all respects of such tax or assessment.

(1874, c. 28, § 2; G. S. 1878, c. 34, § 28.)

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.

§ 2653. 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; G. S. 1878, c. 34, § 29; as amended 1881, c. 57, § 1.)

A railroad company appealed, giving the bond required by section 2613, 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 this section, 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.

§ 2654. Failure to file awards within six months.

If the commissioners appointed in any such proceedings shall fail to make and file their awards within six months after their appointment is finally determined upon, all the proceedings shall, upon motion of the owner of the property sought to be condemned, be set aside and vacated as to the property of such owner by the judge or court making such appointment.

(1874, c. 28, § 4; G. S. 1878, c. 34, § 30.)

§ 2655. Costs, expenses, and interest where proceedings are discontinued or set aside.

When such proceedings are discontinued by the corporation, or vacated or set aside by the judge or court, the owner of such property, or his heirs, assigns or legal representatives, shall have the right to recover from the corporation initiating such condemnatory proceedings, reasonable costs and expenses, including counsel fees, and in addition thereto, where such lands have been taken possession of by the railroad company, as liquidated damages of such proceedings, a sum equal to and at the rate of seven per cent. per annum upon the value of said property from the date the railroad company took possession of said land until the discontinuance of said proceedings.

(1874, c. 28, § 5; G. S. 1878, c. 34, § 31.)

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 § 2653.

§ 2656. Act applies also to companies with special charters.

This act shall apply as well to corporations created by special charter, as to those organized under the general laws of the state, and as well to all proceedings pending, where the owner has not been actually paid for his property, in whatsoever stage such proceedings may now be, as to those hereafter to be initiated: provided, however, that where awards heretofore filed, or verdicts or judgments heretofore rendered in such proceedings, still remain unpaid, such awards, verdicts and judgments shall draw interest at the rate of seven per cent. per annum.

(1874, c. 28, § 6; G. S. 1878, c. 34, § 32.)

§ 2657. Action to recover land taken for railroad, when.

One year after any railroad has been constructed across the land of any person in this state, if such person has not already obtained compensation for the taking of his land for railroad purposes, and in all cases where any person is entitled to such compensation for such land, whether the same was taken with the acquiescence of the owner thereof or not, and no proceedings under the law have been instituted or are pending, to ascertain and assess such compensation, then and in that case he may have and maintain an action to recover the land so taken for railroad purposes, with or without damages for withholding thereof, and the rents and profits of the same, against the corporation or person constructing or operating such railroad.

(1875, c. 98, § 1; G. S. 1878, c. 34, § 33.)

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. 354.

Where the company constructs its road under a mere license, upon revocation of the same the landowner may maintain ejectment, and his right of action is not impaired by delay in bringing suit within the statutory time. *Kremer v. Chicago, M. & St. P. Ry. Co.*, 51 Minn. 15, 52 N. W. Rep. 977.

See *Blue Earth County v. St. Paul & S. C. R. Co.*, 28 Minn. 503, 11 N. W. Rep. 73; *Schoemaker v. Cedar Rapids, I. F. & N. W. Ry. Co.*, 45 Minn. 366, 48 N. W. Rep. 191; *Watson v. Chicago, M. & St. P. Ry. Co.*, 46 Minn. 321, 48 N. W. Rep. 1129.

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§ 2658. Same—Answer—Offer to pay compensation.

In such action the defendant may, by answer, admit and allege the taking of the plaintiff's land for railroad purposes, that no compensation has been made for such taking, and that the defendant is ready and willing to pay such compensation on having the same assessed and ascertained by the jury trying the action, provided, the plaintiff on the trial shall establish his right to recover the land in question.

(1875, c. 98, § 2; G. S. 1878, c. 34, § 34.)

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; *Kremer v. Chicago, M. & St. P. Ry. Co.*, 54 Minn. 157, 55 N. W. Rep. 923.

Notwithstanding an answer under this section, the plaintiff may dismiss. *Koerper v. St. Paul & N. P. Ry. Co.*, 40 Minn. 132, 41 N. W. Rep. 656.

As to the right of the defendant to abandon its application for an assessment. *Kremer v. Chicago, M. & St. P. Ry. Co.*, 51 Minn. 15, 52 N. W. Rep. 977.

§ 2659. Same—Compensation, how ascertained.

In such action, when the defendant by answer admits and pleads as in the last section specified, the jury shall try, and by their verdict find, whether the plaintiff is entitled to recover the land in controversy, and if so entitled, then the amount of compensation to which the plaintiff is entitled for the taking and perpetual use of this land for railroad purposes: provided, that when it appears that the land was so taken or appropriated by and with the consent and acquiescence of the owner, such owner shall not be entitled to recover any rents or profits which accrued prior to demand for compensation for such land, and he shall be limited to a recovery, in such case, to compensation for the land taken, and damages.

(1875, c. 98, § 3; G. S. 1878, c. 34, § 35.)

In an action given by § 2657, 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.*

The question of the amount of compensation must be tried in the same manner and upon the same kind of evidence as in an original proceeding instituted for the purpose. *Adolph v. Minneapolis & P. Ry. Co.*, 42 Minn. 170, 43 N. W. Rep. 348.

The amount of the plaintiff's compensation is not affected by proof by the defendant of the existence of mortgages upon the land, the mortgagees not being parties. *Bennett v. Minneapolis & P. Ry. Co.*, 42 Minn. 245, 44 N. W. Rep. 10.

§ 2660. Same—Judgment on verdict for plaintiff—Execution.

Upon a verdict finding that the plaintiff is entitled to recover the land in suit, and the compensation due him for the taking and perpetual use of such land for railroad purposes, judgment shall be entered in substance as follows: That the plaintiff have and recover from the defendant the land in suit, or, in lieu thereof, the compensation fixed by the jury, with costs and disbursement, and reasonable attorney's fee, to be fixed by the court. On the expiration of thirty days after the entry of the judgment aforesaid, if the

compensation, costs, disbursements and attorney's fee specified in the judgment are not paid, then a writ of execution shall issue for the delivery of the possession of the land described in the judgment to the plaintiff, and to satisfy the judgment as to costs, disbursements and attorney's fee out of any property of the defendant.

(1875, c. 98, § 4; G. S. 1878, c. 34, § 36.)

See *Scott v. Minneapolis, St. P. & S. S. M. Ry. Co.*, 42 Minn. 179, 180, 43 N. W. Rep. 966.

§ 2661. Same—Judgment on failure to answer, etc.—Execution.

In case the defendant does not plead as in the second section specified, then, if there is no answer, or if the plaintiff upon the trial establishes his title to the land sued for, he, the plaintiff, shall have judgment for the immediate possession of the land, and for such damages, rents and profits, as may be alleged and found, with costs, disbursements and reasonable attorney's fee, to be fixed by the court; and, upon such judgment, execution shall issue in the like manner, and for and with the like effect, as is provided in subdivision four of section two hundred and sixty-four of chapter thirty-[sixty]-six of the General Statutes.

(1875, c. 98, § 5; G. S. 1878, c. 34, § 37.)

§ 2662. Same—Rules governing such actions.

The action given by this act shall in all other respects, except as herein provided, be governed by the same rules of practice and procedure, as to new trials and appeals, or otherwise, as other actions brought for the recovery of real estate under the laws of this state.

(1875, c. 98, § 6; G. S. 1878, c. 34, § 38.)

§ 2663. Action to determine validity of condemnation proceedings.

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; G. S. 1878, v. 2, c. 34, § 39a.)

§ 2664. Same—Findings of court—Judgment—Jury trial.

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

⁵ 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.

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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.

(1879, c. 77, § 2; G. S. 1878, v. 2, c. 34, § 39b.)

§ 2665. Same—Judgment for defendant—Effect of payment.

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 purposes, 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; G. S. 1878, v. 2, c. 34, § 39c.)

§ 2666. Same—Parties defendant.

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.

(1879, c. 77, § 4; G. S. 1878, v. 2, c. 34, § 39d.)

§ 2667. Same—Rules of practice.

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.

(1879, c. 77, § 5; G. S. 1878, v. 2, c. 34, § 39e.)

§ 2668. Taking of land for tree-planting and snow-screens.

Any railroad company of this state, or which may hereafter be created or formed under the laws of this state, shall have the power and right, in addition to its other powers and rights, to acquire, by condemnation or otherwise, the necessary lands within two hundred feet on each side of the central line of the main track of its road, for the purpose of planting trees or erecting screens thereon for the protection of its road against snow.

(1878, c. 72, § 1; G. S. 1878, c. 34, § 40.)

§ 2669. Same—Damages or compensation to owners.

Damages or compensation for the land proposed to be taken by such company for the purpose aforesaid, shall be assessed or ascertained, and be payable, as provided by the general laws of this state in relation to the condemnation or taking of land by railroad corporations for right of way; and all proceedings to condemn or take land, for the purposes provided in this act, shall be regulated by and conducted in the manner prescribed by the general laws of this state aforesaid: provided, that whenever the charter of any railroad company, or any special act in relation thereto, provides for proceed-

ings to condemn or take land for right of way, the proceedings in relation to land proposed to be condemned or taken, under this act, by such railroad company, may be conducted in accordance with, and in the manner prescribed by, its said charter or such special act.

(1878, c. 72, § 2; G. S. 1878, c. 34, § 41.)

§ 2670. Right of way over state 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; G. S. 1878, c. 34, § 43; as amended 1879, c. 45, § 1; 1885, c. 42, § 1.)

*See §§ 2675, 2676.

§ 2671. 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; G. S. 1878, c. 34, § 44; as amended 1879, c. 45, § 2.)

§ 2672. 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; G. S. 1878, c. 34, § 45; as amended 1879, c. 45, § 3.)
1879, c. 45, § 4, repeals all acts "so far as the same may conflict with" that act.

§ 2673. Same—Proceeds—Disposition.

The funds so paid shall be credited to the proper fund to which such land belongs.

(1878, c. 73, § 4; G. S. 1878, c. 34, § 46; as amended 1879, c. 45, § 4.)

§ 2674. Same—Deeds to university land legalized.

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; G. S. 1878, v. 2, c. 34, § 46a.)

See, also, §§ 3950-3952.

§ 2675. 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

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the road, and shall continue so long as the same is occupied and used for railroad purposes, and no longer.

(1881, Ex. S. c. 69, § 1; ⁶ G. S. 1878, v. 2, c. 34, § 46b.)

§ 2676. 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 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 and assigns, without any further act or ceremony whatever.

(1881, Ex. S. c. 69, § 2; G. S. 1878, v. 2, c. 34, § 46c.)

§ 2677. Swamp lands—Selection within two years, when.

Any railroad companies within the state to which swamp lands have been granted by the state of Minnesota, and which by the terms of such grant is entitled to make selections of swamp lands and receive patents therefor, is hereby required to make such selections and file lists of the same in the office of the state land commissioner within two years from the passage of this act; and upon the approval of said list by the said land commissioner the governor shall immediately issue deeds for the same; and provided, that if there be no swamp lands certified or patented from which such grant or grants could be filled, or from which such selections could be made, the railroad company entitled to select shall have one year from and after the date of certifying or patenting of such lands within which to make such selections. The lists of all lands heretofore selected by any railroad company in this state where such lists have been filed in the office of the land commissioner shall immediately be approved or disapproved by the state land commissioner if such action has not already been taken, and thereupon deeds for such selected and approved lands shall be immediately executed by the governor.

(1893, c. 62, § 1.7)

§ 2678. Same—Selection by land commissioner, when.

Should any railroad company entitled to make the selections of swamp lands neglect or refuse to comply with the requirements of section one of this act within the time therein provided, the right of any such company to make any selections shall thereupon terminate. It shall then be the duty of the state land commissioner to at once select and set apart from the swamp lands belonging to the state and lying nearest the line of such company's railroad an amount of lands sufficient to fill and complete the grant to which said company may by law be entitled to receive, and no other or different lands than such as have been selected by such company within the time aforesaid or as set apart by the land commissioner as aforesaid shall be certified or conveyed to such company.

(Id. § 2.)

§ 2679. Same—Selection within one year, when.

Any railroad company to whom a grant of swamp lands has been made shall within one year from the date when the right to select such lands shall accrue to such company, but not thereafter, make such selections, and file lists with the state land commissioner; and in case such company shall refuse or neglect to make such selections and file such lists within the time aforesaid, it shall thereupon be the duty of the state land commissioner to select and set apart lands for such company as provided by section two of this act, and no other or different lands than such as have been selected by

⁶ An act granting the right of way for railroads over the swamp lands of this state. Approved November 19, 1881.

⁷ An act regulating the selection of swamp lands by certain railroad companies, and the conveyance of such selected lands by the state to such railroad companies. Approved March 24, 1893. § 4 repeals all inconsistent acts.

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such company within the time aforesaid or as have been set apart by the land commissioner as aforesaid shall be certified or conveyed to said company.

(Id. § 3.)

§ 2680. Sale, etc., of public land by municipal corporations.

The common council, board of aldermen, trustees, commissioners, or other corporate authorities of any city, town, village, or other municipal corporation, are hereby authorized and empowered to grant, sell, convey or lease any public grounds or place within their respective corporate limits, to any railroad corporation; subject, nevertheless, to all the rights of the original proprietors of such public grounds.

(1866, c. 41, § 1; G. S. 1878, c. 34, § 48.)

§ 2681. 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; G. S. 1878, v. 2, c. 34, § 60a.)

See *Bohan v. St. Paul & D. R. Co.*, 49 Minn. 488, 52 N. W. Rep. 133; *Akers v. Chicago, St. P., M. & O. Ry. Co.*, cited in note to § 2683.

§ 2682. Same—Penalty for violation.

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.

(1887, c. 16, § 2; G. S. 1878, v. 2, c. 34, § 60b.)

§ 2683. 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.

(1887, c. 16, § 3; G. S. 1878, v. 2, c. 34, § 60c.)

Laws 1887, c. 16, was designed for the protection of those rightfully on the premises, and not of trespassers, and does not abrogate the rule that, to recover from the owner or occupant on account of the unsafe condition of his premises, the injured party must have been rightfully upon them, and himself free from contributory negligence. *Akers v. Chicago, St. P., M. & O. Ry. Co.*, decided October 26, 1894.

§ 2684. Signs at public road crossings.

Every corporation organized under this title shall erect, at all points where their road crosses any public road, at a sufficient elevation from such public road to admit of a free passage of vehicles of every kind, a sign, with large and distinct letters placed thereon, to give notice of the proximity of the railroad, and warn persons of the necessity of looking out for the cars; and any company neglecting or refusing to erect such sign shall be liable in damages for all injuries occurring to persons or property from such neglect or

^s An act to provide for the better protection of railroad switches. Approved March 7, 1887.

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refusal; and each railroad company shall fence its roads with a good substantial fence, under such rules as the county commissioners of the several counties through which the same may run prescribe.

(G. S. 1866, c. 34, § 33; G. S. 1878, c. 34, § 53.)

§ 2685. 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 lines of railway.

(1889, c. 222, § 1.0)

Laws 1887, c. 15, providing how grade crossings should be constructed, held not to authorize all crossings to be at grade. State v. Minneapolis & St. L. Ry. Co., 39 Minn. 219, 39 N. W. Rep. 153.

Laws 1889, c. 222, is not, as to highways laid out after their passage, unconstitutional because they make no provision for compensation, such provision being made by the statute regulating the laying out of highways. State v. Shardlow, 43 Minn. 524, 46 N. W. Rep. 74.

See Chicago & G. T. Ry. Co. v. Hough, (Mich.) 28 N. W. Rep. 532; Whitsky 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. 737.

§ 2686. Same—Sufficient crossing—What constitutes.

A good and sufficient crossing as required to be built and kept in repair as denominated in section one 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 thirty-two feet in width, 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 supervisors, or other officer or officers having charge of the highway in the town, district or village where such intersection is located.

Second—That planks shall be firmly spiked on and for the full length of the ties used in the road bed of such railway, where such crossing occurs, and such planks, when so laid, shall be no more than one inch apart, except where the rails prevent, in which the planks 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 planks so used shall be equal to the height of the rail; that is to say, the upper surface of the planks shall be on a level with the upper surface of the rail, and all such planks shall extend along such railway the entire width of such highway grade, and all planks so laid shall not be removed or taken up for any greater length of time than is necessary for the repairs of such crossing or for the removal of snow or ice.

Provided, that in all incorporated cities or villages within this state said grade or grades of earth shall extend along said railroad track, at said crossings, the entire width of said public highway or street, and the plank mentioned in subdivision two of this section shall not only extend along the road bed of such railway, but between the tracks thereof when the same are not more than fifteen feet apart, and provided further, that at any crossing where such highway or street is not graded for travel to the full width thereof, that a planking of such track or tracks and between the same to a width equal to and coterminous with the portion of such highway or street which is graded for travel shall be a sufficient compliance with the provisions of this act.

(1889, c. 222, § 2, as amended 1893, c. 121, § 1.)

1893, c. 121, § 2, repeals all acts inconsistent with that act.

* An act requiring railway companies to build and keep in repair highway crossings. Approved April 10, 1889. § 7 repeals all inconsistent acts or parts of acts. This act supersedes Laws 1887, c. 15, having the same title, as amended by Laws 1889, c. 130, approved April 2, 1889.

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69-NW 898
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67-M - 213

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61-NW . 558
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67-M - 216
2686 89-M . 140

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§§ 2687-2692

CORPORATIONS

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§ 2687. Same—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.

(1889, c. 222, § 3.)

§ 2688. Same—Duty of company.

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.)

§ 2689. Same—Removal of 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 fifty feet each way from the centre of said railroad along such highway.

(Id. § 5.)

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

§ 2690. Same—Penalty for neglect.

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 provisions, without charge to the said city, village, or town.

(1889, c. 222, § 6.)

§ 7 repeals all conflicting acts or parts of acts.

§ 2691. Railroad bridges adapted to other travel—Tolls—Repairs.

That any railroad company of this state may so construct its bridges as to answer the ordinary purposes of travel and business, as well as for railroad purposes; and any company that shall so construct its bridge is hereby authorized to demand and receive such rates of toll for the passing of individuals, vehicles of all kinds, or animals, as said company may demand, subject to the approval of the county commissioners of the county or counties in which such bridge is erected: provided, that such rates of toll shall be uniform, shall be printed or painted, and kept conspicuous by being posted in or near the toll-house of such bridge; and provided further, that such rates of toll may be revised and changed the first week of each year, and that said company may compound or bargain with any person or party for the use of such bridge or bridges by the month, quarter, or year: provided also, that no railroad company shall receive toll upon any such bridge, if erected within one mile of any toll-bridge previously constructed over the same stream or river by any incorporated bridge company: provided further, that the town or towns, county or counties, in which such bridge or bridges may be erected, shall not be liable to pay any of the cost of constructing or repairing such bridge or bridges, or the immediate approaches thereto.

(1869, c. 78, § 1; G. S. 1878, c. 34, § 52.)

§ 2692. Fences and cattle-guards.

All railroad companies in this state shall, within six months from and after the passage of this act, build or cause to be built good and sufficient cattle-

(730)

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55-M . 227

2692

63-M - 37
65-NW 125

2692

74-NW 899

2692-2695

68-M - 217

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guards at all wagon-crossings, and good and substantial fences on each side of such road.

(1870, c. 24, § 1; G. S. 1878, c. 34, § 54.)

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. 133, 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. 738; *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.

Findings used to load ties, etc.; and to take on passengers who themselves flag the trains, are not within the implied exception. *Hurt v. St. Paul, M. & M. Ry. Co.*, 39 Minn. 485, 40 N. W. Rep. 613.

The burden of proving an exception from liability is on the defendant. Where the land is not used for public purposes, it is not enough that the defendant contemplates such use in the future. *Cox v. Minneapolis, S. S. M. & A. Ry. Co.*, 41 Minn. 101, 42 N. W. Rep. 924.

It is the condition of the road where the animals enter, not where they are killed, that governs. *Id.*

Cf. Green v. St. Paul, M. & M. Ry. Co. (Minn.) 56 N. W. Rep. 752.

The owner is not charged with contributory negligence, if the animals escape and get on the unfenced track without his fault. *Cox v. Minneapolis, S. S. M. & A. Ry. Co.*, supra. See *Vinson v. Chicago, St. P., M. & O. Ry. Co.*, 47 Minn. 265, 50 N. W. Rep. 228; *Nelson v. Great Northern Ry. Co.*, 52 Minn. 276, 53 N. W. Rep. 1129; *Green v. St. Paul, M. & M. Ry. Co.* (Minn.) 56 N. W. Rep. 753.

Where the railroad occupies a public street, it is not entitled to fence. *Rippe v. Chicago, M. & St. P. Ry. Co.*, 42 Minn. 34, 43 N. W. Rep. 652.

A failure to fence the track at a point some distance from the depot held not excused by proof that some freight was received and discharged there. *Moser v. St. Paul & D. R. Co.*, 42 Minn. 480, 44 N. W. Rep. 530.

The mere fact that the railroad is within a village does not exempt the company. *La Paul v. Truesdale*, 44 Minn. 275, 46 N. W. Rep. 363.

The neglect to fence is not excused by the fact that the construction of cattle guards so as completely to inclose the track is impracticable. *Nelson v. Great Northern Ry. Co.*, 52 Minn. 276, 53 N. W. Rep. 1129.

Evidence held not to show conclusively that the animals were of a kind to be turned by a lawful fence. *Alexander v. Chicago, M. & St. P. Ry. Co.*, 41 Minn. 515, 43 N. W. Rep. 481.

Liability of company for cattle unlawfully at large. *Johnson v. Minneapolis & St. L. Ry. Co.*, 43 Minn. 207, 45 N. W. Rep. 152; *Stacey v. Winona & St. P. R. Co.*, 42 Minn. 158, 43 N. W. Rep. 905.

Evidence held to show the defendant negligent in failing to repair a fence. *Graves v. Chicago, M. & St. P. Ry. Co.*, 47 Minn. 429, 50 N. W. Rep. 474.

"Wagon crossing" refers to wagon roads used for public travel. *Sather v. Chicago, M. & St. P. Ry. Co.*, 40 Minn. 91, 41 N. W. Rep. 458.

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. 553. Followed in *Stacey v. Winona & St. P. R. Co.*, 42 Minn. 158, 43 N. W. Rep. 905.

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 §§ 2693, 2695.

§ 2693. Same—Liability for animals injured.

All railroad companies shall be liable for domestic animals killed or injured by the negligence of such companies; and a failure to build and main-

tain cattle-guards and fences, as above provided, shall be deemed an act of negligence on the part of such companies.

(1876, c. 24, § 2; G. S. 1878, c. 34, § 55.)

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.*, 37 Minn. 103, 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.

Rule as to fencing depot grounds. *Hoopar v. Chicago, St. P., M. & O. Ry. Co.*, 37 Minn. 52, 33 N. W. Rep. 314.

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.)* 28 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. 892.

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. 783; *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 §§ 2692, 2694, 2695.

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§ 2694. Same—Double costs when.

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80-NW 628

If any railroad company shall neglect or refuse to pay the actual damages occasioned by such killing of or injury to any domestic animal for the space of thirty days after such damage occurs, and the same shall be recovered by action, then, in case such action shall be pending in the district court, double the costs allowed by law, together with disbursements, shall be recovered in such action against such company; and in case such action be maintained before a justice of the peace, the sum of ten dollars costs shall be recovered against such company: provided, that the said company, within the time above mentioned, or before the commencement of an action, may tender to the person or persons injured such amount as they are willing to pay; and if such amount is refused, and the person or persons so injured fail to recover a greater amount than the sum so tendered, he or they cannot recover costs and disbursements.

(1876, c. 24, § 3; G. S. 1878, c. 34, § 56.)

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. Chicago, St. P., M. & O. Ry. Co.*, 37 Minn. 52, 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.

§ 2695. Same—Liability of company operating railroad.

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Any company or corporation operating a line of railroad in this state, and which company or corporation has failed or neglected to fence said road, and to erect crossings and cattle-guards, and maintain such fences, crossings, and cattle-guards, shall hereafter be liable for all damages sustained by any person in consequence of such failure or neglect.

(1876, c. 24, § 4, as amended 1877, c. 73, § 1; G. S. 1878, c. 34, § 57.)

This section, since the amendment of 1877, (c. 73, § 1,) makes the obligation to construct fences, etc., provided by § 2692, applicable to all railroad companies in the state. *Gillam v. Sioux City, etc., R. Co.*, 26 Minn. 268, 3 N. W. Rep. 353.

Followed in *Finch v. Chicago, M. & St. P. Ry. Co.*, 46 Minn. 250, 48 N. W. Rep. 915.

The provisions of §§ 2692-2695 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 strays, 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. 163.

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.*, 33 Minn. 215, 36 N. W. Rep. 340.

Followed in *Nelson v. Minneapolis & St. L. Ry. Co.*, 41 Minn. 131, 42 N. W. Rep. 783, and *Finch v. Chicago, M. & St. P. Ry. Co.*, 46 Minn. 250, 48 N. W. Rep. 915.

See, also, *Emmons v. Minneapolis & St. L. Co.*, 41 Minn. 133, 42 N. W. Rep. 789.

This statute, as construed by the courts, is not unconstitutional. Minneapolis

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& *St. L. Ry. Co. v. Emmons*, 149 U. S. 364, 13 Sup. Ct. Rep. 870; *Same v. Nelson*, 149 U. S. 368, 13 Sup. Ct. Rep. 871.

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

§§ 2692-2695, inclusive, are applicable to the *St. Paul & Duluth Railroad Company*. *Fleming v. St. Paul, etc., R. Co.*, 27 Minn. 111, 6 N. W. Rep. 445.

See *Emmons v. Railroad Co.*, 35 Minn. 503, 29 N. W. Rep. 203; *Quackenbush v. Railroad Co.*, (Wis.) 22 N. W. Rep. 519; *Hull v. Railroad Co.*, (Iowa.) 22 N. W. Rep. 940.

See notes to §§ 2692-2694.

2696
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79-M - 401
79-NW 517
82-NW 671

§ 2696. **Crossing for stock—Duty to construct, when.**

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.

(1887, c. 174, § 1; 10 G. S. 1878, v. 2, c. 34, § 57a.)

See *Sigafoos v. Minneapolis, L. & M. Ry. Co.*, 39 Minn. 8, 38 N. W. Rep. 627; *Cameron v. Chicago, M. & St. P. Ry. Co.*, 42 Minn. 75, 78, 43 N. W. Rep. 785; *Chisholm v. Northern Pac. R. Co.*, 53 Minn. 122, 54 N. W. Rep. 1061.

See, also, *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.

§ 2697. **Same—Construction by owner, when—Drainage.**

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.

(1887, c. 174, § 2; G. S. 1878, v. 2, c. 34, § 57b.)

See *Schmidt v. Minneapolis, L. & M. Ry. Co.*, 38 Minn. 491, 38 N. W. Rep. 487.

§ 2698. **Fence between railroad and highway.**

That it shall be the duty of each and every railroad corporation within this state to cause the line of its railroad, or any branch or continuation thereof, now constructed and operated, or that shall hereafter be constructed and operated, along or upon the line of any public road or highway, or parallel with such highway and within one hundred feet distant from the line of such highway, to protect the same, by erecting and maintaining a suitable and sub-

¹⁰ An act to provide necessary crossings for the passage of farm stock, and for drainage under railroad tracks. Approved March 7, 1887.

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stantial post-and-board or stone fence, of at least five feet in height, along or near the line of its road, and so as to separate such portions of its railroad from such highway, and so as to prevent the passage of teams or animals over the track of such railroad at places other than regular and properly constructed crossings.

(1870, c. 16, § 1; G. S. 1878, c. 34, § 58.)

§ 2699. Same—Duty of supervisors—Penalty.

That if in the opinion of the supervisors of any town through or into which any line of railroad is or may hereafter be constructed and operated, upon, along or so near to any public road or highway as to render travel upon such road dangerous by reason of the passage of cars or engines upon such railroad, it shall be the duty of such supervisors to cause a notice thereof to be served upon such railroad company, by delivering the same to the president, secretary or superintendent of such company, therein designating the portions of such highway so regarded as dangerous, and requiring such corporation to cause the same to be protected by a suitable fence, as provided in the first section of this act. That the company or corporation so operating such railroad, and notified as aforesaid, shall cause such fence to be erected within sixty days from the time of the service of such notice; and in case of neglect or omission so to do, such company or corporation so in default shall be liable to a penalty of ten dollars for each and every day it shall so remain in default, to be recovered at the suit of the town supervisors, before any justice of the peace of the town named in such notice: provided, however, that no such notice shall be given between the first day of December and the first day of April, nor shall any such fence be required to be constructed during the months of December, January, February and March of any year.

(1870, c. 16, § 2; G. S. 1878, c. 34, § 59.)

§ 2700. Damage for fire caused by engines, etc.—Evidence.

All railroad companies or corporations operating or running cars or steam-engines over roads in this state shall be liable to any party aggrieved for all damage caused by fire being scattered or thrown from said cars or engines, without the owner or owners of the property so damaged being required to show defect in their engines or negligence on the part of their employes; but the fact of such fire being so scattered or thrown shall be construed by all courts having jurisdiction as prima facie evidence of such negligence or defect: provided, that the said railroad corporation may show, upon the trial of any action, that said damage arose from the default or negligence of the party injured.

(1874, c. 30, § 1; G. S. 1878, c. 34, § 60.)

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. St. Paul, M. & M. Ry. 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; *Davdson 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.) *Sibilrud v. Minneapolis, etc., Ry. Co.*, 29 Minn. 53, 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

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67-NW 794

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. *Sibirud v. Minneapolis, etc., Ry. Co.*, 29 Minn. 58, 11 N. W. Rep. 146.

Evidence held to show that a fire in an open field was set by a passing engine, and (with the statutory presumption) to show the negligence of the defendant. *Dean v. Chicago, M. & St. P. Ry. Co.*, 39 Minn. 413, 40 N. W. Rep. 270.

Statutory presumption of negligence, how rebutted. Presumption held rebutted. *Daly v. Chicago, M. & St. P. Ry. Co.*, 43 Minn. 319, 45 N. W. Rep. 611. Held whether rebutted a question for the jury. *Hoffman v. Chicago, M. & St. P. Ry. Co.*, 43 Minn. 334, 45 N. W. Rep. 608; *Doyscher v. Chicago, M. & St. P. Ry. Co.*, 43 Minn. 427, 45 N. W. Rep. 719; *Wilson v. Northern Pac. R. Co.*, 43 Minn. 519, 45 N. W. Rep. 1132; *Hayes v. Chicago, M. & St. P. Ry. Co.*, 45 Minn. 17, 47 N. W. Rep. 260; *Cantlon v. Eastern Ry. Co. of Minnesota*, 45 Minn. 481, 48 N. W. Rep. 22.

Evidence of combustible material along the road held admissible, as bearing on the degree of care necessary. *Cantlon v. Eastern Ry. Co. of Minnesota, supra.*

The duty of the company in regard to the use of improved appliances. Whether the defendant was negligent in continuing to use a certain kind of engine a question for the jury. *Hoye v. Chicago, M. & St. P. Ry. Co.*, 46 Minn. 269, 48 N. W. Rep. 1117.

The defendant's liability is not affected by the fact that it ran its trains over the road of another company. *Cantlon v. Eastern Ry. Co. of Minnesota, supra.*

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; *Seely 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 Pac. R. Co.*, 32 Minn. 526, 21 N. W. Rep. 732; *Bowen v. Railroad Co.*, 36 Minn. 522, 32 N. W. Rep. 751; *Hoffman v. Chicago, M. & St. P. Ry. Co.*, 40 Minn. 60, 41 N. W. Rep. 301.

§ 2701. Negligence of co-employee—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; 11 G. S. 1878, v. 2, c. 34, § 60d.)

This act applies only to those employes engaged in operating the railroad. *Lavallee v. St. Paul, M. & M. Ry. Co.*, 40 Minn. 249, 41 N. W. Rep. 974; *Johnson v. St. Paul & D. R. Co.*, 43 Minn. 222, 45 N. W. Rep. 156.

A section hand may recover for the negligence of a locomotive engineer. *Smith v. St. Paul & D. R. Co.*, 44 Minn. 17, 46 N. W. Rep. 149.

A sectionman whose duties require the use of a hand car, and who is injured through the negligence of a fellow servant operating it, may recover. *Steffenson v. Chicago, M. & St. P. Ry. Co.*, 45 Minn. 355, 47 N. W. Rep. 1068.

See *Slette v. Great Northern Ry. Co.*, 53 Minn. 341, 55 N. W. Rep. 137; *Northern Pac. R. Co. v. Behling*, 6 C. C. A. 681, 57 Fed. Rep. 1037.

A sectionman injured by the negligence of another, while loading iron on a flat car, cannot recover. *Pearson v. Chicago, M. & St. P. Ry. Co.*, 47 Minn. 9, 49 N. W. Rep. 302.

The defendant had operated a railway for six months when the plaintiff was injured by the negligence of a coemploye, operating an engine hauling cars on a temporary track to fill in low land for a yard. Held, that the case did not fall within the proviso. *Schneider v. Chicago, B. & N. R. Co.*, 42 Minn. 68, 43 N. W. Rep. 783.

Followed in *Moran v. Eastern Ry. Co. of Minnesota*, 48 Minn. 46, 50 N. W. Rep. 930.

¹¹ An act to define the liabilities of railroad companies in relation to damages sustained by their employes. Approved February 24, 1887.

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- 65-NW 260
- 67-NW 804

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- 65-M - 389
- 66-M - 79
- 68-M - 20
- 68-M - 135
- 69-M - 524
- 70-M - 476

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- 73-NW 510
- 75-NW 3
- 77-NW 240

2701

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- 79-M - 247
- 82-NW 576

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A railroad company operating a line composed of the lines of several different companies comes within the act. *Moran v. Eastern Ry. Co. of Minnesota*, supra.

This act does not change the rule as to the burden of proof of contributory negligence. *Lorimer v. St. Paul City Ry. Co.*, 48 Minn. 391, 51 N. W. Rep. 125.

See *Steffenson v. Chicago, M. & St. P. Ry. Co.*, 48 Minn. 285, 51 N. W. Rep. 610; *McLaren v. Williston*, 48 Minn. 299, 51 N. W. Rep. 373.

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

See *State v. Sheriff of Ramsey Co.*, 48 Minn. 236, 240, 51 N. W. Rep. 112.

§ 2702. Waiting-rooms to be provided at stations.

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. Such railroad corporations or companies shall, at all depots or stations where trains stop regularly to receive and discharge passengers, for at least one-half hour before the arrival and one-half hour after the arrival of any passenger train, cause their respective depots or waiting rooms to be open for the reception of passengers; said depots to be kept well lighted and warmed for the space of time aforesaid.

(1885, c. 190, § 1; 12 G. S. 1878, v. 2, c. 34, § 61a; as amended 1891, c. 105, § 1.)

See authorities cited to § 2706.

§ 2703. Same—Penalty for failure.

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 stations shall be taken and deemed to be a separate violation of this act. (1885, c. 190, § 2; G. S. 1878, v. 2, c. 34, § 61b.)

§ 2704. 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.

(1885, c. 190, § 3; G. S. 1878, v. 2, c. 34, § 61c.)

§ 2705. County seats—Stopping passenger trains.

All regular passenger trains, run by any common carrier operating a railway in this state, or by any receiver, agent, lessee or trustee of said common carrier, shall stop a sufficient length of time at its stations at all county seats within this state to take on and discharge passengers from such trains with safety, and any engineer, conductor or other agent, servant or employe of, or any person acting for such common carrier or for any receiver, agent, lessee or trustee of such common carrier, who violates any provision of this act is guilty of a misdemeanor and is punishable by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than three months;

¹²An 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.

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provided, however, that this act shall not apply to through railroad trains entering this state from any other state, or to transcontinental trains of any railroad.

(1893, c. 60, § 1.13)

§ 2 repeals all inconsistent acts and parts of acts.

This act is not unconstitutional either as an unreasonable regulation or as interfering with interstate commerce, and is valid even when applied to a train carrying United States mail which also carries passengers within the state. *State v. Gladson* (Minn.) 59 N. W. Rep. 487.

§ 2706. 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 one minute: provided, all regular passenger trains shall stop a sufficient length of time at the railroad station of county seats to receive and let off passengers with safety; 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.

(G. S. 1866, c. 34, § 34; G. S. 1878, c. 34, § 61; as amended 1885, c. 85; 1891, c. 69, § 1.)

See §§ 388, 398.

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. 360.

³An act requiring all passenger trains of any railway company to stop at county seats, and making any violation thereof a misdemeanor. Approved March 31, 1893.

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§ 2707. Railroad junctions—Transfer of passengers and baggage.

When railroads within this state intersect or cross each other, and either road has a regular or permanent station, and passenger trains are due at the same hour, the train first arriving shall wait for the arrival of the other, if it comes within five minutes; and each of such roads shall afford suitable opportunities for passengers desiring it to change with their baggage from one train to the other; and the superintendent, conductor and engineer of the railroad violating the provisions of this act, who shall knowingly or willingly cause or permit the train to pass intersection or a crossing with another railroad, without affording the opportunity for change of passengers with their baggage as aforesaid, shall, upon conviction thereof, be deemed guilty of a misdemeanor, and shall be subject to a fine of not less than five hundred dollars for each and every offence.

(1872, c. 24, § 1; G. S. 1878, c. 34, § 62.)

§ 2708. Platforms for farm machinery to be provided, where.

That all railroad corporations or companies operating any railroads in this state shall provide at all stations in villages containing a population of two hundred and fifty or more inhabitants on their respective roads suitable platforms immediately along side of the side track or tracks of such company at said stations for the accommodation of patrons of said railroad company and for the use of such patrons in loading upon and unloading from the cars of said railroad company heavy farm machinery, threshing machines, separators, engines, horse powers and other machinery of like character. Said platforms shall be not less than twelve feet in width and thirty-two feet in length, exclusive of the approaches hereinafter prescribed (and of the same height from the ground as the floor of an ordinary box car), and the floor of such platforms shall be constructed of planks not less than three inches in thickness and laid closely together. Such platforms shall be of sufficient strength to permit of the unloading and handling upon the same of the character of machinery hereinbefore set forth with safety. There shall be constructed at each end of the platform an approach or driveway of such slope that teams can be driven up and down the same in handling such machinery. Such approaches shall be floored with the same kind of material as the main part of said platform; provided, however, that at all stations where there are at the date of the passage of this act, platforms with a driveway at one end thereof and of reasonable strength and dimensions, the railroad company owning or operating the railroad on which the same are located shall not be required to replace the same until replacement is necessary by reason of such platform being worn out, but all replacements of present platforms, when the same shall be worn out, shall be in accordance with the provisions of this act.

(1893, c. 61, § 1.14)

§ 2709. Same—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 \$500 nor more than \$1,000 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 stations shall be taken and deemed to be a separate violation of this act.

(Id. § 2.)

¹⁴An act requiring railroad corporations and companies operating railroads in this state to provide platforms for loading and unloading heavy machinery and implements and providing a penalty for the failure so to do. Approved March 30, 1893.

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§ 2710. Stock cars to be furnished—Transportation of stock.

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; ¹⁵ G. S. 1878, v. 2, c. 34, § 62i.)

§ 2711. 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.

(1887, c. 17, § 2; G. S. 1878, v. 2, c. 34, § 62j.)

§ 2712. Same—Transportation 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.

(1887, c. 17, § 3; G. S. 1878, v. 2, c. 34, § 62k.)

§ 2713. Elevator charges unlawful, when.

It shall not be lawful for any railroad company, or any agent or employe of any railroad company, to charge or collect from any person or persons, elevator charges, or any charges whatever for handling wheat, or for the use of any elevator, in any case where grain is shipped on such road without being placed in or passed through such elevator; nor shall any company, or any agent or employe thereof, make any distinction whatever in charges against any person or persons shipping grain from private warehouses, or handling grain otherwise than in or through elevators belonging to any railroad company.

(1870, c. 19, § 1; G. S. 1878, c. 34, § 64.)

See, also, storage and transportation of grain, §§ 7645-7732.

§ 2714. When one company can lease or control another.

Any railroad corporation, either domestic or foreign, whether organized under a general law or by virtue of a special charter, may lease or purchase, 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; ¹⁶ G. S. 1878, v. 2, c. 34, § 68a.)

¹⁵An 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.

¹⁶An 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.

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§ 2715. When one company can be consolidated with another—Articles of consolidation—Filing—Effect—Issue of stock.

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. Any railway company of this state, empowered by the laws thereof to consolidate its railway property and franchises, or any portion thereof, with the railway property and franchises, or any portion thereof, of another railway company, or to purchase the railway property and franchises, or any part thereof, of another railway company, may effect such consolidation or purchase by acquiring the stock, bonds or other securities of such other railway company; and for the special purpose of acquiring the same, may create, issue or dispose of its own stock, bonds, or other securities, in addition to the amounts of the same it is otherwise empowered to issue, to an amount not exceeding the actual value of the stock or bonds of such other company acquired by it. Any railway company of this state may, also, for any other purpose author-

ized by its acts or articles of incorporation, create, issue and dispose of such amounts of stock as the boards of directors may find necessary for such purpose. Prior to the issuance of any stock under the provisions of this act, the company issuing the same shall file with the secretary of state a duly authenticated resolution of its board of directors, stating the number and par value of the shares so to be issued, and the particular purpose for which the same are to be issued. Provided, That nothing contained in this act shall authorize any railway company to sell its capital stock for less than full par value thereof in money, property, work or services. Provided, further, That nothing in this act shall be so construed as to authorize the issuance or sale of any stock or bonds by any such company, or the performance of any act prohibited by chapter twelve of the general laws of one thousand eight hundred and eighty-seven, or by any other law of this state relating to the issuance or sale of the stock and bonds of any railway company therein.

(1881, c. 94, § 2; G. S. 1878, v. 2, c. 34, § 68b; as amended 1889, c. 228, § 1.)

See § 2743.

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., 36 Minn. 481, 32 N. W. Rep. 556.

§ 2716. Consolidation, etc., 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; G. S. 1878, v. 2, c. 34, § 68c.)

§ 2717. Same—Jury to decide whether lines are parallel.

No railroad corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line; and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by jury as in other civil issues.

(1874, c. 29, § 1; G. S. 1878, c. 34, § 65.)

§ 2718. Consolidation of companies having connecting railroads.

Whenever the lines of railroad of any railroad corporation, whether organized under this title or by virtue of a special charter, or any portion of such lines, have been or may be constructed so as to admit the passage of freight or passenger cars over any two or more of such roads continuously, without break or interruption, such corporations may consolidate themselves into a single corporation in the manner following:

First—Any two or more railroad corporations may, by their directors, enter into an agreement, under the corporate seal of each, for the consolidation of the said corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; the name of the new corporation; the names and places of residence and number of the directors thereof; the time and place of holding the first election of directors; the number of shares of capital stock in the new corporation; the amount of each share, which shall not be less than one hundred dollars; the manner of converting the shares of capital stock in each of said two or more corporations into shares in such new corporation; the manner of compensating stockholders in each of the old corporations who refuse to convert their stock into the stock of the new corporation; with such other details as they deem necessary to perfect the consolidation of said corporations; and such new corporation shall possess all the powers, rights and franchises conferred upon said corporations, and be subject to all the restrictions, and perform all the duties,

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imposed by the provisions of this title: provided, that all stockholders in either of such corporations who refuse to convert their stock into the stock of such new corporation, shall be paid at least par value for each of the shares so held by them, if they so require, previous to the consummation of said consolidation.

Second—Such agreement of the directors shall not be deemed to be the agreement of the said old corporations, until after it has been submitted to the stockholders of each of said corporations separately, at a meeting thereof, to be called upon a notice of at least thirty days, specifying the time and place of such meeting, and the object thereof, 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 office of business, and is sanctioned by such stockholders by the vote of at least two-thirds in amount of the stockholders present at such meeting, voting by ballot, either in person or by proxy, each share of capital stock being entitled to one vote; and when such agreement of the directors is so sanctioned by each of the meetings of the stockholders separately, it shall be deemed to be the agreement of the said old corporations.

(G. S. 1866, c. 34, § 36; G. S. 1878, c. 34, § 66.)

§ 2719. Same—Effect of such consolidation.

Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate or counterpart thereof in the office of the secretary of state, the said old corporations shall be merged in the new corporation provided for in such agreement, to be known by the corporate name therein mentioned; and the details of such agreement shall be carried into effect, as provided therein.

(G. S. 1866, c. 34, § 37; G. S. 1878, c. 34, § 67.)

§ 2720. Same—New corporation to succeed to rights of old.

Upon the election of the first board of directors of the corporation created by said agreement, the rights and franchises of each of said old corporations, their rights and interests in and to every species of property, real, personal and mixed, and things in action, shall be deemed to be transferred to and vested in such new corporation, without any other deed or transfer; and such new corporation shall hold and enjoy the same, together with the right of way, and all other rights of property, in the same manner and to the same extent, as if the said old corporations had continued to retain the title, and transact the business, of such corporation; and the titles and real estate acquired by either of said old corporations shall not be deemed to revert or be impaired by means of anything in this title contained: 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 company shall thenceforth attach to such new corporation, and be enforced against the same, to the same extent, and in the same manner, as if such debts, liabilities and duties had been originally incurred by it.

(G. S. 1866, c. 34, § 38; G. S. 1878, c. 34, § 68.)

§ 2721. Aid by railroad company in construction of connecting roads—Purchase, lease or agreement.

Any railroad corporation heretofore or hereafter incorporated, whether under the provisions of this title or by special charter, may at any time, and by means of subscription to the capital of any other corporation, or otherwise, aid such corporation in the construction of its railroad, for the purpose of forming a connection of said last-mentioned road with the road owned by the corporation furnishing said aid; or any railroad corporation may lease or purchase any part or all of any railroad constructed by any other corporation whose lines of road are continuous or connected with its own, upon such terms and conditions as may be agreed on; or any two or more railroad corporations whose lines are so connected may enter into any ar-

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arrangement for their common benefit, consistent with and calculated to promote the objects for which they were created: provided, that no such aid shall be furnished, nor any purchase, lease or arrangement perfected, until a meeting of the stockholders of each of said corporations has been called by the directors thereof, at such time and place, and in such manner as they shall designate, and the stockholders of at least two-thirds of the stock of such corporation represented at such meeting, in person or by proxy, and voting thereat, assent thereto.

(G. S. 1866, c. 34, § 39; G. S. 1878, c. 34, § 69.)

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. §§ 2721, 2751, 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 § 2751. *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.

§ 2722. Power to borrow money and execute bonds, etc.
—Limit of indebtedness—Funding indebtedness
—Representation of bondholders.

Any corporation formed under this title may borrow money and may execute its bonds or promissory notes therefor, and may secure payment thereof by mortgage or pledge of its property or income or both; provided, that the amount of the indebtedness or liability of such corporation exclusive of that so secured shall not at any one time exceed two-thirds of the amount of its capital, nor in the amount specified in its certificate filed, recorded and published as aforesaid; provided further, that any such corporation may issue bonds and promissory notes, in lieu and in payment of any bonds thereof, or of any bonds outstanding and issued and disposed of to provide means for construction of its road or works, the same to bear such rate of interest as may be agreed upon, and if the articles of association of such corporation so provide, then one or more persons selected by the holders of such bonds may be admitted into the board of directors of such corporation upon such terms and conditions and under such regulations as may be agreed upon between such corporation and its bondholders, or their trustee or trustees.

(G. S. 1866, c. 34, § 40, as amended 1875, c. 14, § 4; G. S. 1878, c. 34, § 70; 1893, c. 74, § 2.)

To make a pledge of its income effectual a company may stipulate in its mortgage that upon default the trustee may take possession, operate the road, and receive its earnings. *Seibert v. Minneapolis & St. L. Ry. Co.*, 52 Minn. 246, 53 N. W. Rep. 1151.

§ 2723. Power to execute deeds of trust—Bonds—Convertible into stock, when—Interest.

The several railroad companies of this state shall have the power, and are hereby authorized, to mortgage or execute deeds of trust of the whole or any part of their property and franchises, to secure money borrowed by them for the construction and equipment of their roads, and may issue their corporate bonds, in sums not less than five hundred dollars, secured by said mortgages or deeds of trust, payable to bearer or otherwise, and, if payable to bearer, negotiable by delivery, bearing interest at the rate not to exceed ten per cent. per annum, and convertible into stock or not as may be deemed expedient, and may sell them at such rates or prices as they deem proper; and if said bonds shall be sold below their nominal or par value, they shall be valid and binding on the company, and no plea of usury shall be put in or allowed by said companies in any suit or proceeding upon the same.

(1868, c. 56, § 1; G. S. 1878, c. 34, § 71.)

See *Central Trust Co. v. Moran* (Minn.) 57 N. W. Rep. 471.

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§ 2724. Same — Mortgages may include after-acquired property.

Said mortgages or deeds of trust may, by their terms, include and cover, not only the property of the companies making them at the time of their date, but property, both real and personal, which may thereafter be acquired by them, and shall be as valid and effectual for that purpose as if the property were in possession at the time of the execution thereof.

(1868, c. 56, § 2; G. S. 1878, c. 34, § 72.)

A locomotive was sold to be paid for on delivery, but was delivered without payment. A receiver was afterwards appointed in a foreclosure suit. Held, that the seller's claim was postponed to that of the bondholders. *Manchester Locomotive Works v. Truesdale*, 44 Minn. 115, 46 N. W. Rep. 301.

See *Central Trust Co. v. Moran* (Minn.) 57 N. W. Rep. 471.

§ 2725. Same — Record — Notice — Rolling stock, etc., deemed part of realty.

Said mortgages or deeds of trust shall be recorded in the office of the register of deeds of each county through which the road mortgaged or deeded may run, or wherever it may hold lands, and shall be notice to all the world of the rights of all parties under the same; and for this purpose, and to secure the right of mortgagees or parties interested under deeds of trust so executed and recorded, the rolling stock and personal property of the company properly belonging to the road and appertaining thereto shall be deemed a part of the road, and said mortgages and deeds so recorded shall have the same effect, both as to notice and otherwise, as to the personal, as to the real estate covered by them.

(1868, c. 56, § 3; G. S. 1878, c. 34, § 73.)

Where a railroad with its stock and personal property is mortgaged, pursuant to §§ 2723-2725, the different items of the property cannot be levied on separately. *Central Trust Co. v. Moran* (Minn.) 57 N. W. Rep. 471.

§ 2726. Same—Place of record.

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; G. S. 1878, c. 34, § 74; as amended 1883, c. 66, § 1.)

§ 2727. Foreclosure sale—Organization of new company by purchasers—New company to succeed to rights of old.

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

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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 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—Decree of foreclosure.

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

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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; G. S. 1878, c. 34, § 87; as amended 1879, c. 49, § 1.)

§ 2728. Narrow-gauge railroads.

All railroads in this state commonly known as narrow-gauge railroads shall be built of the uniform gauge of three feet.

(1875, c. 85, § 1; G. S. 1878, c. 34, § 88.)

See § 256.

§ 2729. 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 contracted 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

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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; 17 G. S. 1878, v. 2, c. 34, § 91d.)

§ 2730. 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.

(1885, c. 210, § 2; G. S. 1878, v. 2, c. 34, § 91e.)

§ 2731. 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 register 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.

(1885, c. 210, § 3; G. S. 1878, v. 2, c. 34, § 91f.)

§ 2732. 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.

(1885, c. 210, § 4; G. S. 1878, v. 2, c. 34, § 91g.)

§ 2733. Same—Acknowledgments—Form.

The acknowledgments of such contracts may be made in the form required as to conveyances of real estate.

(1885, c. 210, § 5; G. S. 1878, v. 2, c. 34, § 91h.)

§ 2734. Issue of income certificates—Preferred and special stock.

Any railroad corporation now existing, or hereafter created or organized, by or under any law of this state, general or special, shall have the power to create, issue and dispose of special stock, preferred stock and income certificates, to such amounts, in such form, and for such purposes, as may be determined upon by the board of directors of such corporation, with the assent thereto of the holders of at least two-thirds in amount of the common capital stock then outstanding of such corporation: *provided*, however, that no increase of any special or preferred stock, or of any income certificates, issued pursuant to this act, shall at any time be made without the assent

¹⁷An 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.

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thereto of the holders of two-thirds in amount of the special stock, preferred stock, or of the income certificates, to be affected by such issue, as the case may be.

(1877, c. 143, § 1; G. S. 1878, c. 34, § 75.)

See § 3415.

§ 2735. Holders of bonds,* etc., may vote for directors, when.

Any such corporation shall have the power, in such manner, under such regulations, and to such extent as may be prescribed by its board of directors, and assented to by the holders of at least two-thirds in amount of the common capital stock then outstanding of such corporation, to confer upon the holders of its bonds or other obligations, issued to evidence or secure its indebtedness, or upon the holders of any particular class of such bonds or obligations, or upon the holders of its special stock, or of its preferred stock, or of its income certificates, or of any particular class thereof, or upon all or any of them, the right to vote for directors of such corporation, and also the right to choose from among the stockholders, (whether special, preferred, or common,) or from among the holders of the bonds or income certificates of such corporation, one or more members of its board of directors.

(1870, c. 143, § 2; G. S. 1878, c. 34, § 76.)

* See § 2722.

§ 2736. Agreements with holders of bonds, etc., as to control of property—Certificate of assent.

Any railroad corporation now existing, or hereafter created or organized, by or under any law of this state, general or special, shall have the power to make and enter into any agreement with the holders of its bonds or other obligations issued to evidence or secure its indebtedness, or with the holders of any particular class of such bonds or obligations, or with the holders of its special stock, or of its preferred stock, or of its income certificates, or with any particular class or portion thereof, in relation to the sale, lease or control of the property and franchises of such corporation, which shall receive the assent thereto of the holders of two-thirds in amount of each class of special, preferred and common stock and income certificates then outstanding of such corporation, at a meeting of the holders of such stocks and income certificates, called for that purpose in the same manner and form as other meetings of the stockholders of such corporations are called: provided, however, that a certificate of such assent, under the seal of the corporation, together with a certified copy of the agreement so assented to, shall be filed in the office of the secretary of state of this state, within thirty days after the meeting of the holders of said stocks and income certificates at which such assent is given: and provided further, that a copy of such agreement shall be printed upon or attached to the class of bonds, or other obligations, or upon or to the special stock, preferred stock, or income certificates, with the holders of which such agreement shall have been made, and shall also be printed upon or attached to the certificates of common stock of such corporation.

(1877, c. 144, § 1; G. S. 1878, c. 34, § 77.)

§ 2737. Opening stock-subscription books — Commencement of work.

The corporators named in the articles hereinbefore provided for are authorized, at their first annual meeting, or at such other time as they deem best, before such annual meeting, to be designated by them, to open books for subscription to the capital stock of said corporation, under such regulations as they shall prescribe; and when, after the opening of books for the subscription of stock, sufficient stock is subscribed to justify the incorporators or directors to commence such canal, line, railroad or improvement, and the first instalments upon such stock are paid in, said corporation may commence work thereon, and they shall thereby become invested with all the rights, privileges and franchises conferred by this title.

(G. S. 1866, c. 34, § 41; G. S. 1878, c. 34, § 78.)

§ 2738. Increase of capital stock—New articles.

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.

(G. S. 1866, c. 34, § 42; G. S. 1878, c. 34, § 79; as amended 1883, c. 5, § 1.)

*See § 3400.

†See § 3398.

‡See § 3399.

§ 2739. 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; 18 G. S. 1878, v. 2, c. 34, § 79a.)

§ 2740. 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.

(1887, c. 265, § 2; G. S. 1878, v. 2, c. 34, § 79b.)

¹⁸An act regulating the proceedings of railroad companies desiring to increase their capital stock. Approved March 7, 1887.

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§ 2741. 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.

(1887, c. 265, § 3; G. S. 1878, v. 2, c. 34, § 79c.)

§ 2742. 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.

(1887, c. 265, § 4; G. S. 1878, v. 2, c. 34, § 79d.)

§ 2743. Unpaid shares—Fictitious stock—Issue 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 corporation 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; ¹⁹ G. S. 1878, v. 2, c. 34, § 8a.)

This section does not forbid the issue of first-mortgage bonds and full-paid stock in payment for construction if the amount does not unreasonably exceed the value received. *Brown v. Duluth, M. & M. Ry. Co.*, 53 Fed. Rep. 889.

§ 2744. 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.

(1887, c. 12, § 2; G. S. 1878, v. 2, c. 34, § 8b.)

See § 233.

§ 2745. 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.

(1887, c. 12, § 3; G. S. 1878, v. 2, c. 34, § 8c.)

§ 2746. 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

¹⁹An 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.

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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. (1887, c. 12, § 4; G. S. 1878, v. 2, c. 34, § 8d.)

§ 2747. Annual report to state auditor.

Every railroad company incorporated under this title shall annually, in the month of January, make a full report of the condition of its affairs to the auditor of state, showing the amount of the capital stock in such company, the gross amount of tolls or receipts during the previous year, the costs of repairs and incidental expenses, the net amount of profits, and the dividends made, with such other facts as may be necessary to a full statement of the affairs and condition of such road; and the auditor of state shall annually present an abstract copy of such report to the legislature.

(G. S. 1866, c. 34, § 43; G. S. 1878, c. 34, § 80.)

See §§ 283, 395.

§ 2748. Domestic company may exercise franchise in other states.

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 steamboat in such state or territory, or otherwise applicable to the doings of such corporations in such state or territory.

(1881, c. 31, § 1; G. S. 1878, v. 2, c. 34, § 91b.)

See *In re Minneapolis & St. L. Ry. Co.*, 36 Minn. 481, 32 N. W. Rep. 556.

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§ 2749. 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.

(1881, c. 31, § 2; G. S. 1878, v. 2, c. 34, § 91c.)

*Chapter 34 of General Statutes.

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§ 2750. 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

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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, 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; ²⁰ G. S. 1878, v. 2, c. 34, § 91a.)

§ 2751. Iowa companies—Extension into Minnesota—Conditions.

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Any railroad organized, or that may be hereafter organized under the laws of the state of Iowa, is hereby authorized to extend and build its road into the state of Minnesota; 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 true 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. Service of any civil process on the local station agent in this state shall be deemed and construed to be a personal service of such process on any such company doing business in this state under the provisions of this act: provided, that no company shall be entitled to operate under the provisions of this act, until such company has filed in the office of the secretary of state of this state an acceptance of the provisions of this act.

(1873, c. 27, § 1, as amended 1877, c. 14, § 1; G. S. 1878, c. 34, § 106.)

See §§ 5200, 5202.

Laws 1889, c. 225, requiring the payment of fees, applies to Iowa companies who accept the provisions of this section. State v. Sioux City & N. R. Co., 43 Minn. 17, 44 N. W. Rep. 1032.

See note to § 2721.

See Cedar Rapids, I. F. & N. W. Ry. Co. v. Raymond, 37 Minn. 204, 205, 33 N. W. Rep. 704.

§ 2752. Illinois companies—Extension into Minnesota—Conditions.

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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

²⁰An act to authorize railroad companies to alter their routes or the location of the lines of their roads. Approved March 7, 1881.

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; G. S. 1878, v. 2, c. 34, § 106a.)

§ 2753. Foreign companies—Extension into Minnesota—Conditions.

That any railroad company organized under the laws of other states is hereby authorized, upon being incorporated in this state as hereinafter provided, to build and extend its road into, through, or across the state of Minnesota, and such railroad company shall have and possess all the powers, franchises, immunities and privileges, and be subject to the same liabilities as railroad companies organized and incorporated under the general laws of this state. Provided, and this act is upon the express condition which is accepted by any company that avails itself of the provisions of this act, and which is in accord with the uniform practice of all railroad companies heretofore reporting "gross earnings" for taxation under the laws of this state, that the term "gross earnings" as used in sections one and two of chapter one hundred and eleven of the general laws of one thousand eight hundred and seventy-three, and in section one of chapter eleven of the general laws of one thousand eight hundred and eighty-seven, shall be construed to mean "all earnings on business beginning and ending within the state and a proportion based upon the proportion of the mileage within the state to the entire mileage over which such business is done, of earnings on all inter-state business passing through, into or out of the state, and shall include gross earnings of all express companies, fast freight lines, sleeping and parlor car companies, and other common carriers, corporations or persons doing business or transporting persons or property on and over the lines or right of way of any railroad company within this state by virtue of an agreement, contract or arrangement of any nature with such railroad company. Provided, such railroad company shall first file in the office of the secretary of state of the state of Minnesota, a true copy of its articles of organization, or incorporation, duly certified as such by the secretary of state of the state of its original incorporation, and shall comply with the laws of the state of Minnesota as to filing and recording its said articles of organization or incorporation by causing a certified copy thereof to be recorded in the office of said secretary of state of the state of Minnesota, and a like certified copy of said articles to be recorded in the office of the register of deeds of the county where the principal place of business of said railroad company is to be located in this state, and shall keep an office in this state in the same county, or some one of the counties, in or through 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.

(1889, c. 235, § 1.21)

§ 2754. Same—What constitutes acceptance of act.

That upon and from the filing of its said articles of incorporation as above provided, which shall be deemed to be an acceptance of the benefits of this act, the said corporation is hereby declared to be a legal domestic corporation of this state.

(Id. § 2.)

§ 2755. Abandonment of road illegal, when.

That it shall be unlawful for any railroad company organized under any law of this state and whose road has been constructed in whole or in part

²An act to authorize railroad companies organized under the laws of other states to build and extend their line or lines of railway into, through or across the state of Minnesota, to provide for their incorporation in this state, and to define the meaning of the term "gross earnings" as applied to such companies. Approved March 28, 1889.

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by public aid or local subscription given as a bonus for such construction, having once constructed and put in operation the whole or any portion of said road and located and opened for business stations and houses thereon, to hereafter take up, abandon or cease the operation of its said track, or any portion thereof, or to close up and abandon its said stations and station houses, or to withdraw the agents therefrom, except upon the order or decree of the district court of the county or counties through which said road proposed to be abandoned may run, and in which it is desired to take up and abandon such track or to close up such station or stations and withdraw therefrom. Provided, however, that the provisions of this section relating to the abandonment of stations and station houses and the withdrawal of agents therefrom shall not apply to or affect the stations or station houses on any railroad or any portion thereof while such railroad or portion thereof is being operated.

(1893, c. 59, § 1.22)

§ 2756. Same—Petition—Procedure.

In case any railway company described in section one of this act shall desire to abandon any portion of its line of road it shall make a petition to the district court of the county in which the portion proposed to be abandoned is located, setting forth in such petition the reasons why such abandonment is desired, and such other matters as may be pertinent thereto. And upon the filing of such petition the court shall issue an order directed to all persons interested in the maintenance of such road to show cause, if any they may have, before the court issuing such order why the portion of road described in such order should not be abandoned and vacated, which said order shall be published for four weeks prior to such hearing in a newspaper published in such county. Such order to show cause shall only be returnable before the court issuing the same in the county where such road is located on the first day of a general term of such court to be held in such county. Upon the return day of such order, any one or more taxpayers living along the line proposed to be abandoned by said proceedings may file in the office of the clerk of said court a written protest against such abandonment and vacation, and upon the filing of such protest issue shall be joined and the question of the necessity of the abandonment and vacation of such road shall be a question of fact to be tried by jury.

(Id. § 2.)

§ 2757. Same—Action to recover bonds, etc., when.

In all cases where railway companies described in section one of this act have abandoned, taken up, vacated or ceased to operate its lines for the period of sixty consecutive days without having complied with the requirements prescribed in section two of this act any county, city, town, village, township or individual who has issued bonds, given promissory notes or other thing of value to such railway company or companies may recover the same by commencing an action in the district court of the county where such road has been abandoned against such railway company for the recovery of such bonds, promissory notes or other thing of value, and in the event said bonds, promissory notes or other things of value cannot be recovered, then the cash value thereof.

(Id. § 3.)

§ 2758. Same—Penalty—Duty of attorney general, etc.

Any company violating the provisions of this act shall be liable to a penalty therefor of not less than two hundred dollars nor more than one thousand dollars per day for each and every day that it shall unlawfully dismantle and abandon the operation of its said road; and it shall be the duty of the attorney general of this state or the county attorney of the county or counties where such abandoned road was situated to commence proceedings in the district court in said county in the name of the state of Minnesota for

²²An act to prevent the abandonment and vacation of railways, and to provide for assessment and collection of damages in such cases. Approved April 1, 1893.

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the recovery of the penalty herein specified, and to compel the restoration of the track of the company so abandoned and the reopening for business the station or stations which have been closed. Provided, however, that the provisions of this act shall not apply to forest or ore roads constructed exclusively for logging or mining purposes.

(Id. § 4.)

§ 2759. To keep general office within this state.

That every railroad company heretofore or hereafter incorporated by the laws of the territory or state of Minnesota, shall establish within this state, at some point on the line, or at a terminal point of its road, an office to be known as its general office within this state, and at said point keep some officer of said company, or special auditor of accounts, secretary or general agent, upon whom service of all legal process against said company may be made, and who shall be authorized to hear and determine all questions relating to the current business of said company arising within the state.

(1874, c. 27, § 1; G. S. 1878, c. 34, § 82.)

See *Horn v. Railroad Co.*, 37 Minn. 375, 34 N. W. Rep. 593.

§ 2760. List of stockholders, etc., to be kept in such office.

At said office there shall be kept at all times the original minutes of the board of directors or executive committee of the board, and a list of the stockholders of the company, or correct copies thereof, which copies shall be kept [up] from time to time of the entries in the original number [minutes] or transfers which occur.

(1874, c. 27, § 2; G. S. 1878, c. 34, § 83.)

§ 2761. Land-grant companies to keep record of lands sold, etc.

That all land-grant companies shall keep within this state, at some office publicly established, the original or copies of all books, papers and records of every description relating to the land sold, encumbered, contracted or owned by such company, sufficient to show intelligibly all material matters connected with such grant and the management of its lands, which books and papers shall be open at all reasonable times, on demand, to inspection by the auditor of state, railroad commissioner, or any agent appointed for that purpose by the governor.

(1874, c. 27, § 3; G. S. 1878, c. 34, § 84.)

§ 2762. Penalty for failure to comply with three preceding sections.

If any such company shall fail to comply with the provisions of this act, it shall, for every month it shall fail to establish and maintain such offices, forfeit and pay, for the use of the general fund of the state, the sum of five hundred dollars, to be recovered in any court of competent jurisdiction, to be prosecuted and collected by the attorney general, in the name of the state of Minnesota.

(1874, c. 27, § 4; G. S. 1878, c. 34, § 85.)

§ 2763. Annual meetings* — Time — Notice — Who may vote.†

It shall be the duty of every railroad corporation of this state, whether created by special act of incorporation, or organized under any general law of this state, or under or by virtue of any legislative enactment of this state, or of the late territory of Minnesota, to call a meeting of its stockholders annually, for the purpose of electing directors, and for the transaction of such other business as may lawfully come before such meeting; which meeting shall be appointed for the time and place fixed for the same in the charter or by-laws of the respective corporations; and if no time or place has been fixed in the charter or by-laws of any company, then such meeting shall be held on the first Monday of June of each year, and at such place

* See § 3107.

† See § 3418.

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on the line of the respective railroads as may be designated in the notice calling such meeting; and such notice shall be given by the secretary of each company, by publication for three weeks in a newspaper printed in the county in this state where the principal office of said railroad company is situated, and the first publication of said notice shall be at least twenty-five days prior to the time fixed for such meeting; and in case of the death or disability of any such secretary, or of his neglect or omission to give such notice by publication as aforesaid, or of a vacancy in the office for the time being, then such notice may be given by any one or more of the directors of said company, by publication of a notice fixing the time and place of such meeting of the stockholders, the first publication to be at least twenty days prior to the time fixed for such meeting; and at any such meeting, called as herein provided, it shall be lawful for the stockholders to attend and organize, and, by a majority of votes of those thus attending and taking part in such meeting, to elect directors, and transact all such other business as may be lawfully transacted by such company at its annual meeting; and at any meeting of stockholders of any such company, such stockholders may vote in person or by proxy: provided, that no such proxy shall be valid for more than one year after its date: provided, that any person or class of persons who have a right to vote for directors, shall be deemed and construed as stockholders for the purposes of this act.

(1877. c. 19, § 1; G. S. 1878, c. 34, § 86.)

A stockholders' meeting held outside the state, all the stockholders not consenting, and the by-laws requiring it to be held in the state, is illegal, and does not divest the rights of the former officers. *Hodgson v. Duluth, H. & D. R. Co.*, 46 Minn. 454, 49 N. W. Rep. 197.

§ 2764. Contractors' bonds to secure laborers—Liability of company, when.

That whenever any railroad company shall contract with any person for the construction or repairing of its road, or any part thereof, such railroad company shall take from the person with whom such contract is made, a good and sufficient bond with sureties, conditioned that such person shall pay all laborers, mechanics, all just debts due to such persons, or to any person to whom any part of such work is given, incurred in carrying on such work, which bond, or a certified copy thereof, shall be filed by said railroad company, in the office of the register of deeds in each county where the work of such contractor shall be. All persons to whom such contractor shall be indebted for work as aforesaid, and every railroad company who shall have paid any debt, claim or demand as hereinafter provided, shall have an action on said bond, to the full amount of debts awarded against such contractors. And if any such railroad company shall fail to take and file such bonds, or if any contractor or subcontractor shall be indebted for work or services as aforesaid, said railroad company shall be liable to the persons mentioned aforesaid, to the full extent of all such debts so contracted by said contractor, or pursuant to the terms of said contract: provided, such laborers, or mechanics [or other persons] shall give the notice and take the action prescribed in the subsequent sections of this act.

(1873, c. 29, § 1; G. S. 1878, c. 34, § 89.)

§ 2765. Same—Liability of company to laborers after notice, when.

Whenever any person, being a contractor or subcontractor employed by or in pursuance of the terms of any contract with any railroad company for the construction or repairing of any portion of any railroad, shall be indebted to any laborer or mechanic for services rendered, such railroad company shall be liable to pay such laborer or mechanic the amount of such debt: provided, such laborer or mechanic shall have given notice to such railroad company, within thirty days after such debt shall have accrued, that he has such debt: provided, such debt shall have accrued within sixty days prior to the giving of such notice. Such notice shall be in writing, and shall specify the particular nature and amount of such debt, claim or demand, and shall be delivered to the secretary or chief engineer of such

company, or to the engineer in charge of the construction or repairing of that portion of the road upon which such labor was performed, either personally, or by leaving the same at the office or usual place of business of such secretary or engineer.

(1873, c. 29, § 2; G. S. 1878, c. 34, § 90.)

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

§ 2766. Same—Limitation of actions.

No action shall be maintained against any railroad company under the provisions of this act, unless the same is commenced within sixty days after the service of notice aforesaid.

(1873, c. 29, § 3; G. S. 1878, c. 34, § 91.)

(7) STREET-RAILWAY COMPANIES.

See, also:

- Sections
- 1094. Subd. 2. Cities may charge such companies for use of bridges constructed by them.
 - 1299. Subd. 47. Council in villages of over 3,000 inhabitants to control erection and operation.
 - 1668-1669. Percentage of gross earnings of railroad companies in lieu of other taxes.
 - 6477. Subd. 5. Use of force by carrier of passengers lawful in expelling passengers from railway car, when.
 - 6941-6942. Use of profanity or fire-arms while on horse or other railway car, prohibited.
 - 6943. Smoking, profanity, etc., on street cars prohibited, when.
 - 6944. Disorderly conduct in railroad car or other public conveyance a misdemeanor.

§ 2767. Street railways—Inclosure for drivers, when.

From and after the first day of November, A. D. 1893, it shall be unlawful for any person, partnership or corporation owning or operating a street railway in this state, or for any officer or agent thereof superintending or having charge or control of the management of the said line of railway or of the cars thereof, operating electric, cable or other cars propelled either by steam, cable or electricity which require the constant services, care or attention of any person or persons on any part of such car except on the rear platform thereof, to require or permit such services, attention or care of any of its employes or any other person or persons between the first day of November and the first day of April of each year, unless such person, partnership or corporation, its said officers or superintending and managing agents have first provided the said car or cars with a proper and sufficient inclosure constructed of wood, iron and glass or similar suitable materials sufficient to protect such employes from exposure to the inclemencies of the weather; provided, that such inclosure shall be so constructed as not to obstruct the vision of the person operating such car.

(1893, c. 63, § 1.23)

Laws 1893, c. 63, is constitutional. *State v. Hoskins* (Minn.) 59 N. W. Rep. 545.

§ 2768. Same—Protection between November and April.

From and after said November first, A. D. 1893, it shall be unlawful for any such person, partnership or corporation so owning or operating street railways using steam, electric or cable cars or any superintending or managing officer or agent thereof to cause or permit to be used upon such line of railway between said November first and April first of each and every year any car or cars upon which the services of any employe such as specified in section one of this act is required, unless said car or cars shall be provided with the inclosure required by said section one of this act. Provided, that any street railway company using and operating more than two hundred cars, other than its open cars, and such street railway company or companies have in good faith provided or equipped at least one-half the cars so used

²³An act to compel street railway companies to protect certain of their employes from the inclemencies of the weather. Approved April 6, 1893.

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and operated by it with the inclosure provided for in section one of this act within the time therein specified, then and in such case such street railway company or companies shall have until November first, 1894, to equip the remainder of its said cars as provided in this act.

(1893, c. 63, § 2.)

§ 2769. Same—Penalty for violation.

Any person, partnership or corporation owning, operating, superintending or managing any such line of street railway or managing or superintending officer or agent thereof who shall be found guilty of a violation of the provisions of sections one or two of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars. Each day that any of said persons cause or permit any of their said employes to operate such cars in violation of the provisions of section one of this act, or cause or permit cars to be used or operated in violation of section two of this act shall be deemed a separate offense; provided, that the provisions of this act shall not apply to cars used and known as trailing cars.

(Id. § 3.)

§ 2770. Same—County attorney to prosecute violations.

It is hereby made the duty of the county attorney of any county in which any such street railway is situated and operated upon information given to him by any person that any person, partnership or corporation has violated any of the provisions of this act to promptly prosecute such person, partnership or corporation for such violation.

(Id. § 4.)

(8) MUNICIPAL BONDS IN AID OF RAILROADS.²⁴

See, also:

- Sections
509-518. "Minnesota State Railroad Adjustment Bonds" and "Minnesota State Funding Bonds."
1441-1452. Municipal bonds in aid of construction of canals and improved water ways.
1639. Bonds of municipal corporations in certain cases void.
1692-1693. Registration of municipal bonds issued in aid of the construction of railroads.
1694. Annual tax for payment of interest upon registered bonds.
1696. Payment and cancellation of coupons of municipal bonds.
2757. Action against railroad company to recover bonds issued in aid of abandoned line of railroad.

§ 2771. Counties, etc., may issue bonds in aid of railroads—Limit of issue.

Any county, town, incorporated city or incorporated village in this state, is hereby authorized and empowered, in the manner herein provided, to aid in the construction of any railroad in this state, to be constructed by any railroad company for public use by authority of any law of the state, in the manner hereinafter provided, and which will promote the general prosperity and welfare of the tax-payers of such municipality; and the mutual agreement hereinafter referred to, when the same shall be arrived at, shall be conclusive evidence that such railroad will so promote the general prosperity and welfare of the tax-payers of such municipality. But no bond shall be issued by any city, village or town, under the provisions of this act, to an amount exceeding, together with its then existing indebtedness, five per centum upon the value of the taxable property therein, the amount of such taxable property to be ascertained and determined by the last assessment of said property made for the purpose of state and county taxation previous to the incurring of such indebtedness.

(1877, c. 106, § 1, as amended 1878, c. 45, § 1; G. S. 1878, c. 34, § 92.)

In determining whether the bonds exceed the 5 per cent. limit, the par value alone, exclusive of interest, is to be considered. *Finlayson v. Vaughn*, 54 Minn. 331, 56 N. W. Rep. 49.

²⁴An act to authorize municipal corporations to aid in the construction of railroads. Approved March 5, 1877 (Laws 1877, c. 106).

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§ 2772. Same—Right of municipality to require stock in exchange for bonds.

The aid to be contributed to the construction of any such railroad by any such county, town, city or village, shall be by the bonds of such municipality, to be issued to or for the use of such railroad company, in consideration of which such municipality shall, at its election, be entitled to receive from such railroad company such number of shares of its capital stock as will, at the par value of such stock, correspond with the principal sum of such bonds.

(1877, c. 106, § 2; G. S. 1878, c. 34, § 93.)

§ 2773. Same—Agreement required before issue of bonds or stock.

No such bonds shall be issued to or for the use of any such railroad company, and no such stock shall be issued to any such municipality, until a mutual agreement in relation thereto shall have been arrived at in the mode hereinafter specified; and when such mutual agreement shall have been arrived at (in either one of such modes,) the proper officers of such municipality shall be authorized and required to issue and deliver such bonds in conformity with the mode so agreed upon, and the stock of such railroad company shall also be issued in conformity therewith, in case such municipality shall have elected to take stock.

(1877, c. 106, § 3; G. S. 1878, c. 34, § 94.)

§ 2774. Same—Application of company for aid—Contents—Filing and record.

Whenever any such railroad company specified in the first section of this act shall desire aid in the construction of its railroad from any county, town, city or village specified in said first section, it shall make and deliver to the county auditor of such county, the town clerk of such town, or the clerk of such incorporated city or village, as the case may be, a definite proposition in writing, signed by the president and secretary of said railroad company, and sealed with its seal, which proposition shall contain a statement of the amount of bonds desired, the time when payable, and whether payable before maturity at the option of such municipality, the rate of interest which they shall bear; and such proposition shall contain a statement specifying when said bonds are to be delivered with reference to the time of the entire or partial construction of said railroad, and may contain a statement that such bonds may be deposited in escrow prior to the delivery to the railroad company; and such proposition shall contain a statement that the said railroad company will, in consideration of said bonds, at the election of such municipality, issue to the municipality from which it is to receive the same, such number of the shares of its capital stock as will, at par value of such stock, correspond with the principal sum of such bonds. In case such bonds are proposed to be deposited in escrow as aforesaid, the proposition shall also state that the certificate of the stock to be exchanged therefor shall be placed with the same depository at the same time; and in that case the proposition shall set forth the full name and residence of the trustee or trustees who shall be the custodian of the stock of said company and of the bonds of such city, village, town or county. The auditor or clerk with whom any such proposition shall be filed, shall immediately endorse thereon the date of its receipt by him, and transcribe the same into the record book of the county, town, city or village, as the case may be, of which he is such clerk.

(1877, c. 106, § 4; G. S. 1878, c. 34, § 95.)

§ 2775. Same—Agreement, how arrived at—Calling and notice of election.

The mode of arriving at such mutual agreement as is hereinbefore specified, shall be as follows:

First. Upon receiving such proposition, the county auditor of such county, the town clerk of such town, or the clerk of such incorporated city or village, as the case may be, shall immediately publish a notice of an election to be held by the legal voters of such county, town, incorporated city or village,

at the usual place or places of holding elections therein, and at such time as such clerk may designate, not less than ten or more than twenty days from the date of such notices, which notice shall contain a substantial statement of the proposition made by said railroad company for the issue of the bonds of such municipality, and shall notify the legal voters thereof to deposit a ballot upon which shall be written or printed the words, "For the railroad proposition," or the words, "Against the railroad proposition." And such notice shall be posted in three public places in each election precinct in the district in which aid is desired, at least seven days before the day of such election, and shall also be published at least twice before such election in one newspaper in such city, village, or town, if any is published therein, and if the aid is asked of a county, in one newspaper in each village and city in such county in which a newspaper is published, and if there is no newspaper published in such city, village, town or county, then such notice shall be so published in a newspaper published at the nearest place thereto in which one is published; and said railroad company so desiring aid shall pay the expenses of advertising such proposition in said newspapers; and provided, that no such election shall be called, except upon filing in the office of the town clerk a statement in writing in favor of calling said election, signed by the supervisors, town clerk and justices of the peace, or any two of them, together with at least twelve other freeholders of said town.

Second. Conduct of election—Certificate of canvassers.

Such election shall be held and conducted in the same manner that general elections in such counties, towns, incorporated cities or villages are by law required to be held and conducted, and the votes cast at such election shall be counted, canvassed and returned in the same manner as the votes at such general election, and the canvassers shall make, certify, sign and deposit with the county auditor, town clerk or clerk of such incorporated city or village, as the case may be, a statement of the result of such election; and such certified statement shall be prima facie evidence of the number of votes cast for or against such proposition, and also of the fact that such election was regularly held and conducted according to law.

Third. When further elections may be called.

If in any of said counties, towns, cities or villages, any election shall fail to be held on the day appointed therefor, or if the majority of votes cast at any such election shall be against the railroad proposition, such county auditor, town clerk, or clerk of such city or village shall, at the written request of the president of such railroad company, at any time thereafter, call another election or elections in the manner provided in this act, upon the same or different propositions of such railroad company; and such other election or elections shall be conducted in like manner and upon like notice as is provided in this act for the first election: provided, that not more than one election authorized by this act shall be held in any one calendar year in the same town, county, village or city.

Fourth. Effect of vote in favor of aid—Delivery of bonds—Waiver of stock.

If a majority of the legal voters who shall vote upon the question at any election to be held in any such county, town, city or village, in pursuance of the provisions of this act, shall, as indicated by the official returns of any such election, vote "for the railroad proposition," then such mutual agreement for the issue of bonds by such municipality, and of stock by such railroad company, as provided in this act, shall be deemed and considered to have been arrived at and perfected, and thereupon such bonds and stock shall be issued and delivered by the proper officer, in conformity with the true intent of such proposition, and with the provisions of this act: provided, that if such bonds are to be issued by a county, there shall also have been a majority of votes cast in favor of the railroad proposition at a majority of the election precincts within such county at such election: and provided further, that the board of county commissioners of any such county, or the board of supervisors of any such town, or the common council of any such village or city, may, in case it shall deem it for the interests

of such county, town, village or city to do so, waive the issuance by such railroad company of any such stock to such county, town, village or city.

(1877, c. 106, § 5, as amended 1878, c. 46, §§ 1, 2; G. S. 1878, c. 34, § 96.)

In 1880, town bonds were issued, in pursuance of Laws 1877, c. 106, upon an agreement entered into in the mode provided in § 7 of the act, which had been repealed. The bonds recited that they were issued under said act, and that all the conditions of the act had been complied with. Held, that the town was estopped from denying the validity of the bonds as against a bona fide holder for value. *Kimball v. Town of Lakeland*, 41 Fed. Rep. 289.

An agreement for the issue of railway bonds on the petition of a majority of the taxpayers being void by reason of the unconstitutionality of Laws 1877, c. 106, § 7, the town is not estopped to dispute the validity of bonds issued by its officers under the agreement; but the United States circuit court having given judgment against the town, and in favor of the coupon holders, held that the town might recover from the railway company to which the bonds were issued, and which sold them for their full value to citizens of other states, the amount of the bonds and interest. *Town of Plainview v. Winona & St. P. R. Co.*, 36 Minn. 505, 32 N. W. Rep. 745; writ of error dismissed, 143 U. S. 371, 12 Sup. Ct. Rep. 530.

As to waiver of the issuance of stock. *Finlayson v. Vaughn*, 54 Minn. 331, 56 N. W. Rep. 49.

As to § 7 of Laws 1877, c. 106, repealed by Laws 1879, c. 34, § 2, and c. 72, § 1, see *Harrington v. Town of Plainview*, 27 Minn. 224, 6 N. W. Rep. 777 (holding § 7 unconstitutional); *State v. Town of Highland*, 25 Minn. 355.

§ 2776. Bonds not to be delivered until completion of road.

No bonds shall be delivered to the company under such proposition until the road, branch, or extension thereof, for the construction of which the aid has been granted, shall have been completed, ready for the passage of cars, through or to the district granting aid, or to the nearest point in its line to such district, or from and to such point as the company in its proposition shall have proposed to construct said road.

(1877, c. 106, § 6,* as amended 1878, c. 45, § 2; G. S. 1878, c. 34, § 97.)

* § 7 of Laws 1877, c. 106, repealed by Laws 1879, c. 34, § 2, and c. 72, § 1.

§ 2777. Rights of municipality as stockholder.

The stock received by any such county, town, city or village, in pursuance of any such mutual agreement, shall be entitled to all and the same rights, benefits and privileges as the stock of the same class held by any other person or persons; and the municipality receiving any such stock shall, so long as it shall hold the same or any part thereof, be a part owner of such railroad and its franchises; and the proper authorities of the municipalities holding such stock shall appoint a person to vote thereon, in behalf of such municipality, and such authorities may also sell and dispose of the said stock in such manner as shall to them seem best for the interest of such municipalities.

(1877, c. 106, § 8; G. S. 1878, c. 34, § 99.)

§ 2778. Liability of municipality on bonds—Tax to pay interest and principal.

Every county, town, city or village which shall issue any bonds in pursuance of the provisions of this act, shall be severally liable in law, faithfully, promptly and at maturity, to pay and discharge the principal and interest upon every such bond issued by it; and the faith of every such county, town, city or village shall, by the issue of such bond or bonds, be and stand irrevocably pledged to the prompt discharge of every such liability; and every such county, town, city or village shall annually levy and collect a tax on all taxable property therein, as indicated by the assessment roll or rolls, for the payment of all moneys to become due upon such bonds, whether for principal or interest, in addition to all other taxes, and the money so raised shall be kept as a separate fund, and strictly applied to that purpose; and it may, in the discretion of the proper authorities, raise a greater sum in any one year than is needed to pay what shall become due in that year, and apply the same to the purchase and discharge of such bonds, at the lowest practicable rate or price.

(1877, c. 106, § 9; G. S. 1878, c. 34, § 100.)

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§ 2779. Breach of duty by officers.

If any officer upon whom any duty is imposed by this act shall wilfully fail faithfully and promptly to discharge the same, as by this act required, he shall be liable to the party or parties aggrieved for all actual damages suffered by such party or parties by reason of such failure.

(1877, c. 106, § 10; G. S. 1878, c. 34, § 101.)

§ 2780. Definition of terms—Execution of bonds.

For the purpose of this act, the term "proper officer" shall be construed and held to intend and mean, in the case of a county, the chairman of the board of county commissioners and the county auditor of such county; in the case of a town, the chairman of the town board and the town clerk; in the case of a city, the mayor, or the officer performing the duties of mayor, and the city clerk; and in the case of a village, the president and clerk of the village; and the term "proper authorities" shall be construed and held to intend and mean, in the case of a county, the board of county commissioners; in the case of a town, the town board of supervisors; in the case of a city, the common council or other authorities possessing the usual powers of the common council of cities; and in the case of a village, the board of trustees, or other local governmental board, by whatever name it may be called, which is vested with the power to levy taxes; and any and all bonds issued under this act, by any county, town, city or village, shall be officially signed by the proper officers thereof as aforesaid, and sealed with its corporate seal, if it have one; and in the case of a town, it shall be the duty of the county clerk of the county in which said town is situated, if requested to do so, to add to each of such bonds a certificate, under the seal of the county, to the effect that the town officers subscribing the bonds are in fact such officers, and that he believes their signature thereto to be genuine.

(1877, c. 106, § 11; G. S. 1878, c. 34, § 102.)

§ 2781. No further bonds to be issued under other laws.

If any county, town, city or village shall issue and deliver to any railroad company any bonds in pursuance of the provisions of this act, it shall not thereafter issue or deliver any bonds, or incur any liability, in aid of the construction of the railroad of such company, by virtue of the authority of any other law of this state.

(1877, c. 106, § 12; G. S. 1878, c. 34, § 103.)

§ 2782. Time allowed company for earning bonds.

It shall be lawful for any town, county, city, or village, which shall have voted aid to any railroad company, or which shall hereafter vote aid to any railroad company, without limiting the time when such aid shall be earned by the company, by the authorities thereof, to fix and limit the time when such aid shall be earned: provided, that the time so fixed shall not be less than one year from the date of giving notice to such railroad company of the fixing such limit; and if the aid shall not be earned in accordance with the conditions upon which it was voted within the time so fixed by such authorities, then such aid shall be forfeited.

(1877, c. 106, § 13; G. S. 1878, c. 34, § 104.)

§ 2783. Subscription to stock in lieu of issue of bonds.

Any county, town, city or village, is hereby authorized, instead of issuing bonds in aid of railroads as hereinbefore provided, by agreement to be arrived at as is herein provided for the issuing of bonds, to subscribe to the capital stock of such company, the subscription to be paid in money in one or more instalments, at such times, not exceeding three years from the time of entering into such contract, as may be agreed upon, and after such parts of the work of constructing the railroad aided shall be done as shall be agreed upon; the last instalment not, however, to be paid until the railroad shall have been completed, ready for the passage of cars, to the place to which it is agreed to be built in consideration of the aid so granted. If such an agreement shall be arrived at in the manner herein provided, it shall be the duty of the proper officers of such county, town, city or village, from time to time, to levy and collect a tax in the same manner as general taxes are

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levied, of sufficient amount to pay the instalments as the same shall fall due according to the terms of such agreement.

(1877, c. 106, § 14; G. S. 1878, c. 34, § 105.)

§ 2784. 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 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; 25 G. S. 1878, v. 2, c. 34, § 105a.)

(9) SALE OF TRANSPORTATION TICKETS.

§ 2785. Ticket agents—Certificate and license.

It shall be the duty of the owners of any railroad or steamboat for the transportation of passengers to provide each agent who may be authorized to sell within the state, tickets or other evidence entitling the holder thereof to travel upon his or their railroad or steamboat, with a certificate setting forth the authority of such agent to make such sales, which certificate shall be duly attested by the corporate seal of any corporate owner of such railroad or steamboat, and shall, for the information of travelers, be kept posted in a conspicuous place in the office of such agent. After issue of such certificate, as aforesaid, such agent or superintendent or general officer of such owners shall, within ten days thereafter, exhibit the same to the secretary of state of Minnesota, and at the same time shall pay to said secretary of state a license fee of three dollars, whereupon said secretary of state shall issue to such agent so presenting said certificate, a license under the seal of the state of Minnesota, authorizing such agent to engage in the business of selling transportation tickets of said common carrier, and said license so issued to such agent by said secretary of state shall also be kept posted in a conspicuous place in the office of such agent for the information of travelers and of the public.

(1893, c. 66, § 1.20)

This act is not unconstitutional. State v. Corbett (Minn.) 59 N. W. Rep. 317.

§ 2786. Sale of transportation tickets by others unlawful.

It shall not be lawful for any person not in the possession of such certificate and license so posted as aforesaid to sell, barter or transfer within this state for any consideration the whole or any part of any ticket or other evi-

²⁵ 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."

²⁶ An act to regulate the sale and redemption of transportation tickets of common carriers, and to provide punishment for violation of the same. Approved April 19, 1893.

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dence of the holder's title or right to travel on said railroad or steamboat, whether such railroad or steamboat be situated, operated or owned within or without the limits of this state.

(1893, c. 66, § 2.)

§ 2787. Same—Penalty for violation.

Whoever shall violate the provisions of the second section of this act shall be deemed guilty of a misdemeanor, and shall be punishable by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such offender shall be convicted.

(Id. § 3.)

§ 2788. Agents must show certificates.

It shall be the duty of every agent residing or acting within this state who shall be authorized to sell therein tickets or other evidence of the holder's title to travel upon any railroad or steamboat, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request him so to do, such certificate of his authority thus to sell and such license.

(Id. § 4.)

§ 2789. Unused part of ticket to be redeemed, when.

It shall be the duty of the owners of every railroad or steamboat situate or operated, in whole or in part, within this state, to redeem immediately upon demand, the whole or any coupon or coupons of any ticket theretofore sold by them, in any manner, which the purchaser for any reason has not used, at cost; in case of a ticket not used, and in case of a coupon of a ticket partially used, at a rate which shall be pro rata per mile, and which shall be equal to the difference between the price paid for the whole distance and the distance for which used portion of said ticket was actually used; provided, that such ticket or coupon or coupons shall be presented for such redemption to any agent authorized as aforesaid; and the sale by any person of such ticket, or of the unused portion of any such ticket or coupon or coupons, otherwise than by the presentation of the same for redemption, as hereinbefore provided, shall be deemed to be a violation of the provisions of this act, and any person guilty of such violation shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or either or both in the discretion of the court in which such offender shall be convicted, provided that this act shall not prohibit any person who has purchased from any agent authorized by this act, with a bona fide intention of traveling upon the same the distance between the points named on the said ticket, from selling the unused portion of the same to the company that sold the same; and it shall be the duty of said company to pay for such unused portion of such ticket the difference between the actual fare to points used and the amount paid for such ticket.

(Id. § 5.)

"Owner" includes all who operate a railroad or steamboat in the transportation of passengers, as lessees, receivers, etc. State v. Corbett (Minn.) 59 N. W. Rep. 317.

§ 2790. Redemption of tickets in hands of brokers.

Any person, persons, copartnership or corporation heretofore engaged in carrying on the business of ticket brokerage or "ticket scalping," so-called, may present at any time previous to the date on which this act takes effect, to any common carrier in this state, any unused passage ticket or unused part of the same, heretofore lawfully sold or issued by such common carrier for redemption, and said common carrier shall immediately redeem such ticket in the same manner and upon the same terms as provided for in section five of this act for the redemption of unused tickets in the hands of the purchasers thereof. Provided, that no such common carrier shall be required to redeem any such ticket or part thereof the time for the use of which has by its terms expired, or which has in any manner been altered, changed or forged.

(1893, c. 66, § 6.)

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§ 2791. Penalty for refusal to redeem.

Any railroad company or steamboat company which shall by any of its authorized ticket selling agents within this state refuse to redeem any coupon of a ticket, or any ticket as required by section five of this act, shall pay to the state of Minnesota a fine not exceeding five hundred dollars for each offense.

(Id. § 7.)

§ 2792. Stealing tickets,* etc.—Penalty.

Whenever any person in the employ of any railroad or steamboat company doing business in this state shall fraudulently neglect to cancel or return to the proper officer of the company or agent of such railroad or steamboat company any coupon or any ticket or pass, with the intent to permit the same to be used in fraud of any railroad company or steamboat company, or if any person shall steal or embezzle any such coupon or other ticket or pass, or shall fraudulently stamp or print or sign any such ticket, coupon or pass, or shall fraudulently sell or put in circulation any such ticket, coupon or pass, said person shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for a period not exceeding five years.

(Id. § 8.)

* See § 6726; for forgery of passage tickets, see § 6697.

(10) PENALTY FOR DIVERSION OF CORPORATE PROPERTY.

§ 2793. Penalty for diversion of corporate property, etc.

The diversion of the corporate property to other objects than those specified in the articles and notices published as aforesaid, (if any person is injured thereby,) the declaring of dividends when the profits are insufficient to pay the same, the payment of dividends when the funds remaining will not meet the liabilities of the corporation, any wilful failure to comply with the articles of incorporation, or any intentional deception of the public or individuals in relation to their means or liabilities, are criminal offences, and persons guilty of any of them may be indicted, and, on conviction, shall be punished by a fine not more than five thousand dollars, or by imprisonment in the state prison not more than three years, or both such fine and imprisonment, in the discretion of the court.

(G. S. 1866, c. 34, § 44; G. S. 1878, c. 34, § 81.)

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TITLE 2.

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

(1) PROVISIONS APPLICABLE TO ALL SUCH CORPORATIONS.

§ 2794. For what purposes organized—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,

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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 association 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

*See §§ 2838, 2840.

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.

(G. S. 1866, c. 34, § 45, as amended 1878, c. 10, § 1; G. S. 1878, c. 34, § 109; 1887, c. 71.)

"Other lawful business" includes lawful business not otherwise provided for, though not of the same kind as any of those specified. *Brown v. Corbin*, 40 Minn. 508, 42 N. W. Rep. 481.

A contract with a building association by which it may be enabled to loan its funds to a person not a member or shareholder is nonenforceable. *National Inv. Co. v. National Savings, Loan & Bldg. Ass'n*, 49 Minn. 517, 52 N. W. Rep. 138.

See *State v. Redwood Falls Bldg. & Loan Ass'n*, 45 Minn. 154, 155, 47 N. W. Rep. 540.

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; *State v. Critchett*, 37 Minn. 13, 32 N. W. Rep. 787; *State v. Minnesota Thresher Manuf'g Co.*, 40 Minn. 213, 223, 41 N. W. Rep. 1020; *Mohr v. Minnesota Elevator Co.*, 40 Minn. 343, 346, 41 N. W. Rep. 1074.

§ 2795. Publication of articles legalized, when.

That the publication of articles of incorporation heretofore made for six successive days in a daily newspaper printed and published in the county where such corporation is organized, be and the same is hereby legalized and made as valid and as effectual to all intents and purposes in the organization of corporations for any of the purposes designated in section one hundred and nine of chapter thirty-four of the general statutes, eighteen hundred and seventy-eight, or in any act amendatory thereto, as if such publication had been made for four successive weeks in a newspaper so printed and published.

(1889, c. 231, § 1.27)

§ 2796. Application of certain preceding sections.

The provisions of sections two, three, four, seven, eight, nine, ten, eleven, forty-two and forty-four, of title one, shall apply to and be observed by corporations organizing under this title.

(G. S. 1866, c. 34, § 46, as amended 1870, c. 27, § 1; G. S. 1878, c. 34, § 110.)

For fees to be paid into the state treasury, see §§ 3391-3393.

For certificate of incorporation to be issued by secretary of state, see §§ 3395, 3396.

For extension of term of companies, see §§ 3400, 3401.

See *Lund v. Wheaton Roller-Mill Co.*, 50 Minn. 36, 52 N. W. Rep. 268; *Mercantile-Statement Co. v. Kneal*, 51 Minn. 263, 53 N. W. Rep. 632.

§ 2797. Capital stock—Par value of shares.

The amount of capital stock in any such corporation shall in no case be less than ten thousand dollars, and shall be divided into shares of not less than two 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.

(G. S. 1866, c. 34, § 47, as amended 1873, c. 14, § 1; G. S. 1878, c. 34, § 112; 1881, c. 57, § 2; 1883, c. 4, § 1; 1889, c. 220, § 1.)

§ 2798. Power to hold real estate.

Every such corporation has power to acquire, hold and transfer all such real and personal estate as is necessary or convenient for the purpose of conducting, carrying on, or disposing of the business of such corporation.

(G. S. 1866, c. 34, § 48; G. S. 1878, c. 34, § 113.)

See § 3420 as to power of foreign companies to hold land.

*An act to legalize the publication of certain articles of incorporation. Approved April 24, 1889.

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61-M - 309

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66-M - 251

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79-M - 126
80-NW 853

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§ 2799. Transfer of stock—Lien of company for debts due from stockholders.

The stock of any such corporation shall be deemed personal property, and be transferable only on the books of such corporation, in such form as the directors prescribe; and such corporation shall at all times have a lien upon the stock or property of its members invested therein, for all the debts due from them to such corporation, which may be enforced by advertisement and sale in the manner provided for selling delinquent stock.

(G. S. 1866, c. 34, § 49; G. S. 1878, c. 34, § 114.)

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.

Followed in *Joslyn v. St. Paul Distilling Co.*, 44 Minn. 183, 46 N. W. Rep. 337.

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.

See *Nicollet Nat. Bank v. City Bank*, 38 Minn. 85, 35 N. W. Rep. 577; *Lund v. Wheaton Roller-Mill Co.*, cited in note to § 2599.

§ 2800. Record of stock and business—Reports to company—Dividends.

The directors shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions, and their books and records shall at all times be open to the inspection of any and all stockholders; they shall also, when required, present to the stockholders reports in writing of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the corporation, not reducing the capital stock while they have outstanding liabilities.

(G. S. 1866, c. 34, § 50; G. S. 1878, c. 34, § 115.)

§ 2801. Offices within and without this state.

The directors of any corporation organized under this title have power to establish one or more offices without this state, and transact business thereat; provided, that an office shall always be maintained in this state where legal process may be served on the person in charge thereof.

(G. S. 1866, c. 34, § 51; G. S. 1878, c. 34, § 116.)

§ 2802. Duration of corporation.

No corporation shall be formed under this title to continue more than thirty years.

(G. S. 1866, c. 34, § 52; G. S. 1878, c. 34, § 117.)

§ 2803. Amendments of articles of association.

The shareholders or stockholders in any body politic or corporate which has been or hereafter may be incorporated pursuant to the provisions of title two of chapter thirty-four of the General Statutes of this state, may amend the articles of association of such body corporate in any respect which might have been lawfully made a part of such original articles, by adopting, by a majority* vote in number and amount of such shareholders and shares, articles specifying such amendments.

(1875, c. 19, § 1; G. S. 1878, c. 34, § 118.)

* But see § 3400.

A corporation organized for the purpose of guarantying the credit of business men may amend the article prescribing its business so as to furnish commercial reports for compensation. *Mercantile Statement Co. v. Kneal*, 51 Minn. 263, 53 N. W. Rep. 632.

§ 2804. Certificate of amendment of articles—Publication, filing, and record.

Any body politic or corporate amending its original articles of association, shall cause to be prepared a certificate stating the time when and the respect

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63-NW - 721

2799

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61-M - 309
63-M - 410
65-NW 661
65-NW 663

2799

68-M - 121
70-M - 206
70-NW1079
73-NW 150
73-NW 635
73-NW 713

2799

71-M - 38
7-M - 123

2802

95 - 337

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 politic or corporate, and shall also be filed, published and recorded in the same manner provided by law for the filing, recording and publication of such original articles; 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 a part of such original articles.

(1875, c. 19, § 2; G. S. 1878, c. 34, § 119.)

But see § 3400.

(2) MANUFACTURING COMPANIES.²⁸

§ 2805. Who may incorporate under this act.

Any number of persons, not less than three, who, by articles of agreement in writing, have associated or shall associate according to the provisions of this act, under any name assumed by them, for the purpose of carrying on any kind of manufacturing or mechanical business not incompatible with an honest purpose, and who shall comply with all the provisions of this act, shall, with their successors and assigns, constitute a body politic and corporate, under the name assumed by them in their articles of association.

(1873, c. 11, § 1; G. S. 1878, c. 34, § 120.)

No corporation can be organized under Laws 1873, c. 11, except for exclusively manufacturing or mechanical business. If formed for such and other business, it will belong to the class authorized by §§ 2794-2804, though the articles recite that it is formed under the act of 1873. *State v. Minnesota Thresher Manuf'g Co.*, 40 Minn. 213, 41 N. W. Rep. 1020.

Stockholders cannot exempt themselves from personal liability to the amount of their stock by organizing under Laws 1873, c. 11, for manufacturing purposes, when but a small part of the business for which the company was formed is manufacturing. *Mohr v. Minnesota El. Co.*, 40 Minn. 343, 41 N. W. Rep. 1074.

If the purpose, as stated in the articles, is to carry on both a manufacturing business and other business not incidental thereto, the fact that the corporation never engaged in such other business will not exempt the stockholders from liability to the amount of their stock. *Arthur v. Willins*, 44 Minn. 409, 46 N. W. Rep. 851.

See *Densmore v. Shepard*, 46 Minn. 54, 48 N. W. Rep. 528, 681.

Whether ice companies are "manufacturing corporations," see *Attorney General v. Belle Isle Ice Co.*, (Mich.) 26 N. W. Rep. 811; *People v. Knickerbocker Ice Co.*, (N. Y.) 1 N. E. Rep. 669.

§ 2806. 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; G. S. 1878, c. 34, § 121; 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.*

§ 2807. 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

²⁸An act relating to manufacturing corporations. Approved March 7, 1873 (Laws 1873, c. 11).

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58-M - 172

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74-NW 162

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71-M - 420
84-NW 109

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64-M - 463
74-NW 162

2807
71-M - 420

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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; G. S. 1878, c. 34, § 122; 1879, c. 8, § 1.)

A manufacturing company may take insurance on its property in an insurance corporation organized under Laws 1881, c. 91 (§ 3251 et seq.), so as to be bound upon its premium notes. *St. Paul Trust Co. v. Wampach Manuf'g Co.*, 50 Minn. 93, 52 N. W. Rep. 274.

See *Jones v. Morrison*, 31 Minn. 147, 16 N. W. Rep. 854; *State v. Minnesota Thresher Manuf'g Co.*, cited in note to § 2805; *Mohr v. Minnesota Elevator Co.*, *Id.*

§ 2808. First and subsequent meetings — Notice and waiver.

When any number of persons shall have associated according to the provisions of this act, any two of them may call the first meeting of the corporation at such time and place as they may appoint, by giving notice thereof in a newspaper published in the county in which such corporation is to be established, or if no newspaper is published in such county, in a newspaper published in an adjoining county, at least fifteen days before the time appointed for such meeting. Subsequent meetings of any such corporation may be called in such manner as its by-laws shall prescribe: *provided*, that if the by-laws of any such corporation do not prescribe the manner of calling meetings thereof, its directors may call such meetings by giving the notice provided in this section for the first meeting of such corporation; but said notice may be waived by a writing signed by all the subscribers to the capital stock of said corporation, specifying the time and place for said first meeting, which writing shall be entered at full length upon the records of the corporation, and the first meeting of any such corporation which has been held pursuant to such written waiver or notice shall be valid.

(1873, c. 11, § 4, as amended 1878, c. 28, § 1; G. S. 1878, c. 34, § 123.)

§ 2809. Board of directors—Annual election — Term of office.

The stock, property, affairs and business of every such corporation shall be under the care of and shall be managed by not less than three directors, who shall be chosen annually by the stockholders at such time and place as shall be provided by the by-laws of said corporation, and who shall be

stockholders, and shall hold their offices for one year, and until others shall be chosen in their stead.

(1873, c. 11, § 5; G. S. 1878, c. 34, § 124.)

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.

§ 2810. Failure to choose directors—Subsequent election.

If any election of directors in any such corporation shall not take place at the annual meeting thereof, in any year, such corporation shall not thereby be dissolved, but an election may be had at any time within one year, to be fixed upon and notice thereof to be given by the directors.

(1873, c. 11, § 6; G. S. 1878, c. 34, § 125.)

§ 2811. Officers of company—How chosen—Residence.

The directors of every such corporation shall choose one of their number to be president, and shall also choose a secretary and treasurer, which two last-mentioned officers shall reside and have their place of business, and keep the books of said corporation, within this state; and shall choose such officers as the by-laws of the corporation shall prescribe, all which said officers shall hold their offices until others shall be chosen in their stead.

(1873, c. 11, § 7; G. S. 1878, c. 34, § 126.)

If the corporation fails to comply substantially with this section, its charter may be vacated. *State v. Park & Nelson Lumber Co.* (Minn.) 59 N. W. Rep. 1048.

§ 2812. Vacancies in board of directors.

The directors of such corporation for the time being shall have power to fill any vacancy which may happen in their board, by death, resignation or otherwise, for the current year.

(1873, c. 11, § 8; G. S. 1878, c. 34, § 127.)

§ 2813. Publication of articles—Filing of certificate—Commencement of business.

Before any corporation formed and established by virtue of the provisions of this act shall commence business, the president and directors thereof shall cause their articles of association to be published at full length in two newspapers published in the county in which such corporation is located, or at the capital of the state; and shall also make a certificate of the purpose for which such corporation is formed, the amount of its capital stock, the amount actually paid in, and the names of its stockholders, and the number of shares by each respectively owned, which certificate shall be signed by the president and a majority of the directors, and deposited with the secretary of this state, and a duplicate thereof with the register of deeds of the county in which said corporation is to transact its business; and said secretary and said register of deeds shall respectively record the same in books to be kept by them for that purpose; and within thirty days after the payment of any instalment called for by the directors of such corporation, a certificate thereof shall be made, signed, deposited and recorded, as aforesaid. A copy of the certificate first specified in this section, certified by the secretary of this state, under the seal thereof, shall be received in all the courts in this state as prima facie evidence of the due formation, existence and capacity of such corporation, in any suit brought by or against the same.

(1873, c. 11, § 9; G. S. 1878, c. 34, § 128.)

Failure to file the certificate does not affect the lawful character of the corporation. *In re Shakopee Manuf'g Co.*, 37 Minn. 91, 33 N. W. Rep. 219.

§ 2814. Directors' and stockholders' meetings—Quorum—Right to vote.

A majority of the directors of every such corporation, convened according to the by-laws, shall constitute a quorum for the transaction of business. And a majority of the stockholders present or represented by proxy, at any legal meeting, when a majority of the stock of such corporation is so represented at the meeting, shall be capable of transacting the business of that

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69-NW 217

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meeting; and at all meetings of such stockholders, each share shall entitle the holder thereof, or his representative, to one vote.

(1873, c. 11, § 10, as amended 1875, c. 18, § 1; G. S. 1878, c. 34, § 129.)

§ 2815. Subscription to capital stock—Payment, how enforced.

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63-M - 538
65-NW 956

The directors may call in the subscription to the capital stock of such corporation by instalments, 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 instalment, for the space of sixty days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said instalment from such negligent stockholder in any proper action for that purpose, or may sell said stock at public auction, giving at least thirty days' notice thereof, and of the time and place of sale, by advertising in some newspaper published in the county where the business of such corporation is transacted, or at the capital of the state. And in case of a sale, the proceeds thereof shall be first applied in payment of the instalments called for, and the expenses of the sale, and the residue shall be refunded to the owner thereof. In case the proceeds of such sale shall be insufficient to pay said instalments, such corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder, to the extent of the shares so purchased.

(1873, c. 11, § 11; G. S. 1878, c. 34, § 130.)

Sufficiency of allegations in action on subscription. *Walter A. Wood Harvester Co. v. Robbins* (Minn.) 57 N. W. Rep. 317.

Tender of stock certificate is not necessary to right of action. *Id.*

See *Minneapolis Threshing-Mach. Co. v. Crevier*, 39 Minn. 417, 40 N. W. Rep. 507.

§ 2816. General powers of corporations under this act.

All corporations organized and established under the provisions of this act, shall be capable to sue and be sued, plead and be impleaded, answer and be answered unto, appear and prosecute to final judgment in any court or elsewhere; to have a common seal, and to alter the same at pleasure; to elect, in such manner as they shall determine, all necessary officers; to fix their compensations, and define their duties; to ordain and establish by-laws for the government and regulation of their affairs, and to alter and repeal the same; and to employ all such agents, mechanics and other laborers as they shall think proper.

(1873, c. 11, § 13; G. S. 1878, c. 34, § 132.)

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. *Auerbach v. Le Sueur Mill Co.*, 23 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.*)

§ 2817. Power to hold real and other property.

Every such corporation shall, by its corporate name, have power to acquire and hold such lands, tenements and hereditaments, and such property of every kind, as shall be necessary for the purpose of said corporation; and such other lands, tenements and hereditaments as shall be taken in payment of, or as security for, debts due to such corporation, and to manage and dispose of the same at pleasure.

(1873, c. 11, § 14; G. S. 1878, c. 34, § 133.)

§ 2818. Books to be open to inspection—Annual statement.

The books of every such corporation, containing their accounts, shall be kept, and shall at all reasonable times be open, in the county where such corporation is located, or at the office of the treasurer within this state, for the inspection of any of the stockholders of said corporation; and said stockholders shall have access to the books and statements of said corporation, and shall have the right to examine the same in said county or at said office; and as often as once a year a true statement of the accounts of said corporation shall be made and exhibited to the stockholders by order of the directors.

(1873, c. 11, § 15; G. S. 1878, c. 34, § 134.)

§ 2819. Stock and the transfer thereof—Lien of company.

The stock of every such corporation shall be deemed personal property, and be transferred only on the books of such corporation, in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock or property of its members invested therein, for all the debts due from them to such corporation.

(1873, c. 11, § 16; G. S. 1878, c. 34, § 135.)

See note to § 2799, and *Becher v. Wells Flouring-Mill Co.*, 1 Fed. Rep. 276.

§ 2820. Increase of capital stock—Certificate.

When any such corporation shall increase its capital stock as provided in the second section of this act, the president and directors shall, within thirty days thereafter, make a certificate thereof, which shall be signed, deposited and recorded, as is provided in the ninth section.

(1873, c. 11, § 17; G. S. 1878, c. 34, § 136.)

See *In re Shakopee Manuf'g Co.*, 37 Minn. 91, 33 N. W. Rep. 219.

§ 2821. Certain certificates to be under oath—Penalty.

The certificate required by the ninth, twelfth and seventeenth sections of this act, shall be made under oath or affirmation, by the person subscribing the same; and if any person shall knowingly swear or affirm falsely as to any material facts, he shall be deemed guilty of perjury, and be punished accordingly.

(1873, c. 11, § 18; G. S. 1878, c. 34, § 137.)

See *In re Shakopee Manuf'g Co.*, 37 Minn. 91, 33 N. W. Rep. 219.

§ 2822. Withdrawal of capital—Liability of stockholders.

If the capital stock of any such corporation shall be [withdrawn] and refunded to the stockholders, before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to them respectively as aforesaid; but if any stockholder shall be compelled, by any such action, to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the stockholders to whom any part of said stock has been refunded, to contribute their proportional part of the sum paid by him as aforesaid.

(1873, c. 11, § 20; G. S. 1878, c. 34, § 139.)

After the corporation has been adjudged insolvent, and a receiver appointed under c. 76, he alone can sue the stockholders to recover capital wrongfully withdrawn and refunded to them. *Minnesota Thresher Manuf'g Co. v. Langdon*, 44 Minn. 37, 46 N. W. Rep. 310. See *Patterson v. Stewart*, 41 Minn. 84, 42 N. W. Rep. 926.

§ 2823. Payment of dividends when insolvent—Penalty.

If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, knowing such corporation to be insolvent, or that such dividend would render it so, the directors assenting thereto shall be

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jointly and severally liable, in an action founded on this statute, for all debts due from such corporation at the time of such dividend.

(1873, c. 11, § 21; G. S. 1878, c. 34, § 140.)

And see § 2793.

See *Patterson v. Stewart*, 41 Minn. 84, 88, 42 N. W. Rep. 926.

§ 2824. Neglect of duty by officers—Penalty.

If the president, directors or secretary of any such corporation shall intentionally neglect or refuse to comply with the provisions of this act, and to perform the duties therein required of them respectively, such of them as so neglect or refuse shall be jointly and severally liable, in an action founded on this statute, for all debts of such corporation contracted during the period of any such neglect or refusal.

(1873, c. 11, § 22; G. S. 1878, c. 34, § 141.)

See *Patterson v. Stewart*, 41 Minn. 84, 88, 42 N. W. Rep. 926; In re *Shakopee Manuf'g Co.*, 37 Minn. 91, 33 N. W. Rep. 219.

§ 2825. Violation of act by corporation—Liability of directors.

If any corporation organized and established under the authority of this act shall violate any of its provisions, and shall thereby become insolvent, the directors ordering or assenting to such violation shall be jointly and severally liable, in an action founded on this statute, for all debts contracted after such violation as aforesaid.

(1873, c. 11, § 23; G. S. 1878, c. 34, § 142.)

An action by a creditor under this section is governed by the three-years limitation prescribed for actions on "a statute for a penalty or forfeiture." *Merchants' Nat. Bank of Chicago v. Northwestern Manuf'g & Car Co.*, 48 Minn. 349, 51 N. W. Rep. 117.

See *Patterson v. Stewart*, 41 Minn. 84, 88, 42 N. W. Rep. 926; *Minnesota Thresher Manuf'g Co. v. Langdon*, 44 Minn. 37, 40, 46 N. W. Rep. 310.

§ 2826. Duration of corporation—Renewal.

No corporation formed under the provisions of this act shall continue more than thirty years in the first instance, but it may be renewed from time to time for a period not longer than thirty years: provided, that three-fourths of the votes cast at any regular meeting of the stockholders for the purpose are in favor of such renewal, and those desiring a renewal purchase the stock of those opposed thereto at its current value.

(1873, c. 11, § 24; G. S. 1878, c. 34, § 143.)

(8) COMPANIES FOR MINING AND SMELTING ORES AND MANUFACTURING METALS.²⁹

§ 2827. For what purposes organized—Powers.

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. 23, § 1; G. S. 1878, c. 34, § 144; as amended 1881, c. 27, § 1.)

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

§ 2828. Articles of incorporation—Contents.

Such persons shall sign and severally acknowledge articles of incorporation, which shall declare that they do thereby associate together and agree

²⁹An act to authorize the formation of corporations for mining and smelting ores, and for manufacturing iron, copper, and other metals. Approved February 24, 1876 (Laws 1876, c. 28).

upon said articles for the purpose of forming a corporation under the provisions of this act, and which said articles shall also contain—

First. The name of the corporation, which shall not be the same as that previously assumed by any other corporation in this state.

Second. The general nature of the business to be carried on, and the place of the principal office or headquarters of the company.

Third. The names and places of residence of the persons so associating to form such corporation.

Fourth. The amount of the capital stock of said corporation.

(1876, c. 28, § 2; G. S. 1878, c. 34, § 145.)

Laws 1881, c. 27, § 2, amending this section, was repealed by Laws 1881, Ex. S. c. 14, § 2.

§ 2829. Same—Execution in duplicate—Record—Amendment—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; G. S. 1878, c. 34, § 146; as amended 1881, Ex. S. c. 14, § 1.)

§ 2830. Minimum amount of 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. 28, § 4; G. S. 1878, c. 34, § 147; as amended 1881, c. 27, § 3.)

§ 2831. By-laws—Copy to be filed, where—Record of proceedings—First board of directors.

Such corporation may prescribe and adopt by-laws for the management of its business and affairs by a board of directors, trustees, committee, or other officers or agents, and provide for their election or appointments, and prescribe their duties, and may require bond from any officer for the faithful discharge of duties, and may by such by-laws prescribe in respect to all matters appertaining to the business and affairs of said corporation, not inconsistent with the provisions of this act, nor the constitution or laws of this state. Such by-laws may be made, altered or amended by the directors, trustees or committee clothed with the general management of the affairs of such corporation; but the stockholders, at any regular meeting, may repeal or alter any by-law, or adopt new ones, and such action shall remain binding until repealed or changed by the stockholders themselves at some regular meeting. Such corporation shall keep a record of all proceedings had at meetings of stockholders, and also of all proceedings had or taken by

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the board of directors, trustees or committee having charge of its affairs, and such record shall be subject to the inspection of all stockholders at all reasonable times. A copy of all by-laws, duly certified, and all amendments and alterations of the same, shall be filed for record with the register of deeds where said articles of incorporation are recorded, and also with the secretary of state, and shall not become operative or valid until so filed. Until otherwise provided, the persons executing such articles of incorporation shall constitute a board of directors, with full power and authority to make by-laws, and manage the affairs and business of such corporation.

(1876, c. 28, § 5; G. S. 1878, c. 34, § 148.)

§ 2832. Stock and transfer thereof—Majority of stockholders may call meeting, how.

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The stock of any such corporation shall be deemed personal property, and may be issued, sold and transferred as may be prescribed by resolution or by-laws of said corporation or its managing board; but no stock so issued or sold, purporting to be full paid, shall be subject to any further assessment in the hands of the lawful holder thereof, without his consent. Upon the issuance of stock, the lawful holders thereof shall constitute the members of such corporation, and a majority in amount thereof may call a meeting of the stockholders at any time, irrespective of any by-laws, at the principal office of the company, or at the capital of the state, upon giving thirty days' notice by publication in a newspaper published at the place of such office, if there be such paper, and if not, then a paper published at the capital.

(1876, c. 28, § 6; G. S. 1878, c. 34, § 149.)

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.

§ 2833. Meetings of directors and stockholders—Offices of company within and without this state.

The directors or managing officers of any such corporation may meet and transact business without this state, as may also the stockholders, by by-laws therefor; and offices may be established without this state for the transaction of business: provided, that an office shall always be maintained in this state, where legal process may be served on such corporation; and such service upon an officer or director, if personally made, shall be deemed personal service upon the corporation.

(1876, c. 28, § 7; G. S. 1878, c. 34, § 150.)

§ 2834. Stock in other companies—Power 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; G. S. 1878, c. 34, § 151; as amended 1881, c. 27, § 4.)

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§ 2835. Real estate—Power to mortgage, 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; G. S. 1878, c. 34, § 152; as amended 1881, c. 27, § 5.)

§ 2836. Fraudulent issue of stock, etc.—Penalty.

Any officer of any corporation organized under this act, or any other person or persons, who shall fraudulently issue, or cause to be so issued, any stock, scrip, or evidence of debt of such corporation, or who shall sell or offer for sale, hypothecate, or otherwise dispose of any such stock, scrip or other evidence of debt, knowing the same to be so fraudulently issued, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the state prison not more than ten nor less than one year.

(1876, c. 28, § 10; G. S. 1878, c. 34, § 153.)

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§ 2837. Power to amend act reserved.

This act may be altered or amended at the pleasure of the legislature, but not so as to divest or impair any right of property acquired under the same. (1876, c. 28, § 11; G. S. 1878, c. 34, § 154.)

(4) COMPANIES EMPOWERED TO LOAN MONEY ON REAL-ESTATE SECURITIES.³⁰

§ 2838. 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 mortgage 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; G. S. 1878, v. 2, c. 34, § 165a.)

§ 2839. Application of certain preceding sections.

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.

(1885, c. 270, § 2; G. S. 1878, v. 2, c. 34, § 165b.)

§ 2840. 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 have hereafter organize thereunder.

(1885, c. 270, § 3; G. S. 1878, v. 2, c. 34, § 165c.)

(5) ANNUITY, SAFE-DEPOSIT, AND TRUST COMPANIES.³¹

§ 2841. 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; G. S. 1878, v. 2, c. 34, § 431.)

³⁰ 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.

³¹ An act to authorize the organization and incorporation of annuity, safe-deposit, and trust companies. Approved March 5, 1883.

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§ 2842. Application of previous sections—Prohibited acts—Penalty—Companies doing trust, annuity, or safe-deposit business to be organized under this act—Duty of secretary of state and register of deeds.

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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.

(1883, c. 107, § 2; G. S. 1878, v. 2, c. 34, § 432; as amended 1885, c. 3, § 1.)

§ 2843. Amount of capital—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; G. S. 1878, v. 2, c. 34, § 433; as amended 1885, c. 3, § 2.)

§ 2844. Same—Amount necessary—Deposit of securities with state auditor—Character of securities deposited.

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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 one hundred thousand dollars on account of said stock shall have been actually paid in, invested, and deposited as hereinafter provided. Said one hundred thousand dollars shall be invested in bonds of the United States, or of the state of Minnesota, or 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 one hundred thousand dollars, and not less than one-eighth of its capital stock, and any such corporation having a larger deposit with the state auditor than one hundred thousand dollars shall be allowed at any time hereafter to withdraw its deposits in excess of said sum, provided, its whole deposit shall at no time be less than one-eighth of its capital stock.

(1883, c. 107, § 4; G. S. 1878, v. 2, c. 34, § 434; as amended 1885, c. 3, § 3; 1889, c. 234, §§ 1, 2.)

§ 2845. Same—State auditor shall issue certificate of deposit, when—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; G. S. 1878, v. 2, c. 34, § 435; as amended 1885, c. 3, § 4.)

§ 2846. 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; G. S. 1878, v. 2, c. 34, § 436.)

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§ 2847. 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.

(1883, c. 107, § 7; G. S. 1878, v. 2, c. 34, § 437.)

§ 2848. Board of directors—Powers—Officers, how selected—Bond of indemnity, where filed.

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.

(1883, c. 107, § 8; G. S. 1878, v. 2, c. 34, § 438.)

§ 2849. 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—

Concerning property—Investment of certain funds in real estate prohibited, when.

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

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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 [and] 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.)

* The last clause of the amendment of 1885, which authorized 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 affect or be construed as referring to any company which has been heretofore organized under said act as so amended."

Concerning trusts—To act as agent.

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 ante-nuptial 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.

Concerning 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

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.)

To act as trustee, receiver, executor, guardian, 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.

To act 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.

Concerning investment of moneys.

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.

Concerning transfer of trusts to company—Condition.

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.

Concerning compensation—Commission not deemed to be 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.)

To act as assignee for benefit of creditors, etc.—As surety upon bond—Deposit with company of trust securities by executor, etc., before giving 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

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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 necessary, 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 of company, when.

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 ap-

pointed 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.)

(G. S. 1878, v. 2, c. 34, § 439, amended as supra.)

Subd. 4. The provision granting to such corporations power to act as guardians of the estates of insane persons is valid. *Minnesota Loan & Trust Co. v. Beebe*, 40 Minn. 7, 41 N. W. Rep. 232.

Subd. 9. The provision that the company may become sole surety upon any bond or undertaking "without justification or qualification" is only permissive, and the court may require the company to justify if its sufficiency is excepted to. *People's Bank v. Mutual Ins. Co.* (Minn.) 59 N. W. Rep. 1055.

§ 2850. 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; G. S. 1878, v. 2, c. 34, § 440; as amended 1885, c. 3, § 8.)

§ 2851. Prohibited dealings—Indebtedness to company of officers or agents forbidden—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; G. S. 1878, v. 2, c. 34, § 441.)

§ 2852. Powers of court—Annual report to public examiner.

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

*See § 283.

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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.

(1883, c. 107, § 12; G. S. 1878, v. 2, c. 34, § 442.)

§ 2853. Duty of public examiner.

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 premises, the state auditor may discharge and perform all the duties of the public examiner in relation to such corporation.

(1883, c. 107, § 13; G. S. 1878, v. 2, c. 34, § 443.)

§ 2854. 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.

(1883, c. 107, § 14; G. S. 1878, v. 2, c. 34, § 444.)

(6) BUILDING, LOAN, AND SAVINGS ASSOCIATIONS.

(a) *Associations Doing a General Business.*

§ 2855. Formation—Method—For what purposes.

Whenever any number of persons, not less than ten, desire to be incorporated as a building and loan association, for the purpose of accumulating the savings and funds of its members and lending them only the funds so accumulated, they shall make and execute a written declaration to that effect, in the form now provided by statute for the execution of deeds of real estate, to entitle the same to record. Said declaration shall state the name of such association, its principal place of business, which shall be within this state, the limit of capital to be accumulated, the time of its duration, the names and places of residence of such persons, and that it is organized under this act for the purposes herein expressed. When so executed, said declaration shall be filed and recorded in the office of the secretary of state, whereupon such officer shall issue a copy of such declaration under his certificate, in proper form, setting forth the time and place of filing and recording thereof in his office, which declaration and certificate shall thereupon be recorded in the office of the register of deeds of the county where said association is located, and published once in a daily or weekly newspaper printed and published and of general circulation in said county. Upon complying with the foregoing requirements, and upon filing

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97 - 245
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65-NW 645
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an affidavit of proof of such publication in the office of the secretary of state, the persons executing such declaration, their associates and successors, shall become a corporate body.

(1889, c. 236, as amended 1891, c. 131, § 1.³²)

§ 2856. Same—Name.

The name shall not be the same as, nor too closely resemble, that in use by any existing corporation established under the laws of this state. The words "building and loan association," or "savings and loan association," shall form a part of the same, and no corporation not organized under this act shall be entitled to use a name embodying either said combination of words; Providing, That associations now existing may continue their present names.

(1891, c. 131, § 2.)

§ 2857. Same—By-laws—Division of directors into classes.

The directors of such association shall adopt by-laws for its government, and therein describe the manner in which its business shall be transacted, which by-laws shall be conformable to the provisions of this act and the laws of this state, and at all times be open to the inspection of all members of the association at its home office, and a copy thereof and of any amendments thereto, duly certified by the president and secretary of the association, shall, immediately upon its adoption, be filed in the office of the public examiner. The directors may amend said by-laws from time to time in such manner as they see fit, so long as such amendments are not in conflict with the provisions of this act or the laws of the state. Every such association which has not already done so shall, before its next annual election after the passage of this act, divide its board of directors, by resolution thereof, into three classes, consisting of an equal number in each class, as nearly as may be. The term of office of the first class shall expire at the end of one year from and after the next annual election, of the second class at the end of two years, and of the third class at the end of three years; and at each succeeding annual election after the one at which the full board is elected, there shall be elected a number of directors equal to those whose terms of office expire at that time, and the directors so elected shall hold their office for the term of three years and until their successors are elected and qualified.

(Id. § 3.)

§ 2858. Same—Loans, how secured.

For every loan made, a note, non-negotiable, or bond, secured by first mortgage on real estate, shall be given, which security shall be in double the value of the loan and satisfactory to the directors, and shall be accompanied by a transfer and pledge of the shares of the borrowers to the association. The shares so pledged shall be held by the corporation as collateral security for the performance of the conditions of said note or bond and mortgage; Provided, That the shares, without other security, may, in the discretion of the directors, be accepted as security for the loans for an amount not exceeding their withdrawal value, as provided by this act. Stockholders who have borrowed money of an association on real estate security, and who have pledged their stock or any portion thereof as collateral thereto, as provided herein, shall not be entitled to have the value of such stock applied on the mortgage debt where the payment on such stock is more than three months in arrears, unless the same has reached a withdrawal age as fixed by this act; and when such stock has reached that age the withdrawal value thereof shall be applied on said debt whenever the stock is three months in arrears.

(Id. § 4.)

³²An act to amend "An act relative to building, loan and savings associations doing a general business," the same being chapter two hundred and thirty-six of the General Laws of one thousand eight hundred and eighty-nine. Approved April 23, 1891. § 41 repeals all inconsistent acts.

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§ 2859. Same—When real estate may be bought, etc.

Any such association may purchase at any sale, public or private, any real estate upon which it may have a mortgage, judgment, lien or other incumbrance, or in which it may have any interests, and may sell, convey, lease or mortgage the same at pleasure to any person or persons, and may acquire and hold a lot or lots whereon is erected a building or buildings requisite for the convenient transaction of its business, and from portions of which not required for its own use a revenue may be derived. The cost of such building and lot or lots in no case to exceed five per cent of its assets; Provided, That any such association may acquire any leasehold interest necessary for the transaction of its business.

(Id. § 5.)

§ 2860. Same—Deposit of securities—Character—Substitution.

Every building and loan association heretofore or hereafter incorporated under the laws of this state and governed by this act shall deposit and keep with the state treasurer, or with a duly chartered trust company of this state, approved by the public examiner, in trust for all its members and creditors, all mortgages or other securities received by it in the usual course of its business. When deposited with a trust company, such company shall certify to the public examiner the possession of such securities, and the same shall not be surrendered without the authority and sanction of said public examiner. Provided, That every such corporation heretofore organized not having or owning mortgage or other securities to the amount of twenty-five thousand dollars shall deposit with the state treasurer additional securities to make, with the securities so owned and deposited, the sum of twenty-five thousand dollars; and every such association hereafter organized under this act shall deposit and keep with the state treasurer in trust, as aforesaid, securities of the value of twenty-five thousand dollars before commencing to do business. The securities mentioned in this proviso shall consist of bonds or treasury notes of the United States, or national bank stocks, or the bonds of this state, or of any other state of the United States, or of any solvent city, county or town of this state, or of any other state of the United States, having the legal authority to issue the same; and such securities may be withdrawn from time to time, when mortgage securities of corresponding value shall be deposited as provided in this act, or when securities of like character are substituted therefor, or when the same shall have been paid or are required for foreclosure or suit; and it shall be the duty of the public examiner from time to time to examine such association to ascertain whether or not its securities are deposited as required by this act.

Transfer of securities to another state, when—Minimum amount of deposit—Certificate to be filed with examiner.

Provided, That whenever required by the laws of any other state or territory, or nation, all securities taken in such state, territory or nation, by any association organized under the laws of this state and subject to the provisions of this act, and other securities sufficient to allow such association to enter and do business in such state, territory or nation, may be deposited with some officer authorized to receive the same in such state, territory or nation, under the laws thereof, for the benefit of its members and creditors; and to this end, upon the presentation to the public examiner of a duly authenticated copy of a resolution of the board of directors of any such association, having on deposit with the state treasurer or a duly chartered trust company securities in excess of twenty-five thousand dollars, demanding the transfer and specifying the securities to be transferred, or the amount thereof, to any other state, territory or nation, for the purpose of enabling such association to comply with the laws thereof, it shall be the duty of the public examiner to cause such transfer to be made. The expense of making such transfer shall be borne by the association requiring the same, and a receipt shall be taken by the officer or trust company making the transfer, and filed and kept in the office from which the securities are transferred

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in lieu thereof. But the securities kept on deposit in this state by any such association, as required by this act, shall at no time be reduced in amount by such transfer, or otherwise, below twenty-five thousand dollars; and in every case where securities taken in another state, territory or nation are deposited in such state, territory or nation, or when other securities are removed from this state to such other state, territory or nation for the purpose aforesaid, the association to which they belong shall make a certificate of such depository, showing the amount and character of such deposit which certificate shall be filed with the public examiner, and renewed annually, together with a statement, verified by the affidavit of some officer of such association who has knowledge of the facts, showing all the securities taken or deposited by such association in such state, territory or nation at the time of the filing of such certificate; and, in case any securities taken in such state, territory or nation are not deposited there, then the same shall be deposited in this state as required by this act.

(Id. § 6.)

§ 2861. Same—Interest, etc., on securities deposited—Surrender of securities.

All interests and dividends and premiums which may accrue on securities held by the state treasurer or such trust company, as provided for herein, and all dues or monthly payments which may become payable on stock pledged as security for loans, the mortgages for which are so deposited in accordance with the provisions of this act, may be collected and retained by the association depositing such securities or mortgages, so long as such association remains solvent and faithfully performs all contracts with its members; and when any mortgage shall have been fully paid to said corporation, the same may be surrendered to it, upon filing with the depository the affidavit of the president or vice president and secretary of any such association that such indebtedness has been paid in full, which affidavit shall be first presented to the public examiner and by him approved. And any mortgage upon which default has been made may be surrendered as aforesaid, for foreclosure, upon like affidavit that default exists and that such mortgage is withdrawn for the purpose of foreclosure or suit.

(Id. § 7.)

§ 2862. Foreign building and loan associations doing business in Minnesota.

No building and loan association organized under the laws of any other state, territory or nation shall do business in this state unless such association shall have securities of the value of one hundred thousand dollars, and of the character mentioned in this act, on deposit in trust, for all its members and creditors, with some responsible trust company duly incorporated under the laws of such state or territory in the United States, or with some authorized officer of this or some other state of the United States. Certificates of such deposit shall be made to the public examiner of this state, certifying the possession of such securities, which shall not thereafter be surrendered without the authority or consent of the public examiner or other authorized officer of the state or territory in which said company is incorporated.

(Id. § 8.)

§ 2863. Same—Conditions.

Every building and loan association organized under the laws of any other state, territory or nation, shall, before commencing to do business in this state, first, file with the public examiner of this state a duly authenticated copy of its charter or articles of incorporation; second, file with the public examiner of this state the certificate of the authorized officer of another state showing that securities of the value of one hundred thousand dollars are on deposit with such state officer or duly incorporated trust company, in trust for all the members and creditors of such building and loan association; third, file with the public examiner of this state a duly authenticated copy of a resolution adopted by the board of directors of such association, stipulating and agreeing that if any legal process affecting such association

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be served on such examiner, and a copy thereof be mailed postage prepaid by the party procuring the issue of the same, or his attorneys, to said association, addressed to its home office, then such service and mailing of such process shall have the same effect as personal service on said association in this state, and also an agreement that said association will not remove any action commenced in any state court of this state against the same to the United States court, and will pay every judgment that may be taken against it upon any such action within sixty days after the final judgment shall have been entered; fourth, pay to the public examiner twenty-five dollars as fees for filing the papers mentioned in this section.

(Id. § 9.)

§ 2864. Same—Process—Duplicate copies.

When process against or affecting any foreign building and loan association is served on the public examiner, the same shall be by duplicate copies, one of which shall be filed in the office of the public examiner, and the other by him immediately mailed, postage prepaid, to the home office of said association.

(Id. § 10.)

§ 2865. Definition of "process."

The word "process" in this act shall include any writ, declaration, summons or order whereby any action, writ or proceedings shall be commenced, or which shall be issued in or upon any action, suit or proceeding authorized by law in this state.

(Id. § 11.)

§ 2866. Foreign companies—Service of process.

Service of process according to a stipulation provided in section nine of this act shall be sufficient personal service on the association filing such stipulation.

(Id. § 12.)

§ 2867. Foreign company—Retaliatory taxes, etc.

When by the laws of any other state, territory or nation, any taxes, fines, penalties, licenses, fees, deposits of money or securities, or other obligations or prohibitions, are imposed on building and loan associations of this state doing business in such other state, territory or nation, or upon their agents therein, so long as such laws continue in force the same obligation and prohibition, of whatever kind, shall be imposed upon all building and loan associations of such other state, territory or nation, doing business in this state, and upon their agents here.

(Id. § 13.)

§ 2868. Same—Effect of violation of act—Notice.

Any building and loan association organized under the laws of any other state or territory, that shall remove any action that shall be commenced against it in a court of this state to the United States court, or that shall fail to pay any judgment rendered against it upon a suit in any court of the state within sixty days after the rendition of final judgment in such case, or that shall fail to make yearly statements to the public examiner as hereafter mentioned, or statements of the amount and value of its stock held in this state as hereafter required, or to pay the fees of the public examiner as provided in this act, or to do any other act required in this act to be done and performed, shall upon violation of the provisions of this act have no right or authority to do or transact any further business in this state, and the public examiner shall thereupon cause notice of determination of such authority to do business to be mailed to such corporation and to be published in some newspaper of general circulation at the capital of this state, and shall communicate the facts to the attorney general of this state, who shall institute such proceedings in the matter as the case may require; Provided, Any such corporation may be again authorized to commence business in this state upon such terms as the public examiner may deem just and proper, and upon full compliance with the provisions of this act.

(Id. § 14.)

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§ 2869. Authorized capital—Par value of stock.

All building and loan associations hereafter incorporated in this state shall have an authorized capital of two million dollars at the time of the incorporation. Every share of capital stock issued by any such association shall be of the par value of one hundred dollars, but this provision shall not be construed to forbid the issue by any such association of paid-up certificates for a less amount in liquidation of stock surrendered for cancellation or withdrawn before reaching its maturity period; Provided, That such paid up certificates shall be certificates of indebtedness only, and the stock in liquidation of which certificates are issued shall be thereupon surrendered and canceled.

(Id. § 15.)

§ 2870. Increase of capital—Amendment of articles.

Any building and loan association heretofore or hereafter incorporated under the laws of this state may at any time increase the amount of its capital stock by a vote of at least three-fourths of its board of directors; Provided, That no such increase shall be made unless three-fourths of the capital stock previously authorized has actually been issued, and the amount of increase made at any one time shall not exceed the amount issued previous to the time of such increase. Any amendments of the articles of incorporation of any such association in any other respect shall be done at an annual meeting, by a two-thirds vote of stock represented and voted at such annual meeting on the question of such amendment or amendments, and only upon the notice hereinafter provided to be given.

(Id. § 16.)

§ 2871. Amendment of articles—Filing—Publication.

Whenever any building and loan association increases its capital stock or otherwise amends its articles of incorporation, as provided in this act, a copy of the resolution of the board of directors or stockholders making such increase or other amendment, duly verified by oath of the president and secretary of such association, shall be filed in the office of the register of deeds of the county in which the home of said association is located and in the office of the secretary of state, and be published four successive times in some daily or weekly newspaper published at the capital of the state or in the county where the association has its home office, proof of which publication shall be filed in the office of the secretary of state.

(Id. § 17.)

§ 2872. Annual report—Contents—Mid-year report—Penalty for neglect—Certificate.

In each year every building and loan association organized under the laws of this state and doing business in this or any other territory shall, within thirty days after the end of the year for which its report to its stockholders is made,* deposit with the public examiner an annual report of its affairs and operations for said year. Such report shall be verified under oath of the president and secretary or by three directors of the association, and shall contain the following information:

First—The amount of authorized capital and the par value of each share of stock.

Second—The number of shares sold during the year.

Third—The number of shares canceled and withdrawn during the year.

Fourth—The number of shares in force at the end of the year.

Fifth—A detailed statement of the receipts and disbursements during the year.

Sixth—A detailed statement of the assets and liabilities at the end of the year.

Such report shall also show the total amount received as dues on stock under each separate class or kind of stock, and all deductions therefrom for expenses, withdrawals, cancellations, forfeitures, refunded or otherwise, and the amounts, if any, of such profits credited to stock or subject to such

*But see §§ 283, 284.

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credit. The report shall also show the number of shares in force of each monthly issue or series, and the amount expended during the year in payment of salaries of officers, clerks, agents and all other employes, the amount expended for traveling expenses, rent, postage, including telegraph and express charges, printing, books and stationery, office supplies, office furniture, advertising, commission, paid agents or other persons, and all other items of expense.

In addition to such annual report, and six months after such report has been submitted to the public examiner, every such association shall prepare a report of its business for the preceding six months, which report shall state the amount of resources included in mortgage loans, the amount of loans on stock of the association, the amount of loans on other securities, specifying the kind of such securities, the amount of unpaid dues, fines, premiums and interest, the amount due from agents, the amount due from banks, the amount invested in real estate and secured by foreclosure, the amount invested in furniture and fixtures, the amount of expenses paid during the six months, the amount of cash on hand, and the amount of all other resources of the association not enumerated heretofore; and shall state as its liabilities the amount received from stock subscriptions, the amount due from stock delinquent in each class or kind of stock, and the unpaid fines on such stock, the amount set aside as an expense fund from each class or kind of stock, the amount of undivided profits at the beginning of said period of six months, the amount received as interest, premiums, fees, fines or other sources as profits during said period, the amount of such interest and premium delinquent at the end of such period, the amount of all bills payable, and the amount of all other liabilities at the close of said period of six months. Such report shall be made within twenty days after the close of said period of six months, and shall be verified by the secretary and president or vice president of the association, and within thirty days a statement of the assets and liabilities shall be published at least once in some newspaper in the city or town where the association's principal place of business is, and a copy of such semi-annual report, verified by the secretary, shall be filed with the public examiner within ten days after the printing thereof. Provided, That all such statements herein required to be made shall be uniform and in accordance with a form to be prescribed therefor by the public examiner, and shall correctly show the proportion which the entire expenses of the association for the term reported bear to the gross earnings of said association for that term; and Provided further, That all reports required of building and loan associations organized under the laws of this state and doing a general business, are also required of all foreign building and loan associations doing business in this state, and all the provisions of this act relating to such reports, the filing thereof and the fees therefor, shall apply to such foreign building and loan associations.

If any such association shall fail to furnish to the public examiner of the state any report required by this act at the time so required, it shall forfeit the sum of twenty-five dollars for every day such report shall be delayed or withheld, and the examiner may maintain an action in his name of office to recover such penalty, and the same shall be paid in to the treasury of the state and applied to the expenses of the department of said examiner. After receiving such annual report, the public examiner, if satisfied that such corporation has complied with all [the] provisions of this act and is entitled to do business in this state, shall issue his certificate stating the compliance with such provision, and that such corporation is entitled to do business in this state, which certificate shall be in force for the period of one year, unless sooner rescinded, as provided in this act. The public examiner shall also issue such certificate to a domestic corporation which has complied with the law in regard to its articles of incorporation and the deposit of securities and in all other respects except the filing of said report, which commenced business at some intervening period in any year. Such certificate shall also be issued to any foreign corporation authorized to do business in this state, after complying with the conditions of section nine of this act, and shall be in force until the time herein required for such annual report.

(Id. § 18.)

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§ 2873. Duty of public examiner—Examiner's fee.

It shall be the duty of such public examiner, at least once in each year and as often as he may deem necessary, to assume and exercise over every building and loan association incorporated under the laws of this state, 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; Provided, He shall not have the power to suspend the operations of any such association, except in the manner provided in the next succeeding section. And such public examiner shall have the same supervision and control over the business, within this state, of other corporations of like kind, incorporated under the laws of other states, territories or nations, doing business in this state. Upon the completion of any examination of any association made by said public examiner, or under his direction, the association so examined shall pay to said examiner a fee, to be determined as follows, viz.: for the first one hundred thousand dollars of assets, a fee of ten dollars, and for each additional one hundred thousand dollars of assets, or major portion thereof, an additional fee of five dollars.

(Id. § 19.)

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§ 2874. Violation of law—Complaint to attorney general—His powers.

If it shall appear to said public examiner, from any examination made by him, or from any report of any examination made by him, or from the annual report aforesaid, that said corporation is violating its charter or the law, or that it is conducting business in an unsafe, unauthorized or dishonest manner, he shall, by an order under his hand and seal of office addressed to such corporation, direct conformity with the requirements of its charter and of the law. And whenever such corporation shall refuse or neglect to make such report or account as may be lawfully required, or to comply with such order as aforesaid, the public examiner shall file a statement in writing with the attorney general, setting forth the facts or particulars in which such alleged violation or refusal consists, which statement shall be prima facie evidence of such violation or refusal, whereupon the attorney general shall institute such proceedings against any such corporations as are now or may hereafter be provided by law in the case of insolvent corporations, or such other proceedings as the occasion may require. And if such corporation shall have been organized under the laws of any other state or territory, said attorney general shall, upon receiving such communication, if in his judgment the facts in the case are sufficient to warrant such action, give notice to such corporation that it is no longer authorized to do business in this state, by depositing such notice in the post office, properly sealed and stamped, addressed to said corporation at its principal office in the state where incorporated, and thereupon said corporation shall cease to have any right in this state, and said notice may be published in the same manner as provided in section fourteen of this act.

(Id. § 20.)

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§ 2875. Officers to give bonds—Penalty.

All officers of any building and loan association governed by this act and doing business in this state, who sign or endorse checks or handle any funds of such association, shall give such bonds or fidelity insurance for the faithful performance of their duties as the board of directors may require, and no such officer shall be deemed qualified to enter upon the duties of his office until his bond is approved by the board of directors and the public examiner, with whom such bond shall be filed; Provided, That the public examiner may require of any association, at any time, such increase of said bond or additional security thereto or such increase of said insurance as he may deem necessary for the protection of the members. The penalty for the failure of any association to file and maintain the bonds or policy as required by the provisions of this section shall be a fine of one hundred dollars for each day such association transacts business after such bond has become due under the provisions of this act. Said bond or policy shall be held in trust for the

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benefit and protection of the members of such association, and shall be enforceable by any member whenever the cause of action shall accrue thereon.

(Id. § 21.)

§ 2876. "Building and loan association"—Definition.

The name "building and loan association," as used in this act, shall include all corporations, societies, organizations or associations doing a saving and loan or investment business on the building society plan, whether mutual or otherwise, and whether issuing certificates of stock, which mature at a fixed time in advance, or not.

(Id. § 22.)

§ 2877. Foreign company—Penalty for selling its stock without authority.

Any officer, director or agent, or any foreign building and loan association, or any other person whatever, who shall in this state solicit subscriptions to the stock of such association, or who shall sell or issue or knowingly cause to be sold or issued to a resident of this state any stock of such association while such association shall not have had the certificate of the public examiner authorizing it to do business in this state as herein described, or has not deposited, as required by this act, securities of the value and at the time herein prescribed, or before said association has complied with all the provisions of this act, or when said association shall have been notified and required to discontinue business in this state, as hereinbefore provided, shall 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 of not less than ten days nor more than six months, or both such fine and imprisonment, in the discretion of the court.

(Id. § 23.)

§ 2878. Minnesota company—Penalty for selling its stock without authority.

Any officer, director or agent of any building and loan association incorporated under the laws of this state, or any other person whatever, who shall sell or issue or knowingly cause to be sold or issued to any person not a resident of the county in which the home office of said association is located, or in the counties immediately adjacent thereto, any stock of said association while said association does not have on deposit with the public examiner or some loan and trust company, as required by this act, securities of the value and at the time hereinafter prescribed, or while such association shall not have a certificate of the public examiner authorizing it to do business as herein prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, and not more than five hundred dollars, or by imprisonment of not less than ten days nor more than six months, or both such fine and imprisonment, in the discretion of the court.

(Id. § 24.)

§ 2879. Premiums for loans not deemed interest.

Any premium for loans made by any association governed by this act shall not be considered or treated as interest nor render such association amenable to the laws relating to usury.

(Id. § 25.)

§ 2880. Preferred stock prohibited—Classes of stock—Stock certificate.

Every such association heretofore organized under the laws of this state or incorporated under this act shall not issue preferred stock, but may issue different series of stock, and all shares of stock hereafter issued shall be of the par value when matured of one hundred dollars each. Any such association may issue instalment stock to be paid in periodical sums, and prepaid stock upon which a gross sum shall be paid in advance, and which instalment and prepaid stock shall mature when the amount so paid, together with

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the dividends declared upon the same, shall equal the par value of such stock (and a dividend-bearing prepaid stock upon which a larger sum is paid than on the prepaid stock, and upon which a partial dividend may be paid annually out of the full dividend apportioned thereto); and may also issue full-paid stock upon which the par value thereof shall be paid in advance, in the certificate of which stock the right of withdrawal may be waived for a definite time, and upon which full-paid stock a full dividend or a definite dividend may be paid, which dividend shall in no case exceed the per cent of profits earned by all classes or series of stock at the time said dividend is declared. Any such association may issue from time to time a limited amount of guaranty or permanent stock, for which the full par value shall be paid at the time of issue or in instalments of five dollars on each share, from time to time, at the option of the purchaser, until the full par value of one hundred dollars is paid. Such guaranty or permanent stock to be paid a dividend on the amount paid in, such dividend not to exceed the per cent of profits earned by all classes or series of stock at the time such dividend is declared. The balance of profits (if any) and the principal paid on said stock not to be paid to holders of same until all lawful claims of every other class of stock shall have been fully liquidated and paid by such association. Provided, That the total amount of guaranty or permanent stock at its par value issued by any association shall not exceed at the time of its issue twenty per cent of the amount of payments to the credit of all other classes of stock. No building and loan association shall issue any certificate of shares until the terms and conditions thereof shall have been first submitted to and approved by the public examiner.

(Id. § 26.)

**§ 2881. Withdrawals—Fines, etc.—Delinquent shares—
Rate of interest.**

Any shareholder whose share or shares are not in arrears or pledged upon a loan, shall be entitled to withdraw such share or shares at any time twenty-four months from and after the date of the first payment on such share or shares, and not before such date; Provided, That the board of directors may, if they deem it to the interest of the association, buy in the share or shares of any shareholder desiring to withdraw at a previous date, paying therefor the sum paid in on said shares, less such discount as may be agreed upon and which shall not in any case exceed eight per cent. Any such shareholder may give notice of withdrawal in writing to the secretary of said association, and the liability of said shareholder to pay further instalments and right to share in future profits shall cease with said notice. Such withdrawing shareholder shall be entitled to receive, at the end of two years from the date of his first payment, all monthly payments made on account of such share or shares (not including admission fees or fines), less the following deductions: Fifty cents on each certificate in payment for issuing and canceling the same, and two per cent of the amount so paid in, for a contingent or reserve fund, to be used by the association to meet any contingency or loss in its business, from the depreciation of its securities or otherwise; Provided, That if the share or shares on which such notice of withdrawal is given are in arrears, a fine of ten cents per share for each thirty days such share or shares are delinquent may be deducted, in addition to the withdrawal fee and charge for the reserve fund hereinbefore provided for. All stockholders who do not give the notice as herein provided, failing to make payments, shall be subject to a fine of ten cents per share per month for each month such payments are in arrears, for a period of six months after the last payment made (such fines in the aggregate not to exceed the sum of sixty cents per share), and at the end of such period of six months, if arrearages and fines remain unpaid, the balance of such monthly payments, if any, after deducting the certificate fee, contingent fund and fines as herein provided, shall be subject to withdrawal at a period not less than twenty-four months from the date of the first payment, on application of the stockholder. If such delinquent shares are not reclaimed or called for within twenty-four months from the date of the last payment, the balance, if any, to the credit of such delinquent shares, shall be transferred to the contingent fund herein

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provided for, and the delinquent shareholder, shall, from the time of such transfer, have no further claim upon the association on account of such share or shares or the payments made thereon; Provided, That such shares which may have been pledged as collateral for the payment of a loan and become delinquent, shall be adjusted as provided for in section four of this act. If such withdrawing member has made twenty-four or more payments and less than thirty-six payments, he shall receive the amounts paid, less the deductions provided for, and interest on such amount at the rate of five per cent per annum for the actual time the association has had the payments in excess of twenty-four months; and if such withdrawing member has made thirty-six or more payments and less than forty-eight payments, he shall receive the amount paid in, less the deductions provided for, and interest on such amount at the rate of six per cent per annum for the actual time the association has had the payments in excess of twenty-four months; and if such withdrawing member has made forty-eight payments and less than sixty payments, he shall receive the amount paid in, less the deductions provided for, and interest on said amount at the rate of seven per cent per annum for the actual time the association has had the payments in excess of twenty-four months; and if such withdrawing member has made sixty or more payments, and the stock has not reached a maturity value, he shall receive the amounts paid in, less the deductions provided for, and interest on such amount at the rate of eight per cent per annum for the actual time the association has had the payments; Provided, That the net profits of the association for the time the association has had the use of all of its funds shall amount to the sum of five, six, seven and eight per cent per annum, computed on the amounts paid in on all the shares in force at the time such withdrawals are made; and if such profits are not sufficient when so computed, then the stock so withdrawn shall be entitled to a rate per cent found to be earned as net profits during said period, such interest payments to be in all cases in lieu of such profits; Provided further, That if by reason of extraordinary losses the entire net profit is exhausted, the withdrawing member shall not be entitled to the interest herein named; and if by reason of extraordinary losses the association is compelled to charge such losses against its capital actually paid in, all withdrawing shares shall be subject to a pro rata charge of such losses with those remaining undrawn, and in such case all payment herein provided shall be considered of no effect, and the withdrawing member shall only be entitled to such sums as may be found to be due him after the adjustment of such losses among all shareholders; and Provided further, That whenever the capital of an association has been impaired by losses in excess of its reserve fund and profits earned, it shall be the duty of the directors to suspend sales of all classes of stock until such losses have been adjusted and distributed pro rata as a charge upon the shares of stock in force; and Provided further, That no more than one-half of the amount received in payments on stock by such association in any month shall be used to pay withdrawals, without the consent of the board of directors; and Provided further, That any association that has issued shares maturing at a definite period, which finds that its assets will not be sufficient under the mutual system to mature its stock at such period without unusual assessments, may, with the consent of any stockholder, settle and discharge his stock by paying to him at the maturity period, or sooner if its directors deem it practicable, such sum as he had paid into such association for monthly dues and withdrawal assessments, and such proportion of the profits as shall be mutually deemed by them equitable.

(Id. § 27.)

§ 2882. Death of stockholder—Legal representatives to receive withdrawal value, when.

Upon the death of a stockholder in any such association, his heirs or personal representatives, upon giving sixty days' notice to the association, shall receive from such association the then withdrawal value of his shares, agreeable to the provisions of section twenty-seven of this act.

(Id. § 28.)

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§ 2883. Applications for loans.

Every such association shall provide in its by-laws in what manner applications and bids for loans shall be received, and who shall be entitled to loans thereunder. Such proportion of the loan fund shall be loaned upon such application as the directors shall deem advisable; Provided, The securities shall be in the character and amount as required by this act; and Provided further, That the provisions of this section relating to bidding for loans shall not apply to associations which fix the rate of interest and premium in any other manner.

(Id. § 29.)

§ 2884. Payment of expenses.

All associations governed by this act may, in payment of their expenses, use a sum not to exceed fourteen per cent of their receipts for payments on stock. Whenever a distribution of profits is made, and at least twice in each year, each association shall charge against the profits accrued four-fifths of such expenses; or, if there is not a sufficient amount of the profits to pay such part of the expense incurred, then the total amount of profits shall be so charged with expense, and the balance of said four-fifths of such expenses shall be carried as "Expenses paid" until the next report or distribution of profits. The remaining one-fifth of such expenses shall, at the time of making the charges to profits, as herein provided, be carried to an account to be called "Permanent expense," which shall finally be paid as follows: Whenever any share of stock has reached a maturity value, the share of permanent expense contributed by said share of stock shall be charged against it, and the sum found after deducting such share of permanent expense shall be deemed the true maturity value of said stock. All fees and fines received by any association may be used for the payment of expenses, in addition to the amount herein provided for.

(Id. § 30.)

§ 2885. Not more than three officers to be directors.

That not more than three of the officers of any such association, incorporated under the laws of this state, shall be members of the board of directors of such association; Provided, That no change shall be required under this section until the next annual meeting of such association.

(Id. § 31.)

§ 2886. Existing companies subject to this act.

All corporations organized in this state, and doing business in this or any other state as building and loan associations, shall comply with and be subject to all the provisions of this act within sixty days after its passage, and shall be entitled to all the privileges and benefits thereof, without reincorporating.

(Id. § 32.)

§ 2887. Same—Local companies excepted, when—Penalty for sale of stock beyond its limits.

This act shall not apply to any association organized under the laws of this state which confines its loaning and business operations wholly to its county and the counties adjacent and adjoining thereto; Provided, That any such association heretofore incorporated which desires to hereafter confine its business to adjacent counties, as aforesaid, may file with the public examiner a statement to that effect and also containing the names of those holding, the amount held by them of the stock of said association outside such counties, and so long as such association thereafter confines its sales of stock within the limits aforesaid it shall not be subject to the provisions hereof; and any sales of stock outside the limits of said counties, made after filing of such statements by any officers, director or agent of any association, shall subject such person to all the penalties prescribed in section twenty-four of this act; Provided further, That nothing in this section shall be so construed to prevent the bona fide sale or transfer of the individual stock of any member of such association.

(Id. § 33.)

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§ 2888. Taxation of company.

Every such association shall be assessed for and pay taxes upon its office furniture and fixtures and all real estate acquired in the course of its business.

(Id. § 34.)

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§ 2889. Taxation of stockholder.

The amount standing to the credit of each member of any such association, upon its books, shall be considered and held as the individual credit of such member, and each member shall list the shares held by him for taxation, at their real value in money, in the county of his residence, the same as other credits are listed, except shares upon which loans have been made or money advanced by the association.

(Id. § 35.)

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§ 2890. Same—Duty of foreign companies.

It shall be the duty of every such association not incorporated under the laws of this state to make and forward to the public examiner, upon the first day of May in each year,* a statement containing the names and the withdrawal value of all its stock held and owned by residents of this state, together with the place of residence of every such stockholder, except those having loans as provided in the foregoing section; and it shall be the duty of the said public examiner to make out and forward to the county auditors of the proper counties a statement of the stock held by them. And it shall be the duty of the said county auditors, upon receiving the statements provided for in this and the foregoing sections, to furnish the assessors of each town in his county having such stockholders with the names of such stockholders and the value of their stock as given in such statements, for the purpose of assessment.

(Id. § 36.)

*See §§ 283, 284

§ 2891. Consolidation.

Any such association shall have authority to consolidate with one or more other corporations organized for the same purpose, upon such terms as may be agreed upon, when such consolidation shall be deemed advisable by a majority vote of its members, and to transfer to such consolidated corporation its entire assets, subject to the vested right of its members.

(Id. § 37.)

§ 2892. Transfer of securities to state treasurer.

All securities, cash, mortgages, certificates, bonds, notes, receipts, statements and records heretofore deposited with or received by the state auditor pursuant to law shall, upon the passage of this act, be transferred and delivered by him to the state treasurer, who shall receive the same, and who, with his sureties, shall be liable for the safe keeping thereof. The treasurer shall deliver up such securities only upon the written order of the public examiner, except in pursuance of this act. All securities of such association heretofore required to be deposited with the state auditor shall be hereafter deposited as in this act provided. Upon filing any mortgage, the treasurer shall receive a fee of fifteen cents therefor, and upon withdrawal of the same he shall receive a fee of ten cents therefor, to be paid by the association so filing or withdrawing it.

(Id. § 38.)

§ 2893. Disposal of fees—Execution of papers.

The public examiner and state treasurer respectively shall retain all the fees by this act provided to be paid to them or either of them in lieu of any allowance for clerk hire made necessary by the extra labor imposed by this act, and they are respectively hereby authorized and empowered to make and execute any and all orders, releases or other papers which the state auditor was heretofore authorized to make or execute in the premises.

(Id. § 39.)

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§ 2894. Annual or special meeting—Notice—Amendment of articles—Proxies—Voting.

At least thirty days prior to any annual or special meeting of the stockholders of any such association governed by this act, a notice stating the time and place of such meeting shall be deposited in the post office at the headquarters of such association directed to each member to his address as the same appears at such time on the books of the association; and when so deposited, postage prepaid, shall be deemed a legal and sufficient notice of any such meeting; and there shall be attached to and accompany such notice any proposed amendment or amendments to the articles of incorporation of any such association, and a statement of any officers to be elected at such meeting. Any amendment so proposed and of which such notice shall have been duly given may be adopted at such meeting by the vote of two-thirds of the stock represented and voting thereat. Any member of such association entitled to vote at such meeting may vote in person or by proxy; but no person shall be appointed such proxy who shall not reside in the same county where the stockholder so appointing him resides at the time of such appointment, except that stockholders residing outside of this state may appoint proxies residing in any county in this state; and no person shall be appointed proxy in any case who is at the time an officer, agent or employe of any such association; and no person shall hold proxies to exceed five hundred votes for any such meeting. Upon all questions to be voted upon at such meeting the vote shall be taken by calling the roll of persons entitled to vote thereat, with the number of votes which each is entitled to cast, and the votes shall be by written or printed ballot, the form for which may be prescribed by the board of directors.

(Id. § 40.)

(b) *Associations Doing a Local Business.*

§ 2895. Mutual building associations—Supervision by public examiner—Exception.

To insure the thorough supervision of the affairs and the safety of the funds of mutual building associations in this state, every officer of any such association is hereby made subject to the same duties and penalties made applicable to the officers of public institutions of this state by an act of the legislature of this state, approved March twelve, one thousand eight hundred and seventy-eight, entitled "An act to provide for the appointment and to prescribe the duties of a public examiner for the state of Minnesota," and also the acts of said legislature amendatory thereof; and the public examiner of this state is hereby given the same powers and jurisdiction, and there is hereby imposed upon him the same duties relative to mutual building associations or societies as are now imposed upon and granted to the public examiner of this state relative to the several public institutions of this state; Provided, Nothing in this act shall affect or apply to any society or association which has its principal place of business in a city or village containing less than ten thousand inhabitants, and this act shall apply only to local building associations.

(1891, c. 27, § 1.³³)

§ 2896. Unauthorized to do business without certificate from examiner—License fee—Certificate may be recorded.

After September first, one thousand eight hundred and ninety-one, no building association shall receive any moneys or transact any business in this state, except to settle and close its unfinished affairs, unless it shall have obtained from the said public examiner a certificate stating its compliance with the provisions of this section; and thereafter shall keep said certificate conspicuously posted in the office of said association. Such certificate shall

³³ An act to provide for the regulation and supervision of mutual building associations in the state of Minnesota. Approved April 20, 1891.

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be in force for one year, and for one year only, and a new certificate shall be obtained from year to year, and for each such certificate such building association shall pay into the treasury of the state of Minnesota a license fee of ten dollars before receiving the same.

In making application for and as a basis for such certificate, the secretary and a majority of the directors of such association shall make out and report under oath to the public examiner a statement showing:

First—The full corporate articles of such association and a full copy of its by-laws then in force.

Second—The name and address of each officer and the salary or fees received by each officer for the twelve months next preceding its last annual meeting.

Third—A copy of its last report.

Within thirty days after receiving the aforesaid statement, the public examiner shall issue the yearly certificate above named; Provided, That if it appears from such verified statement that the association applying for such certificate is not complying with the law applicable thereto and such rules as said examiner may adopt for said societies, the public examiner shall refuse to issue such certificate. Said certificate may be recorded in the office of the register of deeds in the county where said society has its regular place of business.

(Id. § 2.)

§ 2897. Dealing in real estate prohibited.

No corporation doing or claiming to do the business of a mutual building society shall have authority to engage in the business of buying and selling or dealing in real estate; Provided, however, That nothing in this section shall be taken as prohibiting any such association from securing the obligations due it and the repayment of its loans by taking mortgages on real estate, as provided by the laws and the statutes of this state; or from purchasing, as provided by law, at any sheriff's, judicial or other sale, public or private, any real estate upon which such association may have or hold any mortgage or judgment or lien or other incumbrance, or in which such association may have an interest, or from selling, conveying, holding, leasing, mortgaging at pleasure any real estate so purchased or acquired; Provided also, That nothing herein contained shall prohibit any such association from obtaining or acquiring title, by deed or otherwise, to real estate on which it may hold any lien or security in whole or in part satisfaction thereof.

(Id. § 3.)

§ 2898. Preferred stock prohibited.

All mutual building associations organized or to be organized under the laws of this state are hereby prohibited from hereafter creating or issuing any preferred or non-contributing stock, except in payment of matured contributing stock, and no stockholder in any such association shall have more than one vote. But this section shall not limit the power of such associations to create and issue different series of stock.

(Id. § 4.)

§ 2899. Forfeited stock to be sold.

Whenever any mutual building association shall declare any of its stock forfeited for non-compliance of the owner with any of its rules, by-laws or regulations, the said stock shall be sold at a regular monthly meeting of said association to the highest bidder; and it is made the duty of the officers of said association at any such sale to bid in the stock so offered at not less than its then withdrawal value, and thereupon the said stock shall be canceled; but if a higher bid is received the person making the highest bid shall have said stock issued or assigned to him, and no fines or penalties shall be charged against any stock for more than twelve months.

(Id. § 5.)

§ 2900. Withdrawal of shares.

Any shareholder in any such association whose share or shares are not in arrears and not pledged, may withdraw said share or shares from his association, at any time after it is six months old, by giving at least sixty days' notice in writing to the secretary of his intention so to do; and, upon the re-

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ceipt of such notice by the secretary, the membership represented by the share or shares mentioned in such notice shall cease; Provided, Not exceeding one-half of the subsequent monthly receipts of such association shall be used to satisfy withdrawn stock, unless the directors thereof otherwise provide.

(Id. § 6.)

§ 2901. Application of act.

Every corporation hereafter doing business in this state which by its corporate articles or by its by-laws, or printed literature, claims to do or seeks to do the business of a mutual building association, or a mutual building society, shall be held to come under the benefits, provisions and restrictions of this act; Provided, however, that nothing in this act shall be taken or construed as in any way changing or affecting Chapter two hundred and thirty-six of the General Laws of this state for the year one thousand eight hundred and eighty-nine, entitled "An act relating to building, loan and savings associations doing a general business."

(Id. § 7.)

§ 2902. Compensation of public examiner.

For the services required under this act the public examiner shall receive annually a sum equal to the aggregate amount paid into the treasury of this state under this act, said sum so paid to be in addition to such other compensation as he may be entitled to receive under any law or laws of this state, the same to be paid by the state treasurer in the same manner as other salaries of state officers are paid.

(Id. § 8.)

(7) CO-OPERATIVE ASSOCIATIONS.*

§ 2903. Formation—For what purposes.

Seven or more persons of lawful age, inhabitants of this state, may, by written articles of agreement, associate themselves together for the purposes of trade, or for carrying on any lawful mechanical, manufacturing or agricultural business within this state; and when such articles of association shall have been executed, and recorded in the office of the clerk of the city or town in which the business is to be carried on, such persons shall be and become a corporation, and enjoy all the powers and privileges, and be subject to all duties, restrictions and liabilities, set forth in all general laws in relation to similar corporations, except so far as the same may be limited or enlarged by this act.

(1870, c. 29, § 1; G. S. 1878, c. 34, § 155.)

Laws 1870, c. 29, is not unconstitutional on the ground that its title does not express its subject. *Finnegan v. Noerenberg*, 52 Minn. 239, 53 N. W. Rep. 1150.

Under this act, a corporation may be formed for the purpose of buying, owning, improving, selling, and leasing real and personal property, including the constructing and leasing of a building. *Id.*

§ 2904. Articles of association—Filing—Place of business.

The objects for which such association is established, and the place within which its business is to be carried on, shall be distinctly set forth in its articles of agreement; and it shall not do business in any other place or places than those mentioned in its articles; and the articles of agreement shall be recorded in the office of the clerk of every place in which it proposes to do business.

(1870, c. 29, § 2; G. S. 1878, c. 34, § 156.)

§ 2905. Directors and officers.

The business of the association shall be managed and conducted by president, a board of not less than three directors, and a treasurer, who shall be styled a board of managers, and who shall be chosen annually by the stockholders, and shall hold their offices until others are chosen and qualified in their stead; and shall have such other officers as the association shall pre-

*An act in relation to the formation of co-operative associations. Approved March 4, 1870 (Laws 1870, c. 29).

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scribe by their by-laws; and the mode of appointment and choice of such officers shall also be prescribed by the by-laws.

(1870, c. 29, § 3; G. S. 1878, c. 34, § 157.)

§ 2906. First meeting—By-laws—Copies to be filed.

The first meeting of such association hereafter organized shall be called in the manner provided for calling meetings of corporations in the General Statutes. Each association may make its own by-laws, provided they be not repugnant to this act, nor to the laws of the state, and shall file in the clerk's office of the place where they transact their business a copy of all by-laws by them made.

(1870, c. 29, § 4; G. S. 1878, c. 34, § 158.)

§ 2907. 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. 20, § 5; G. S. 1878, c. 34, § 159; as amended 1881, Ex. S. c. 13, § 1.)

§ 2908. Power to hold property, etc.—Limit of interest and voting power of members.

Such association may take, hold and convey such real and personal estate as is necessary for the purposes of its organization, and may sue and be sued in its associate name; and no member thereof shall be entitled to hold or claim any interest therein exceeding the sum of one thousand dollars, nor shall any member, upon any subject, be entitled to more than one vote.

(1870, c. 29, § 7; G. S. 1878, c. 34, § 161.)

§ 2909. Certificates of shares, when and to whom issued.

No certificate of shares shall be issued to any person until the full amount thereof shall have been paid in cash; no person shall be allowed to become a shareholder in such association except by the consent of the managers of the same.

(1870, c. 29, § 8; G. S. 1878, c. 34, § 162.)

§ 2910. Failure to make true returns.

If the board of managers shall fail to make the returns provided for in this act, or shall make untrue returns, they shall be jointly and severally liable for all debts existing at the date of such return, or at the time when the same should have been made.

(1870, c. 29, § 9; G. S. 1878, c. 34, § 163.)

§ 2911. Judgment against association, how enforced.

If any person shall recover judgment against any association created under the provisions of this act, and if, after the issue of execution upon such judgment, demand shall be made on the treasurer, or any of the board of managers, for payment of the same, or for property to be exposed to satisfy such execution, and if the same shall not be paid or satisfied, the officer shall make return of such fact upon the execution, or upon any alias execution that may issue, so long as any part thereof remains unsatisfied; and if, after thirty days shall have elapsed, the balance of such execution remains unpaid, the creditor may apply to the supreme judicial court, setting forth the facts, and praying for an injunction to restrain such association from alienating or transferring any of its property, and doing any business until such judgment is satisfied, and the said court shall grant such injunction; or the judgment creditor may apply to the district court in the county in which such association has a place of business, setting forth the facts, and, after due notice and hearing thereupon, a warrant shall issue under the law in relation to insolvent corporations; and proceedings shall be had as in other cases of insolvent corpora-

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tions; and said association may at any time apply for the benefit of the acts in regard to insolvent corporations.

(1870, c. 29, § 10; G. S. 1878, c. 34, § 164.)

§ 2912. 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; G. S. 1878, c. 34, § 165; as amended 1881, Ex. S. c. 13, § 3.)

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TITLE 3.

CORPORATIONS OTHER THAN THOSE FOR PECUNIARY PROFIT.³⁵

(1) PROVISIONS APPLICABLE TO SUCH CORPORATIONS.

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97 - 55
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01 - 219
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 '05 . 109
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 '05 . 304

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§ 2913. Formation—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. Or for the purpose of providing, leasing, furnishing, owning and managing buildings, halls or apartments for the use of any of the societies or bodies mentioned in this section, or for any or either of said purposes.

(G. S. 1866, c. 34, § 54, as amended 1870, c. 28, § 1; 1872, c. 52, § 1; G. S. 1878, c. 34, § 166; 1879, c. 30, § 1; 1881, c. 75, § 1; 1885, c. 8; 1891, c. 70, § 1.)

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*, 37 Minn. 13, 32 N. W. Rep. 737.

See *Foster v. Moulton*, 35 Minn. 458, 29 N. W. Rep. 155; *Brown v. Balfour*, 46 Minn. 68, 48 N. W. Rep. 604; *Walter v. Hensel*, 42 Minn. 204, 44 N. W. Rep. 57.

§ 2914. Articles—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

³⁵ For act authorizing incorporation of clearing house associations, see §§ 2533-2535.

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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.

(G. S. 1866, c. 34, § 55; G. S. 1878, c. 34, § 167; as amended 1881, c. 75, § 2.)

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

§ 2915. Attempted incorporation legalized, when.

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 secretary 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, and 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;³⁰ G. S. 1878, v. 2, c. 34, § 208.)

§ 2916. Powers—Collection of assessments.

Upon filing said articles the persons named therein and signing the same become a body corporate, with power to sue and be sued by its corporate name, 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, in the corporate name, and for the use and benefit of the corporation, sue and recover judgment, for an amount not to exceed twenty dollars upon any one share in any one year of subscribed stock in said company, after notice of the assessment upon the shares of ten days served upon each stockholder.

(G. S. 1866, c. 34, § 56, as amended 1876, c. 31, § 1; G. S. 1878, c. 34, § 168.)

§ 2917. 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,

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³⁰An act to legalize the proceedings for the incorporation of certain societies under title 3 of chapter 34 of the General Statutes of 1878. Approved March 5, 1885.

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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; G. S. 1878, v. 2, c. 34, § 163a.)

§ 2918. 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.

(1883, c. 111, § 2; G. S. 1878, v. 2, c. 34, § 168b.)

§ 2919. Directors, etc.—Election by another society, when.

Any benevolent, charitable or missionary society that may hereafter be organized under title three, general statutes of 1878, state of Minnesota, and the acts amendatory thereof, may authorize the election of a portion of its directors, trustees or managers by any other organization or corporation that has heretofore been, or may hereafter be organized under the laws of the state of Minnesota or that has attempted to be formed under the laws of the state of Minnesota and is now exercising the functions of a corporation whenever the articles of incorporation shall so designate the corporation or society which shall thereafter elect such portion of said directors, trustees or managers and the number to be elected.

(1893, c. 47, § 1.⁵⁷)

§ 2920. Same—Acceptance of act, how.

Any benevolent, charitable or missionary society heretofore organized under the laws of the state of Minnesota may upon resolution by the unanimous vote of the body or constituency empowered to amend its articles of incorporation, accept the provisions of section one of this act; and upon filing a certified copy of the resolution amending its articles of incorporation in conformity with section one as above, together with a verification by two of its officers that such resolution was adopted in pursuance of said section, shall be entitled to all the benefits thereof; provided, that said corporation shall cause said certificate and verification to be filed with the secretary of state and with the register of deeds in the county in which its principal offices shall be situated.

(Id. § 2.)

§ 2921. No dividend or distribution until dissolution.

No dividend or distribution of property among the members or stockholders is lawful until the dissolution of the corporation.

(G. S. 1866, c. 34, § 57; G. S. 1878, c. 34, § 173.)

§ 2922. Power to hold and dispose of property.

Any corporation formed under the provisions of this title, in addition to the other powers granted by law, is authorized to acquire by purchase, gift, grant or devise, and to hold, use and convey, any real estate [or] personal property whatever, and may lease or mortgage the same, or use the same in any other manner considered by such corporation most conducive to the interests and prosperity of such corporation, to the same extent as natural persons: provided, that such corporation shall not have power to divert any

⁵⁷An act to enable a benevolent, charitable or missionary association to authorize another corporation to elect a portion of its trustees, directors or managers. Approved April 18, 1893.

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gift, grant or bequest from the specific purpose designated by the donor, without the consent of such donor.

(G. S. 1866, c. 34, § 58, as amended 1869, c. 76, § 2; G. S. 1878, c. 34, § 174.)

See *Atwater v. Russell*, 49 Minn. 57, 51 N. W. Rep. 629, 632, and 52 N. W. Rep. 26.

§ 2923. Powers of trustees of colleges and seminaries.

The trustees of any college or seminary incorporated under the provisions of this title, besides the general powers and privileges aforesaid, have power:

First. To appoint and fix the salaries of a president, professors, tutors, and such other officers and agents as they may deem necessary, and to remove them at pleasure.

Second. To direct and prescribe the course of study and discipline to be observed in the institution, and to grant such literary honors and degrees as are usually granted by any such institution in the United States, and, in testimony thereof, to give suitable diplomas, under their seal and the signatures of such officers of the institution as they may deem expedient: provided, that the course of study to be pursued in such institution is in all respects as thorough and comprehensive as is usually pursued in similar institutions in the United States.

Third. To make all ordinances and by-laws necessary and proper to carry into effect the foregoing powers.

(G. S. 1866, c. 34, § 59; G. S. 1878, c. 34, § 175.)

§ 2924. May require other officers to give bonds.

Such trustees may require the treasurer and all other officers and agents, before entering upon the duties of their respective offices, to give bonds in such sums and with such sureties as they deem proper and sufficient.

(G. S. 1866, c. 34, § 60; G. S. 1878, c. 34, § 176.)

§ 2925. Shall make annual report.

Such trustees are required, on or before the first day of January, annually, to report to the superintendent of public instruction a statement of the name of each trustee, officer, treasurer and student of such institution, with a statement of its property, the amount of stock subscribed, donated and bequeathed, and the amount actually paid in, and such other information as will tend to exhibit its condition and operations.

(G. S. 1866, c. 34, § 61; G. S. 1878, c. 34, § 177.)

But see § 283.

§ 2926. Legal process, how served.

Service of any legal process on such corporation may be made on any one of the trustees thereof, if such trustee is in the county in which the institution is located; but if not, then by leaving a copy of such process with any officer in the employ thereof, at its principal place of business.

(G. S. 1866, c. 34, § 62; G. S. 1878, c. 34, § 178.)

§ 2927. Colleges, etc., subject to visitation.

Any college or institution incorporated under the provisions of this title is always subject to the visitation and examination of the superintendent of public instruction.

(G. S. 1866, c. 34, § 63; G. S. 1878, c. 34, § 179.)

§ 2928. Existing institutions may organize under this title.

Any institution of learning now in existence in this state, whether incorporated or not, may enjoy all the benefits of this title, by complying with the provisions thereof; and may, by a vote of the majority of such corporation, company or association, to be taken according to the act of incorporation, by-laws, or other legal regulations thereof, determine to avail itself of the provisions of this title, and to take and assume corporate name and powers

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thereunder; and may, by like vote, transfer to such corporation, when formed, all its property, real, personal, and mixed; and thereupon said corporation to which such property is so transferred, shall take the same in the [same] manner, to the same extent, and with the like effect, as the same was previously owned and held by the corporation, company or association so transferring the same, and may, in its corporate name, sue for and collect all debts, dues, demands, subscriptions, devises and bequests thereof. The said corporation so taking such property shall take the same subject to all the liens, trusts and limitations, both legal and equitable, to which the same was subject before such transfer; and shall also be liable for all the debts and obligations of such previous corporation, company or association, and shall pay the same to the full extent of the value of such property at the time of so taking the same.

(G. S. 1866, c. 34, § 64; G. S. 1878, c. 34, § 180.)

(2) ORPHAN ASYLUMS.

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§ 2929. Orphan asylum—May be guardian, when.

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.

(G. S. 1866, c. 34, § 65; G. S. 1878, c. 34, § 181; as amended 1881, c. 54, § 1.)

§ 2930. Same—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.

(G. S. 1866, c. 34, § 66; G. S. 1878, c. 34, § 182; as amended 1881, c. 54, § 1.)

§ 2931. Same—Shall possess same powers as parents and guardians.

That any orphan asylum aforesaid shall possess the same authority and powers over the children in their charge and custody as parents and guardians possess over children subject to them, and may in their discretion bind out any such child to some suitable employment, until such child, if a male, shall attain the age of twenty-one years, and if a female, the age of eighteen years, or for a shorter period. But proper provisions shall in every case be made and inserted in the indentures by which the child shall be bound to service, for securing an education proper and fitting for the condition and circumstances in life of such child: *provided*, that nothing herein contained shall prevent the proper judicial tribunal from awarding the custody of any orphan child to any person, in its discretion.

(G. S. 1866, c. 34, § 67; G. S. 1878, c. 34, § 183.)

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(3) SOCIETIES FOR SECURING HOMES FOR CHILDREN.

§ 2932. Formation—Certificate.

That whenever not less than twenty reputable citizens of the state of Minnesota have or shall associate themselves into a corporation under the laws of this state, for the purpose of securing homes for orphans or for homeless, abandoned and neglected or grossly ill-treated children, by adoption or otherwise, into private families, have or shall file with the secretary of state their articles of incorporation, together with a certificate signed by the governor and three or more members of the supreme court of the state of Minnesota, of their confidence in the trustworthiness of said corporation for said purposes, said corporation shall have power to receive such children for the purposes above expressed, in the manner herein specified; provided that at the end of ten years said power shall cease, unless a new certificate as provided above, signed by at least three members of the supreme court of Minnesota, shall be filed as above, and such certificates shall be filed every ten years during the continuance of such society. Such society shall have a main office and adopt rules for the transaction of business, which shall be published, and its financial records shall be open to the inspection of the public.

(1893, c. 17, § 1.³⁵)

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§ 2933. Powers—Contracts.

That such society shall have the power to receive into its hands, and under its control, and may become the legal guardian of any child under two years of age of the state, who is grossly ill-treated by any person or persons exercising control over it, or who shall have been abandoned or is without a home, or is surrounded by bad or immoral influences, or whose living parent or parents, by written authority, shall assign the custody of the same to such society; and such society is hereby authorized and empowered to consent through its duly authorized agent in the courts of this state in place of, instead of, and whenever it is by law permitted to the parent or guardian of a minor child, to consent to the adoption of such child in the court, under the laws and in the manner provided for the adoption of children. That such society shall have the power and authority to enter into contracts with the persons taking the children, but not legally adopting them, as soon as possible after the period of ninety days trial upon which the child may have been taken has elapsed; and this contract shall provide for the proper care of the child until the age of sixteen years in the case of a girl and eighteen years in case of a boy, and shall specify the amount to be paid to the ward at the expiration of the period of the contract; provided that in no case shall such contract contain any provision of a sectarian or political nature regarding the care, custody or education of such children.

(Id. § 2.)

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§ 2934. What compensation permitted.

The said society shall not in any case charge, or receive from the person or persons adopting any child through said society, any compensation for the same, except the expense of taking the child to the home where the child is placed, and persons so taking a child shall not be authorized to require of the society compensation for the care, clothing or medical attendance of such child, if it is returned to the keeping of said society.

(Id. § 3.)

§ 2935. Supervision of children in homes.

It shall be the duty of such society to keep a careful supervision of all children so placed by them and require of all families who have taken, except those who have legally adopted them, a full report of the condition and welfare of the child, not less frequently than once a year. Also the author-

³⁵An act relating to societies organized for the purpose of securing homes for orphans or abandoned, neglected or grossly ill-treated children, by adoption or otherwise, and providing rules for the regulation of the same. Approved March 29, 1893.

ized agents of the society shall have the right to visit such families and personally investigate the condition and welfare of the children as occasion may require; and if such agents shall become satisfied upon due investigation that the influence of the home is vicious or harmful to the child, or that the treatment is unduly severe or seriously lacking in wise and considerate care, then the superintendent of the society shall have authority to require the return of the child to the care of the society at its main office at the expense of the family having it.

(Id. § 4.)

§ 2936. To report to state board of corrections, etc.

It shall be the duty of the secretary of every such society to report to the state board of corrections and charities from time to time such facts with reference to children committed to the custody of the society as the said board may require on such blanks as they may prescribe, and the state board of corrections and charities, or its secretary, shall have the right at all times to investigate the homes in which such children may be placed, and in case the said board shall find at any time that any child has been placed in an improper home, or is not properly cared for, the said board or its secretary may order the society to transfer the child to a proper home, and if such change is not made within thirty days the said board may take charge of such child and make suitable provision for it.

(Id. § 5.)

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§ 2937. Dependent children—Duty and powers of probate judge.

Whenever a complaint or petition in writing of two of the commissioners of a county, or two of the town supervisors of any town, or of two aldermen of any city, or of two officers of any incorporated village or town, shall be made to the judge of probate of any county, stating that any minor child or children under two years of age, residing in such county, are in their opinion dependent upon the public for support or have been abandoned or neglected or are in a state of vagrancy or mendicancy, or are in a state of want or suffering, or are in peril of life, health or morality, by cruel or bad treatment, or by the habitual intemperance or grave misconduct of parents or guardians, it shall thereupon be the duty of such judge of probate to investigate the facts in such case and ascertain whether such child or children are dependent, neglected, abandoned or ill-treated, the residence and so far as possible the whereabouts of the parents, whether the condition and treatment of said children and general surroundings are such as to imperil the life, health or morality in consequence of their surroundings, or of the grave misconduct or habitual intemperance of their parents or guardian, and if said judge of probate shall so find he shall enter such finding in his office, certifying and directing that such child or children shall be and are turned over to the care and custody of said society for the purpose of adoption into private families or otherwise as to said society seems best, and shall order that it be taken in charge of at once or as soon as it can be conveniently done by said society, and shall deliver to said society a certified copy of such order, which order shall contain, besides such finding, a statement of the facts as far as ascertained as to the age of the child, name, nationality, residence and occupation of the parents or either of them. That upon entering such order the parents of said child shall be released from all parental duties towards, and responsibility for such child, and shall thereafter have no rights over or to the custody, services or earnings of such child. That in case any parent or other person having the custody of such child, shall refuse to surrender said child to said society or its agent, said judge of probate is hereby authorized and empowered to direct the sheriff of the county to take possession of said child; and, if so directed, it shall be the duty of said sheriff to deliver said child to the said society or its agent. The said judge of probate is hereby authorized to compel the attendance of witnesses on such examination, and it shall be the duty of the county attorney, when requested by said judge of probate, to attend any examination on behalf of the petitioners. Any friend of said child may appear in its behalf in said

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probate court, and the said judge of probate may, in his discretion, request any county commissioner, town supervisor, alderman or other officer of the town or city, where such examination is had or where said child resides, to appear in behalf of the child, and the records of such proceedings should show who, if any one, appeared in behalf of the petition or of the child on such examination.

(Id. § 6.)

§ 2938. Same—Notice of hearing.

Whenever a petition such as is provided for in section six of this act, shall be presented, signed by the parties as above provided, if it shall appear that one or both of the parents of the child reside in said county, the judge of probate shall issue a citation or notice, fixing the time and place for the hearing of said petition, which shall be served on one or both of said parents if either can be found in the county, not less than two days before the time fixed for the hearing of said petition, requiring them to appear, if they so desire, on said day and hour, and show cause, if any, why such child should not be taken from them and delivered to the care and custody of said society for purposes of adoption into a private family or otherwise as said society shall determine. Provided such citation or notice shall not be necessary if such parent or parents shall join in said petition. It shall be the duty of the probate judge in case such citation or notice has not been served upon said parents, before proceeding to hear and determine the petition, to require a certificate of the sheriff of the county that he has made diligent search to find and serve the same on one or both of the parents, but has been unable to find either of them; but, in case of such inability to give such notice, the proceedings shall be heard the same as though such notice had been given and such citation duly served.

(Id. § 7.)

§ 2939. Society not entitled to appropriation.

It is also herein expressly enacted that no provision of this law shall be construed as giving any claim to any society organized under it to an appropriation from the treasury of the state.

(Id. § 8.)

(4) CAMP-MEETING ASSOCIATIONS, ETC.

§ 2940. 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; ³⁰ G. S. 1878, v. 2, c. 34, § 183a.)

§ 2941. Articles—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 names and place of electing or appointing the same, and the number of directors, and the places of residence of each.

(1881, c. 138, § 2; G. S. 1878, v. 2, c. 34, § 183b.)

§ 2942. Capital stock—Subscription.

The directors or trustees may call in the subscription to the capital stock of such corporation by instalments, in such proportion and at such times and

³⁰ 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.

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 instalment 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 instalment from such negligent stockholder in any proper action for that purpose, or may declare the amount or amounts previously paid on part-paid stock forfeited for the use and benefit of the corporation.

(1881, c. 138, § 3; G. S. 1878, v. 2, c. 34, § 183c.)

§ 2943. Articles in duplicate—Record—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.

(1881, c. 138, § 4; G. S. 1878, v. 2, c. 34, § 183d.)

§ 2944. Capital stock—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.

(1881, c. 138, § 5; G. S. 1878, v. 2, c. 34, § 183e.)

§ 2945. Distribution of profits.

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.

(1881, c. 138, § 6; G. S. 1878, v. 2, c. 34, § 183f.)

§ 2946. 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.

(1881, c. 138, § 7; G. S. 1878, v. 2, c. 34, § 183g.)

§ 2947. 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.

(1881, c. 138, § 8; G. S. 1878, v. 2, c. 34, § 183h.)

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§ 2948. 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 possess 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.

(1881, c. 138, § 9; G. S. 1878, v. 2, c. 34, § 183i.)

§ 2949. 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.

(1881, c. 138, § 10; G. S. 1878, v. 2, c. 34, § 183j.)

§ 2950. Amendment of articles—Certificate.

The stockholders in any corporation, which has been or hereinafter may be, incorporated pursuant to the provisions of this chapter, may amend the articles of association of such body corporate, in any respect which might have been lawfully made a part of such original articles, by adopting articles, specifying such amendment, by a majority vote of the stockholders present and voting, at any meeting of such stockholders. The body corporate, upon adopting such amendment, shall cause a certificate to be prepared in duplicate, stating the time when, and the articles of amendment, which certificate shall be subscribed and sworn to by the president or chief executive officer, and also by the secretary of such body corporate, and deposited for record, in the manner provided by this act for depositing for record the original articles, and thereupon such amendment shall be and become a part of the articles of such body corporate, with the same force and effect as if such amendment had been adopted as a part of such original articles.

(1880, c. 238, § 1.)

§ 2951. Same—Adopted prior to this act.

Any articles amending the articles of association of any incorporation incorporated under the provisions of this act, which might have been made a part of the original articles, and which may have been heretofore adopted by a majority vote of the stockholders present and voting at any meeting of the stockholders of such corporation, may hereafter be certified and sworn to in duplicate and deposited for record as provided for in this act, and when so deposited, shall have the same force and effect as though they had been adopted pursuant to the provisions of the next preceding section.

(Id.)

(5) STATE AGRICULTURAL SOCIETY.

§ 2952. Of what members 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.

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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; 40 G. S. 1878, v. 2, c. 34, § 192.)

§ 2953. 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.

(1887, c. 181, § 2; G. S. 1878, v. 2, c. 34, § 193.)

§ 2954. Annual meeting—Officers.

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.

(1887, c. 181, § 3; G. S. 1878, v. 2, c. 34, § 194.)

§ 2955. 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.

(1887, c. 181, § 4; G. S. 1878, v. 2, c. 34, § 194a.)

§ 2956. 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.

(1887, c. 181, § 5; G. S. 1878, v. 2, c. 34, § 194b.)

§ 2957. Duty of secretary.

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

⁴⁰An 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. Laws 1883, and all acts and parts of acts inconsistent with the provisions of this act. Laws 1883, c. 142, § 7, repealed c. 19, Laws 1868 (G. S. 1878, c. 34, §§ 191-194).

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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.

(1887, c. 181, § 6; G. S. 1878, v. 2, c. 34, § 194c.)

See §§ 283, 284.

§ 2958. 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.

(1887, c. 181, § 7; G. S. 1878, v. 2, c. 34, § 194d.)

§ 2959. 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; G. S. 1878, v. 2, c. 34, § 194e.)

§ 2960. Peace-officers ex officio.

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.

(1887, c. 181, § 9; G. S. 1878, v. 2, c. 34, § 194f.)

§ 2961. 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.

(1887, c. 181, § 10; G. S. 1878, v. 2, c. 34, § 194g.)

§ 2962. State fair grounds—Conveyance to state authorized.

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; 41 G. S. 1878, v. 2, c. 34, § 191.)

§ 2963. Same—Annual exhibit.

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.

(1885, c. 174, § 2; G. S. 1878, v. 2, c. 34, § 191a.)

See *Farrier v. State Agricultural Society*, 36 Minn. 478, 32 N. W. Rep. 554.

§ 2964. Same—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.

(1885, c. 174, § 4; G. S. 1878, v. 2, c. 34, § 191b.)

§ 2965. 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 deportment of the public thereon which may be requisite or proper.

(1885, c. 174, § 5; G. S. 1878, v. 2, c. 34, § 191c.)

See §§ 2008, 2009.

§ 2966. Same—Expenditure.

Any and all moneys expended by the said State Agricultural Society for premiums for exhibits or other displays, or which may hereafter be appropri-

⁴¹An 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.

Laws 1885, c. 271, prescribes the manner of disbursement of appropriation.

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ated 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.

(1885, c. 174, § 6; G. S. 1878, v. 2, c. 34, § 191d.)

§ 2967. Same—Power of incumbering property.

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.

(1885, c. 174, § 7; G. S. 1878, v. 2, c. 34, § 191e.)

§ 2968. Same—Lease of fair grounds, when.

The board of managers of the Minnesota State Agricultural Society are hereby authorized and empowered whenever they may deem it advisable to lease limited portions of what is known as the "State Fair Grounds," in this state, to any person, company or corporation of this state, for the purpose of giving exhibitions of live stock, and the holding of racing meetings thereon, and for other purposes not inconsistent with the use of said grounds for holding state fairs, together with all reasonable and necessary privileges concomitant with such exhibitions and racing meetings; Provided, That no such lease shall be given for a longer term than twenty years; and Provided further, That all rents and income arising from such leasing shall by said board and in their discretion be expended upon said grounds in repairing and improving the same.

(1891, c. 51, § 1.42)

§ 2969. Certain lease ratified.

That certain lease, dated the twenty-fourth day of April, A. D. one thousand eight hundred and ninety, made by the State Agricultural Society of Minnesota to the Minnesota Driving Club, is hereby ratified and confirmed.

(1891, c. 52, § 1.43)

§ 2970. Entry of horse under assumed name, etc., prohibited, when.

That in order to encourage the breeding of, and improvement in, horses in the state of Minnesota, it is hereby made unlawful for any person or persons to enter, or cause to be entered, for competition, or cause to compete for, any prize, premium, sweepstake, purse or stake offered or given by any fair, agricultural society or any other association (whether members of the parent association or not), person or persons in the state of Minnesota, or to drive or handle any horse, mare, gelding, colt or filly under an assumed name, or out of its proper class where such prize, premium, sweepstake, purse, or stake is to be decided by contest.

(1893, c. 40, § 1.44)

§ 2971. Same—Penalty for violation.

Any person or persons found guilty of violating section one of this act shall, upon conviction thereof, be imprisoned in the Minnesota state prison for the period of not less than one year nor more than five years.

(Id. § 2.)

*An act to authorize the board of managers of the Minnesota State Agricultural Society to lease portions of what is known as the "State Fair Grounds," in this state. Approved April 17, 1891.

*An act to ratify a certain lease made by the State Agricultural Society of Minnesota. Approved April 20, 1891.

*An act relating to persons, corporations or associations offering premiums, purses and stakes for exhibits of, and speed contests by and between, horses, and to prevent fraudulent entries for competition for such premiums, purses and stakes. Approved April 1, 1893.

§ 2972. Same—Class, how determined—Fraud.

That the class to which an animal belongs for entry purpose, as an exhibitor or performer shall be determined by the public exhibition or performance of said horse, mare, gelding, colt or filly in any former contest, either in show-ring, races, trials against time, or other contests as provided by the printed rules of the society, corporation or association under which the proposed contest is advertised to be conducted. Any person or persons misrepresenting or fraudulently concealing the public exhibition or performance in any former contest by the animal or animals which he, she or they propose to enter for competition in any such contest, shall, upon conviction thereof, be punished as provided in section two of this act, irrespective of success as to entry offered.

(Id. § 3.)

§ 2973. Annual appropriation 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; G. S. 1878, v. 2, c. 34, § 194h.)

§ 2974. Annual appropriation for other 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 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; G. S. 1878, v. 2, c. 34, § 194i.)

* By Laws 1885, c. 77, this section is amended by adding the words in brackets after the word "sureties" in the sixth line. The word "societies" occurs in the sixth line of the section.

See Laws 1891, c. 161, as to payment of pro rata share to the Pipestone County Agricultural Society.

(6) COUNTY AGRICULTURAL SOCIETIES.**§ 2975. Formation.**

That any number of citizens of any county, or two or more counties jointly, who shall associate themselves together and comply with the provisions of this act, shall be a body politic and corporate, and shall be known as the agricultural society of such county or counties: provided, that only one society shall be organized under this act in any county.

(1867, c. 21, § 1; ⁴⁵ G. S. 1878, c. 34, § 184.)

⁴⁵ An act to provide for the organization of agricultural societies. Approved March 9, 1867 (Laws 1867, c. 21).

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§ 2976. Powers.

Such agricultural societies shall possess the following powers, to wit:

First.—To have perpetual succession.

Second.—To sue and be sued by their corporate name.

Third.—To adopt corporate seals, which they may alter at pleasure.

Fourth.—To adopt such constitutions and by-laws, and to alter and amend the same from time to time, and to make such rules and regulations as they may deem proper or necessary for the good order and general management of such societies.

Fifth.—To purchase and hold any real or personal estate which shall be deemed necessary to promote the objects of such societies; and to sell and convey all such real estate, said conveyance being executed by the president and secretary of such society.

Sixth.—The officers of such societies, and also of the state agricultural society, shall have full jurisdiction and control of the grounds upon which the society may hold its fairs, and of the streets and grounds adjacent thereto, during such fair, so far as may be necessary to preserve and keep good order. And any person who shall wilfully violate the rules or regulations of such societies, during the days of the fair, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be liable to a fine of not less than five nor more than twenty-five dollars. Such offender may be tried before any justice of the peace.

(1867, c. 21, § 2; G. S. 1878, c. 34, § 185.)

§ 2977. County lands may be leased, when.

That the board of county commissioners of any county in this state is hereby authorized to lease to agricultural societies established and existing in such county, for such period and on such terms as the said board shall deem expedient, any portion of the lands owned by the county, to be used by such society for the purpose thereof. The said society is authorized to construct upon the lands so leased suitable buildings, race tracks and other improvements necessary to the uses and purposes of the said society.

(1893, c. 160, § 1.46)

§ 2978. Constitution and by-laws—Annual reports.

Each agricultural society shall, upon its organization, file a copy of its constitution and by-laws in the office of the register of deeds in and for the county in which such society shall be located; and the secretary of such county agricultural society shall, at or before the annual meeting of such society, make an annual report of their proceedings during the year. The report shall contain a statement of the transactions of the society at its fair, showing the number of entries, the amount of money received, and from what source, together with the amount paid out for premiums and for other purposes; also a full statement of the entire receipts and disbursements of the society for the year.

(1867, c. 21, § 3; G. S. 1878, c. 34, § 186.)

§ 2979. Annual meetings.

Each agricultural society shall hold, at such place as the society may determine, an annual meeting for the election of officers, and for the transaction of other necessary business.

(1867, c. 21, § 4; G. S. 1878, c. 34, § 187.)

§ 2980. Delegates to state society.

The agricultural society of any county or counties may elect two delegates, who, together with the president of said society acting as delegate ex officio, shall represent said county or counties in the state agricultural society.

(1867, c. 21, § 5; G. S. 1878, c. 34, § 188.)

But see § 2952.

*An act authorizing boards of county commissioners to make certain leases to agricultural societies. Approved April 17, 1893.

§ 2981. Act extended to existing societies.

Agricultural societies which may be already organized in any county or counties of this state may have all the powers and privileges of societies organized under this act, by complying with the provisions of section three of this act.

(1867, c. 21, § 7; G. S. 1878, c. 34, § 190.)

(7) CHAMBERS OF COMMERCE AND BOARDS OF TRADE.

§ 2982. Formation.—For what purposes.

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 disseminating* 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. 133, § 1, as amended 1887, c. 87; G. S. 1878, v. 2, c. 34, § 197.)

* "Disseminating" in Laws 1883, c. 133, § 1.

§ 2983. 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—Submission—Hearing—Award—Order of court—Claims to real estate.

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, Laws 1868 (G. S. 1878, §§ 197-199), and c. 37, 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."

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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.

Power to hold property—Other powers—Assessments.

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; G. S. 1878, v. 2, c. 34, § 198.)

§ 2984. 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; G. S. 1878, v. 2, c. 34, § 199.)

(8) INDEPENDENT ORDER OF ODD FELLOWS.⁴⁸**§ 2985. Incorporation of subordinate lodges.**

That any subordinate lodge or encampment of the Independent Order of Odd Fellows, instituted under the authority of the grand lodge or grand encampment of said order in this state, or of the grand lodge of said order

⁴⁸An act to provide for the incorporation of subordinate lodges and encampments of the Independent Order of Odd Fellows. Approved February 13, 1874 (Laws 1874, c. 62).

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of the United States, may become incorporated in the manner provided herein.

(1874, c. 62, § 1; G. S. 1878, c. 34, § 200.)

§ 2986. Certificate of incorporation, what to contain—Recording.

Such subordinate lodge or encampment shall cause to be prepared a certificate, which shall contain:

First.—The charter, name and number of such lodge or encampment.

Second.—The time when and the authority by which such lodge or encampment was instituted.

Third.—The names of the charter members of such lodge or encampment.

Fourth.—The location of such lodge or encampment.

Fifth.—The names, if a lodge, of its noble grand, vice-grand and secretary, and if an encampment, of its chief patriarch, high priest and scribe for the then current term of such lodge or encampment. Such certificate shall be under the seal of such lodge or encampment, and signed by the noble grand, vice-grand and secretary of such lodge, or the chief patriarch, high priest and scribe of such encampment, and shall be recorded in the office of the register of deeds of the county where such lodge or encampment is located.

(1874, c. 62, § 2; G. S. 1878, c. 34, § 201.)

§ 2987. Powers.

Upon filing such certificate in the office of such register, such lodge or encampment 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, 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:

(1874, c. 62, § 3; G. S. 1878, c. 34, § 202.)

§ 2988. Corporate seal.

The seal of such lodge or encampment shall be its corporate seal.

(1874, c. 62, § 4; G. S. 1878, c. 34, § 203.)

§ 2989. Surrender of charter—Disposition of property.

Whenever the charter of any such subordinate lodge or encampment shall be surrendered to or taken away by said grand lodge or grand encampment of this state, or whenever, by the laws and usages of said order, such subordinate lodge or encampment shall become defunct, the corporate powers of such lodge or encampment 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 or grand encampment of this state, in accordance with the laws of said order.

(1874, c. 62, § 5; G. S. 1878, c. 34, § 204.)

(9) ANCIENT ORDER OF UNITED WORKMEN.⁴⁹

§ 2990. Incorporation of subordinate lodges.

That any subordinate lodge of the Ancient Order of United Workmen instituted under the authority of the grand lodge of said order in this state, or of the supreme lodge of the United States, or any grand lodge in this state, instituted under the authority of the supreme lodge of the United States of said order, may become incorporated in the manner provided herein.

(Sp. Laws 1877, c. 5, § 1; G. S. 1878, c. 34, § 205.)

See *Perine v. Grand Lodge A. O. U. W.*, 48 Minn. 82, 50 N. W. Rep. 1022.

⁴⁹An act to provide for the incorporation of subordinate lodges and grand lodges of the Ancient Order of United Workmen. Approved February 20, 1877.

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2991 § 2991. Certificate of incorporation, what to contain—Re-
99 - 180 cording.

2991 Such subordinate lodge, or such grand lodge, shall cause to be prepared a
01 - 2 certificate, which shall contain:

First.—The charter name and number of such lodge.

Second.—The time when and authority by which such lodge was instituted.

Third.—The names of the charter members of such lodge.

Fourth.—The location of such lodge.

Fifth.—The names of the elective officers of such lodge who hold said offices at the time of incorporation. Such certificate shall be under the seal of such lodge, and shall be signed by the said elective officers, and shall be recorded in the office of the register of deeds of the county where such lodge is located and meeting at the time of such incorporation.

(Sp. Laws 1877, c. 5, § 2; G. S. 1878, c. 34, § 206.)

2992 § 2992. Powers.
01 - 2

Upon filing such certificate in the office of such register of deeds, such 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.

(Sp. Laws 1877, c. 5, § 3; G. S. 1878, c. 34, § 207.)

2993 § 2993. Corporate seal.
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The seal of said lodge shall be its corporate seal.

(Sp. Laws 1877, c. 5, § 4; G. S. 1878, c. 34, § 208.)

(10) MASONIC BODIES.

§ 2994. 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.

(1883, c. 45, § 1; G. S. 1878, v. 2, c. 34, § 422.)

§ 2995. 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

⁵⁰ 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.

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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.

(1883, c. 45, § 1; G. S. 1878, v. 2, c. 34, § 423.)

§ 2996. 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 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.

(1883, c. 45, § 1; G. S. 1878, v. 2, c. 34, § 424.)

§ 2997. 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.

(1883, c. 45, § 1; G. S. 1878, v. 2, c. 34, § 426.)

(11) GRAND ARMY POSTS.

§ 2998. Incorporation.

That any post of the Grand Army of the Republic of the state of Minnesota may become incorporated in the manner provided herein.

(1885, c. 115; G. S. 1878, v. 2, c. 34, § 427.)

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§ 2999. 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.

(1885, c. 115; G. S. 1878, v. 2, c. 34, § 428.)

§ 3000. 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.

(1885, c. 115; G. S. 1878, v. 2, c. 34, § 429.)

§ 3001. **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.

(1885, c. 115; G. S. 1878, v. 2, c. 34, § 430.)

(12) KNIGHTS OF PYTHIAS.⁵¹

§ 3002. **Incorporation of subordinate lodges.**

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; G. S. 1878, v. 2, c. 34, § 208a.)

§ 3003. **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; G. S. 1878, v. 2, c. 34, § 208b.)

§ 3004. **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.

(1885, c. 150, § 3; G. S. 1878, v. 2, c. 34, § 208c.)

⁵¹An 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.

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§ 3005. Corporate seal.

The seal of said lodge, division, section, or grand lodge shall be its corporate seal.

(1885, c. 150, § 4; G. S. 1878, v. 2, c. 34, § 208d.)

§ 3006. Surrender of charter—Disposition of property.

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.

(1885, c. 150, § 5; G. S. 1878, v. 2, c. 34, § 208e.)

(13) ANCIENT ORDER OF HIBERNIANS.⁵²

§ 3007. Formation.

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 Ancient Order of Hibernians of America, or any county board or any division now or hereafter organized under the authority of the said national officers and national directory of said order, may become incorporated in the manner following, to-wit:

(1889, c. 290, § 1.⁵³)

§ 3008. Certificate of incorporation.

Such state board or each of said county boards and divisions of said order shall cause to be prepared a certificate which shall contain,

First. The name of such state or county board or of such division, and if a division the number thereof.

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

Third. The names of the officers of said board or of said division at the time of incorporation.

Fourth. The location of said board or said division.

Said certificate shall be signed by the 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 in cases where said board, or division have no common seal, a seal may be adopted and used as such, at the date of said incorporation, and said board or said division seal shall be its incorporate 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 division is located.

(Id. § 2.)

§ 3009. Same—Effect of filing—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 or county board, under its name, and each of said divisions, under its name and number, shall become and be a body corporate, with full power to sue and be sued by its cor-

⁵² Sp. Laws 1883, c. 263, repealed by Sp. Laws 1889, c. 468.

⁵³ An act to authorize and empower the Ancient Order of Hibernians of America to become incorporated. Approved April 22, 1889.

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porate 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.)

§ 3010. Surrender of charter—Disposition of property.

Whenever the warrant of any such division or board shall have been surrendered to or recalled by the national directory or whenever by the constitution of said order any board or division of said order in this state shall become defunct, the corporate powers of said board or division shall cease and determine except that such corporation, as such, shall have the power to sell, convey, and dispose of such of its property as is not designed for and used exclusively by said order, and to collect debts due it, and except as used in payment of its debts, all property and effects of every nature shall be delivered up as follows, to wit: In case of a division to the county board of the county in which it is located, if incorporated, if not to the state board, and if a county board to the state board, and if the state board, to the national directory, in trust for the Ancient Order of Hibernians of America, to be disposed of as the constitution and laws of said order shall determine.

(Id. § 4.)

(14) SCANDINAVIAN AID AND FELLOWSHIP SOCIETY.

§ 3011. Incorporation.

That any subordinate lodge instituted under the authority of the grand lodge of said society in this state, or of the supreme lodge of America, or any division, section or grand lodge in this state, instituted under the authority of the supreme lodge of America, of said society, may become incorporated in the manner herein provided.

(1893, c. 242, § 1.54)

§ 3012. Certificate of incorporation—Record.

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 name 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, and for the first year thereafter.

Such certificate shall be under the seal of such lodge, division, section or grand lodge, and shall be signed by the presiding officers, secretary and president 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 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.

(Id. § 2.)

§ 3013. 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 and receive by purchase, gift, grant or bequest any property, real or personal or mixed, and

¹An act to provide for the incorporation of subordinate lodges, divisions and sections and grand lodges of the Scandinavian Aid and Fellowship Society of America. Approved March 30, 1893.

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the same to hold, transfer, sell, mortgage, convey, loan, let or otherwise use, in accordance with the laws and usages of said society; but said corporation shall have no power to divert any gift, grant or bequest from the specific purpose designated by the donor.

(Id. § 3.)

§ 3014. Corporate seal:

The seal of said lodge, division, section or grand lodge shall be its corporate seal.

(Id. § 4.)

§ 3015. Surrender of charter—Disposition of property.

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 America, or whenever by the laws and usages of the said society, such subordinate lodge, division or section shall cease and 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 its property as is not designed for and used exclusively by said society, and collect debts due it; and except as used in the payments 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 America, or for its own use and benefit, as the laws of said society shall determine.

(Id. § 5.)

(15) MINNESOTA SOCIETY FOR THE PREVENTION OF CRUELTY.

§ 3016. Powers, privileges, and duties of society.

The Minnesota State Society for the Prevention of Cruelty to Animals, heretofore incorporated, shall be and remain a body corporate under the name of "The Minnesota Society for Prevention of Cruelty," with all the powers, privileges, immunities and duties heretofore possessed by said Minnesota State Society for the Prevention of Cruelty, or hereinafter specified as to county associations, and may appoint any person in any county in this state where there is no such active association, to represent the state society, and to receive and account for all funds coming to the society from fines or otherwise, and may also appoint agents at large to prosecute the work of said society throughout the state. The objects of said societies and all societies hereafter organized under sections three and four hereof, shall be the inculcation of humane principles, and to secure the enforcement of laws for the prevention of cruelty, especially to children and animals; to promote which object the said societies may respectively acquire property, real or personal, by purchase or gift. The said society, and all societies hereafter organized under sections three and four hereof, may appoint agents for the purpose of prosecuting any person guilty of any act of cruelty to animals or children; the agents of said societies, whose appointment has been approved as hereinafter provided, shall have power to arrest any person found violating any law for the protection of persons or animals, or the prevention of cruelty thereto, and upon making such arrests shall forthwith convey the person arrested before some court or magistrate having jurisdiction of the offense, and there make complaint against such person, but said agent shall not be authorized to make such arrests unless their appointment has been approved by the probate judge of the county in which they have been appointed, and the said probate judge shall keep a record of all such appointments. Such arrest can be made only in the county in which such appointment and approval has been made as aforesaid. Branches of the said state society, consisting of not less than ten members, may be organized in any part of the state, to prosecute the work of the society in their several localities, under rules and regulations prescribed by the said society. Societies for the prevention of acts of cruelty to animals or children organized in any county under sections three and four hereof may

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become branches of said society by resolution adopted at a meeting thereof called for that purpose, a copy of which resolution shall be forwarded to the secretary of state.

(1889, c. 224, § 2.55).

§ 3017. County societies.

Societies for the prevention of cruelty to animals or children may be organized in any county, by the association of not less than seven persons, and the members thereof shall, at a meeting called for that purpose, elect not less than three of their members directors, who shall continue in office until their successors are duly chosen.

(Id. § 3.)

§ 3018. Record of proceedings—Evidence.

The secretary or clerk of the meeting shall make a true record of the proceedings thereat, which he shall certify and forward to the secretary of state, who shall record the same; the record shall contain the name by which such association shall have determined to be known, and from and after the filing of the same the association shall be invested with the powers, privileges and immunities incident to incorporated companies, with power to sue and be sued by its corporate name, and to have a common seal, which may be altered at pleasure; and a copy of the record, duly certified by the secretary of state, shall be deemed and taken in all courts and places in this state as evidence that such association is a duly organized and incorporated body.

(Id. § 4.)

§ 3019. Officers, rules and regulations.

Such associations may elect such officers, and make such rules, regulations and by-laws as may be deemed necessary or expedient by their members for their own government, and the proper management of their affairs.

(Id. § 5.)

§ 3020. Power to hold property.

Any association formed under the provisions of this act, in addition to the other powers granted by law, is authorized to acquire by purchase, gift, grant or devise, and to hold, use or convey any real estate or personal property whatever, and may lease, mortgage, sell or use the same in any other manner considered by such corporation most conducive to the interests of such corporation, or to the same extent as natural persons.

(Id. § 6.)

§ 3021. Duties of police—Fees.

A member of any such association may require and it shall be the duty of any sheriff, deputy sheriff, constable or police officer, or the agent of any such association or of the said state society, to arrest any person found violating the laws in relation to cruelty to persons or animals, and to take possession of any animal cruelly treated in their respective counties, cities or villages, and deliver the same to the proper officers of such association; and for such service and for all services rendered in carrying out the provisions of this act, such officers, and the officers and agents of the association, shall be allowed and paid such fees as they are allowed for like services in other cases, which shall be charged as costs, and reimbursed to the association by the person convicted.

(Id. § 7.)

TITLE 4.

RELIGIOUS CORPORATIONS.

(1) ORGANIZATION BY ELECTION OF TRUSTEES, ETC.

§ 3022. Religious corporations, how organized.

It shall be lawful for all persons of full age, belonging to any church, congregation or religious society not already incorporated, to assemble at

⁵⁵By § 8, all inconsistent acts are repealed.

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the church or meeting-house, or other place where they stately attend for divine worship, and, by a plurality vote, elect any number of discreet persons of their church, congregation or society, not less than three nor more than nine in number, as trustees to take charge of the estate and property belonging thereto, and transact all affairs relative to the temporalities thereof.

(G. S. 1866, c. 34, § 68; G. S. 1878, c. 34, § 209.)

Corporations de facto. Church v. Fröislie, 37 Minn. 447, 35 N. W. Rep. 260.

See Goldsmidt v. First M. E. Church, 25 Minn. 202; Meyer v. German, etc., Church, 37 Minn. 241, 33 N. W. Rep. 786.

§ 3023. President to be chosen—Who may vote.

Such church, congregation or religious society may choose a president of the said corporation, and of their meetings, by a vote as aforesaid; and at the election provided for in this chapter, every person of full age who has stately worshipped with such church, congregation or society, and has been formerly considered as belonging thereto, is entitled to a vote.

(G. S. 1866, c. 34, § 69; G. S. 1878, c. 34, § 210.)

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§ 3024. 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.

(G. S. 1866, c. 34, § 70; G. S. 1878, c. 34, § 211; as amended 1881, c. 36, § 1.)

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§ 3025. 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.

(G. S. 1866, c. 34, § 71; G. S. 1878, c. 34, § 212; as amended 1881, c. 36, § 2.)

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§ 3026. Certificate to be acknowledged and recorded.

Such certificate shall be acknowledged by the persons making the same, or proved by a subscribing witness thereto, before some officer authorized to take the acknowledgment of deeds, and recorded, together with the certificate of such acknowledgment or proof, by the register of deeds of the county within which the church or place of worship of such congregation is situated, in a book provided by him for that purpose, who shall be entitled to receive seventy-five cents for such record; and thereafter such trustees and their successors shall be a body corporate, by the name expressed in such certificate.

(G. S. 1866, c. 34, § 72; G. S. 1878, c. 34, § 213.)

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§ 3027. Trustees to hold temporalities—Common seal.

Such trustees may have a common seal, and alter the same at pleasure; they may take into their possession and custody all the temporalities of such church, congregation or society, whether the same consists of real or personal estate, and have been given, granted or devised directly or indirectly to such church, congregation or society, or to any other person for their use.

(G. S. 1866, c. 34, § 73; G. S. 1878, c. 34, § 214.)

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

§ 3028. General powers of trustees.

Such trustees may also, in their corporate name, sue and be sued in all courts and places; and they may recover and hold all the debts, demands, rights and privileges, all churches, buildings, burial-places, and all the estate and appurtenances belonging to such church, congregation or society, in whatsoever manner the same may have been acquired, or in whose hands soever

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the same may be held, as fully and amply as if the right and title thereto had been originally vested in the said trustees; and they may hold other real or personal estate, and demise, lease and improve the same; but the whole of such estate, real and personal, shall not exceed the yearly income of three thousand dollars.

(G. S. 1866, c. 34, § 74; G. S. 1878, c. 34, § 215.)

§ 3029. Trustees may erect and repair churches, etc.

The said trustees have authority to repair and alter their churches and meeting-houses, and, under the direction of the society or congregation, erect churches and meeting-houses, and dwelling-houses for their ministers, and other buildings for the use of their church, congregation or society.

(G. S. 1866, c. 34, § 75; G. S. 1878, c. 34, § 216.)

§ 3030. May make by-laws, rent pews, etc.

They have authority to make rules and orders for managing the temporal affairs of such church, congregation or society, and to dispose of all moneys belonging thereto; and to order and regulate the renting of pews or slips in their churches and meeting-houses, and the requisites for the breaking of the ground in the cemetery or church-yard, and in the said churches or meeting-houses, for burying the dead.

(G. S. 1866, c. 34, § 76; G. S. 1878, c. 34, § 217.)

§ 3031. May appoint clerk and treasurer—Duties of clerk.

They may appoint a clerk and treasurer of their board, and a collector to collect and receive their rents and revenues, and may regulate the fees to be allowed to such clerk, treasurer and collector, and may remove them and appoint others in their stead at pleasure; and such clerk shall enter all rules and orders made by such trustees, and payments ordered by them, in a book to be procured by them for that purpose.

(G. S. 1866, c. 34, § 77; G. S. 1878, c. 34, § 218.)

§ 3032. Meetings of trustees—Power of majority.

Any two of the trustees may at any time call a meeting of the trustees, and a majority of them, being lawfully convened, shall be competent to do and perform all matters and things which such trustees are authorized to do and perform.

(G. S. 1866, c. 34, § 78; G. S. 1878, c. 34, § 219.)

§ 3033. 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.

(G. S. 1866, c. 34, § 79; G. S. 1878, c. 34, § 220; as amended 1881, c. 36, § 3.)

§ 3034. 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, 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.

(G. S. 1866, c. 34, § 80; G. S. 1878, c. 34, § 221; as amended 1881, c. 36, § 4.)

G. S. 1866, c. 34, § 81; G. S. 1873, c. 34, § 222; repealed by Laws 1881, c. 36, § 5.

§ 3035. Qualifications of voters.

No person belonging to any such church, congregation or society, incorporated under the provisions of this chapter, is entitled to vote at any election after the first, until he has been an attendant on public worship in such church, congregation or society, at least six months before such election, and contributed to the support of such church, congregation or society, according to the usages and customs thereof.

(G. S. 1866, c. 34, § 82; G. S. 1878, c. 34, § 223.)

§ 3036. Clerk to keep register of stated hearers.

The clerk of the trustees shall keep a register of the names of all such persons as desire to become stated hearers in the said church, congregation or society, and shall therein note the time when such request was made; and the said clerk shall attend all subsequent elections, in order to test the qualifications of such voters in case they shall be questioned.

(G. S. 1866 c. 34, § 83; G. S. 1878, c. 34, § 224.)

§ 3037. Salary of minister.

Nothing in this chapter contained shall be construed to give to such trustees the power to fix or ascertain the salary or compensation to be paid to any minister; but the same shall be ascertained and fixed by a majority of such society, entitled to vote at the election of trustees.

(G. S. 1866, c. 34, § 84; G. S. 1878, c. 34, § 225.)

Contract with pastor, see *Church v. Froistie*, 37 Minn. 447, 35 N. W. Rep. 260.

Usage of Presbyterian Church in regard to call of pastor. *West v. First Presbyterian Church of St. Paul*, 41 Minn. 94, 42 N. W. Rep. 922.

§ 3038. Sale, etc., of real estate — Definition of "society."

It shall be lawful for any religious corporation, organized under the provisions of this title, by and through their trustees, to sell and convey, encumber, or otherwise dispose of any real estate belonging to such corporation: provided, however, that no such conveyance or encumbrance shall be made by the trustees except when first authorized to make the same by a resolution of such society, passed at a meeting thereof called for that purpose, notice of the time, place and object of which shall be given for at least four successive sabbaths on which such society stately meet for public worship immediately preceding the time specified for such meeting; and when any religious society ceases to have stated meetings for public worship, or for any cause is unable to give notice, as above provided, of the time and place of the meeting of such society, the said corporation is hereby authorized to make such sale, conveyance or incumbrance by and through its trustees, upon being authorized so to do by a resolution of such society passed at a meeting thereof; notice of the time, place and object of which shall be given by said trustees by posting a notice thereof, at least ten days before said meeting, in three of the most public places in the town, village or city in which said society holds or has held its meetings; and proof of the facts of such notice, meetings, and resolutions may be made by the affidavits of one of such trustees, or by any of the members of such society cognizant of the facts. Such affidavits may be recorded at length in the office of the register of deeds of the county where the premises are situated, and the same and the records thereof aforesaid, or certified copies of such records, shall be presumptive evidence of the facts therein contained: and provided further, that by the word "society," as used in this section, shall be understood the religious body, constituted in accordance with its own principles of ecclesiastical polity, which forms the basis of the corporation designated in this title the church, society or congregation, and as contradistinguished from such corporation; and no person shall vote at any meeting called as aforesaid to authorize the said trustees to sell and convey, encumber, or otherwise dispose of any real estate belonging to such corporation, who is not a member of such religious body: and provided always, that no such society or religious corporation shall in any manner other than as provided by the denominational rules and articles of association of such religious society, as the same appears of record in the office of the register of deeds of the county, sell, transfer, incumber or otherwise dispose of any

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of its real estate; provided, however, that nothing herein contained shall in any manner effect or infringe any of the provisions of chapter forty-five of the General Statutes of 1878.

(G. S. 1866, c. 34, § 85, as amended 1867, c. 17, § 1; 1872, c. 54, § 1; G. S. 1878, c. 34, § 226; 1889, c. 223, § 1; 1893, c. 81, § 1.)

And see § 3045, last paragraph.

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. *Church v. Froislie*, 37 Minn. 447, 35 N. W. Rep. 260.

§ 3039. Existing societies confirmed—Reorganization of dissolved societies.

Every church, congregation or religious society heretofore incorporated in pursuance of law, and not since dissolved, is hereby established and confirmed; and in case of the dissolution of any such corporation, or of any corporation hereafter to be formed in pursuance of the provisions of this title, for any cause whatever, the same may be incorporated under the provisions of this title at any time within six years after such dissolution; and thereupon all the estate, real and personal, formerly belonging to the same, and not lawfully disposed of, shall vest in such corporation as if there had been no such dissolution.

(G. S. 1866, c. 34, § 86; G. S. 1878, c. 34, § 227.)

See *Meyer v. German, etc.*, *Church*, 37 Minn. 241, 33 N. W. Rep. 786.

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§ 3040. Descent of lands held by trustees.

All lands, tenements and hereditaments, lawfully conveyed by devise, grant, purchase or otherwise, to any persons as trustees, in trust for the use of any religious society organized, or which may hereafter be organized within this state, either for a meeting-house, burying-ground, or for the residence of a preacher, shall descend with the improvements in perpetual succession to, and shall be held by, such trustees in trust for such society.

(G. S. 1866, c. 34, § 87; G. S. 1878, c. 34, § 228.)

§ 3041. Conveyances in trust for Methodist Episcopal 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; ⁵⁰ G. S. 1878, v. 2, c. 34, § 228a.)

§ 3042. Conveyances in trust for Evangelical Association of North America legalized.

In all cases when deeds or conveyances have heretofore been made of lands or interests in lands in this state, to any person or persons or to any church or congregation or to the trustees of any church or congregation of the evangelical association of North America in trust to be used, maintained, kept and disposed of as a place of divine worship or for the purpose of residence for the ministry for the use of the ministry and membership of any such

⁵⁰An 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.

church or congregation of the evangelical association of North America, such deeds or conveyances are hereby declared legal and valid, and the legal title or interest in such land shall be deemed vested in such person or persons and trustees. Provided, that when any of such lands have been occupied by any church organization of the evangelical association of North America for the term of five years, such church organization under whatever name 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 church organization.

(1889, c. 23, § 1.)

§ 3043. Certificate of the election or appointment of trustees—Effect of such certificate when recorded.

Whenever, by the constitution, rules or usages of any particular church or religious denomination, trustees are required to be appointed, elected, or chosen in any way, by any minister, presiding elder, officer or officers, or by any conference, assemblage, body, or meeting of any kind, and trustees are so appointed, elected or chosen, such minister, presiding elder, officer or officers, or the presiding officer and secretary of such conference, assemblage, body or meeting so appointing, electing or choosing trustees, shall make and give to such trustees a certificate, under the hand and seal of the person or persons making the same, specifying the names of the trustees, the time when, and the person or body by which they were appointed, elected or chosen, and the corporate name assumed by such trustees, which certificate shall be acknowledged, proved and recorded as hereinbefore directed; whereupon such trustees and their successors, appointed or chosen in the same manner, shall be a body corporate, by the name expressed in such certificate, with all the rights, powers and privileges of other religious corporations constituted according to the provisions of this chapter. And in every case where trustees have been heretofore elected, appointed, or chosen in any way, by a conference or assembly of any kind, of any church or religious society, in accordance with the constitution, rules or usages of such church or religious society, and a certificate of such election, appointment or choice has been made by the presiding officer or secretary of such conference or assembly, specifying the corporate name by which such trustees should be known, and acknowledged, proved and recorded as provided in this chapter, with the intent to constitute such trustees a body corporate, such trustees shall be deemed, in all legal proceedings, to have become a religious corporation, within the provisions of this chapter, from the time of recording such certificate; and all their acts thereafter, as a body corporate, are and shall be considered valid and effectual as the acts of a religious corporation framed under the provisions of this chapter; and all conveyances to such trustees, as a body corporate, are confirmed and shall be considered valid to the same extent as conveyances to any religious corporation under the provisions of this said chapter.

(G. S. 1866, c. 34, § 88, as amended 1877, c. 21, § 1; G. S. 1878, c. 34, § 229.)

§ 3044. Certificate when minister, elders, and deacons are trustees.

Whenever, by the constitution, rules and usages of any particular church or religious denomination, the minister or ministers, elders and deacons, or other officers elected by any church or congregation, according to such constitution, rules or usages, are thereby constituted the trustees of such church or congregation, such minister or ministers, elders and deacons, or other officers, may assemble together and execute, under their hands and seals, a certificate, stating therein the name by which they and their successors in office shall forever thereafter be called and known, which certificate shall be acknowledged or proved, and recorded as hereinbefore directed; whereupon such persons and their successors in office shall be a body corporate, by the name expressed in such certificate, with all the rights, powers and privileges of other religious corporations constituted according to the provisions of this title.

(G. S. 1866, c. 34, § 89; G. S. 1878, c. 34, § 230.)

(2) ORGANIZATION BY EXECUTION OF ARTICLES BY CLERGY, ETC.

§ 3045. Execution of articles of incorporation by bishop, vicar general and pastor, ex officio, and by two lay members—Corporate powers—Term of membership—Vacancy—Division of diocese.

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 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 administering temporalities—
Execution of articles by bishop, vicar general, and
chancellor, ex officio, and by two lay members—Corpo-
rate powers—Term of membership—Vacancy—Proxy.**

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 respective 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 res-

ignation 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.

(G. S. 1866, c. 34, § 90, as amended 1876, c. 34, § 1; 1877, c. 81, § 6; 1878, c. 15, § 1; G. S. 1878, c. 34, § 231; 1879, c. 2, § 1; 1881, Ex. S. c. 18, § 1; 1883, c. 41; 1887, c. 27.)

§ 3046. Reorganization under § 3045—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. S. c. 63; ⁵⁷ G. S. 1878, v. 2, c. 34, § 231a.)

§ 3047. Articles under § 3045—Legalized, when.

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

⁵⁷An act relating to religious corporations. Approved November 15, 1881.

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; ⁵⁸ G. S. 1878, v. 2, c. 34, § 231b.)

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§ 3048. Incorporation of existing churches, etc.—Vesting of property, etc.

Whenever any church or religious society now organized, or which may hereafter be organized, as a church or congregation, but not incorporated in pursuance of law, shall comply with the provisions of this title, and thereby become a body corporate, all the estate, real and personal, which has been lawfully conveyed to the said church or religious society, or to the trustees or vestry thereof in trust for the use of such church or society, whether by devise, gift, grant, purchase or otherwise, and not lawfully disposed of, shall thereupon vest in said corporation as fully and amply as if the said church had been legally incorporated from the date of its religious organization: provided, that the name or title publicly assumed or borne by such church or society from the date of its organization as such, and none other, shall be the title by which it shall forever be known in law and as a body politic and corporate.

(G. S. 1866, c. 34, § 91; G. S. 1878, c. 34, § 232.)

(3) PARISHES OF THE PROTESTANT EPISCOPAL CHURCH

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§ 3049. Formation.

Any parish of the Protestant Episcopal Church in this state that now is or hereafter may be organized under and in conformity with the constitution and canons of the diocese of Minnesota, or that hereafter may be organized under and in conformity with the constitution and canons of any diocese that may hereafter be created out of any part of the present diocese of Minnesota, may be incorporated in the manner provided herein.

(1877, c. 81, § 1; G. S. 1878, c. 34, § 233.)

§ 3050. Certificate of incorporation.

Said parish shall cause to be prepared a certificate which shall contain:

First.—The name and location of the parish.

Second.—The name of the rector, (if any,) and of the church-wardens, and the names and number of vestrymen, which shall not be less than three nor more than nine.

Third.—The date of the organization of said parish.

Fourth.—Said certificate shall be signed and duly acknowledged by said rector, (if any,) and by a majority of said wardens and vestrymen.

(1877, c. 81, § 2; G. S. 1878, c. 34, § 234; as amended 1893, c. 111, § 1.)

§ 3051. Filing of certificate—Powers of corporation.

Upon filing for record such certificate, so signed and acknowledged, in the office of the register of deeds in and for the county in which such parish is located, such parish shall be and become a body corporate by the name so assumed, shall have power to sue and be sued by its corporate name; to adopt a seal and the same to change at pleasure; by and through its said officers, to do and transact all the business of said parish, including the calling of a rector and determining his salary; and in such corporate 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 for the use or benefit of said parish: provided, however, that such use shall not contravene the laws and usages of the Protestant Episcopal Church in the state of Minnesota: and provided, that said corporation shall have no power to divert any gift, grant or bequest from the specific purpose in writing designated by the donor or

⁵⁸An act to legalize certain articles of incorporation. Approved March 7, 1887.

devisor: and provided further, the said officers of said corporation shall have no power to sell or convey or mortgage the church or church site of said parish, without authority so to do first given them in parish meeting called for that purpose, nor, in contravention of the canons of the diocese, or of the canons of the general convention of the Protestant Episcopal Church of the United States.

(1877, c. 81, § 3; G. S. 1878, c. 34, § 235.)

§ 3052. Annual meeting—Election of vestry.

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The annual meeting of said corporation shall be holden at the parish church, if any, and if not, at their usual place of worship, on Easter Monday of each year, at which time church-wardens and vestrymen shall be elected, in the manner, and by electors having the qualifications, which are or may be prescribed by the canons of the Protestant Episcopal Church of said diocese, and who shall hold their respective offices until the next succeeding Easter Monday, and until their successors are elected.

(1877, c. 81, § 4; G. S. 1878, c. 34, § 236.)

§ 3053. Meetings of vestry.

The rector of said parish shall, ex officio, be a member, and, when present, the presiding officer of the vestry, and entitled to a vote in all the meetings thereof. Such meetings may be called by the rector at his discretion, or by either of the wardens at the request of a majority of the vestrymen, three days' notice in writing having been given to each member of the vestry.

(1877, c. 81, § 5; G. S. 1878, c. 34, § 237.)

§ 3054. Parishes heretofore incorporated to be governed by § 3058.

Section four of this act shall be applicable to, and hereafter, in the particulars enumerated in that section, shall govern, all parishes in the Protestant Episcopal Church heretofore incorporated under the laws of this state.

(1877, c. 81, § 7; G. S. 1878, c. 34, § 238.)

(4) ORGANIZATION BY ADOPTION OF ARTICLES AT STATED MEETING.

§ 3055. Formation—Reorganization.

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The members of any church, or religious association not less than eight, who do not wish to organize themselves into a religious association, society or corporation under the provisions of any existing law, may organize as a body corporate by adopting articles as hereinafter set forth and complying with the other provisions of this act; or any religious society, association or organization now in existence by virtue of any special or private laws, which does not wish to reorganize under the provisions of any existing law, may be reorganized and continued as a religious association, society or corporation by adopting by a vote of three-fourths of the members present and voting at a stated meeting called for the purpose of considering the question of such reorganization, 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 such society or corporation 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 organization shall be a body corporate by the name expressed in said articles, shall have a common seal which it may alter at pleasure, and will have all the powers hereinafter specified, and may adopt and establish a constitution and by-laws and make all rules and regulations by it deemed necessary and expedient for the management, regulation and conduct of its affairs in accordance with law.

(1889, c. 229, § 1.59)

⁵⁹ An act relating to the formation or reorganization of religious societies, associations or corporations. Approved April 24, 1889.

§ 3056. Reorganization—Property vests, when.

All the rights, privileges, franchises and property of every name or nature, whether real or personal, whether in action or in possession, whether in law or in equity, and wherever situated, of any corporation re-organizing under the provisions of this act shall pass to the new corporation as soon as it shall have become fully organized without further act or ceremony. Provided, however, that the last board of trustees, or their survivors, of any corporation or society re-organizing under this act may at any time convey by a general or specific description, and by proper deed or deeds to the new corporation, any property owned by such society or corporation. Such deed shall recite the facts of such re-organization and it shall be prima facie evidence of the facts therein stated, and it shall be sufficient to pass all the title to the property therein described possessed by the corporation, association or society on whose behalf it is executed. Proof of the re-organization of any corporation pursuant to the provisions of this act, may be made by the affidavit of the president and recording secretary of such newly organized corporation, and such affidavit shall be recorded in the office of the register of deeds of the county in which such corporation is located, and such affidavit shall be presumptive evidence of the facts therein stated pertaining to such organization or re-organization.

(Id. § 2.)

§ 3057. Powers and privileges.

Any religious society, association, organization, or corporation formed pursuant to the provisions of this act, or which shall have reorganized under the provisions of this act, shall be capable of suing and being sued, holding, purchasing, and receiving title by devise, gift, grant or other conveyance of any property, real and personal, and shall have the power through its trustees to mortgage, sell, convey or otherwise dispose of its property, whether real or personal, or any part or portion thereof; Provided, however, that no such sale, conveyance, incumbrance, or any other disposition of the real property of any such corporation shall be made through the trustees, except when first authorized to make the same by a resolution of such society or organization, passed at a stated meeting thereof, called for that purpose, notice of the time, place and object of which shall be given by the recording secretary of the corporation, association or society; which notice shall be printed and a copy mailed to each member at his residence, when such residence is known to the person sending such notice. Provided, further, That no sale, incumbrance, mortgage, conveyance, or other disposition of any real property of said corporation, society or organization shall be made, except by the vote and assent of two-thirds of the members present at the meeting called for the purpose of making such disposition. Proof of the facts of such notice of meeting, such meeting, and its proceedings, may be made by the affidavit of the recording secretary of such society, organization or corporation and a certified copy of the minutes of any meeting duly certified and attested by the recording secretary, under the seal of the society, organization or corporation. In case of sales of real property such affidavit and certified copies shall be recorded at length in the office of the register of deeds of the county where the premises are situated, and the said affidavits and records of said meeting, or a certified copy of such record, aforesaid, shall be presumptive evidence of the facts therein stated.

(Id. § 3.)

§ 3058. Constitution and by-laws.

The constitution and by-laws and all rules for the management, regulation and conduct of affairs of any corporation or society reorganizing under the provisions of this act, so far as they are not inconsistent with this act, shall continue in force until altered, amended, revised or repealed.

(Id. § 4.)

§ 3059. Appropriations and contracts.

No appropriations or contracts made by any corporation organized or re-organized pursuant to this act, where the amount of a single appropriation

for a single purpose, or the amount involved in such contract exceeds the sum of three hundred dollars, shall be valid, unless such contract or appropriation shall be authorized and ordered by the vote and assent of two-thirds of the members present and voting at a stated meeting of such corporation, held for the purpose of considering such contract or appropriation.

(Id. § 5.)

§ 3060. Pew rights.

Nothing herein contained shall in anywise impair any rights in pews possessed by any members at the time of the formation or reorganization of any corporation formed or reorganized pursuant to this act.

(Id. § 6.)

§ 3061. Construction of act.

Nothing herein contained shall be construed to, or shall repeal any law now in force relating to the formation or reorganization of any religious societies, associations or corporations in this state. Nor shall this act apply to or affect any action now pending in any court in this state.

(Id. § 7.)

(5) INCORPORATION OF DIOCESAN COUNCIL, PRESBYTERY, ETC.

§ 3062. Diocesan council, etc., may incorporate.

That any diocesan council, synod, presbytery, conference, association, congregation, 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; ⁶⁰ G. S. 1878, v. 2, c. 34, § 231c.)

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§ 3063. 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, 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; G. S. 1878, v. 2, c. 34, § 231d.)

§ 3064. Same—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

⁶⁰An act concerning religious corporations. Approved February 26, 1885.

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.

(1885, c. 151, § 3; G. S. 1878, v. 2, c. 34, § 231e.)

§ 3065. 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.

(1885, c. 151, § 4; G. S. 1878, v. 2, c. 34, § 231f.)

§ 3066. Same—Imperfect organization legalized.

That in all cases in which an attempt has heretofore been made to organize a religious corporation under chapter one hundred and fifty-one, general laws of Minnesota 1885, in which the attorney general has made a certificate and the same has been filed with the secretary of state in accordance with section three of said chapter, and in which attempt to form and organize such corporation there has been a failure to comply with the provisions of section two of said chapter, such corporations shall be and they are hereby legalized and confirmed in all respects as though there had been a full compliance with said chapter; and all rights, privileges and titles to property received and acquired by such bodies are hereby confirmed and established in such corporation.

(1893, c. 48, § 1.01)

§ 3067. Powers.

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.

(1885, c. 151, § 5; G. S. 1878, v. 2, c. 34, § 231g.)

^aAn act relating to religious corporations. Approved April 17, 1893.

§ 3068. 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.

(1885, c. 151, § 6; G. S. 1878, v. 2, c. 34, § 231h.)

§ 3069. Act subject to future legislation—Place of meeting.

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. Any corporation organized under this act, the membership of which in part extends to and resides in states other than the state of Minnesota, shall have authority to hold its annual meetings at such points without the limits of the state of Minnesota as may be decided upon from time to time by said corporation at a previous annual meeting, and such decision may be made at such previous annual meeting by authorizing the president of such corporation to select and designate a place for the holding of the next annual meeting of said corporation, notice of the time and place of such meeting to be given by publication in the recognized organ of the corporation, if it have one, at least three months previous to the time of such annual meeting. If such corporation have no organ, the publication of which is controlled by it, then such notice may be given by publishing the same in at least two papers of general circulation, published at the capital of the state of Minnesota.

(1885, c. 151, § 7; G. S. 1878, v. 2, c. 34, § 231i; as amended 1893, c. 103, § 1.)

(6) YOUNG MEN'S CHRISTIAN ASSOCIATION.

§ 3070. Formation.

Any number of persons, not less than three, who desire to become incorporated as a religious society to be known as a Young Men's Christian Association, may execute and acknowledge articles of incorporation for such purpose, and upon complying with the following provisions, shall become a body corporate for the purpose herein provided for.

(1889, c. 232, § 1.02)

§ 3071. Articles of incorporation.

The articles of incorporation shall contain the following:

First—The names of the persons associating for incorporation, and their places of residence.

Second—The name of such corporation, and the place where its principal office for the transaction of business shall be located, and the period for which it shall be incorporated.

Third—The objects for which it shall be organized, expressly stated.

Fourth—The number of its directors, not less than five nor more than twenty, who shall have the management and government of the affairs of said corporation; how and when the same shall be elected, and the time and place of holding the annual meetings of members.

Fifth—The terms of admission to active membership.

(Id. § 2.)

§ 3072. Same—Filing.

The articles shall be executed in duplicate, one of which shall be filed in the office of the secretary of state and the other with the register of deeds in the county in which the principal of business of said corporation shall be conducted. Thereupon it shall become a body corporate, and may buy, hold, lease, mortgage and sell all personal and real property necessary and convenient for its business. And the said corporation may receive by gift or otherwise, any real or personal property necessary or convenient for its use, or that may become necessary or convenient.

(Id. § 3.)

⁰² An act to incorporate and reincorporate religious societies known as Young Men's Christian Associations. Approved April 23, 1889.

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CORPORATIONS.

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§ 3073. **By-laws, rules, etc.**

The directors shall have power to enact all necessary by-laws, and alter or repeal the same. And they may also provide rules governing the trial and expulsion of members for violation or forfeiture of the qualifications for membership. The directors and officers shall be active members of said corporation.

(Id. § 4.)

§ 3074. **Members may be classified.**

The directors may, by rule and by-laws, divide the members into active, senior, junior, associate, and such other classes as they may deem convenient, and also determine the qualification for associate membership. But active members only shall be allowed to vote at any of the meetings of the corporation.

(Id. § 5.)

§ 3075. **Reincorporation.**

Any religious society now conducting its affairs as a Young Men's Christian Association in this state, may reincorporate under the provisions of this act, provided all of the directors thereof shall execute and acknowledge articles of incorporation, and cause the same to be filed as hereinabove provided. And upon said reincorporation, all of the real and personal property of said religious society formerly belonging to the same, and not lawfully disposed of, shall pass to and vest in the corporation so created, without further act or ceremony.

(Id. § 6.)

(7) MISCELLANEOUS PROVISIONS.

§ 3076. **Amendment of articles of incorporation.**

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; G. S. 1878, v. 2, c. 34, § 232a.)

§ 3077. **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.

(1879, c. 92, § 2; G. S. 1878, v. 2, c. 34, § 232b.)

§ 3078. **Religious societies—Consolidation, when.**

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; G. S. 1878, v. 2, c. 34, § 232c.)

^a An act to authorize the consolidation of religious corporations. Approved February 25, 1887.

§ 3079. 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.

(1887, c. 133, § 2; G. S. 1878, v. 2, c. 34, § 232d.)

§ 3080. 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; G. S. 1878, v. 2, c. 34, § 232e.)

§ 3081. Same—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.

(1887, c. 133, § 4; G. S. 1878, v. 2, c. 34, § 232f.)

§ 3082. 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. S. c. 65, § 1; ⁶⁴ G. S. 1878, v. 2, c. 34, § 238a.)

§ 3083. 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; ⁶⁵ G. S. 1878, v. 2, c. 34, § 238b.)

§ 3084. Incorporation of religious society legalized.

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; ⁶⁶ G. S. 1878, v. 2, c. 34, § 238c.)

§ 3085. Same.

That all and singular the acts and proceedings had and done, or attempted to be had and done, by and on behalf of the members and officers, or either, of any religious society or congregation of this state, or any persons whomsoever, to incorporate as a church society under any of the laws of this state, which incorporation is incomplete or invalid for informalities or non-compliance with statutory requirements, are hereby legalized and made valid, and the incorporations so attempted are hereby declared in all respects valid, and such societies properly and legally incorporated.

(1891, c. 50, § 1. ⁶⁷)

TITLE 5.

CEMETERY ASSOCIATIONS AND PRIVATE CEMETERIES.

§ 3086. Formation.

Any number of persons residing in any county in this state, not less than seven, who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place for the burial of the dead, may meet at such time and place as they or a majority of them agree upon, and appoint a chairman and secretary by the vote of a majority of the persons present at the meeting; and may proceed to form an association, by agreeing on a corporate name by which the association shall be known, and by determining upon the number of trustees to manage the

⁶⁴ 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."

⁶⁵ An act to validate the proceedings of religious corporations. Approved February 26, 1885.

⁶⁶ An act relating to religious societies. Approved March 7, 1887.

⁶⁷ An act to legalize the incorporation of church societies. Approved April 11, 1891.

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CEMETERY ASSOCIATIONS, ETC.

§§ 3086-3092

affairs of the association, which number shall not be less than three, or more than nine; and thereupon they may proceed to elect by ballot the number of trustees so determined upon.

(G. S. 1866, c. 34, § 92; G. S. 1878, c. 34, § 239.)

See *Wolford v. Crystal Lake Cemetery Ass'n*, 54 Minn. 440, 56 N. W. Rep. 56.

§ 3087. Trustees to be divided into classes.

The chairman and secretary of such meeting shall, immediately after such election, divide the trustees by lot into three classes; those in the first class to hold their office one year; those in the second class, two years; and those in the third class, three years; but the trustees of each class may be re-elected, if they possess the qualifications hereinafter mentioned; such meeting shall also determine on what day in each year the future annual election of trustees shall be held.

(G. S. 1866, c. 34, § 93; G. S. 1878, c. 34, § 240.)

§ 3088. Certificate of organization to be made and filed.

The chairman and secretary of such meeting shall, within three days after the holding of the same, make a written certificate, which shall state the names of the associates who attended such meetings, the corporate name of the association determined upon by the majority of the persons who met, the number of persons fixed upon to manage the concerns of the association, the names of the trustees chosen at the meeting, and their classification, the day of the year fixed upon for the annual election of trustees, and the manner of said election, whether by the associates named in said certificate, or the owners of lots in such cemetery; such certificate shall be signed by the said chairman and secretary, and acknowledged by them before some officer of the county authorized to take the acknowledgment of deeds; and they shall cause said certificate, so acknowledged, to be recorded in the register's office of the county in which the meeting was held.

(G. S. 1866, c. 34, § 94, as amended 1873, c. 15, § 1; G. S. 1878, c. 34, § 241.)

§ 3089. Effect of certificate—Powers of association.

Whenever such certificate is duly acknowledged and recorded as aforesaid, the association mentioned therein shall be deemed legally incorporated, and shall have the general powers and privileges, and be subject to the liabilities and restrictions, as provided by the laws of this state in respect to incorporations.

(G. S. 1866, c. 34, § 95; G. S. 1878, c. 34, § 242.)

§ 3090. Trustees may adopt by-laws.

The trustees of any association incorporated agreeably to the provisions of this title, may enact by-laws for regulating the affairs of such corporation, not inconsistent with the laws of this state.

(G. S. 1866, c. 34, § 96, as amended 1870, c. 30, § 1; G. S. 1878, c. 34, § 243.)

§ 3091. Vacancies, how filled.

That all vacancies occurring by death or otherwise in the membership of any cemetery association, heretofore or hereafter organized under title five of chapter thirty-four of the General Statutes, as amended by an act entitled "An act to amend title five of chapter thirty-four of the General Statutes," approved March 10th, 1873, may be filled by a vote of the surviving or remaining associates named in the certificate of association. All persons so selected to fill any such vacancy shall be entitled to vote at the election of trustees, and be eligible to the office of trustee of said incorporation, and shall have and be entitled to the same rights, powers and privileges as the original associates named in said certificate.

(1874, c. 33, § 1; G. S. 1878, c. 34, § 244.)

§ 3092. Trustees to manage affairs of association, etc.

The affairs and property of such association shall be managed by the trustees, a majority of whom shall form a board for the transaction of business; the trustees shall annually appoint, from among their number, a president, and also appoint a secretary, treasurer and actuary, who shall hold their places during the pleasure of the board; and the trustees may require

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the treasurer to give security for the faithful performance of the duties of his office.

(G. S. 1866, c. 34, § 97; G. S. 1878, c. 34, § 245.)

§ 3093. Actuary to keep record of interments, etc.

The actuary shall keep a record of interments, in which he shall enter, as carefully and correctly as may be, the name, age, sex, nativity and cause of death, with date of burial, of every person interred in such cemetery, which facts he shall procure from such friends or relatives of the deceased, or undertaker, as give order for the interment, at the time thereof; or in case the deceased is a pauper, stranger or criminal, from the coroner, county physician, overseer of the poor, or other public officer directing the burial of the same.

(G. S. 1866, c. 34, § 98; G. S. 1878, c. 34, § 246.)

§ 3094. Trustees to furnish summary of interments, etc.

Such register or record of interments shall be open to the inspection of the public; and the actuary or secretary of every cemetery association shall furnish to the commissioner of the statistical bureau, or to the health officers of any corporate town or city, or to the editors of newspapers within the state, when so desired, an accurate summary of all the interments during any particular year.

(G. S. 1866, c. 34, § 99; G. S. 1878, c. 34, § 247.)

§ 3095. Penalty for failure to keep register.

Any actuary who neglects or refuses to carefully keep such register of burials, and record all interments therein as hereinbefore provided, shall be subject to a fine for such offence, not exceeding ten dollars, nor less than two dollars, recoverable before any justice of the peace, for the benefit of the school fund of the district.

(G. S. 1866, c. 34, § 100; G. S. 1878, c. 34, § 248.)

§ 3096. 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

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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 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.

(G. S. 1866, c. 34, § 101, as amended 1870, c. 30, § 2; G. S. 1878, c. 34, § 249; 1885, c. 7.)

§ 3097. Trustees may sell lots, when.

After such map is filed in the register's office, as aforesaid, the trustees may sell and convey the lots as designated on such map, upon such terms, and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the said trustees shall prescribe. Every conveyance of any such lots shall be expressly for burial purposes and no other, and shall be in the corporate name of the association, signed by the president and treasurer or president and secretary thereof.

(G. S. 1866, c. 34, § 102; G. S. 1878, c. 34, § 250; as amended 1889, c. 73, § 1.)

After lands have been acquired by the corporation, platted, the plat recorded and the lands used for burials, they are thereby dedicated to that purpose; and the corporation cannot convey except for that purpose, or mortgage. *Wolford v. Crystal Lake Cemetery Ass'n*, 54 Minn. 440, 56 N. W. Rep. 56.

§ 3098. Conveyances legalized.

All conveyances of such lots heretofore made by any cemetery association, signed by the president and secretary thereof, are hereby legalized and made valid, and shall have the same force and effect as if signed by the president and treasurer of such association.

(1889, c. 73, § 2.)

§ 3099. Election and term of trustees — Who may vote.

The annual election for trustees, to supply the place of those whose term of office expires, shall be holden on the day mentioned in the certificate of incorporation, and at such hour and place as the trustees direct. The trustees chosen at any election after the first shall hold their office for three years, and until others are chosen to succeed them; such election shall be by ballot, and every person who is the proprietor of a lot in the cemetery of the association, or if there is more than one proprietor of any such lot, then such one of the proprietors as a majority of the joint proprietors shall designate to represent such lot, or any person who is named as an associate in said certificate, as said certificate shall provide, may vote at such election; and the persons receiving the highest number of votes given at such election shall be declared elected trustees.

(G. S. 1866, c. 34, § 103, as amended 1873, c. 15, § 2; G. S. 1878, c. 34, § 251.)

§ 3100. Who may be trustees—Vacancies.

In all elections after the first, the trustees shall be chosen from among the associates named in said certificate of incorporation, or in case said certificate provides for an election by the owners of lots in said cemetery, then from among the proprietors of lots in such cemetery; and the said trustees shall have the power to fill any vacancy in their number occurring during the term of office for which any trustee was elected. Public notice of every annual election shall be given in such manner as the by-laws of the association prescribe.

(G. S. 1866, c. 34, § 104, as amended 1873, c. 15, § 3; G. S. 1878, c. 34, § 252.)

§ 3101. Trustees may appoint day of election, when.

If the annual election is not held on the day fixed in the certificate of incorporation, the trustees have power to appoint another day, not more than sixty days thereafter, and shall give public notice of the time and place; at which time the election may be held with like effect as if holden on the day fixed in said certificate; and the terms of office of the trustees chosen at such election shall expire at the same time they would have done, had they been chosen on the day fixed in the said certificate of incorporation.

(G. S. 1866, c. 34, § 105; G. S. 1878, c. 34, § 253.)

§ 3102. Annual report of trustees.

The trustees, at each annual meeting, shall make a report in writing, containing a statement of their doings, and of the affairs of the association, and an account of the receipts and expenditures, during the year preceding.

(G. S. 1866, c. 34, § 106; G. S. 1878, c. 34, § 254.)

§ 3103. Proceeds of sale of lots, how applied.

The proceeds arising from the sale of lots in such cemetery shall be applied to the payment of any debts incurred by said association, in the purchase of cemetery grounds and property, in fencing, improving and embellishing such grounds and avenues leading thereto, and in defraying the necessary expenses in the management and care of the same, and for no other purpose.

(G. S. 1866, c. 34, § 107; G. S. 1878, c. 34, § 255.)

§ 3104. Penalty for injury to monuments, etc.

Any person who wilfully destroys, mutilates, injures or removes any tombstone, monument, gravestone, building, or other structure, placed in any cemetery, or any fence, railing, or other work, for a protection or ornament thereof, or wilfully destroys or injures any tree, shrub or plant, within the limits of such cemetery, incorporated under this title, shall be deemed guilty of a misdemeanor; and shall also be liable, in an action to be brought in the name of the association, for the payment of all damages by him occasioned; or any proprietor of a lot in such cemetery may sue for any injury done upon any lot owned by him.

(G. S. 1866, c. 34, § 108; G. S. 1878, c. 34, § 256.)

See § 6786.

§ 3105. Penalty for discharging fire-arms in cemeteries.

That it shall be unlawful for any person to discharge any fire-arm, unless authorized to do so by the trustees, upon or over the grounds of any cemetery which is now established, or may hereafter be established, in this state; and any person so offending shall, upon conviction before any court or magistrate having jurisdiction, be fined any sum not exceeding twenty dollars and costs, or be imprisoned in the county jail for the period of ten days, or shall be subjected to both of said punishments, in the discretion of the court or magistrate.

(1874, c. 34, § 1; G. S. 1878, c. 34, § 257.)

§ 3106. Trustees may appoint watchmen—Their powers.

That it shall be lawful for the trustees, directors, or other officers, of all organized cemeteries within this state, to appoint as many day and night watchmen of their grounds as they may deem expedient; and such watchmen, and also all their superintendents, gardeners and agents stationed on such grounds, are hereby authorized to take and subscribe before any mayor [or]

justice of the peace, in the township where such cemeteries may be situate, an oath of office similar to the oath required by law of constables; and upon the taking of such oath, such watchmen, superintendents, gardeners and agents shall have, exercise and possess all the powers of police officers within and adjacent to said cemetery grounds; and they and each of them shall have power to arrest on view all persons engaged in violating the laws of this state in reference to the protection, care and preservation of cemeteries, and of the trees, shrubbery, structures and adornments therein, and to bring such persons so offending before a mayor or justice of the peace within such township, to be dealt with according to law.

(1874, c. 34, § 2; G. S. 1878, c. 34, § 258.)

§ 3107. Property exempt from taxation and sale on execution.

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The cemetery lands and property of any association, formed pursuant to this title, are exempt from all public taxes and assessments, and not liable to be sold on execution, or applied in payment of debts of any individual proprietors; but the proprietors of lots in such cemetery, their heirs or legal representatives, may hold the same exempt therefrom, so long as the same remain appropriated to the use of a cemetery; and during that time no street or road shall be laid through such cemetery, or any part of the lands held by such association, for the purpose aforesaid, without the consent of the trustees of such association.

(G. S. 1866, c. 34, § 109; G. S. 1878, c. 34, § 259.)

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

§ 3108. Cemetery lots inalienable—Conveyance to association—Interment—Record of conveyances governed by special acts, when.

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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. (G. S. 1866, c. 34, § 110; G. S. 1878, c. 34, § 260; as amended 1887, c. 86.)

§ 3109. "Permanent care and improvement fund"—Establishment.⁶⁸

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; G. S. 1878, v. 2, c. 34, § 260a.)

§ 3110. Same—Board of trustees, how constituted—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.

(1887, c. 168, § 2; G. S. 1878, v. 2, c. 34, § 260b.)

§ 3111. Same—Term of office of trustees.

The tenure of office of the trustees of such fund shall be for life.

(1887, c. 168, § 3; G. S. 1878, v. 2, c. 34, § 260c.)

§ 3112. 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

⁶⁸An act to provide for the establishment of permanent funds for the care, maintenance, and improvement of cemeteries. Approved March 7, 1887.

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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; G. S. 1878, v. 2, c. 34, § 260d.)

§ 3113. 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.

(1887, c. 168, § 5; G. S. 1878, v. 2, c. 34, § 260e.)

§ 3114. Same—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. (1887, c. 168, § 6; G. S. 1878, v. 2, c. 34, § 260f.)

§ 3115. Same—Organization of new board, when.

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.

(1887, c. 168, § 7; G. S. 1878, v. 2, c. 34, § 260g.)

§ 3116. Same—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.

(1887, c. 168, § 8; G. S. 1878, v. 2, c. 34, § 260h.)

§ 3117. Same—Record of appointment.

All instruments of appointment of trustees of such fund shall be recorded with the secretary of the association establishing the fund.

(1887, c. 168, § 9; G. S. 1878, v. 2, c. 34, § 260i.)

§ 3118. 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.

(1887, c. 168, § 10; G. S. 1878, v. 2, c. 34, § 260j.)

§ 3119. 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.

(1887, c. 168, § 11; G. S. 1878, v. 2, c. 34, § 260k.)

§ 3120. 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.

(1887, c. 168, § 12; G. S. 1878, v. 2, c. 34, § 260l.)

§ 3121. 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.

(1887, c. 168, § 13; G. S. 1878, v. 2, c. 34, § 260m.)

§ 3122. 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; G. S. 1878, v. 2, c. 34, § 260n.)

§ 3123. 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.

(1887, c. 168, § 15; G. S. 1878, v. 2, c. 34, § 260o.)

§ 3124. 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.

(1887, c. 168, § 16; G. S. 1878, v. 2, c. 34, § 260p.)

§ 3125. Other cemeteries—Establishment of permanent fund—Powers of trustees.

Whenever the trustees of any cemetery association, not specifically provided for by Chapter one hundred and sixty-eight of the General Laws of the state of Minnesota for the year one thousand eight hundred and eighty-seven, at any regular or special meeting, by a resolution adopted by a two-thirds vote of such board, determine to constitute a board of trustees of the permanent fund for such cemetery association, they shall file a copy of such resolution with the judge of probate of the county in which such cemetery association is situated, and thereupon it shall be the duty of such judge of probate to appoint three persons, who shall be resident freeholders of the town, city or village where such cemetery association has its place of business, and such persons shall also be members of such cemetery association. Said judge of probate, in making such appointment, shall designate one for the term of two years, one for the term of four years and one for the term of six years; and the persons so designated shall be known as the trustees of the permanent funds of such cemetery association, and, thereafter, it shall be the duty of such judge of probate, or his successor in office, to appoint a member of such board every two years. Excepting those first appointed, such trustees shall hold their office for the term of six years and until their successors are appointed and qualified. Such trustees, before entering upon the duty of their office, shall each execute a bond, running to such judge of probate or his successor in office, in such sum as he may determine, not less than two thousand dollars, conditioned upon the faithful performance of their duty as such trustees and for the paying over in the manner herein provided any funds coming into their hands. Said bond shall be approved by the judge of probate and be recorded in the office of the register of deeds of the proper county, and, in case of a breach of its conditions, shall be enforced by an action in the name of the judge of probate for the use and benefit of such cemetery association. The said board of trustees of the permanent funds of such cemetery association may take in their name as such trustees, by gift or bequest, any property, real or personal, and shall also re-

ceive ten per cent upon the sale of the lots of such cemetery association, such percentage to be paid them yearly by the trustees of the association. In the case of a gift or bequest of property, other than money, said board of trustees of the permanent fund may retain such property or convert the same into cash. All funds coming into the hands of the trustees of the permanent funds for cemeteries may be invested in the same manner in which savings banks of the state of Minnesota are permitted to invest their funds, and not otherwise, and the principal of such funds shall in all cases remain intact and inviolate. Said board of the permanent fund shall, ten days before the annual meeting of the trustees of the cemetery association in each year, render a statement of account of the property in their hands, and under their control to the treasurer of the association, and shall at the same time pay over to the treasurer all accruing income and profits, interest and rents arising from such fund, or the property held by them as such trustees; and the receipt of the treasurer shall be sufficient voucher therefor.

(1891, c. 48, § 1.⁶⁰)**§ 3126. Income.**

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; Provided, That if by any bequest the care of any part of such cemetery is provided for, the terms of bequest shall be complied with; and Provided further, During the year for which any income is paid over to the trustees of the association any part of such income remains unexpended and unappropriated, it shall be returned to the trustees of the permanent fund and become principal of such fund.

(Id. § 2.)

§ 3127. Record—Bond—New trustees.

A notice of the appointment of such trustees shall be filed with the secretary of the association, and a proper record thereof and all proceedings pertaining thereto shall be kept by the judge of probate in a book provided for that purpose, and the bond required of the trustees of the permanent fund shall be given for the full term for which the trustee is appointed and until his successor is appointed and qualified; Provided, That the trustees of the association may, when they deem it expedient, require the renewal of such bond. In case of the death, resignation, disability or removal of any member or members of the board of trustees of the permanent fund, the judge of probate shall fill such vacancy by appointment to be for the balance of the term and until the successor of the person appointed is appointed and qualified. In case of the death, resignation, disability or removal of one or more of the trustees of the permanent fund, all the rights, title, power, authority, franchises or trusts whatever existing in such trustee at the time of such death, resignation, disability or removal shall at once, without any act of 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 as so reconstituted; and all newly appointed trustees shall at once upon qualification succeed to an equal share in all the rights, titles, powers, authority, franchises or trusts belonging to such board, and the same shall always be vested in the members of such board as actually constituted.

(Id. § 3.)

§ 3128. District court—Powers.

In case of the death, removal, resignation or disability of all the members of the board of trustees of the permanent funds, all the rights, title, interest, authorities, powers, franchises or trusts shall without further act at once vest in the district court of the district in which such cemetery is situated, to be exercised and discharged by the judge of such court in trust for such cemetery association, until such board be reconstituted in the manner herein provided.

(Id. § 4.)

⁶⁰An act to provide for the care and investment of the permanent funds of cemetery associations. Approved April 21, 1891.

§ 3129. Secretary.

The secretary of the cemetery association shall act as secretary of the board of trustees of the permanent funds and shall keep a full record of their proceedings, and none of the trustees shall receive any fees or compensation whatever.

(Id. § 5.)

§ 3130. Private cemeteries, how established.

Any person desiring to establish a cemetery upon any lands owned by himself, shall cause the same to be surveyed, and a plat thereof made, which shall particularly prescribe and set forth all the streets, alleys, commons or public grounds, and all the blocks, lots or fractional lots within said cemetery, giving the names, width, extent and courses of all such streets and alleys, and the length and width of all said lots, and the number thereof, and the letters or numbers of all said blocks therein.

(G. S. 1866, c. 34, § 111; G. S. 1878, c. 34, § 261.)

§ 3131. Stone to be fixed at corner of cemetery

The proprietor of such cemetery shall, at the time of the surveying thereof, plant and fix, at some corner thereof, a good and sufficient stone for a mark, from which said survey shall be made; and the point where the same may be found shall be designated on said plat.

(G. S. 1866, c. 34, § 112; G. S. 1878, c. 34, § 262.)

§ 3132. Plat to be certified and recorded.

Said plat, after having been completed, shall be certified to by the surveyor, upon what lands the same is laid out, and the extent and boundaries thereof, and that the same is correct; which said certificate shall be indorsed upon said plat, and shall be recorded therewith, and form a part thereof; and said plat shall thereupon be recorded in the register of deeds' office, in the county wherein said lands are situate.

(G. S. 1866, c. 34, § 113; G. S. 1878, c. 34, § 263.)

§ 3133. Effect of making and recording plat.

When the plat of such cemetery has been made out, certified and recorded as required by this title, every donation or grant to the public, or to any religious society, or individual, of any lands in said cemetery, shall be deemed in law and equity a conveyance of all such lands, subject to such conditions and restrictions as may be inserted in or annexed to the conveyance. Every conveyance of any such lots shall be expressly for burial purposes, and no other; and the lands intended to be used for, and designated on said plat for, streets, alleys, ways, commons, or other public uses, in any such cemetery, shall be held by such owner in trust to and for the uses and purposes set forth and intended in and by said plat.

(G. S. 1866, c. 34, § 114, as amended 1868, c. 21, § 1; G. S. 1878, c. 34, § 264.)

**§ 3134. Exemption from taxation and sale on execution
—Streets, etc.**

All land surveyed, and laid out, and dedicated as aforesaid, under the provisions of this title, not exceeding, however, eighty acres, shall be exempt from public taxes and assessments, and shall not be liable to levy and sale upon execution, or to be applied in payment of the debts of any such owner thereof, so long as the same remains appropriated to the use of a cemetery; and no street or road shall be laid through such cemetery without the consent of the owner thereof.

(G. S. 1866, c. 34, § 115; G. S. 1878, c. 34, § 265.)

§ 3135. District court may vacate cemeteries, etc.

The district courts are authorized and empowered, upon the application of the owners or proprietors of any cemetery within the proper county, to alter and vacate the same, and the alleys, streets, lots and blocks, any or either thereof, and the plat thereof, upon the like notice, and in the like manner, and shall require the like proof, and shall make the like order thereon, as is required by law in relation to town plats.

(G. S. 1866, c. 34, § 116; G. S. 1878, c. 34, § 266.)

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3136-3322
01 - 143
01 - 146

3136-3360
01 - 168
01 - 178
77-M - 31
77-M - 474
79-NW 588

3136-3360
95 - 175

3136-3322
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97 - 58
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3136-3360
99 - 198
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66-M - 393
75-NW 741

TITLE 6.

INSURANCE COMPANIES.

(1) CONSTRUCTION OF INSURANCE ACT—DEFINITIONS.

§ 3136. Object of this act—Rule for construing it.

The object of this act is to revise, simplify and amend the laws of this state in relation to insurance, with due regard to the legislation of other states, so as to secure mutual harmony in the promotion of the public interest, to define the relation of the state to companies and individuals, to insure the stability of companies, to protect the interests of the assured, and to encourage the employment of capital; and its provisions are to be construed liberally in furtherance of the protection of the insured, and so far as may be in harmony with the construction which may be given by the courts of other states adopting a like act.

(1872, c. 1, tit. 1, § 1; 70 G. S. 1878, c. 34, § 267.)

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.

§ 3137. Construction of certain words.

The words, "the substantial provisions of this act shall be enacted," shall be construed to mean the provisions of this act which define the right to do insurance business, and provide for the stability of companies, and the protection of the insured; and differences in respect to the organization of the insurance department, the constitution of companies, or the form of judicial remedies, shall not be deemed to impair the uniformity which this act is intended to secure.

(1872, c. 1, tit. 1, § 2; G. S. 1878, c. 34, § 268.)

§ 3138. Retaliatory taxes, etc., on foreign companies.

When, by the laws of any other state or nation, any taxes, fines, penalties, licenses, fees, deposits of money, or of securities, or other obligations or prohibitions, are imposed on insurance companies of this state doing business in such other state or nation, or upon their agents therein, so long as such laws continue in force, the same obligations and prohibitions, of whatever kind, shall be imposed upon all insurance companies of such other state or nation doing business in this state, and upon their agents here.

(1872, c. 1, tit. 1, § 3; G. S. 1878, c. 34, § 269.)

A foreign corporation will not be excluded from doing business in this state, on the ground that the laws of the state where such corporation was created would exclude corporations of this state, unless it is clearly apparent that such is the effect of the foreign law. *State v. Fidelity & Casualty Ins. Co.*, 39 Minn. 538, 41 N. W. Rep. 108.

§ 3139. The term "company" defined.

The term "company," as used in any provision of this act subjecting companies to any obligation or restriction, includes individuals, partnerships, joint-stock associations, and corporations.

(1872, c. 1, tit. 1, § 4; G. S. 1878, c. 34, § 270.)

§ 3140. "American company" defined.

The term "American company," as used in this act, designates a company which exists by the laws of any state or territory of the United States, or by any law of the United States. All others are designated as foreign.

(1872, c. 1, tit. 1, § 5; G. S. 1878, c. 34, § 271.)

⁷⁰An act to establish a reciprocal general insurance law for the state of Minnesota, and to revise and amend the laws of said state, relating to home and foreign insurance companies. Approved February 29, 1872 (Laws 1872, c. 1).

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INSURANCE COMPANIES.

§§ 3141-3145

§ 3141. "Company of a state, territory or nation" defined.

The expression "company of a state, territory or nation," as used in this act, means a company incorporated by or organized under the laws of such state, territory or nation.

(1872, c. 1, tit. 1, § 6; G. S. 1878, c. 34, § 272.)

§ 3142. "Commissioner" defined.

The word "commissioner" designates the officer, by whatever name called, who is charged for the time being with the duties of commissioner of insurance.

(1872, c. 1, tit. 1, § 7; G. S. 1878, c. 34, § 273.)

§ 3143. "Oath" defined.

The term "oath," in this act, includes affirmations.

"Directors" defined.

The term "directors," in this act, designates the trustees, managers or officers constituting the executive board of a company. Directors are included in the term "officers," unless a contrary intention appears.

"Agent" defined.

The term "agent" or "agents," in this act, includes an acknowledged agent, surveyor, and all other persons who shall in any manner, directly or indirectly, aid in transacting the business of insurance.

Construction of powers of agent.

Nothing contained in this act shall be construed to imply that an agent has any power to bind a company, not expressly or by necessary implication given him by the company.

(1872, c. 1, tit. 1, § 8; G. S. 1878, c. 34, § 274.)

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

(2) INSURANCE COMMISSIONER.

§ 3144. Insurance commissioner — Appointment — Term of office—Bond.

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It shall be the duty of the governor, by and with the advice and consent of the senate, to appoint one competent person, a resident and citizen of this state and one who is possessed with the qualifications hereinafter provided, who shall be styled the insurance commissioner, who shall be sworn in the manner as provided by law for other state officers. He shall hold his office for two years, and execute the duties thereof, as hereinafter provided, until his successor is appointed and qualified; and in case of a vacancy by death, removal, resignation or otherwise, the governor shall fill the same by appointment. No person who is a director, officer, agent, attorney or stockholder of, or directly or indirectly interested in, any insurance company, except as insured, shall be insurance commissioner or deputy commissioner; and no officer or agent of any insurance company doing business in this state, shall be deputed to examine the affairs of a company under this act. The said commissioner shall keep his office at the capitol of the state and shall give bonds in the sum of twenty-five thousand dollars, with at least two sureties to be approved by the governor, for the faithful discharge of his duties.

(1889, c. 245, § 1.71)

§ 3145. Salary—Penalty for receiving other pay.

Said commissioner shall be paid a salary of twenty-five hundred dollars per annum, which said sum is hereby appropriated out of any moneys in the state treasury not otherwise appropriated; Provided, that said salary or expense shall in no way be a charge upon the state treasury, over and above the fees and license receipts paid into the same by said commissioner. All

¹ § 5 repeals G. S. 1878, c. 34, §§ 275-277.

necessary blanks, forms and circulars, together with such pamphlet copies of the insurance law as may be required for distribution among persons affected by the provisions of this act, shall be furnished at the expense of the state, and if the said commissioner shall directly or indirectly receive any compensation or pay for any service or extra service, other than as provided in this act, he shall be deemed guilty of a felony, and on conviction thereof, shall be subject to a fine not exceeding five thousand dollars or imprisonment in the state prison for a term not exceeding five years, or both, in the discretion of the court.

(Id. § 2, as amended 1891, c. 128, § 1.)

§ 3146. Deputy commissioner — Appointment—Powers — Bond—Penalty for receiving other pay.

The insurance commissioner shall appoint a deputy commissioner by and with the approval of the governor, whose appointment shall be evidenced by a writing to be kept on file and of record in the office of the secretary of state. Said deputy commissioner shall have power under the direction of the insurance commissioner, to issue licenses to agents, renewal licenses to companies having been previously admitted to do business in the state, receive and receipt for all moneys paid by insurance companies to the state; he shall have power to accept service of process in all actions against insurance companies, when such service is made upon the insurance commissioner, and to act for and in the name of the insurance commissioner and do and perform such other and further duties pertaining to said office as said insurance commissioner; before entering upon his duties, shall give bonds with two or more sureties in the penal sum of fifteen thousand dollars to be approved by the governor, for the faithful discharge of his duties as such deputy. And if the said deputy shall directly or indirectly receive any compensation or pay for any services or extra service or for neglect or omission of service other than provided in this act, he shall be deemed guilty of a felony and on conviction thereof shall be subject to a fine not exceeding five thousand dollars or imprisonment in the state prison for a term not exceeding five years, or both, in the discretion of the court.

(1889, c. 245, § 3.)

§ 3147. Same—Salary.

The salary of the deputy insurance commissioner shall be fifteen hundred dollars a year, which said sum is hereby appropriated out of any moneys in the state treasury not otherwise appropriated.

(Id. § 4.)

§ 3148. Duties of commissioner.

It shall be the duty of such insurance commissioner:

1. Execution of laws.

To see that all laws of this state respecting insurance companies are faithfully executed.

2. Filing of papers—Copies.

To file in his office every charter or declaration of organization of a company, with the certificate of the attorney general; and, on application of the corporators, to furnish to them a certified copy thereof.

3. To calculate value of life policies.

He shall, as soon as practicable, in each year following the passage of this act, calculate or cause to be calculated, in his office, by officers or employes of his department, [or bureau,] the net value, on the 31st day of December of the previous year, of all the policies in force on that day, in each life-insurance company doing business in this state, organized by authority of this state, and every other life-insurance company doing business in this state, that shall fail to furnish him, as hereinafter provided, a certificate of the insurance commissioner of the state by whose authority the company was organized, or by the state in which it may elect to have its policies valued and its deposits made, in case the company is chartered by the government of the United

States, giving the net values of all policies in force in the company on the 31st day of December of the preceding year.

4. Basis of such calculations.

Calculations of the net value of each policy must be based upon the American Experience Table of Mortality, and $4\frac{1}{2}$ per cent. interest per annum. And the net value of a policy at any time shall be taken to be the net single premium which will at that time effect the insurance, less the value at that time of the future net premiums called for by the table of mortality, and rate of interest designated above.

(As amended 1876, c. 21, § 1.)

5. To proceed against unsafe life companies.

In case it is found that any life-insurance company doing business in this state has not on hand the net value of all its policies in force, after all other debts of the company and claims against it, exclusive of capital stock, have been provided for, it shall be the duty of the insurance commissioner to publish the fact that the then existing condition of the affairs of the company is below the standard of legal safety established by this state; and he shall require the company at once to cease doing new business; and he shall immediately institute proceedings, as required in this act, to determine what further shall be done in the case.

6. To see that assets of life companies are sufficient.

It is hereby made the duty of the insurance commissioner, after having determined as above the amount of the net value of all the policies in force, and added thereto the amount of all other debts and claims against the company, exclusive of its capital stock, to see that the sum of all liabilities so ascertained, is fully equalled by the total of admitted assets of such company, comprising its real estate, premiums, loans, and notes, cash on hand, rents, and other convertible property, together with the safe legal securities of the description and character hereafter provided in this act.

(As amended 1873, c. 16, § 1.)

7. To accept valuations of other insurance commissioners, when.

He shall accept the valuations made by the insurance commissioner of the state under whose authority a life-insurance company was organized, when such valuations have been properly made on sound and recognized principles and legal basis as above: provided, the company shall furnish to the insurance commissioner of this state, a certificate from the insurance commissioner of such state, setting forth the value, calculated on the data designated above, of all the policies in force in the company on the previous thirty-first day of December; and stating that, after all other debts of the company, and claims against it at that time, were provided for, the company had, in safe securities of the character specified in this act, an amount equal to the net value of all its policies in force; and that said company is entitled to do business in its own state.

8. Failure of company to furnish certificate.

Every life insurance company doing business in this state during the year for which the statement is made, that fails promptly to furnish the certificate aforesaid, shall be required to make full detailed lists of policies and securities to the insurance commissioner of this state, and shall be liable for all charges and expenses consequent upon not having furnished said certificate.

9. To calculate reinsurance reserves for fire companies.

For every company doing fire-insurance business in this state, he shall calculate the reinsurance reserve for unexpired fire risks, by taking fifty per cent. of the premiums received on all unexpired risks that have less than one year to run, and a pro rata of all premiums received on risks that have more than one year to run: provided, that when the reinsurance reserve, calculated as above, is less than forty per cent. of all the premiums received during the year, the reinsurance reserve in this case shall be the whole of the premiums received on all its unexpired risks.

10. Marine and inland insurance—Reinsurance reserve.

In marine and inland insurance, he shall charge all the premiums received on unexpired risks as a reinsurance reserve.

11. To proceed against company whose capital is impaired.

Having charged against a company the reinsurance reserve, as above determined, for fire, inland and marine insurance, and adding thereto all other debts and claims against the company, he shall, in case he finds the capital stock of the company impaired to the extent of ten per cent., give notice to the company to make good its whole capital stock within sixty days; and if this is not done, he shall require the company to cease to do new business within this state, and shall thereupon, in case the company is organized under the authority of this state, immediately institute legal proceedings, as required in this act, to determine what further shall be done in the case.

Company to make good its capital.

Any company receiving the aforesaid notice of the commissioner to make good its whole capital stock within sixty days, shall forthwith call upon its stockholders for such amounts as will make its capital equal to the amount fixed by the charter of said company; and in case any stockholder of such company shall neglect or refuse to pay the amount so called for, after notice personally given, or by advertisement, in such time and manner as the said commissioner shall approve, it shall be lawful for the said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to, in the proportion that the ascertained value of the funds of the said company may be found to bear to the original capital of the said company; the value of such shares for which new certificates shall be issued to be ascertained under the direction of the said commissioner, and the company paying for the fractional parts of shares; and it shall be lawful for the directors of such company to create new stock and dispose of the same, and to issue new certificates therefor, to any amount sufficient to make up the original capital of the company.

When capital stock may be reduced.

Whenever the capital stock of any joint-stock fire or marine insurance company of this state becomes impaired, the commissioner may, in his discretion, permit the said company to reduce its capital stock and the par value of its shares in proportion to the extent of impairment: provided, that, in fixing such reduced capital, no sum exceeding twenty-five thousand dollars shall be deducted from the assets and property on hand, which shall be retained as surplus assets: and provided, that no part of such assets and property shall be distributed to the stockholders: and provided further, that the capital stock shall not be reduced to an amount less than that required by law for the organization of a new company.

To examine business of companies in detail.

To examine, or cause to be examined, every detail of the business of any company transacting business of insurance within this state, whenever in his judgment such examination is required by the interests of the policy-holders of such company.

(As amended 1873, c. 17, § 1; 1877, c. 47, § 1.)

12. To examine affairs of unsafe life companies, etc.

It shall be the duty of the insurance commissioner, after he has notified a life-insurance company, organized under authority of this state, to cease doing new business until the net value of its policies in force is equal to that called for by the standard of safety established by the state, at once to cause a rigid examination in regard to all the affairs of such company. In case it shall appear that there is no fraud or gross incompetency or recklessness shown to exist in the management, he may, upon publishing the facts in the case, permit such company to continue in charge of its business for one year, provided there is, in his opinion, reason to believe that the company may eventually be able to re-establish the legal net value of all its policies in force.

13. To proceed against such companies, when.

In case the insurance commissioner does not permit the company to continue in the control of its old business, it is hereby made his duty to institute the necessary proceedings for the protection of its policy-holders, in accordance with the laws of this state.

14. To publish results of examinations.

To publish the result of his examination of the affairs of any company, whenever he deems it for the interest of the public so to do, in one or more papers of this state.

15. To suspend business of companies, when.

To suspend the entire business of any company of this state, and the business, within this state, of any other company, during its non-compliance with any provisions of this act, or whenever its assets appear to him insufficient to justify its continuance in business, by suspending or revoking the certificate granted by him; and to give notice thereof to the insurance commissioner, or other similar officer, of every state, and publish the same in the papers in which, by law, state notices are required to be published.

16. To institute winding-up proceedings.

To institute or cause to be instituted, the necessary proceeding[s], under the laws of this state to close the affairs of any company of this state which shall appear to him, upon examination, to be insolvent, or fraudulently conducted.

17. To report violations of law.

To report, in detail, to the attorney general, any violation of law relative to insurance companies, their officers or agents, or the business of insurance.

18. To furnish blanks.

To furnish to the companies required by this act to report to him the necessary blank forms for the statements required.

19. To keep records.

To reserve, in permanent form, a full record of his proceedings, and a concise statement of the condition of each company or agency visited or examined.

20. To furnish copies of papers.

At the request of any person, and on payment of a [the] fee, to give certified copies of any record or papers in his office, when he deems it not prejudicial to public interests so to do, and to give such other certificates as this act provides for.

21. To make annual report.

To make a written report to the governor, on or before the first day of July of each year, showing his official acts, the receipts and expenses of his department for the year, the condition of the companies doing business in this state, and such other information as will exhibit the affairs of his department; which report shall be printed, to the number of one thousand, at the expense of the state, and distributed among the members of the succeeding legislature, and otherwise, as provided in this act.

(As amended 1873, c. 16, § 3.)

But see § 284.

22. To send copies of annual report, etc.

To send a copy of his annual report to the insurance commissioner, or other similar officer, of every other state, and to each company doing business in this state.

23. To notify other insurance commissioners, when.

On request, to communicate to the insurance commissioner of any other state in which the substantial provisions of this act shall be enacted, any facts which, by law, it is his duty to ascertain respecting companies of this state doing business within such state.

24. To adopt seal.

To adopt, and to renew, from time to time, when necessary, with the approval of the governor, a seal of office, an impression and description whereof, with the governor's certificate of approval, should [shall] be filed in the office of the secretary of state.

25. What companies may not issue life policies.

It shall be his duty to see that no company shall be hereafter permitted to issue policies of insurance on lives in this state that does a fire, marine or inland insurance business.

Assets of fire companies—Premium notes.

And in determining the capital or assets of any fire-insurance company, the commissioner shall exclude all notes given for premium[s] upon policies issued.

(1872, c. 1, tit. 2, § 3; G. S. 1873, c. 34, § 273; amended as supra.)

§ 3149. Powers of commissioner.

The insurance commissioner, for the purposes of examinations authorized by law, has power, either in person or by one or more examiners by him commissioned in writing—

1. To have access to books.

To require free access to all books and papers, within this state, of any insurance company, or the agents thereof, doing business within this state.

2. To examine under oath.

To summon and examine any person, being within this state, under oath, which he or any examiner may administer, relative to the affairs and condition of any company.

3. To visit home office of companies, etc.

For probable cause, to visit, at its principal office, wherever it may be, any insurance company not of a state in which the provisions of law contained in this act shall be in force, and doing business in this state, for the purpose of investigating its affairs and condition; and to revoke its certificate in this state, if it does not permit an examination.

4. To revoke certificates.

To revoke or modify any certificate of authority, when any conditions prescribed by law for granting it no longer exist.

5. To institute suits, etc.

The insurance commissioner has also power to institute suits and prosecutions, either by the attorney general, or such other attorney as the commissioner may designate, for any violation of this act; and the commissioner is a necessary party to any proceeding instituted for the purpose of closing up the affairs of any company, when the same shall not be in the name of the state.

(1872, c. 1, tit. 2, § 4; G. S. 1878, c. 34, § 279.)

§ 3150. Inquiries by commissioner—Penalty when unanswered—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 additional 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; ⁷² G. S. 1878, v. 2, c. 34, § 299a.)

See, also, § 3308.

§ 3151. Penalty for obstructing commissioner, etc.

Whoever, without justifiable cause, being within this state, refuses to appear and testify before the commissioner, whenever so required, or obstructs him in the discharge of his duty, shall, for each offence, be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year.

(1872, c. 1, tit. 2, § 5; G. S. 1878, c. 34, § 280.)

§ 3152. Authentication of instruments by seal—Certified copies—Recording.

Every instrument executed by the commissioner of this state, or any other state in which the substantial provisions of this act shall be enacted, pursuant to authority conferred by this act, and authenticated by his seal of office, shall be received as evidence in this state; and copies of papers in his office, certified by him, and so authenticated, shall be received as evidence in this state with the same effect as the originals. Every such instrument so executed and authenticated by the commissioner of this state shall be recorded in the same manner, and the same and its record shall have the like effect, as if acknowledged or proved according to law. The impression of the seal may be directly on paper, with or without tenacious substance.

(1872, c. 1, tit. 2, § 6; G. S. 1878, c. 34, § 281.)

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§ 3153. Fees to be paid—Disposal of fees.

There shall be paid by every company to whom this act applies, the following fees toward defraying the expenses of executing its provisions: Upon filing the declaration or certified copy of charter, twenty-five dollars. Upon filing the annual statement, or certificate in lieu thereof, twenty dollars. For each certificate of authority, and certified copy thereof, one dollar. For every copy of any paper filed with the commissioner, the sum of twenty cents per folio; and for affixing the official seal to such copy, and certifying the same, one dollar. For valuing policies of life-insurance companies, ten dollars per million of insurance, or any fraction thereof. For official examinations of companies under this act, the actual expenses incurred. For countersigning and registering policies and annuity bonds, the reasonable expenses of custody, registration, and issue. All fees or fines received or collected by the commissioner under the provisions of this act shall be paid over to the state treasurer, accompanied with a statement in detail, on the last week-day of every month.

(1872, c. 1, tit. 2, § 7; G. S. 1878, c. 34, § 282.)

§ 3154. Assessment of expenses on companies.

In case the necessary expense of said commissioner exceed the amount of fees collected under this act, and paid into the state treasury, (exclusive of the tax upon premiums,) the excess of such expense shall be annually as-

⁷² An act regulating the cancellation of fire insurance policies. Approved March 10, 1879. Took effect from and after July 1, 1879.

essed by the commissioner, in equal shares, upon all the insurance companies doing business in this state; and the commissioner has power to collect such assessments and pay the same into the state treasury.

(1872, c. 1, tit. 2, § 8; G. S. 1878, c. 34, § 283.)

§ 3155. Transfer of securities—Duty of state treasurer.

No transfer by the insurance commissioner of securities of any kind, in any way held by him in his official capacity, is valid until countersigned by the treasurer of the state.

It is the duty of the state treasurer—

1. To countersign any such transfer presented to him by the commissioner, when satisfied of the propriety thereof;

2. To keep a record of all such transfers, stating the name of the company from whose account the transfer is made; the name of the transferee, unless transferred in blank; and a description of the security;

3. Upon countersigning, to advise by mail the company concerned, of the particulars of the transaction;

4. In his annual report to the legislature, to state the amount of transfers countersigned by him.

(1872, c. 1, tit. 2, § 9; G. S. 1878, c. 34, § 284.)

§ 3156. Access to books of treasurer and commissioner.

For the purpose of verifying the correctness of records, the commissioner is entitled to free access to the treasurer's record required by section 9, and the treasurer is entitled to free access to the books and other documents of the insurance commissioner, relating to securities held by the commissioner.

(1872, c. 1, tit. 2, § 10; G. S. 1878, c. 34, § 285.)

(3) PROVISIONS APPLICABLE TO ALL CLASSES OF COMPANIES.

§ 3157. Unauthorized insurance forbidden.

It is unlawful for insurers or their agents to make, negotiate or solicit, within this state, any contract of insurance except as authorized in this act; Provided, however, That this act shall not be construed to apply to reciprocal contracts of indemnity against loss by fire made by manufacturers with each other.

(1872, c. 1, tit. 3, § 1; G. S. 1878, c. 34, § 286; as amended 1891, c. 94, § 1.)

§ 3158. Same—Penalty—Service of summons on certain companies.

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; G. S. 1878, v. 2, c. 34, § 316a.)

¹⁸An act concerning insurance companies, and to authorize the commissioner of insurance to sue for and collect penalties. Approved March 7, 1887.

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§ 3159. Prosecutions—Duty of 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.

(1887, c. 137, § 2; G. S. 1878, v. 2, c. 34, § 316b.)

§ 3160. Same—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.

(1887, c. 137, § 3; G. S. 1878, v. 2, c. 34, § 316c.)

§ 3161. Excess lines of insurance, when.

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.

(1887, c. 137, § 4; G. S. 1878, v. 2, c. 34, § 316d.)

§ 3162. Same—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.

(1887, c. 137, § 5; G. S. 1878, v. 2, c. 34, § 316e.)

§ 3163. Life insurance.

No company hereafter organized in this state shall make insurance upon the lives of individuals, nor grant, purchase or dispose of annuities, unless organized solely therefor, and doing such business exclusively.

(1872, c. 1, tit. 3, § 2; G. S. 1878, c. 34, § 287.)

§ 3164. Charters, etc., to be submitted to attorney general.

No declaration of organization or charter of an insurance company formed under any general law of this state, and no alteration or amendment thereof, shall be operative until it has been submitted to the attorney general for examination, and found by him to be in accordance with the provisions of this act, and of such general law, and not inconsistent with the constitution and laws of the United States and of this state, and so certified by him, and delivered to the insurance commissioner.

(1872, c. 1, tit. 3, § 3; G. S. 1878, c. 34, § 288.)

§ 3165. Investment of capital stock.

The capital stock and accumulations of any insurance company of this state shall be invested in the bonds or treasury notes of the United States, or national-bank stocks, or bonds of this state or any other state of the United States, or of any city, town or county of this state, or of any other state of the United States having legal authority to issue the same, bearing interest, at their market value; or in any interest or dividend-paying stocks or bonds issued under the laws of this state, at their known market value; or they may be invested or loaned on mortgages of unencumbered real estate in this or any other state of the United States, worth at least double the amount loaned thereon, exclusive of buildings, except when such buildings are insured, and the policies duly assigned as additional security; or loaned

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on pledges of any of the securities named in this section: provided, always, that the current market value of such pledged securities shall be at all times during the continuance of such loans at least twenty per cent. more than the sum loaned on them, and all such loans are subject to the power of the company to terminate the same in case of depreciation of the securities below the limit: and provided, that in all investments made upon mortgage securities, the evidence of the debt shall accompany the mortgage or deed of trust.

Dividends.

No dividends shall be paid except from surplus in excess of the minimum capital stock required by law, reserve fund for reinsurance of policies, and other liabilities of the company; but this section shall not be construed to affect the power of a company to make dividends not impairing its capital and its reserve.

(1872, c. 1, tit. 3, § 4; G. S. 1878, c. 34, § 289.)

§ 3166. Examination before state company begins business.

Before any insurance company of this state shall do any business, the insurance commissioner shall cause an examination to be made, either by himself or by a disinterested person appointed by him for that purpose, who shall certify, under oath, that the capital herein required of the company named in the charter, according to the nature of the business proposed to be transacted by such company, has been paid in in money, and invested in such securities as are required by section four of this title.

(1872, c. 1, tit. 3, § 5; G. S. 1878, c. 34, § 290.)

§ 3167. 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, § 6; G. S. 1878, c. 34, § 291; as amended 1885, c. 183, § 3.)

* Certificate to be revoked if company makes application for removal of any case from state court to United States court. See § 3423.

§ 3168. Agent of foreign company to have certificate of authority — Penalty — Prosecutions — Solicitors of fire or inland risks to be resident in Minnesota.

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 complied 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

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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; G. S. 1878, c. 34, § 292; 1879, c. 54, § 1.)

Under an indictment for acting as agent without the statutory certificate, the company's compliance with the law is immaterial. *State v. Johnson*, 43 Minn. 350, 45 N. W. Rep. 711.

§ 3169. Location of company, etc., to be published.

Every insurance company or agent thereof doing business in this state, shall, in all advertisements of such company or agency, publish the location of the company, giving the name of the city, town or village in which the company is located, and the state or government under the laws of which it is organized; and in all advertisements and circulars in which the capital of the company so advertising is stated, the amount at risk on the preceding thirty-first of December shall be stated.

(1872, c. 1, tit. 3, § 8; G. S. 1878, c. 34, § 293.)

§ 3170. Real estate may be held, when—Disposal of same within five years.

It is unlawful for any insurance company of this state to purchase, hold or convey real estate anywhere, and for any other insurance company to purchase, hold or convey real estate within this state except of the kind and in the manner and time following:

1. Such as it has heretofore acquired, or may hereafter acquire within any incorporated city for purposes of improvement; or
2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted, or for moneys due; or
3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings; or
4. Such as shall have been purchased at sales upon judgments, decrees, or mortgages obtained, or made for such debts.

Real estate lawfully acquired as aforesaid under subdivisions two, three and four, hereof, except such as has been heretofore or may be hereafter acquired within any incorporated city under said subdivisions, shall be disposed of within five years after the company acquired title to the same, unless the company procures a certificate from the insurance commissioner that the interests of the company will suffer materially by a forced sale thereof, and extending the time of the sale to a period fixed in said certificate.

(1872, c. 1, tit. 3, § 9; G. S. 1878, c. 34, § 294; as amended 1889, c. 218, § 1.)

§ 3171. Same—Application of § 3170.

The provisions of the above section shall not apply to any conveyance heretofore made to, or by, or hereafter made to, or by any foreign corporation created and organized with power under its charter to acquire, hold and convey real property in a fiduciary capacity.

(1889, c. 218, § 2; similar to 1883, c. 92, § 1; see G. S. 1878, v. 2, c. 34, § 294a.)

§ 3172. Securities on deposit to be compared with record annually.

Every insurance company having deposited security [ies] with the insurance commissioner, whether under this act or any other, must, by its president, secretary or attorney, examine the securities, and compare them with the books of the commissioner, once or more in each calendar year, at such times, in or during business hours, as the company may direct, and if found correct, give the commissioner a written acknowledgment that the same, designating the kinds and the amounts, are in his custody at the date of the acknowledgment.

(1872, c. 1, tit. 3, § 10; G. S. 1878, c. 34, § 295.)

§ 3173. Penalty for violation of law and false representations.

If any insurance company doing business in this state shall violate any of the provisions of this act, or shall, by means of any advertisement, circular, notice or statement, printed or written, published, posted or circulated through and by the agency of any officer, agent, or other person, or by any other means, falsely represent or hold out to the public that the capital stock of such company is greater than its actual amount, or that the accumulation of such company is greater than its actual cash or market value, every director, officer or agent of such company, guilty of any wilful participation therein, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment, in the discretion of the court; and if any such company, after any such false advertisement posted or circulated, shall receive any money, note or obligation for the payment of money, from any person, as a consideration for any insurance made, or policy issued or to be issued by such company, such money, note or obligation shall be deemed and taken to have been received without consideration; and the directors of such company, and any officer or agent receiving the same, shall be jointly and severally liable in a civil action for the repayment thereof, and shall also, in like manner, be liable to the person insured for the amount of the premium paid.

(1872, c. 1, tit. 3, § 11; G. S. 1878, c. 34, § 296.)

§ 3174. Annual statement—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; G. S. 1878, c. 34, § 297; 1881, c. 59, § 1; 1883, c. 17, § 1; 1885, c. 79.)

But see § 283.

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§ 3175. 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 pre-

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ceding 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; G. S. 1878, c. 34, § 298; as amended 1885, c. 187, § 1.)

§ 3176. Commissioner may require statement at any time.

The insurance commissioner may require, at any time, statements from any company doing business within this state, or any of its officers or agents, on such points as he deems necessary and proper to elicit a full exhibit of its business and standing.

(1872, c. 1, tit. 3, § 14; G. S. 1878, c. 34, § 299.)

See § 3150.

§ 3177. Statement, how verified.

The statement required under this act must be verified by the signature and oath of the president or vice-president, with those of the secretary or actuary; or by those of a majority of the directors.

(1872, c. 1, tit. 3, § 15; G. S. 1878, c. 34, § 300.)

§ 3178. No company to do business without statement.

No company having neglected to file a statement required from it, within the time and in the manner prescribed, shall do any new business, after a notification by the commissioner, while such neglect continues.

(1872, c. 1, tit. 3, § 16; G. S. 1878, c. 34, § 301.)

§ 3179. Forfeiture for neglect to furnish statement.

Any company wilfully neglecting to make and transmit any statement required, shall forfeit one hundred dollars for each day's neglect.

(1872, c. 1, tit. 3, § 17; G. S. 1878, c. 34, § 302.)

§ 3180. Penalty for false statement.

Any company or person wilfully making a false statement in any report to the commissioner, is liable to a penalty of \$500, which sum must be paid to the commissioner, in default of which the certificate of authority shall be revoked.

(1872, c. 1, tit. 3, § 18; G. S. 1878, c. 34, § 303.)

§ 3181. Commissioner may defer publication of statement.

The insurance commissioner has authority to prevent publication of any part of the statement made under this article, until his annual report to the legislature is made.

(1872, c. 1, tit. 3, § 19; G. S. 1878, c. 34, § 304.)

§ 3182. Receiver or trustee of company to make statement.

Every receiver or other judicially appointed trustee of an insurance company of this state, must make the statements required under this article; and all the provisions of this article shall apply to such receivers or trustees.
(1872, c. 1, tit. 3, § 20; G. S. 1878, c. 34, § 305.)

§ 3183. Stipulation as to service of process.

No insurance companies not incorporated under the laws of this state shall insure property or do business in this state until it has filed with the insurance commissioner a written stipulation, duly authenticated by the company, stipulating and agreeing that any legal process affecting such company, served on the insurance commissioner, shall have the same effect as if personally served on the company, or its authorized attorney in this state.

(1876, c. 20, § 1; G. S. 1878, c. 34, § 306.)

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See, also, §§ 3158, 3303.

§ 3184. Commissioner to receive and file stipulations.

The insurance commissioner shall, within three months after the passage of this act, transmit a copy thereof, with proper blanks for such stipulation, to every company authorized to do business in this state, and shall receive and file the stipulations herein provided for, and the same shall be safely kept in his office.

(1876, c. 20, § 2; G. S. 1878, c. 34, § 307.)

§ 3185. Stipulation not to be revoked.

So long as any liability of such stipulating company to any resident of this state shall continue, such stipulation shall not be revoked or modified, except that another shall be filed according to law.

(1876, c. 20, § 3; G. S. 1878, c. 34, § 308.)

§ 3186. Service of process.

Service of process according to a stipulation provided in this act, shall be sufficient personal service on the company.

(1876, c. 20, § 4; G. S. 1878, c. 34, § 309.)

See, also, § 315b.

§ 3187. Proof of service.

A copy of such stipulation, certified by the insurance commissioner, and a certificate that process has been duly served on him, shall be sufficient evidence thereof.

(1876, c. 20, § 5; G. S. 1878, c. 34, § 310.)

§ 3188. Commissioner to notify company of such service.

When process against or affecting any company is served on the insurance commissioner, the same shall be by duplicate copies, one of which shall be filed in the office of said commissioner, and the other by him immediately mailed, postage prepaid, to home office of the company, or to the address of the authorized resident attorney in this state, as the company may designate in such stipulation.

(1876, c. 20, § 6; G. S. 1878, c. 34, § 311.)

§ 3189. Meaning of "process."

The word "process" in this act shall include any writ, declaration, summons or order whereby any action, writ or proceeding shall be commenced, or which shall be issued in or upon any action, suit or proceeding authorized by law in this state.

(1876, c. 20, § 7; G. S. 1878, c. 34, § 312.)

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§ 3190. Failure of company, etc., to satisfy judgment—Revocation of authority.

Whenever a judgment for the recovery of money has heretofore been or hereafter may be recovered in any of the courts of this state, or in any of the

courts of the United States having jurisdiction in this state, against any insurance company, or against any association, partnership, firm or individual engaged in the business of insurance, and holding a certificate of authority therefor from the state treasurer, under the laws of the state, or from the insurance commissioner under this act, and an execution thereon is issued and duly returned unsatisfied in whole or in part, proof is made by any person, by filing with the insurance commissioner a certified transcript of the docket of such judgment, together with a certificate of the clerk of the court in the county where the judgment roll in said action is filed and the judgment therein is docketed, that an execution has been issued on such judgment to the proper officer of such county and returned unsatisfied in whole or in part, and with the date of issuing and return, the insurance commissioner shall forthwith revoke all authority or license for the transaction of any kind of insurance business within this state conferred upon such insurance company, association, partnership, firm or individual by any certificate therefor granted by said commissioner to such company, association, partnership, firm or individual under the provisions of this act, and shall withhold therefrom any new certificate of authority, such as is contemplated herein, until such judgment so docketed against such company, association, partnership, firm or individual, is wholly paid and satisfied, and proof thereof filed with such commissioner by the official certificate of the clerk of the court in the county where the judgment roll is filed and judgment docketed, showing that the same is satisfied of record, and until the expenses and fees incurred in the case under the provisions of this title are also paid by such company, association, partnership, firm or individual; and the insurance commissioner shall also forthwith cause notice of such revocation of authority to be published in some daily newspaper, printed and published at the capital of the state, for at least one week; and during the time such authority or license remains so revoked, it shall be unlawful for the company, association, partnership, firm or individual holding such revoked certificate of authority, or any of its agents or officers, to issue or renew any policies of insurance, take any risks, or transact any business relating to insurance, except such as is absolutely necessary in closing up its affairs in this state.

(1872, c. 1, tit. 3, § 26; G. S. 1878, c. 34, § 313.)

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§ 3191. Transfer of duties to commissioner.

All duties heretofore required to be performed by, or responsibility imposed upon, the state treasurer of this state under the existing laws regulating insurance companies, shall hereafter be performed by the insurance commissioner, so far as such duties and responsibilities are not changed, modified or repealed by this act.

(1872, c. 1, tit. 3, § 27; G. S. 1878, c. 34, § 314.)

**§ 3192. Percentage of all premiums to be paid as tax—
Tax on real and personal estate—Duties of commissioner and auditor.**

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

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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, tit. 3, § 23, as amended 1876, c. 23, § 1; G. S. 1878, c. 34, § 315; 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.)

§ 3193. Act not to apply to certain companies.

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; G. S. 1878, v. 2, c. 34, § 315a.)

§ 3194. Responsibility of agents—Penalty for embezzlement.

Agents or employes of any insurance company doing business in this state, appointed or authorized to solicit for applications for insurance, to issue policies, to collect premiums on the same, to adjust losses, or to transact any other duties or business for such companies, shall be held personally responsible to such company for any moneys or property received by them for such company; and in case any such agent or employe shall embezzle or fraudulently convert to his own use, or shall take or secrete, with intent to embezzle and convert to his own use, without the consent of such company, any money or other property belonging to such company which he shall have collected, or which shall otherwise come into his possession, or shall be under his care or control, by virtue of such agency or employment, or shall receive any consideration other than such allowed by the company for which he is acting, in the settlement or adjustment or payment of a loss, with intent to defraud either said company or any insurer, he shall be deemed guilty of the crime of larceny, and, on conviction therefor, shall be subject to the fines and penalties provided by statute for the punishment of larceny.

False statements in sworn proofs of loss—Penalty.

If any person or persons insured in any company doing business in this state, as provided in this act, shall wilfully make any false statement, under oath, in making any claim or proof of loss, as required by said company, they shall be deemed guilty of a felony, and shall suffer the pains and penalties of perjury as provided by the laws of this state.

(1872, c. 1, tit. 3, § 29; G. S. 1878, c. 34, § 316.)

(4) FIRE INSURANCE COMPANIES.

§ 3195. Lloyds—May do business, when.

That associations of individuals, whether organized in this state or elsewhere, formed upon the plan known as Lloyds or individual underwriters or otherwise, whereby each associate underwriter becomes liable for a proportionate part of the whole amount insured by policy, may be authorized to

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transact insurance other than life insurance in this state in like manner and upon the same terms and conditions as are required of and imposed upon fire insurance companies doing business in this state.

(1893, c. 44, § 1.74)

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§ 3196. Same—License requisite.

No association of individuals or the agents of the same, mentioned in section one of this act, shall be authorized to do business in this state without first having obtained a license therefor from the insurance commissioner.

(Id. § 2.)

§ 3197. Same—Penalty for violation.

Any person violating any of the provisions of this act shall be guilty of a misdemeanor, and, on conviction therefor in a court of competent jurisdiction, shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment for a period not to exceed three months, or by both such fine and imprisonment.

(Id. § 3.)

§ 3198. Amount of capital required.

No joint-stock fire, inland or marine insurance company shall be organized in this state, unless it has one hundred thousand dollars capital. No joint-stock fire, inland or marine insurance company of any other state or nation shall do business in this state, unless it has at least two hundred thousand dollars capital.

(1872, c. 1, tit. 4, § 1, as amended 1877, c. 46, § 1; G. S. 1878, c. 34, § 317.)

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§ 3199. 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; G. S. 1878, c. 34, § 318; 1881, c. 61, § 1.)

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§ 3200. Minnesota standard policy.

The insurance commissioner shall prepare and file in his office on or before the first day of August, A. D. eighteen hundred and eighty-nine, a printed form in blank of a contract or policy of fire insurance, together with such provisions, agreements or conditions as may be endorsed thereon, or added thereto, and form a part of such contract or policy, and such form when so filed shall be known and designated as the Minnesota standard policy. Said insurance commissioner shall within sixty days from the passage of this act prepare, approve and adopt a printed form in blank of a contract or policy of fire insurance, together with such provisions, agreements and conditions as may be endorsed thereon or added thereto and form a part of such contract or policy, and such form shall, as near as the same can be made applicable, conform to the type and form of the New York standard fire insurance policy, so called and known. Provided, however, that five days' notice of cancellation by the company shall be given, and provided, that proof of loss shall be made within sixty days after a fire.

(1889, c. 217, § 1.75)

By § 2, the insurance commissioner may call on the attorney general for assistance in the preparation of a standard policy.

⁷⁴An act regulating certain kinds of insurance in this state. Approved April 18, 1893.

⁷⁵An act to provide for a uniform policy of fire insurance to be made and issued in this state by all insurance companies taking fire risks on property within this state. Approved April 24, 1889.

By § 3, the commissioner is to furnish the insurance companies with copies of the standard policy.

A standard policy adopted by the commissioner provided that the assured should furnish the certificate of the disinterested magistrate or notary public living nearest the place of the fire in respect to the circumstances and loss, and that no action on the policy should be sustained until after compliance with all requirements of the policy. Held, that inability to furnish the certificate because of the refusal of the magistrate or notary, for any cause whatever, to give it, will not excuse the assured, unless he was prevented by the company from obtaining it. *Lane v. St. Paul F. & M. Ins. Co.*, 50 Minn. 227, 52 N. W. Rep. 649.

§ 3201. All policies to conform to standard policy—Variations allowed.

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On and after the first day of January, A. D. eighteen hundred and ninety, no fire insurance company, corporation or association, their officers or agents, shall make, issue, use or deliver for use any fire insurance policy or renewal of any fire policy on property in this state, other than such as shall conform in all particulars as to blanks, size of type, context, provisions, agreements and conditions with the printed form of contract or policy so filed in the office of the insurance commissioner, as provided for in the first section of this act, and no other or different provision, agreement, condition or clause shall in any manner be made a part of said contract or policy, or be endorsed thereon or delivered therewith, except as follows, to wit:

First—The name of the company its location and place of business, the date of its incorporation or organization, and the state or county under which the same is organized, the amount of paid up capital stock, whether it is a stock or mutual company, the names of its officers, the number and date of the policy, and if it be issued through a manager or agent of the company, the words, "this policy shall not be valid until countersigned by the duly authorized manager or agent of the company at —," may be printed on policies issued on property in this state.

Second—Printed or written forms of description and specification or schedules of the property covered by any particular policy, or any other matter, necessary to clearly express all the facts and conditions of insurance on any particular risk (which facts or conditions shall in no case be inconsistent with or a waiver of any of the provisions or conditions of the standard policy herein provided for) may be written upon or attached or appended to any policy issued on property in this state.

Third—A company, corporation or association organized or incorporated under and in pursuance of the laws of this state, or elsewhere, if entitled to do business in this state, may, with the approval of the insurance commissioner, if the same is not already included in the standard form to be filed in the office of said commissioner, as provided for in the first section of this act, print on its policies any provision which it is required by law to insert therein, if such provision is not in conflict with the laws of this state or of the United States, [or] of the provisions of the standard form provided for herein; but said provision or provisions shall be printed apart from the other provisions, agreements or conditions of the policy, and in type not smaller than the body of the policy, and under a separate title, as follows: "Provisions required by law to be stated in this policy," and be a part of said policy.

Fourth—There may be indorsed on the outside of any policy herein provided for, the name with the word "agent or agents," and place of business of any insurance agent or agents, either by writing, printing, stamping, or otherwise.

Fifth—Where two or more companies (each having previously complied with the laws of this state) unite to issue a joint policy, there may be expressed in the heading of such policy the fact of the severalty of the contract; also the proportion of premium to be paid to each company and the proportion of liability which each company agrees to assume. And in the printed conditions of such policy the necessary change may be made from the singular to the plural number, when reference is had to the companies issuing such policy.

(1889, c. 217, § 4.)

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§ 3202. Same—Penalty for violation.

Any insurance company, its officers or agents, or either of them, violating any provisions of this act by making, issuing, delivering or offering to deliver any policy of fire insurance on property in this state, except as hereinbefore provided, shall be guilty of a misdemeanor, and upon complaint made by the insurance commissioner or by any citizen of this state shall, upon conviction thereof, be punished by a fine of not less than fifty dollars, nor more than one hundred dollars for the first offense, and of not less than one hundred dollars, nor more than two hundred and fifty dollars for each subsequent offense; but any policy so made, issued and delivered shall, nevertheless, be binding upon the company issuing the same, and such company shall thereafter be disqualified from doing any insurance business in this state.

(Id. § 5.)

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§ 3203. Premium—Promissory note deemed payment.

In all cases of insurance of property in this state, by insurance companies doing business therein, against loss or damage by fire or lightning, or hail or storm, where a promissory note or other written contract for the payment of money is given for the premiums due or to become due thereon, the giving and acceptance of such promissory note or other written contract shall be deemed a full payment for such premium, and shall operate to continue in full force and effect any such contract or policy of insurance during the period provided by such policy or contract of insurance, whether such note or other written contract be paid or not at maturity. And any provision in any such policy or contract of insurance to the contrary shall be void. Provided, that nothing in this act shall apply to marine insurance.

(1893, c. 36, § 1.70)

§ 3204. Limitation as to single risks.

No fire or inland insurance company of this state, or doing business in this state, shall expose itself to any loss on any one fire or inland navigation risk or hazard, either by one or more policies, to [an] amount exceeding five per cent. of its paid-up capital in case of a fire, or ten per cent. in case of an inland insurance company, whether reinsured or not.

(1872, c. 1, tit. 4, § 3; G. S. 1878, c. 34, § 319.)

§ 3205. Dividends to be from surplus profits—Reserve.

No fire-insurance company shall make any dividend, except from the surplus profits arising from its business. In estimating such profits, there shall be reserved therefrom—

1. A sum equal to the whole amount of premiums on unexpired risks and policies, which are hereby declared to be unearned premiums:

2. All sums due the company on bonds and mortgages, bonds, stocks, and book-accounts, of which no part of the principal, nor the interest thereon, has been paid during the preceding year, and for which foreclosure or suit has not been commenced, or which, after judgment obtained thereon, shall have remained more than two years unsatisfied, and on which interest shall not have been paid; and,

3. All interest due or accrued and remaining unpaid.

Provided, that any company may declare dividends, not exceeding fifteen per cent. on its capital stock in any one year, that possesses an accumulated fund, in addition to the amount of its capital stock, and of such dividend, and all actual outstanding liabilities, equal to one-half of the amount of all premiums on risks not terminated at the time of making such dividend. Any dividend made contrary to this section shall subject the company making the same to a forfeiture of its charter, and each stockholder receiving it to a liability to the creditors of such company, to the extent of the dividend received, beside the other penalties and punishments prescribed by law. This section shall not apply to the declaration of scrip dividends by par-

⁷⁰An act to provide that contracts and policies of insurance on property in this state shall be valid and shall continue in force notwithstanding promissory notes given for the premiums thereon are not paid at maturity. Approved March 9, 1893.

ticipating companies; but no such scrip dividend shall be paid, except from surplus profits, after reserving all sums as above provided, including the whole amount of premiums on unexpired risks. The word "year," wherever used in this section, shall be construed to mean the calendar year.

(1872, c. 1, tit. 4, § 4; G. S. 1878, c. 34, § 320.)

§ 3206. Participation of insured in profits.

Any joint-stock fire-insurance company may (upon the written consent of the holders of three-fourths in amount of the stock) permit the insured to participate in the profits of its business, and provide how far any scrip, issued to the insured for such profits, shall be liable for the losses to be sustained; and any company so doing, whenever an amount not less than one hundred thousand dollars has been accumulated, and scrip so issued therefor, may, upon the written consent of the holders of three-fourths in amount of the stock, pay off and cancel an amount of the original cash capital equal to one-half of the accumulated profits, and so may continue from time to time until the whole amount of the original cash capital is paid off: provided, that before any portion of such capital stock shall be so paid off, proof shall be exhibited to the insurance commissioner that an amount of accumulated profits has been realized, scrip issued therefor, and investment made thereof, pursuant to the provisions of section 4 of title 3, of this act, at least equal to double the amount so desired to be paid off and cancelled; and the said commissioner shall also first certify that he is satisfied with such proof.

(1872, c. 1, tit. 4, § 5; G. S. 1878, c. 34, § 321.)

§ 3207. No deposit required of certain companies.

No fire-insurance company of any other state of the United States in which the substantial provisions of this act shall be enacted, shall be required to make any deposit in this state.

(1872, c. 1, tit. 4, § 6; G. S. 1878, c. 34, § 322.)

§ 3208. Deposit required of foreign companies.

No foreign fire-insurance company shall do business in this state, unless it has on deposit with the commissioner of this state, for the benefit of all its policy-holders in the United States, the sum of two hundred thousand dollars, invested and valued as prescribed in section 4 of title 3, or unless it has complied with the next section.

(1872, c. 1, tit. 4, § 7; G. S. 1878, c. 34, § 323.)

§ 3209. When certificate filed, no deposit required.

A foreign fire-insurance company which has its principal office in the United States in any state where the provisions of law contained in this act shall be in force, may file with the insurance commissioner of this state a certificate made by the insurance commissioner of such other state, that he holds a deposit made by such company, such as is described in the last section. No deposit shall be required in this state from such company while the deposit so certified remains sufficient.

(1872, c. 1, tit. 4, § 8; G. S. 1878, c. 34, § 324.)

§ 3210. Limit of single risks of foreign companies.

No foreign insurance company shall make any contract of insurance against loss or damage by fire or inland navigation risks, nor expose itself to any such loss by any one risk, for any greater amount in proportion to its capital, as determined by the following provisions, than companies of this state may.

(1872, c. 1, tit. 4, § 9; G. S. 1878, c. 34, § 325.)

§ 3211. Capital of foreign companies defined—Trustees and their powers.

For the purposes of this act, the capital of any foreign insurance company, doing fire-insurance business in this state, shall be deemed to be the aggregate value of its deposits with the insurance or other departments of this state, and of the other states of the United States, for the benefit of policy-holders in any such state, or in the United States, and its assets and invest-

ments, certified according to the provisions of this act, in the United States, after making the same deductions therefrom for losses and all liabilities within the United States, and for premiums on unexpired risks, as are made in the case of companies of this state; provided, that such assets and investments be vested in and held within the United States by trustees, citizens of the United States, appointed by the board of directors of the company, and approved by the insurance commissioner of the state where invested, for the benefit of the policy-holders and creditors in the United States. The trustees so chosen are hereby empowered to take, hold and convey real and personal property for the purposes of the trust, subject to the same restrictions as insurance companies of this state.

(1872, c. 1, tit. 4, § 10; G. S. 1878, c. 34, § 326.)

§ 3212. Certificate to state amount of capital.

The annual certificate of the insurance commissioner, given to any foreign fire-insurance company [or] its agents within this state, under section 8, must state the amount of capital of the company ascertained by him, as defined in the last section.

(1872, c. 1, tit. 4, § 11; G. S. 1878, c. 34, § 327.)

§ 3213. Requirements of inland insurance companies.

All the provisions contained in this title respecting fire-insurance companies, shall apply to companies doing an inland insurance business, so far as, from the nature of the business of inland insurance, the same may be applicable.

(1872, c. 1, tit. 4, § 12; G. S. 1878, c. 34, § 328.)

§ 3214. Minnesota companies doing farm business only.

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; G. S. 1878, c. 34, § 329; 1885, c. 60.)

§ 3215. 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 loss or damage by hail, tornado, cyclones, and wind-storms, and to make contracts and policies accordingly.

(1885, c. 185; ⁷⁷ G. S. 1878, v. 2, c. 34, § 316f.)

§ 3216. Fire department—Certificate of municipal officer.

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

⁷⁷An 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.

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; G. S. 1878, v. 2, c. 34, § 298a.)

§ 3217. Report of premiums from such towns, etc.—Certificate of commissioner.

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.

(1885, c. 187, § 3; G. S. 1878, v. 2, c. 34, § 298b.)

§ 3218. Same—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; G. S. 1878, v. 2, c. 34, § 298c.)

§ 3219. 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.

(1885, c. 187, § 5; G. S. 1878, v. 2, c. 34, § 298d.)

§ 3220. Same—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.

(1885, c. 187, § 6, as amended 1887, c. 44; G. S. 1878, v. 2, c. 34, § 298e.)

* Viz., Laws 1885, c. 187 (§ 3219).

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

§ 3221. 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; G. S. 1878, v. 2, c. 34, § 298f.)

§ 3222. 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.

(1885, c. 187, § 8; G. S. 1878, v. 2, c. 34, § 298g.)

(5) CREATION OF SAFETY FUNDS BY FIRE COMPANIES.⁷³

§ 3223. Guaranty surplus fund and special reserve fund.

Hereafter it shall be lawful for any fire insurance company, organized under the laws of this state, to create the funds herein provided for, to be known and designated as the guaranty surplus fund and the special reserve fund, and to avail itself of the provisions of this act, upon complying with the requirements thereof.

(1876, c. 18, § 1; G. S. 1878, c. 34, § 330.)

§ 3224. Same—How created—Examination and certificate—Notice on policies.

Any fire-insurance company desiring to create such fund shall be, and it is hereby authorized to do so upon the adoption of a resolution by its board of directors at a regular meeting thereof, and filing with the insurance commissioner of the state a copy thereof, declaring the desire and intention of such company to create such funds, and to do business under the provisions of this act; and as soon after the filing of such copy of the resolution as convenient, the insurance commissioner shall make, or cause to be made, an examination of such company, and he shall make a certificate of the result thereof, which shall particularly set forth the amount of surplus funds held by such company at the date of such examination, which, under the provisions of this act, are to and may be equally divided between, and be set apart to constitute, said guaranty surplus and special reserve funds, which certificate shall be recorded in the insurance department; and from and after the date of the recording of said certificate, all the policies and renewals of policies issued by said company shall have printed thereon by said company a notice that the same are issued under and in pursuance of this act, referring to the same by its chapter, date and title; and such policies and renewals shall be deemed to have been issued and received subject to the provisions of this act.

(1876, c. 18, § 2; G. S. 1878, c. 34, § 331.)

§ 3225. Limit of dividends—Disposition of surplus.

After the date mentioned in any such resolution so passed and filed, it shall not be lawful for such company to make, declare or pay in any form, any dividend upon its capital stock exceeding ten per cent. per annum thereupon, and upon the surplus funds to be formed hereunder, until after its guaranty surplus fund and its special reserve fund shall have together accumulated to an amount equal to its said capital stock; and the entire surplus profits of such company, above such annual dividend of ten per cent., shall be equally divided between, and be set apart to constitute, the said guaranty surplus

⁷³An act to provide security against extraordinary conflagrations, and for the creation of safety funds by fire insurance companies. Approved March 6, 1876 (Laws 1876, c. 18).

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fund and the said special reserve fund, which funds shall be held and used as hereinafter provided, and not otherwise; and any company doing business under this act, which shall declare or pay any dividend contrary to the provisions herein contained, shall be liable to be proceeded against by the attorney general for its dissolution. Such guaranty surplus fund and such special reserve fund may from time to time, after they shall together have accumulated to an amount equal to the capital stock, be still further increased out of any subsequent profits of the company: provided, however, that such profits shall, at each division thereof, be equally divided between the said funds.

(1876, c. 18, § 3; G. S. 1878, c. 34, § 332.)

§ 3226. Guaranty fund, to what applicable.

Said guaranty surplus fund shall be held and invested by such company the same as its capital stock and surplus accumulation, and shall be liable and applicable in the same manner as the capital stock to the payment generally of the losses of such company.

(1876, c. 18, § 4; G. S. 1878, c. 34, § 333.)

§ 3227. Special reserve fund, how invested—Purposes of.

Said special reserve fund shall be invested according to existing laws relating to investments of capital by fire-insurance companies, and shall be deposited from time to time, as the same shall accumulate and be invested, with the insurance commissioner of the state, who shall permit the company depositing the same to change such deposits by substituting for those withdrawn others of equal amount and value, and to collect and receive the interest or dividends upon such securities as the same may accrue; and such special reserve fund shall be deemed a fund contributed by the stockholders to protect such company and its policy-holders, other than claimants for losses already existing, or then incurred, in case of such extraordinary conflagration or conflagrations as hereinafter mentioned; and said fund shall not be regarded as any part or portion of the assets in possession of said company, so as to be or render the same liable for any claim or claims for loss by fire or otherwise, except as herein provided.

(1876, c. 18, § 5; G. S. 1878, c. 34, § 334.)

§ 3228. Estimate of profit in making division.

In estimating the profit of any such company, for the purpose of making a division thereof between said guaranty surplus fund and such special reserve fund, there shall be deducted from the gross assets of the company, including for this purpose the amount of special reserve fund, the sum of the following items:

First—The amount of all outstanding claims;

Second—An amount sufficient to meet the liability of such company for the unearned premiums upon its unexpired policies, which amount shall be at least equal to one-half of the premiums received on policies having less than one year to run from date of policy, and a pro rata proportion of the premiums received on the policies having more than one year to run from date of policy, and shall be known as the re-insurance liability;

Third—The amount of its guaranty surplus fund and of its special reserve fund;

Fourth—The amount of capital of the company; and,

Fifth—Interest at the rate of ten per cent. per annum upon the amount of the capital and of the said funds for whatever time shall have elapsed since the last preceding cash dividend. And the balance shall constitute the net surplus of the company, subject to an equal division between the said funds as herein provided.

(1876, c. 18, § 6; G. S. 1878, c. 34, § 335.)

§ 3229. Notice when claims exceed capital and fund— Further proceedings.

In the event of any extensive conflagration or conflagrations, whereby the claims upon such company shall exceed the amount of its capital stock, and of the guaranty surplus fund provided for by this act, the said company shall

notify the said insurance commissioner of the fact, who shall then make, or cause to be made, an examination of said company, and shall issue his certificate of the result, showing the amounts of capital, of guaranty surplus fund, of special reserve fund, of reinsurance liability, and of other assets; and upon his issuing such certificate in duplicate, one copy to be given to the company, and one to be recorded in the insurance department, the said special reserve fund shall be immediately held to protect all policy-holders of said company, other than such as are claimants upon it at the time, or such as became such claimants in consequence of such conflagration or conflagrations; and the amount of said special reserve fund, and an amount equal to the unearned premiums of such company, to be ascertained as hereinbefore provided, shall constitute the capital and assets of such company for the protection of policy-holders other than such claimants, and for the further conduct of its business; and such official certificate of the insurance commissioner shall be binding and conclusive upon all parties interested in such company, whether as stockholders, creditors or policy-holders; and upon the payment to the claimants for losses, or otherwise, existing at the time of or caused by such general conflagration or conflagrations, of the amount to which they are respectively entitled, in proportion to their several claims, of the full sum of the capital of such company, and of its guaranty surplus fund, and of its assets, excepting only such special reserve fund and an amount of its assets equal to the liability of the company for unearned premiums, as so certified by such insurance commissioner, such company shall be forever discharged from any and all further liability to such claimants, and to each of them; and the said insurance commissioner shall, after issuing his said certificate, upon the demand of such company, transfer to it all such securities as shall have been deposited with him by such company as such special reserve fund; unless said special reserve fund shall exceed the amount of the capital of such company, in which case the said insurance commissioner shall so transfer to the company only so much of said securities as shall, at their market value, equal its capital; and said insurance commissioner shall hold the balance thereof as a special reserve fund for the purpose and under the conditions set forth herein; and if the amount of such special reserve fund be less than fifty per cent. of the full amount of the capital of the company, a requisition shall be issued by the said insurance commissioner upon the stockholders, to make up such capital to that proportion of its full amount, in the manner now provided by law in the case of companies with impaired capital: and provided further, that any capital so impaired shall be made up to at least the sum of \$200,000; and in case said company, after such requisition, shall fail to make up its capital to at least said amount of \$200,000, as therein directed, such special reserve fund shall still be held as security, and liable for any and all losses occurring upon policies of such company after such conflagration or conflagrations. Such company shall, in its annual statement to the insurance department of this state, set forth the amount of such special reserve fund and of its guaranty surplus fund. The policy registers, insurance maps, books of records, account and other books in use by such company in its business, are not to be considered as assets, but shall be held by the company for its use in the protection of its policy-holders not claimants for losses at the time of such general conflagration.

(1876, c. 18, § 7; G. S. 1878, c. 34, § 336.)

§ 3230. Impairment of capital, how made good—Limit of single risks.

If, at any time after said special reserve fund shall have been accumulated by any company, it shall appear, upon examination by the said insurance commissioner, that the capital of such company has, in the absence of any such extensive conflagration, become impaired so as to cause him to order a call upon the stockholders to make up such impairment, the board of directors of such company may either comply with such order, and require the necessary payment by the stockholders, or, at their option, they may apply, for that purpose, so much of said special reserve fund as will make such impairment good. No company doing business under this act shall insure any larger amount upon any single risk than is permitted by law to a company pos-

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sessing the same amount of capital, irrespective of the fund hereby provided for. So much and such parts of existing laws as are inconsistent with this act are hereby made and declared to be inapplicable to insurance companies doing business under and in conformity with this act.

(1876, c. 18, § 8; G. S. 1878, c. 34, § 337.)

(6) TOWN INSURANCE COMPANIES.

§ 3231. 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. An insurance company organized under chapter eighty-three of the general laws of one thousand eight hundred and seventy-five, entitled "An act authorizing the formation of township insurance companies" may, and is hereby authorized, to receive applications for insurance and issue policies on any farm property situated in any county, in portions of which such company is now authorized to do business.

(1875, c. 83.⁷⁹ § 1, as amended 1877, c. 69, § 1; 1878, c. 36, § 1; G. S. 1878, c. 34, § 338; 1879, c. 26, § 1; Id. c. 40, § 1; Id. c. 50, § 1; 1881, c. 20, § 1; 1883, c. 67, § 1; 1889, c. 216, § 1.⁸⁰)

See *Soli v. Farmers' Mut. Ins. Co.*, 51 Minn. 24, 52 N. W. Rep. 979; *Delaware Farmers' Mut. Fire Ins. Co. v. Wagner* (Minn.) 57 N. W. Rep. 656.

§ 3232. Amendment of articles.

Any insurance company heretofore or hereafter organized under Chapter eighty-three of the General Laws of one thousand eight hundred and seventy-five, entitled "An act authorizing the formation of town insurance companies," may at any regular annual meeting of its members, or at any special meeting after thirty days' notice to all members, by a majority vote of those present, amend its articles of association so as to include in its organization other adjoining towns 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 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;⁸¹ G. S. 1878, v. 2, c. 34, § 354a; as amended 1891, c. 98, § 1.)

§ 3233. Amendment of articles, when.

Any town insurance company heretofore or hereafter organized 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 adjacent and adjoining towns without regard to the county in which such towns are situated, and not exceeding six towns in any county other than that in which such company has its place of business.

(1891, c. 14, § 1.⁸²)

⁷⁹An act authorizing the formation of town insurance companies. Approved March 9, 1875.

⁸⁰§ 2 repeals all inconsistent acts.

⁸¹An act relating to town insurance companies. Approved March 3, 1881.

⁸²An act to allow town insurance companies to enlarge territory and their operations, and to legalize amendments to their articles of incorporation extending their territory. Approved April 21, 1891.

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§ 3234. Same—Legalized, when.

Any town insurance company which has heretofore attempted to amend its articles of incorporation by adding towns in a county other than that in which such company's place of business is situated shall be deemed and considered to have added such territory under the terms of this act to all intents and purposes as fully as though such action had been taken subsequent to the passage of this act; and such attempted enlargement of territory is hereby in all things legalized, and such company is authorized to do business in such additional towns.

(Id. § 2.)

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§ 3235. Directors and officers.

Every company so formed shall choose of their number not less than five nor more than nine directors to manage the affairs of such company, who shall hold their office for one year, and until others are elected; and such directors shall choose one of their number president, and one secretary.

(1875, c. 83, § 2; G. S. 1878, c. 34, § 339.)

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§ 3236. Directors to file articles, by-laws, etc.—To keep record, etc.

The directors of such company shall file their articles of association, together with a copy of their by-laws and the names of the officers of such company, in the clerk's office of the town in which the office of such company is located, and shall keep a record of their proceedings in a book to be kept for that purpose, together with the names of all persons insured, and the amount each person is insured, which record shall be kept open for the inspection of all the members of such company, from the hours of 9 o'clock a. m. to 4 o'clock p. m. of each secular day, the established holidays excepted.

(1875, c. 83, § 3; G. S. 1878, c. 34, § 340.)

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§ 3237. Issue of policies against loss by fire or lightning.

The directors of each company may issue such policies, signed by the president and secretary, agreeing in the name of the company to pay all losses or damages which may be sustained by fire or lightning, for a term not exceeding five years, by the holders of such policies, and not exceeding the sum named in such policy.

(1875, c. 83, § 4; G. S. 1878, c. 34, § 341.)

§ 3238. Undertaking for payment of losses—Cash premiums.

Every person so insured shall give his undertaking, bearing even date with the policy so issued to him, binding himself, his heirs and assigns, to pay his pro rata share to the company of all losses or damages by fire or lightning, which may be sustained by any member thereof; and every such undertaking shall, within five days after the execution thereof, be filed in the office of secretary of such company, and shall remain on file in such office except when required to be produced in court as evidence. He shall also, at the time of effecting such insurance, pay such percentage in cash, and such reasonable sum for a policy, as may be required by the rules or by-laws of the company.

(1875, c. 83, § 5; G. S. 1878, c. 34, § 342.)

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§ 3239. Proceedings in case of loss.

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 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. Provided, That in cases where the claim for loss so presented does not exceed the sum of one hundred dollars, no meeting of directors nor appointment of committee shall be requisite, but the amount of such loss may be ascertained by the president, secretary or treasurer, or two of them, with the same right of appeal as hereinbefore provided for.

(1875, c. 83, § 6; G. S. 1878, c. 34, § 343; as amended 1887, c. 79; 1891, c. 95, § 1.)

Amendment of 1891 amends Laws 1875, c. 83, § 6, without referring to the amendment of 1887.

§ 3240. Classification of property insured—Assessment.

The companies formed under the provisions of this act may classify the property insured, at the time of issuing policies thereon, under different rates, corresponding as nearly as may be to the greater or less risk from fire and loss which may attach to each several buildings or personal property insured. Whenever the amount of any loss shall be ascertained which exceeds in amount the cash funds of the company, the president shall convene the directors of said company, who shall make an assessment upon all property insured to the amount for which each several piece of property insured in such company shall pay to cover all unpaid losses, taken in connection with the rate of premium under which it may have been classified.

(1875, c. 83, § 7; G. S. 1878, c. 34, § 344.)

§ 3241. Duty of secretary in collecting assessments.

It shall be the duty of the secretary, whenever such assessment shall have been completed, to immediately notify every person composing such company, by letter sent to his usual post-office address, of the amount of such loss, and the sum due from him as his share thereof, and of the time when and to whom such payment is to be made; but such time shall not be less than sixty nor more than ninety days from the date of such notice; and every person designated to receive such money may demand and receive two per cent., in addition to the amount due on such assessment as aforesaid, for his fees in receiving and paying over the same.

(1875, c. 83, § 8; G. S. 1878, c. 34, § 345.)

§ 3242. Actions for neglect to pay assessments, etc.

Suits at law may be brought against any member of such company who shall refuse or neglect to pay any assessment made upon them by the provisions of this act; and the directors of any company so formed, who shall wilfully neglect or refuse to perform the duties imposed upon them by the foregoing sections of this act, shall be liable in their individual capacity to the person sustaining such loss.

(1875, c. 83, § 9; G. S. 1878, c. 34, § 346.)

§ 3243. 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, churches and school houses; nor shall they insure any prop-

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erty 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; G. S. 1878, c. 34, § 347; as amended 1885, cc. 67, 84; 1889, c. 219, § 1.)

Sec. § 3234.

A company organized under §§ 3231, 3243, has no power to insure growing grain of one of its members against loss by hail. Delaware Farmers' Mut. Fire Ins. Co. v. Wagner (Minn.) 57 N. W. Rep. 656.

§ 3244. Directors, how chosen.

The directors of such company so formed shall be chosen by ballot, at the annual meeting thereof, which shall be held on the first Tuesday of January in each year, unless otherwise determined by a majority of the voters in such company, and every person insured shall have one vote; but no person shall be allowed to vote by proxy at such election, excepting a woman.

(1875, c. 83, § 11; G. S. 1878, c. 34, § 348; as amended 1889, c. 215, § 1.)

§ 3245. 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; G. S. 1878, c. 34, § 349; as amended 1885, c. 45.)

§ 3246. Right of withdrawal—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; G. S. 1878, c. 34, § 350; as amended 1881, c. 29, § 1.)

§ 3247. Non-resident members.

Non-residents of any town in this state, owning property therein, may become members of any company founded under this act, and shall be entitled to all rights and privileges appertaining thereto, except that it shall not be lawful for such non-resident to become a director of said company, unless he be at the time of such membership a resident of a town adjoining the town or towns in which said company has been formed under the provisions of this act.

(1875, c. 83, § 14; G. S. 1878, c. 34, § 351.)

§ 3248. By-laws—Pay of officers.

The company so formed may adopt such by-laws for its regulations as are not inconsistent with the provisions of this act, and may therein prescribe the compensation of its officers.

(1875, c. 83, § 15; G. S. 1878, c. 34, § 352.)

§ 3249. Duration of company.

No company formed under this act shall continue for a longer term than thirty years.

(1875, c. 83, § 16; G. S. 1878, c. 34, § 353.)

§ 3250. Provisions of general insurance law applicable.

Any company organizing under the foregoing provisions to do a farm business only, may do such business by complying with the provisions of title three of the general reciprocal insurance laws of this state, so far as the same are applicable, but shall be exempt from complying with section twenty-eight, title three, of the same.

(1875, c. 83, § 17; G. S. 1878, c. 34, § 354.)

(7) MILLERS' AND MANUFACTURERS' MUTUAL INSURANCE COMPANIES.

§ 3251. Formation—Purposes.

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; ⁸³ G. S. 1878, v. 2, c. 34, § 354b.)

See In re Minneapolis Mut. Fire Ins. Co., 49 Minn. 291, 51 N. W. Rep. 921.

§ 3252. 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.

(1881, c. 91, § 2; G. S. 1878, v. 2, c. 34, § 354c.)

§ 3253. 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.

(1881, c. 91, § 3; G. S. 1878, v. 2, c. 34, § 354d.)

§ 3254. Application of § 2595.

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.

(1881, c. 91, § 4; G. S. 1878, v. 2, c. 34, § 354e.)

§ 3255. 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

⁸³An 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 appraisalment 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; G. S. 1878, v. 2, c. 34, § 354f.)

§ 3256. 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.

(1881, c. 91, § 7; G. S. 1878, v. 2, c. 34, § 354g.)

§ 3257. Prerequisites to commencing bus ness.

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.

(1881, c. 91, § 8; G. S. 1878, v. 2, c. 34, § 354h.)

§ 3258. 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.

(1881, c. 91, § 9; G. S. 1878, v. 2, c. 34, § 354i.)

§ 3259. 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.

(1881, c. 91, § 10; G. S. 1878, v. 2, c. 34, § 354j.)

§ 3260. 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.

(1881, c. 91, § 11; G. S. 1878, v. 2, c. 34, § 354k.)

§ 3261. Membership—Premiums—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 days 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.

(1881, c. 91, § 12; G. S. 1878, v. 2, c. 34, § 354l.)

As to the effect of an adjudication of the insolvency of such a corporation on outstanding policies. *Taylor v. North Star Mut. Ins. Co.*, 46 Minn. 198, 48 N. W. Rep. 772.

See *In re Minneapolis Mut. Fire Ins. Co.*, 49 Minn. 291, 51 N. W. Rep. 921; *St. Paul Trust Co. v. Wampach Manuf'g Co.*, 50 Minn. 93, 52 N. W. Rep. 274.

§ 3262. 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.

(1881, c. 91, § 13; G. S. 1878, v. 2, c. 34, § 354m.)

§ 3263. 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.

(1881, c. 91, § 14; G. S. 1878, v. 2, c. 34, § 354n.)

§ 3264. 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; ⁸⁴ G. S. 1878, v. 2, c. 34, § 354o.)

A policy in the form provided in this section is a contract of simple (not mutual) insurance. Upon the termination of the policy by insolvency proceedings, the right of the holder to a repayment of the unearned premium is not inferior to that of other policy holders who have suffered loss. In re Minneapolis Mut. Fire Ins. Co., 49 Minn. 291, 51 N. W. Rep. 921.

(8) FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

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§ 3265. Formation.

That it shall be lawful for any number of persons, not less than twenty-five, residing in this state, 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 or lightning, which corporation shall have perpetual succession, 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; Provided, however, That nothing herein contained shall be construed as amending, repealing or in anywise affecting the existing statutes for the incorporation or operation of county or township farmer fire insurance companies.

(1891, c. 13, § 1.85)

§ 3266. Articles of incorporation.

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 its principal office or headquarters.

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 commencement and the period of 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.)

§ 3267. Same—Filing for record.

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.)

⁸⁴ An act relating to millers' and manufacturers' mutual insurance companies. Approved February 28, 1885.

⁸⁵ An act authorizing the formation of farmers' mutual fire insurance companies. Approved April 20, 1891.

§ 3268. Same—Duty of secretary and attorney general—Evidence.

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 endorse 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 copy of such records shall be received in all 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.)

§ 3269. Becomes a corporation, when.

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 fire or lightning in such manner and upon such terms as in and by its by-laws may be provided.

(Id. § 5.)

§ 3270. 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 office 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.)

§ 3271. 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.)

§ 3272. Policies.

Such corporation is authorized to issue policies of insurance, signed by its president and secretary, agreeing to pay the person assured thereby all loss and damage to the property insured which he may sustain by fire or lightning, for a period of not more than five years and not exceeding in amount the sum specified in such policy.

(Id. § 8.)

§ 3273. Policy holders to be members—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 fire or lightning sustained by any other member and also for his pro rata

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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.)

§ 3274. By-laws—Regulations concerning insurance—Annual report to commissioner.

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 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 issued 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. Provided, however, that any company organized under the provisions of this act shall be and is hereby placed under the supervision of the state commissioner of insurance, to whom the secretary of the company shall make annual reports, setting forth the business and doings of said company.

(Id. § 10, as amended 1893, c. 127, § 1.)

See § 283.

§ 3275. Withdrawal, etc., 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.

(1891, c. 13, § 11.)

§ 3276. Annual statement to members.

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 number of policies and to whom issued and the amounts insured thereby, the number of assessments made during the year, and the amount paid in upon each assessment; 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 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.)

§ 3277. Duration of company.

No corporation formed under this act shall continue for a longer period than thirty years.

(Id. § 13.)

§ 3278. Insurable property.

No corporation formed under this act shall insure any property outside 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 in the stack, bin, crib or granary, and all farm machinery and utensils, including wagons and carriages, upon such premises; nor shall it insure any property whatever in any incorporated city or village, unless entirely detached and used for farm purposes only.

(Id. § 14.)

§ 3279. Examination of books and papers.

All the books, papers and files of such corporation shall at all times be open to the examination of any member thereof, or his agent or attorney;

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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.)

§ 3280. Amendment of articles.

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.)

(9) LIFE INSURANCE COMPANIES.⁸⁶

§ 3281. Capital required of life companies.

No life-insurance company shall be organized or do business in this state, unless it has at least one hundred thousand dollars, capital or assets, invested as provided in this act.

(1872, c. 1, tit. 5, § 1; G. S. 1878, c. 34, § 355.)

§ 3282. Securities required to be on deposit.

No life-insurance company of this state shall do business in this state or elsewhere, and no other life-insurance company, except as provided in section 13 of this title, shall do business in this state, unless it has on deposit with the insurance commissioner or other financial officer of this state, as security for all its policy-holders, stocks or bonds of this state or of the United States to an amount the actual market value of which, exclusive of interest, shall never be less than one hundred thousand dollars, which stock or bonds shall be retained by the commissioner or other designated officer, and disposed of as directed by law: provided, however, that personal obligations, secured by first mortgages on real estate within this state, worth, exclusive of all buildings, at least double the amount of the lien, and bearing an interest of not less than six per cent. per annum, may be received by the said financial officer of this state, instead of bonds or stocks, to the amount of not exceeding fifty thousand dollars.

(1872, c. 1, tit. 5, § 2; G. S. 1878, c. 34, § 356.)

§ 3283. Deposit to be held while liability exists.

As long as any policies of the depositing company remain in force, the insurance commissioner shall hold the deposit mentioned in the last section as security for all holders of its policies.

(1872, c. 1, tit. 5, § 3; G. S. 1878, c. 34, § 357.)

§ 3284. Certificate from another commissioner to be in lieu of deposit.

Any life-insurance company of any other state of the United States in which the provisions of law contained in this act shall be in force, may file with the insurance commissioner of this state a certificate of the insurance commissioner of such other state, that, as such officer, he holds in trust and on deposit, for the benefit of all the policy-holders of such company, the deposit above described, stating the items of the securities so held; and that he is satisfied that such securities are worth one hundred thousand dollars. No deposit shall be required in this state while the said deposit so certified remains.

(1872, c. 1, tit. 5, § 4; G. S. 1878, c. 34, § 358.)

§ 3285. Surrender of securities to company.

When any life-insurance company, doing business in this state, desires to relinquish its business, the insurance commissioner shall, on its application, under the oath of the president or vice-president, and secretary or actuary,

⁸⁶ Police department relief associations and fire department associations of this state not subject to the laws relating to life insurance companies. See § 5313. Corporations authorized by charter to guarantee fidelity of persons holding places of public or private trust are subject to provisions of §§ 3281-3284, inclusive. See § 5947.

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give notice of such intention in a public newspaper, published at the state capital, at least twice a week for six months; and after such publication, he shall deliver up to such company, or its assigns, any securities held by him belonging to it, on being satisfied by the exhibition of its books and papers, and on examination, by himself or a person appointed by him, and upon the oath of the president or vice-president, and the secretary or actuary of the same, that all liabilities due or to become due, on any agreement made with any citizens of the United States, are paid and extinguished. And the commissioner may also, from time to time, deliver up to such company, or its assigns, any part of said securities, on being satisfied by any other competent proof that all liabilities, due or to become due on any agreement made by it, are less than one-half the amount of the securities he still retains. Any foreign life-insurance company, having made such publication, may, in the discretion of the insurance commissioner, withdraw one-half of its deposit of one hundred thousand dollars, on registering, according to the provisions of law for registered policies, all its outstanding policies issued to citizens or residents of the United States, and covenanting to maintain unimpaired the reinsurance deposit for such registered policies at all future times, and especially pledging for their security all future premiums payable on American policies.

(1872, c. 1, tit. 5, § 5; G. S. 1878, c. 34, § 359.)

§ 3286. Provision for additional securities.

Any life-insurance company of this state may, at any time, assign to the insurance commissioner securities such as are described in section two, to the amount of twenty-five thousand dollars, or more, in addition to the deposits required by that section, to be held by him in trust for the benefit of all holders of its policies and bonds registered under section seven, and not to be transferred by him without the written application of the company, or its receiver duly appointed, and for the purpose of paying such holders.

(1872, c. 1, tit. 5, § 6; G. S. 1878, c. 34, § 360.)

§ 3287. Registration, etc., of policies and annuity bonds.

Upon being furnished by the depositing company with policies and annuity bonds, consecutively numbered, executed by the company in duplicate, each bearing the words, "The present net value of this policy is secured by pledge of public stocks or bonds and mortgages," and of such denominations and amounts as the company may require, within the limits prescribed by section six, the commissioner shall register the same in books provided for the purpose, and countersign, seal, and deliver to the company the originals, and file the duplicates. Mutilated registered policies and annuity bonds, issued to a company, shall be received back by the commissioner, and others delivered in lieu thereof, of like tenor and date; and in case of lost policies or bonds, he shall furnish certified copies of the duplicates on file.

(1872, c. 1, tit. 5, § 7; G. S. 1878, c. 34, § 361.)

§ 3288. Same—Renewal receipts and cancellation, how regulated.

Receipts for renewal premiums on registered policies must be countersigned or stamped by the insurance commissioner, and no policies shall be marked off or cancelled on the books of a registering company, except those the renewal receipts for which are returned to the commissioner, or other proof satisfactory to the commissioner is furnished, that they have not been taken, or have ceased to be in force.

(1872, c. 1, tit. 5, § 8; G. S. 1878, c. 34, § 362.)

§ 3289. Valuation of policies—Withdrawal of securities.

The commissioner shall value the policies and annuity bonds chartered under the last section, according to the rules prescribed by section 3, title 2, and in no case shall the aggregate amount of the net value of said policies and bonds issued to any company exceed the value of the securities he holds by its transfer, as provided in section 2, title 5. He may, upon satisfactory proof presented in writing and filed with him, that the securities so held by him exceed the net present value of outstanding registered policies and an-

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nuity bonds issued to the depositing company, allow it to withdraw the excess.

(1872, c. 1, tit. 5, § 9; G. S. 1878, c. 34, § 363.)

§ 3290. No liability on part of state.

Nothing in this act shall be construed as implying any obligation on the part of the state to pay policies or annuity bonds of companies, except as to the net value thereof by a proper application of the securities deposited or transferred to the objects declared by the act.

(1872, c. 1, tit. 5, § 10; G. S. 1878, c. 34, § 364.)

§ 3291. Dividends on deposited securities.

So long as any deposit required by this article is kept good, and the depositing company is solvent, the commissioner may permit the company to collect the interest or dividends on its securities so deposited, and from time to time to withdraw any such securities, on depositing with him others of equal value and like character.

(1872, c. 1, tit. 5, § 11; G. S. 1878, c. 34, § 365.)

§ 3292. Companies organized under act of congress.

Any life-insurance company, organized under a law of congress, shall elect one state in which its policies shall be valued; and the certificate of the proper officer of such state that such has been done, shall be received by the commissioner of this state as of the same force and effect as if such company had been organized under the laws of such state. And such company shall comply with the law of the state so selected as regards the deposit required to be made therein for the protection of policy-holders; and the certificate of the commissioner of such state that said deposit has been duly made, shall be received by the commissioner of this state as of the same effect as if said company had been organized under the laws of the state so selected.

(1872, c. 1, tit. 5, § 12; G. S. 1878, c. 34, § 366.)

§ 3293. Exemption of mutual life companies.

Life-insurance companies doing business exclusively on the mutual plan, are hereby exempted from the provisions of sections one and two of this title, and may do business in this state, provided they have on hand, exclusive of all debts and liabilities, the net value of all their policies in force, calculated as provided in subdivision four of section three of title two of this act, subject, however, to all other regulations and provisions of this act.

(1872, c. 1, tit. 5, § 13; G. S. 1878, c. 34, § 367.)

§ 3294. Certain secret societies exempted from general life-insurance laws.

That all associations or secret orders, such as Masons, Odd Fellows, Druids, Knights of Pythias, Ancient Order of United Workmen, firemen, and other benevolent or fraternal co-operative societies, associated or incorporated for the sole purpose of mutual protection and relief of its members, and for the payment of stipulated sums of money to the families of deceased members, are hereby declared not to be life-insurance companies in the sense and meaning of the general life-insurance laws of the state, and they are and shall be henceforth exempt from the provisions of said general insurance law.

(1877, c. 128, § 1; G. S. 1878, c. 34, § 368.)

A corporation organized for the purpose of life insurance on the co-operative or assessment plan is an association of the character of those mentioned in this section, and its funds are exempt from execution to the same extent. *Brown v. Balfour*, 46 Minn. 68, 48 N. W. Rep. 604.

See *Walter v. Hensel*, 42 Minn. 204, 207, 44 N. W. Rep. 57.

§ 3295. Fund exempt from legal process.

When any benevolent association or society, similar to those enumerated in section one of this act, set apart or appropriate a beneficiary fund to be paid over to the families of deceased, or to any member of said families, any such fund, not exceeding the sum of five thousand dollars, so provided and set apart, according to the rules, regulations or by-laws of said association

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or society, to the family of any deceased member, or to any member of said family, shall be exempt from execution, and shall under no circumstances be liable to be seized, taken or appropriated by any legal or equitable process, to pay any debt of such deceased member.

(1877, c. 128, § 2; G. S. 1878, c. 34, § 369.)

Extent of the exemption. *Brown v. Balfour*, 46 Minn. 68, 48 N. W. Rep. 604.

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(10) CO-OPERATIVE LIFE, ENDOWMENT, AND CASUALTY INSURANCE ASSOCIATIONS.⁸⁷

§ 3296. Formation.

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; G. S. 1878, v. 2, c. 34, § 369a.)

Applicable to associations whose attempted incorporation under prior statutes was unauthorized and ineffectual. *State v. Steele*, 37 Minn. 428, 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.

See *State v. Federal Inv. Co.*, cited in note to § 3300; *Gray v. Merriman* (Minn.) 57 N. W. Rep. 463.

§ 3297. 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.

(1885, c. 184, § 2; G. S. 1878, v. 2, c. 34, § 369b.)

Articles signed by but two persons held not good as original articles. *State v. Critchett*, 37 Minn. 13, 32 N. W. Rep. 737.

§ 3298. 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 conform-

⁸⁷ 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.

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able 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 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.

(1885, c. 184, § 3; G. S. 1878, v. 2, c. 34, § 369c.)

§ 3299. 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.

(1885, c. 184, § 4; G. S. 1878, v. 2, c. 34, § 369d.)

§ 3300. What associations are 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.

(1885, c. 184, § 5; G. S. 1878, v. 2, c. 34, § 369e.)

A corporation held not to be a life, endowment, or casualty insurance company, and hence not subject to this act (Laws 1885, c. 184). *State v. Federal Inv. Co.*, 48 Minn. 110, 50 N. W. Rep. 1028.

See *Brown v. Balfour*, 46 Minn. 68, 69, 48 N. W. Rep. 604; *State v. Educational Endowment Ass'n*, 49 Minn. 158, 51 N. W. Rep. 908.

§ 3301. 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,

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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; G. S. 1878, v. 2, c. 34, § 369f.)

See *Brown v. Balfour*, 46 Minn. 68, 69, 48 N. W. Rep. 604; *State v. Educational Endowment Ass'n*, 49 Minn. 158, 51 N. W. Rep. 908.

§ 3302. 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?

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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.

(1885, c. 184, § 7; G. S. 1878, v. 2, c. 34, § 369g.)

* But see § 283.

See State v. Educational Endowment Ass'n, 49 Minn. 153, 51 N. W. Rep. 908.

§ 3303. **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 no-

tice, to comply with those requirements, shall be liable to punishment as hereinafter provided.

(1885, c. 184, § 8; G. S. 1878, v. 2, c. 34, § 369h.)

§ 3304. 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; G. S. 1878, v. 2, c. 34, § 369i.)

§ 3305. 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 depart-

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ment 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.

(1885, c. 184, § 10; G. S. 1878, v. 2, c. 34, § 369j.)

§ 3306. 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 contained 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.

(1885, c. 184, § 11; G. S. 1878, v. 2, c. 34, § 369k.)

This section applies to associations whose attempted incorporation under prior statutes had been unauthorized and ineffectual. *State v. Steele*, 37 Minn. 428, 34 N. W. Rep. 903.

§ 3307. 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.

(1885, c. 184, § 12; G. S. 1878, v. 2, c. 34, § 369l.)

A corporation organized under this act may also be proceeded against in manner provided by § 5900. *State v. Educational Endowment Ass'n*, 49 Minn. 158, 51 N. W. Rep. 908; *State v. Knights of Aurora*, 49 Minn. 165, 51 N. W. Rep. 909.

§ 3308. 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.

(1885, c. 184, § 13; G. S. 1878, v. 2, c. 34, § 369m.)

See, also, § 3150.

§ 3309. Same—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.

(1885, c. 184, § 14; G. S. 1878, v. 2, c. 34, § 369n.)

§ 3310. Annual meeting—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; G. S. 1878, v. 2, c. 34, § 369o.)

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§ 3311. 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.

(1885, c. 184, § 16; G. S. 1878, v. 2, c. 34, § 369p.)

3311
76-NW 270
3311
73-M - 487

§ 3312. 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.

(1885, c. 184, § 17; G. S. 1878, v. 2, c. 34, § 369q.)

See *Brown v. Balfour*, 46 Minn. 68, 71, 48 N. W. Rep. 604.

3312
61-NW 456
63-NW 263
63-NW 627
3312
59-M - 418
61-M - 107
61-M - 217
67-NW 994

§ 3313. 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.

(1885, c. 184, § 18; G. S. 1878, v. 2, c. 34, § 369r.)

3312
65-M - 187

§ 3314. 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.

(1885, c. 184, § 19; G. S. 1878, v. 2, c. 34, § 369s.)

3314
99 - 113
99 - 344

§ 3315. 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.

(1885, c. 184, § 20; G. S. 1878, v. 2, c. 34, § 369t.)

§ 3316. 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.

(1885, c. 184, § 21; G. S. 1878, v. 2, c. 34, § 369u.)

(11) LIVE STOCK INSURANCE COMPANIES ORGANIZED IN OTHER STATES.

§ 3317. Such companies may transact business, when.

Corporations organized under the laws of other states of the United States for the purpose of insuring live stock against death by accident, disease or otherwise, may be permitted to transact such business in the state of Minnesota upon compliance with the provisions herein contained, and not otherwise.

(1891, c. 15, § 1.88)

§ 3318. Same—Capital required.

Such corporations shall have a capital stock of one hundred thousand dollars, actually paid up in cash, which they may invest in such securities as fire insurance companies may be permitted to hold,* including mortgages upon real estate in the state where the said corporations are organized, or in the state of Minnesota, which real estate shall be worth at least twice the amount of the sum secured by mortgage thereon. Such corporations shall also comply with the act of the legislature of the state of Minnesota entitled "An act requiring the payment of fees into the state treasury by corporations upon filing articles of association or increase of capital stock," approved April twenty-four, one thousand eight hundred and eighty-nine.†

(Id. § 2.)

* See §§ 3165, 3211.

† See §§ 3301-3393.

§ 3319. Same—Certificate of compliance with foreign law.

Such insurance companies shall also file with the insurance department of this state a certificate from the insurance department of the state where the company is organized, certifying that it has fully complied with the laws of such state and is authorized to engage in the business of live stock insurance therein.

(1891, c. 15, § 3.)

⁸⁸ An act to authorize live stock insurance companies organized under the laws of other states to do business in Minnesota, and defining the terms and conditions thereof. Approved April 20, 1891.

Tit. 6] LIVE STOCK INSURANCE COMPANIES, ETC. §§ 3320-3325.

§ 3320. Same—Certificate concerning capital.

Such insurance companies shall also file with the insurance department of this state a certificate of the insurance department of the state where said company is organized and doing business, certifying that it has a paid-up capital stock of one hundred thousand dollars, and stating how the same is invested, and attaching a schedule of the securities in which it is invested.

(Id. § 4.)

§ 3321. Same—Annual report—Powers of commissioner.

Such insurance companies shall also file with the insurance department of this state a certified copy of the last annual report filed by it with the insurance department of the state in which it is organized, and such insurance companies shall thereafter annually, on or before the first day of March in each year,* file with the insurance commissioner of this state a certified copy of the annual report filed by it in the insurance department of the state where said corporation is organized for the last preceding year; and the said insurance commissioner of this state is authorized to require such other statements in such form and at such times as he may prescribe; and he may examine or authorize some person to examine such company, if not satisfied of the correctness of the reports and statements hereinbefore referred to.

(Id. § 5.)

* See § 283.

§ 3322. Same—Stipulation—Service of process.

Such company shall also file a written stipulation, duly authenticated by the company, stipulating and agreeing that any legal process affecting such company, served on the insurance commissioner, shall have the same effect as if personally served on the company or its authorized agent.

(1891, c. 15, § 6.)

See, also, § 3158.

§ 3323. Same—License to company—Certificate to agents.

Upon compliance with the foregoing provisions, the insurance commissioner of this state shall issue to such insurance company a license permitting it to do business in the state of Minnesota subject to the provisions of this statute and to such other provisions as have been or may be hereafter enacted by the legislature of the state of Minnesota for the government and regulation of such insurance companies; and the said insurance commissioner shall also issue a certificate to such person or persons as may be designated as agents of said company, and he shall charge and receive such fees for such license and certificates of authority to agents as he is now entitled to receive under existing laws from fire insurance companies organized under laws of other states and permitted to do business in this state.

(1891, c. 15, § 7.)

§ 3324. Impairment of capital stock.

In case the insurance commissioner shall at any time find the capital stock of any such insurance company impaired to the extent of ten per cent, he shall immediately give notice to such company to make good its whole capital stock within sixty days; and if this is not done, he shall require the company to cease to do new business within the state, and shall immediately revoke the license permitting it to do business within the state.

(Id. § 8.)

§ 3325. Agents—Certificate—Penalty for violation.

No person shall act as agent in this state for any live stock insurance company not incorporated under the laws of this state in any manner relating to risks, until the company for which he is acting as such agent shall have complied with the provisions of this act, and until he has received from the insurance commissioner a certificate of authority, as provided for in section seven of this act, stating that the requirements of this act have been complied with, a record of which certificate shall be kept in the office of the commissioner, and which certificate can be at any time revoked

by the commissioner. A renewal certificate must be procured and filed within sixty days from the first day of January in each year. Any such person or agent doing or attempting to do business in any way relating to insurance in this state, without such 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.

(Id. § 9.)

(12) MARINE INSURANCE COMPANIES.

§ 3326. **Capital of future marine companies.**

No joint-stock marine-insurance company shall hereafter be organized in this state, unless it has a paid-up capital of at least five hundred thousand dollars.

(1872, c. 1, tit. 6, § 1; G. S. 1878, c. 34, § 370.)

§ 3327. **No deposit required of certain companies.**

No marine-insurance company of any of the states in which the substantial provisions of this act shall be enacted, shall be required to make any deposit in this state.

(1872, c. 1, tit. 6, § 2; G. S. 1878, c. 34, § 371.)

§ 3328. **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; G. S. 1878, c. 34, § 372; as amended 1881, c. 8, § 1.)

§ 3329. **Foreign company may file certificate in lieu of deposit.**

A marine-insurance company of a foreign nation, which has its principal office for the United States in any state in which the substantial provisions of this act shall be enacted, may file with the insurance commissioner of this state a certificate made by the insurance commissioner of such other state, that he holds a deposit made by such company, such as is described in the last section. No deposit shall be required in this state from such company while the deposit so certified remains.

(1872, c. 1, tit. 6, § 4; G. S. 1878, c. 34, § 373.)

§ 3330. **Repeal of former acts—Vested rights saved.**

All acts and parts of acts and laws of this state now in force, inconsistent or in conflict with the several provisions of this act are hereby repealed; but the repeal of such acts and laws shall not in any manner affect, injure or invalidate any vested rights of any insurance company, or any contracts, suits, rights, claims or demands that may have been heretofore duly and lawfully issued, commenced, made, performed, or that may exist, in favor of or against any insurance company or other corporation, partnership, firm or person, under or by virtue or in pursuance of the said laws and acts, or any of them; but the same shall exist, be in force and carried out as fully and effectually, to all intents and purposes, as if this act had not been passed.

(1872, c. 1, tit. 6, § 5; G. S. 1878, c. 34, § 374.)

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Tit. 6] INSURANCE COMPANIES OTHER THAN LIFE, ETC. §§ 3331-3334

(13) INSURANCE COMPANIES OTHER THAN LIFE, FIRE, AND MARINE.

§ 3331. 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; ⁸⁰ G. S. 1878, v. 2, c. 34, § 3741.)

3331

63-M - 177
65-NW 352
69-NW 916

3331-3360
97 - 207

3331-3337
67-M - 246

§ 3332. 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; G. S. 1878, v. 2, c. 34, § 3742.)

3332

68-NW 30
69-NW 916

3332

65-M - 284
67-M - 247

3332

78-M - 214
79-M - 487
80-NW 966

§ 3333. 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; G. S. 1878, v. 2, c. 34, § 3743.)

§ 3334. "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.

(1881, c. 123, § 4; G. S. 1878, v. 2, c. 34, § 3744.)

⁸⁰ An act to authorize and regulate within this state the business of insurance other than life, fire, and marine. Approved March 5, 1881.

§ 3335. **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 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.

(1881, c. 123, § 5; G. S. 1878, v. 2, c. 34, § 374^b.)

§ 3336. **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.

(1881, c. 123, § 6; G. S. 1878, v. 2, c. 34, § 374^b.)

§ 3337. **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. S. c. 22, § 1; G. S. 1878, v. 2, c. 34, § 374^c.)

(14) REAL-ESTATE TITLE INSURANCE COMPANIES.

§ 3338. **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 corpora-

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66-NW 206

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tions 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; ⁹⁰ G. S. 1878, v. 2, c. 34, § 374⁹⁰.)

§ 3339. Same—May act as trust company.

That any corporation heretofore organized under or confirmed by the provisions of chapter one hundred and thirty-five of the general laws of one thousand eight hundred and eighty-seven shall, upon complying with the provisions of chapter one hundred and seven of the general laws of one thousand eight hundred and eighty-three, as amended by chapter three of the general laws of one thousand eight hundred and eighty-five and as amended by chapter seventy-four of the general laws of one thousand eight hundred and eighty-seven, or as the same may be hereafter amended, be subject to the provisions of said laws of one thousand eight hundred and eighty-three, as amended by said laws of one thousand eight hundred and eighty-five and one thousand eight hundred and eighty-seven as aforesaid, or as the same may be hereafter amended, and entitled to all the rights, privileges and franchises thereby conferred.

(1889, c. 227, § 1.91)

§ 2 repeals all inconsistent acts.

§ 3340. Guaranty fund.

Every such corporation shall set apart a sum not less than two-fifths of its capital stock, but in no case less than two hundred thousand dollars, when organized in cities of one hundred and twenty-five thousand or more inhabitants, and when organized in cities containing less than one hundred and twenty-five thousand inhabitants, a sum not less than one-fifth of its capital stock, but in no such case less than one 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 in 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; G. S. 1878, v. 2, c. 34, § 374⁹⁰; as amended 1893, c. 132, § 1.)

§ 3341. 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 state-

* But see § 288.

⁹⁰An act regulating and confirming the formation of real-estate title insurance companies. Approved February 28, 1887.

⁹¹An act to make the provisions of chapter one hundred and seven of the General Laws of eighteen hundred and eighty-three, as amended by chapter three of the General Laws of eighteen hundred and eighty-five and as amended by chapter seventy-four of the General Laws of eighteen hundred and eighty-seven, applicable to corporations, organized under or confirmed by chapter one hundred and thirty-five of the General Laws of eighteen hundred and eighty-seven. Approved March 30, 1889.

ment 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.

(1887, c. 135, § 3; G. S. 1878, v. 2, c. 34, § 374¹⁰.)

§ 3342. Certificate of authority to do business.

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.

(1887, c. 135, § 4; G. S. 1878, v. 2, c. 34, § 374¹¹.)

§ 3343. 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.

(1887, c. 135, § 5, as amended 1887, c. 55; G. S. 1878, v. 2, c. 34, § 374¹².)

(15) COMPANIES FOR MUTUAL INSURANCE AGAINST HAIL, TORNADOES, CYCLONES, ETC.

§ 3344. 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; ⁹²G. S. 1878, v. 2, c. 34, § 374¹³.)

§ 3345. Articles of incorporation.

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

⁹²An act authorizing the formation of companies for mutual insurance against loss and damage by hail, tornadoes, cyclones, and hurricanes. Approved March 2, 1885.

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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.
(1885, c. 186, § 2; G. S. 1878, v. 2, c. 34, § 37414.)

§ 3346. 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 insurance commissioner of the state of Minnesota.

(1885, c. 186, § 3; G. S. 1878, v. 2, c. 34, § 37415; as amended 1893, c. 104, § 1.)

§ 3347. Same—Approval—Certificate of authority.

The insurance commissioner of said state shall before recording such articles examine the same, and if he shall find that they have been executed in conformity to law, he shall indorse thereon the word "Approved," date and sign the same, and he shall thereupon record the same in the records in his office, and shall issue under his hand and official seal and deliver to 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, subject to the provisions of this act. 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 copy of such records shall be received in all 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.

(1885, c. 186, § 4; G. S. 1878, v. 2, c. 34, § 37416; as amended 1893, c. 104, § 2.)

§ 3348. 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 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; G. S. 1878, v. 2, c. 34, § 37417.)

§ 3349. 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.

(1885, c. 186, § 6; G. S. 1878, v. 2, c. 34, § 37418.)

§ 3350. 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.

(1885, c. 186, § 7; G. S. 1878, v. 2, c. 34, § 37419.)

§ 3351. 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.

(1885, c. 186, § 8; G. S. 1878, v. 2, c. 34, § 374²⁰.)

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§ 3352. 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.

(1885, c. 186, § 9; G. S. 1878, v. 2, c. 34, § 374²¹.)

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§ 3353. 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.

(1885, c. 186, § 10; G. S. 1878, v. 2, c. 34, § 374²².)

§ 3354. 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.

(1885, c. 186, § 11; G. S. 1878, v. 2, c. 34, § 374²³.)

§ 3355. 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.

(1885, c. 186, § 12; G. S. 1878, v. 2, c. 34, § 374²⁴.)

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Tit. 7]

PLANK-ROADS AND TURNPIKES.

§§ 3356-3362

§ 3356. Duration of corporation.

No corporation formed under this act shall continue for a longer period than thirty years.

(1885, c. 186, § 13; G. S. 1878, v. 2, c. 34, § 374²⁵.)

§ 3357. Insurable property.

No corporation formed under this act shall insure 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.

(1885, c. 186, § 14; G. S. 1878, v. 2, c. 34, § 374²⁶; as amended 1893, c. 104, § 3.)

§ 3358. Inspection of books and papers.

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.

(1885, c. 186, § 15; G. S. 1878, v. 2, c. 34, § 374²⁷.)

§ 3359. Amendment of articles.

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.

(1885, c. 186, § 16; G. S. 1878, v. 2, c. 34, § 374²⁸.)

§ 3360. Question of solvency—Duty of commissioner.

Whenever the insurance commissioner shall have reason to doubt the solvency of any such corporation, he may, at the expense of such corporation, cause an examination of its books and papers to be made, and if, in his judgment, such examination establishes the fact that such corporation is not financially sound, or is conducting its business fraudulently, he shall institute or cause to be instituted the necessary proceedings under the laws of this state to close up the affairs of such corporation.

(1893, c. 104, § 4.)

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TITLE 7.

PLANK-ROADS AND TURNPIKES [—BRIDGE COMPANIES].

(1) PLANK-ROADS AND TURNPIKES.

§ 3361. Application of sections of title one.

The provisions of section one, two, three and four, sections six to twenty-seven, inclusive, and sections thirty and thirty-two of title one, shall apply to and be observed by corporations and companies organizing under this title.

(G. S. 1866, c. 34, § 126; G. S. 1878, c. 34, § 375.)

G. S. 1866, c. 34, tit. 1, § 32, was repealed by Laws 1869, c. 73, § 3.

§ 3362. Roads, where constructed — Payment for land — Power to hold land.

No plank-road or turnpike company shall lay out or construct their road through any orchard or garden, without the consent of the owner thereof, nor through any buildings or any fixtures or erections used or intended for the purpose of trade or manufactures, or any yards or enclosures necessary to the use or enjoyment thereof, without permission from the owners; and when the said route is determined by the said company, it shall be lawful for them, their officers, agents, engineers, contractors and servants, to enter upon, take possession of, and use such lands to the width of four rods, upon

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their first making payment, at the time and in the manner hereinafter specified, of such compensation as the company may have agreed to pay therefor, or as shall be ascertained in the manner hereinafter directed: provided, that the said corporation shall not, in their corporate capacity, hold, purchase or deal in any lands other than the lands on which the said road shall run, or which may be actually necessary for the construction or maintenance thereof, and of the gates, toll-houses, and other fixtures connected therewith.

(G. S. 1866, c. 34, § 127; G. S. 1878, c. 34, § 376.)

§ 3363. Necessary lands, how acquired—Use of public roads.

Any plank-road or turnpike company legally organized under the provisions of this title may procure, by purchase or gift from the owners thereof, any lands necessary for the construction of this road, or for the erection of gates, toll-houses, and other fixtures; and may also procure, by agreement with the supervisors of the township, and the county commissioners of the county, through or in which such road is to be located, the right to take and use any part of any public highway in such county for the construction of such proposed road, and agree with such commissioners and supervisors upon the amount of compensation and damages to be paid by such company for such highway; every such agreement shall be in writing, and shall be filed in the office of the register of deeds of the county; and such compensation and damages, when paid, shall be expended by the proper officers in improving the highways of the town through or in which such road is located.

(G. S. 1866, c. 34, § 128; G. S. 1878, c. 34, § 377.)

§ 3364. Survey to be made, acknowledged, and recorded.

When any such company has procured all the lands necessary to be used for the construction of its road in any county, and the right to take and use such parts of the public highway in such county as shall be necessary for that purpose, it shall cause an accurate survey of such road to be signed by its president and secretary, and acknowledged by them as conveyances of real estate are required to be acknowledged, and recorded in the office of the register of deeds of such county, and whenever such company has so procured the land, and the right to take and use the parts of public highways necessary to construct its road in any such county, and has caused such survey thereof to be made and recorded, said company may construct so much of its road as shall be intended to be constructed in any such county; and so much of any such road as shall be situated in any county may be embraced in one survey, and recorded as aforesaid.

(G. S. 1866, c. 34, § 129; G. S. 1878, c. 34, § 378.)

§ 3365. Compensation for land occupied, how appraised.

Whenever it is necessary for such company to enter upon and occupy, for the purpose of making said road, any lands, the owners of which refuse to permit such entry or occupation, and such company cannot agree with such owners upon the compensation and damages to be paid for the use of such land, it shall be lawful for the parties to appoint three disinterested persons, residents of the county, to estimate and appraise such compensation and damages; every such appraisement shall be reduced to writing, and signed by the appraisers, or a majority of them, and a duplicate copy thereof shall be furnished to each of the parties; the expense of said appraisement shall be paid by said company.

(G. S. 1866, c. 34, § 130; G. S. 1878, c. 34, § 379.)

§ 3366. Width and construction of plank-roads.

Every plank-road made by virtue of this title shall be laid out at least four rods wide, and shall be so constructed as to make, secure and maintain a smooth and permanent road, the track of which shall be made of timber, plank, or other hard material, so that the same shall form a hard and even surface, and be so constructed as to permit carriages and other vehicles conveniently and easily to pass each other, and also, so as to permit all carriages to pass on and off, where such road is intersected by other roads.

(G. S. 1866, c. 34, § 131; G. S. 1878, c. 34, § 380.)

§ 3367. Width and construction of turnpikes.

Every turnpike road constructed by virtue of this title shall be laid out at least four rods wide, and shall be bedded with stone, gravel, or such other material as may be found on the line thereof, and faced with broken stone or gravel, so as to form a hard and even surface, with good and sufficient ditches on each side whenever the same are practicable; the arch or bed of such road shall be at least eighteen feet wide, and shall be so constructed as to permit carriages and other vehicles conveniently to pass each other, and to pass on and off such turnpike where it may be intersected by other roads.

(G. S. 1866, c. 34, § 132; G. S. 1878, c. 34, § 381.)

§ 3368. Toll-gates on plank-roads—Rates of toll.

Whenever any plank-road company complete their road, or any five consecutive miles thereof, the said company may erect one or more toll-gates upon their road, but not within three miles of each other, and may demand and receive toll not exceeding two cents per mile for any vehicle drawn by two animals; and for any vehicle drawn by more than two animals, one cent per mile for every additional animal; for every vehicle drawn by one animal, one cent per mile; for every score of sheep or swine, and for every score of neat cattle, one cent per mile, and in the same proportion for any greater or less number of cattle, sheep or swine; for every horse and rider, or led horse, three-fourths of a cent per mile.

(G. S. 1866, c. 34, § 133; G. S. 1878, c. 34, § 382.)

§ 3369. Toll-gates on turnpikes—Rates of toll.

Whenever any turnpike-road company completes their road, or any five consecutive miles thereof, the said company may erect one or more toll-gates upon their road, but not within three miles of each other, and may demand and receive toll not exceeding the following rates: For every vehicle drawn by one animal, three-quarters of a cent per mile; for every vehicle drawn by two animals, one and a half cents per mile; for every vehicle drawn by more than two animals, one-quarter cent additional a mile, for every animal more than two; for every score of neat cattle, one cent a mile; for every score of sheep or swine, one-half cent a mile, and in the same proportion for any greater or less number of neat cattle, sheep or swine; for every horse and rider, or horse, one-half cent a mile.

(G. S. 1866, c. 34, § 134; G. S. 1878, c. 34, § 383.)

§ 3370. Persons exempt from paying toll.

No toll shall be collected at any gate of any company incorporated under this title from any person passing to or from public worship, or a funeral, or from any person going for a physician, or returning from such errand, or from any person going to or returning from any court, when legally summoned as a juror or witness, or from any person going to a town meeting or election, at which he is entitled to vote, for the purpose of giving such vote, and returning therefrom; or from farmers going to and from their work on their farms; and no more than half the rate of toll provided for in this title shall be taken from persons living within one mile of the gate at which the toll is taken.

(G. S. 1866, c. 34, § 135; G. S. 1878, c. 34, § 384.)

§ 3371. Location of toll-gate, how changed.

The commissioners of any county in which a toll-gate may be located on any such road, whenever they or a majority of them are of opinion that the location of such gate is unjust to the public interests, by reason of the proximity of diverging roads, or for other reasons, may, by giving at least fifteen days written notice to the president or secretary of said company, apply to the district judge of the county in which such gate is located, for an order to alter or change the location of such gate. The said judge, on such application being made, and on hearing the respective parties, and on viewing the premises, if he deems such view necessary, shall make such order in the matter as to him may seem just and proper; and either party may, within fifteen days thereafter, appeal from such order to the district court of the

county, on giving such security as the district judge shall require; such order, unless appealed from, shall be observed by the respective parties, and may be enforced by attachment or otherwise, as the said court shall direct; and if appealed from, the decision of the district court shall be final in the matter, and the said district court may direct the payment of costs in the premises, as shall be deemed just and equitable.

(G. S. 1866, c. 34, § 136; G. S. 1878, c. 34, § 385.)

§ 3372. Limit of debts—Stockholders liable for excess.

The debts and liabilities of any company formed under this title, shall not exceed in amount, at any one time, fifty per cent. of the amount of its capital actually paid in; and if such debts and liabilities shall at any time exceed such amount, the stockholders who were such at the time any excess of debts or liabilities was created or incurred, shall be, jointly and severally, individually liable for such excess, in addition to their other individual liability, as provided in this title.

(G. S. 1866, c. 34, § 137; G. S. 1878, c. 34, § 386.)

§ 3373. Annual report to secretary of state.

The directors of every company formed under the provisions of this title shall report annually to the secretary of state, under the oath of two such directors, the cost of constructing their road; the amount of all moneys expended; the amount of their capital; how much of the same is paid in, and how much is actually expended; the whole amount of tolls or earnings expended on such road; the amount received during the previous year for tolls, and from all other sources, stating each separately; the amount expended; the amount of dividends made; the amount set apart for repairs; and the amount of indebtedness of such company, specifying the object for which the indebtedness accrued.

(G. S. 1866, c. 34, § 138; G. S. 1878, c. 34, § 387.)

See § 233.

§ 3374. Town supervisors as road inspectors—Powers and duties.

The town supervisors are inspectors of roads within their town; and whenever a complaint in writing to any two supervisors is made, that any part of a plank-road or turnpike in their town is out of repair, they shall without delay view and examine the road complained of; and if they find such complaint to be true, they shall give notice in writing of the defect to the toll-gatherer or person attending the gate nearest to the place out of repair, and may in their discretion order such gate to be thrown open; but such supervisors shall not order such gate to be thrown open unless a notice in writing has been served on the gatekeeper nearest the place out of repair, particularly describing such place, at least three days previous to making such order.

(G. S. 1866, c. 34, § 139; G. S. 1878, c. 34, § 388.)

§ 3375. Order to open gate—Service and effect.

Notice of such order shall be served on such gatekeeper, and immediately thereafter the gate ordered to be thrown open shall be opened; nor shall it again be shut, nor shall any toll be collected thereat, until two supervisors of the town where such road out of repair is located, shall grant a certificate that such road is in sufficient repair, and that such gate ought to be closed.

(G. S. 1866, c. 34, § 140; G. S. 1878, c. 34, § 389.)

§ 3376. Proceedings when road is in two counties.

Whenever any part of such road is out of repair, and the gate nearest to the place out of repair is situated in an adjoining county, any two supervisors of the town in such adjoining county where such gate may be, upon complaint made to them in writing, shall view and examine the road complained of, and proceed thereon as provided in the one hundred and thirty-ninth section of this title, in like manner as if the portion of road complained of was within the precinct where such gate is situated.

(G. S. 1866, c. 34, § 141; G. S. 1878, c. 34, § 390.)

§ 3377. Appeal from refusal to grant certificate.

Whenever any toll-gate is ordered to be thrown open, as herein provided, or whenever such supervisors refuse to grant a certificate that the road complained of is in sufficient repair, the company owning such gate, or the gate-keeper attending the same in their behalf, may appeal from the order or decision of such supervisors to the district judge of the same district where such supervisors reside, by delivering a statement in writing of their order or decision, and of such appeal, verified by affidavit, to such judge; and thereupon such district judge shall forthwith proceed to view and examine the road complained of, and may reverse or confirm the order or decision of such supervisors respecting the same; and if he reverses their order or decision, then such gate may be closed; but if he confirms the same, then such gate shall not be closed until such district judge grants a certificate that such road is in sufficient repair.

(G. S. 1866, c. 34, § 142; G. S. 1878, c. 34, § 391.)

§ 3378. Penalty for not obeying order to open gate.

Every keeper of a gate ordered to be thrown open, who shall not immediately obey such order, or who shall not keep open such gate until a certificate permitting it to be closed shall be granted, or who, during the time such gate ought to be open, shall hinder or delay any person in passing, or take or demand any toll from any person passing, shall, for each offence, forfeit the sum of ten dollars to the party aggrieved.

(G. S. 1866, c. 34, § 143; G. S. 1878, c. 34, § 392.)

§ 3379. Fees of supervisors and district judges.

To each supervisor who shall view a plank or turnpike road, upon complaint made to him, and to each district judge for the like service, shall be allowed the sum of one dollar and fifty cents for each day spent by him in the performance of such duty; and if the road viewed shall be adjudged out of repair, such fees shall be paid by the company to which the road shall belong; otherwise they shall be paid by the party making the complaint.

(G. S. 1866, c. 34, § 144; G. S. 1878, c. 34, § 393.)

§ 3380. By whom such fees are to be paid.

Such fee, when payable by the company, shall be paid by the toll-gatherer nearest that part of the road adjudged out of repair, on demand, and out of the tolls received, or to be received by him, and may be recovered, with costs, of such toll-gatherer, if he neglects or refuses to make such payment.

(G. S. 1866, c. 34, § 145; G. S. 1878, c. 34, § 394.)

§ 3381. Penalty for delaying traveller or taking illegal toll.

Every toll-gatherer who at any such gate shall unreasonably hinder or delay any traveller or passenger, or shall demand and receive from any person more toll than by law he is authorized to collect, shall, for each offence, forfeit the sum of five dollars to the person aggrieved.

(G. S. 1866, c. 34, § 146; G. S. 1878, c. 34, § 395.)

§ 3382. Judgment against toll-gatherer, how collected.

Whenever a judgment is obtained against a toll-gatherer for a penalty, or for damages for acts done or omitted to be done by him in his capacity of toll-gatherer, and goods and chattels of the defendant to satisfy such judgment cannot be found, it shall be paid by the corporation whose officer he shall be; and if, on demand, payment is refused by such corporation, the amount of such judgment may be recovered, with costs, of such corporation.

(G. S. 1866, c. 34, § 147; G. S. 1878, c. 34, § 396.)

§ 3383. Printed list of rates of toll to be posted.

It shall be the duty of the directors of every such company, to affix and keep up, at or over each gate, in a conspicuous place, so as to be conveniently read, a printed list of rates of toll demandable at such gate.

(G. S. 1866, c. 34, § 148; G. S. 1878, c. 34, § 397.)

§ 3384. Persons not paying toll may be detained.

Each toll-gatherer may detain, and prevent from passing through his gate, all persons riding, leading or driving animals or carriages subject to toll, until they have paid respectively the tolls authorized by law.

(G. S. 1866, c. 34, § 149; G. S. 1878, c. 34, § 398.)

§ 3385. Company liable for damages, when.

Any such corporation is liable for all damages that may be sustained by any person in consequence of neglect or omission to keep such road in good condition and repair.

(G. S. 1866, c. 34, § 150; G. S. 1878, c. 34, § 399.)

§ 3386. Penalty for obstructing road.

Whoever wilfully obstructs, breaks, injures or destroys any road constructed under the provisions of this title, or any work, building, fixture or toll-gate attached to or in use upon the same, belonging to said company, shall, for every such offence, be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding one year.

(G. S. 1866, c. 34, § 151; G. S. 1878, c. 34, § 400.)

§ 3387. Penalty for wilfully running gate.

Whoever forcibly or fraudulently passes any toll-gate erected on such road in pursuance of this title, without having paid the legal toll, and whoever shall, with his carriage or horse, or other vehicle or animal liable to toll, turn out of such road, or pass any gate thereon, or ground adjacent thereto, and enter again in such road, to avoid the payment of legal toll, shall, for each offence, be liable to a fine not exceeding ten dollars.

(G. S. 1866, c. 34, § 152; G. S. 1878, c. 34, § 401.)

§ 3388. Effect of failure to construct road.

Every company incorporated under this title shall cease to be a body corporate:

1. If, within two years from the filing of their articles of association, they shall not have commenced the construction of their road, and actually expended thereon at least ten per cent. of the capital stock of such company; and

2. If, within five years from such filing of the articles of association, such road shall not be completed according to the provisions of this title.

(G. S. 1866, c. 34, § 153; G. S. 1878, c. 34, § 402.)

§ 3389. Power of legislature over companies.

All companies formed under this title shall at all times be subject to visitation and examination by the legislature, or by a committee appointed by either house thereof, or by any agent or officer in pursuance of law; and the legislature may at any time establish rules and regulations for the government of any such corporation in relation to such road, the use of the same, and rates of toll to be collected thereon, and may alter, amend or repeal this title, or may annul and disfranchise any corporation formed or created under the same.

(G. S. 1866, c. 34, § 154; G. S. 1878, c. 34, § 403.)

(2) BRIDGE COMPANIES.

§ 3390. Bridge companies.

Corporations for the purpose of erecting and maintaining free or toll bridges over any lake or stream of water in the state, may be formed, and continue to be a corporation, under and subject to the provisions of chapter seventeen, Bissell's statutes, being chapter thirty-four, statutes of eighteen hundred and sixty-six, and acts amendatory thereto.

(1875, c. 108, § 3; G. S. 1878, c. 34, § 108.)

See, also:
Sections

- 1870. Penalty for fast driving on bridges.
- 1916-1917. Driving of cattle, etc., over bridges.
- 1918-1921. Bridges on Minnesota river.

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See § 2793 for penalty for diversion of corporate property, etc.

See, also, as to payment of dividends:

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| Sections | |
| 2793. | Penalty when profits are insufficient. |
| 2823. | By manufacturing companies. |
| 2912. | Or profits on earnings by co-operative associations. |
| 2921. | By corporations other than those for pecuniary profit. |
| 3165. | By any insurance company. |
| 3205, 3225. | By fire insurance companies. |

(1) INCORPORATION AND ORGANIZATION.

§ 3391. State fees.

That no corporation or association, other than those formed for religious, educational, social or charitable purposes, and building and loan societies, and corporations for the manufacture of butter, cheese, or other dairy products, and workmen's co-operative associations, and township mutual fire insurance companies, shall hereafter be created or organized under the laws of this state, unless the persons named as corporators therein, shall, at or before the filing of the articles of association or incorporation pay into the state treasury the sum of fifty dollars for the first fifty thousand dollars, or fraction thereof of the capital stock of such corporation or association, and the further sum of five dollars for every additional ten thousand or fraction thereof of its capital stock.

(1889, c. 225, § 1.03)

This act (Laws 1889, c. 225) applies to an Iowa railway company which accepts the provisions of Laws 1877, c. 14 (supra, § 2751). State v. Sioux City & N. R. Co., 43 Minn. 17, 44 N. W. Rep. 1032.

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62-NW - 333

3391-3429
97 - 165

3391-3486
60-M v 286

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§ 3392. Same—Increase of capital.

No increase of the capital stock of any corporation or association heretofore or hereafter formed, other than those excepted in section one of this act, shall be valid or effectual until such corporation or association shall have paid into the state treasury the sum of five dollars for every ten thousand dollars, or fraction thereof, of such increase in the capital stock of such corporation or association.

(1889, c. 225, § 2.)

See, also:

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| Sections | |
| 2738-2741. | By railroad company. |
| 2820-2821. | Certificate of increase by manufacturing company. |
| 2843. | By annuity, safe-deposit, and trust companies. |
| 2870. | By building, etc., associations doing a general business. |
| 2907. | By co-operative associations. |

§ 3393. Same—Receipt of state treasurer to be filed—Exceptions.

It shall be the duty of every corporation or association hereafter organized, or which shall hereafter increase its capital stock, to file with the secretary of state, at the time of filing the articles of association or instrument evi-

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²An act requiring the payment of fees into the state treasury by corporations, upon filing articles of association, or upon increase of capital stock. Approved April 24, 1889.

dencing such increase, a duplicate receipt of the state treasurer for the payments herein required to be made; which receipt, in duplicate, it is hereby made the duty of such treasurer to furnish. Provided, None of the provisions of this act shall apply to any manufacturing corporation or association whose articles provide that its functions shall be limited to the business of manufacturing and to business essential thereto. Provided further, That none of the provisions shall apply to or in any manner affect corporations which may be organized for the purpose of raising and improving live stock, cultivating and improving farm, garden or horticultural lands, growing sugar beets, or any corporation formed or created for the purpose of canning fruits or vegetables, or the local telephone companies connecting towns or villages of less than two thousand inhabitants each.

(1889, c. 225, § 3, as amended 1891, c. 127, § 1.)

§ 3394. Form of state certificate of incorporation—Evidence.

Whenever any corporation hereafter organized under the general law of this state shall have complied with all the provisions of the general statutes in regard to the filing for record of the articles of incorporation of such corporation and of the requisite affidavit of proof of publication, the secretary of state shall thereupon issue a certificate in the following form:

State of Minnesota—

Be it known, that whereas [here the names of the subscribers to the articles of incorporation shall be inserted], have associated themselves with the intention of forming a corporation under the name of [here the name of the corporation shall be inserted], for the purpose [here the purpose declared in the articles of incorporation shall be inserted], with a capital of [here the amount of capital fixed in the articles of incorporation, shall be inserted], and have complied with statutes of this state in such case made and provided, as appears from the articles of incorporation, and the affidavit of proof of publication filed in this office; now, therefore, I [here the name of the secretary shall be inserted], secretary of the state of Minnesota, do hereby certify that said [here the names of the subscribers to the articles of incorporation shall be inserted], their associates and successors, are legally organized and established as, and are hereby made an existing corporation under the name of [here the name of the incorporation shall be inserted], with the powers, rights and privileges and subject to the limitations, duties and restrictions which by law appertain thereto. Witness my official signature hereunto subscribed and the seal of the state of Minnesota hereunto fixed this — day of — in the year — [in these blanks the day, month and year of execution of this certificate shall be inserted].

The secretary shall sign the same and cause the seal of the state to be thereto affixed, and such certificate shall be prima facie evidence of the existence of such corporation. He shall also cause a record of such certificate to be made, and a certified copy of such record may be given in evidence with the like effect as the original certificate.

(1889, c. 226, § 1.04)

§ 3395. Same—Companies already incorporated.

Whenever any corporation already incorporated under the provisions of said chapter thirty-four shall have complied with the provisions of said chapter thirty-four in regard to the filing for record of the articles of incorporation and of the requisite affidavit of proof of publication, and shall make application for such certificate and shall pay one dollar therefor, the secretary of state shall thereupon issue a certificate in the form prescribed in the preceding section. And such certificate shall have the same force and effect in all respects, and a certified copy thereof the same force and effect, as if such certificate had been issued to a corporation incorporated subsequent

⁹⁴An act amendatory and supplementary to chapter thirty-four of the General Statutes, relating to corporations, and amendatory laws thereto. Approved April 24, 1889.

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to the passage of this act. And the secretary shall keep a record of all such certificates issued.

(Id. § 2.)

§ 3396. Articles—Approval of attorney general unnecessary.

Hereafter it shall not be necessary for the attorney general to endorse any form of approval upon the articles of incorporation of any incorporated company.

(1889, c. 248, § 1.⁹⁵)

See, also, §§ 3064, 3269.

§ 3397. Same—Exception.

This act shall not apply to religious incorporations.

(Id. § 2.)

§ 3398. Companies organized under special act—Directors—Stock.

That the shareholders in any body corporate heretofore chartered, incorporated or organized by or under any special act or acts of the legislature of the state or territory of Minnesota, may by resolution adopted at any regularly called meeting of such shareholders, by a majority vote in number and amount of such shareholders and the shares in said corporation and specifying the exact nature of the change intended, alter the number of the members of the board of directors of said body corporate (whether by increasing or diminishing the same) to any number so designated, not less than three or more than fifteen, or may, in like manner, increase or diminish the amount of the capital stock in said body corporate or the number of shares of stock therein, or may in like manner establish one hundred dollars as the par value of shares of stock in said body corporate and provide for the conversion of outstanding shares of said body corporate into shares thereof of the par value of one hundred dollars.

(1893, c. 43, § 1.⁹⁶)

§ 3399. Same—Certificate—Record, etc.

That any body corporate adopting any such resolution shall cause to be prepared a certificate setting forth such resolution in full and stating the time when the same was adopted, 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 shall be filed, published and recorded in the same manner provided in and by title one of chapter thirty-four of the general statutes of one thousand eight hundred and seventy-eight for the filing, recording and publication of articles of incorporation of corporations organized under the provisions of that chapter and title; and thereupon the change so resolved upon shall become effectual and said resolution shall be of the same force and effect as if the provision therein contained had been a part of the original act of incorporation of said body politic.

(Id. § 2.)

§ 3400. Amendments of article—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

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01 - 84
01 - 207
72-M - 275

⁹⁵An act relating to the duty of the attorney general respecting incorporations. Approved April 24, 1889.

⁹⁶An act to enable corporations incorporated by or under special acts of the legislature of Minnesota to alter their powers and organizations in certain respects. Approved March 11, 1893.

publishing such resolution in the manner provided for filing and publishing its original articles.

(1885, c. 155; ⁹⁷ G. S. 1878, v. 2, c. 34, § 421k.)

See, also, as to amendment of articles:

Sections

- 2595. Of companies under title 1.
- 2803-2804. Of companies under title 2.
- 2807-2820. Of manufacturing companies.
- 2829. Of mining companies.
- 2870-2871. Of building, etc., associations doing a general business.
- 2917-2918. Of associations under title 3.
- 2919. Of benevolent, charitable, or missionary society authorizing another society to elect directors, etc.
- 2950-2951. Camp-meeting associations, etc.
- 2984. Of chambers of commerce and boards of trade,
- 3065-3066. Of diocesan council, presbytery, etc.
- 3076-3077. Of any religious corporation.
- 3232-3234. Of town insurance companies.
- 3250. Of farmers' mutual fire insurance companies.
- 3359. Of companies for mutual insurance against hail, etc.

See, also, as to term of corporate existence:

Sections

- 2596. Of corporations under title 1.
- 3249. Of town insurance companies.
- 3277. Of farmers' mutual fire insurance companies.

See, also, as to extension of term of corporate existence:

Section

- 2826. Of manufacturing companies.

§ 3401. Same—Legalized in certain cases.

That in any case where a corporation created by the laws of this state shall, within the period of its corporate existence as originally defined, have heretofore initiated proceedings authorized by law for the extension of its corporate existence, and said proceedings have been regularly taken and consummated, except that the original period of corporate existence had expired prior to the making of the newspaper publication of the resolution or amendatory articles in that behalf required by law, the said proceedings are hereby legalized, and declared as valid as though such publication had been made before the original corporate term had expired.

(1893, c. 49, § 1.93)

As to jurisdiction of district court over officers, see § 5695.

§ 3402. 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-

⁹¹An act to provide for the extension of the term of corporations. Approved March 7, 1885.

⁹³An act to legalize, in certain cases, proceedings for extending the period of corporate existence. Approved April 19, 1893.

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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 or the county in which is the principal place of business of said corporation, its articles of incorporation.

(1881, Ex. S. c. 62; ⁹⁹ G. S. 1878, v. 2, c. 34, § 4211.)

See *Brown v. Corbin*, 40 Minn. 508, 510, 42 N. W. Rep. 481.

§ 3403. 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; ¹⁰⁰ G. S. 1878, v. 2, c. 34, § 421m.)

See *Brown v. Corbin*, cited in note to § 3402.

§ 3404. 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

⁹⁹An act to cure defective organizations of corporations and for the protection of rights acquired thereunder. Approved November 18, 1881.

¹⁰⁰Title same as in note 99. 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; ¹⁰¹ G. S. 1878, v. 2, c. 34, § 421n.)

Laws 1887, c. 132, validates the class of corporations designated, but does not interfere with vested rights. *Christian v. Bowman*, 49 Minn. 99, 51 N. W. Rep. 663.

See *State v. Minnesota Thresher Manuf'g Co.*, 40 Minn. 213, 224, 41 N. W. Rep. 1020; *Brown v. Corbin*, 40 Minn. 508, 510, 42 N. W. Rep. 481.

§ 3405. Same—On what condition.

That in any case where there has been heretofore any 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 corporations have actually adopted and signed 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 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, 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 shall within ninety days from the passage of this act file in the office of the secretary of state, and also in the office of the register of deeds in the county in which is the principal place of business of said corporation, its articles of incorporation, if the same have not been heretofore so filed, and shall at the time of filing such articles in the office of the secretary of state, pay into the state treasury the fees provided for by Chapter two hundred and twenty-five of the General Laws of one thousand eight hundred and eighty-nine, if the date of such attempted organization is subsequent to the passage of said law.

(1891, c. 45, § 1.102)

§ 3406. Same—Publication of articles.

That every private corporation, heretofore in good faith organized or attempted to be organized under the general laws of this state, but whose articles of incorporation have been irregularly published or for an insufficient length of time, but where the persons organizing the same have acted in good faith, and corporate meetings have been held, and business transacted,

¹⁰¹An act to legalize certain corporations. Approved March 2, 1887.

¹⁰²An act to legalize certain corporations. Approved April 18, 1891.

and such de facto corporation has acted in all things as though there were no errors or omissions in its organization, the same is hereby declared to be in law a valid and legal corporation de jure, and shall be so deemed and held in all courts, and as to all transactions past and future, and the liabilities of the stockholders and incorporators shall be those of a corporation de jure and the same as though there was no defect in its organization. Provided this act shall not affect any action at law now pending.

(1893, c. 50, § 1.103)

§ 3407. General powers—Meetings out of Minnesota—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 necessary 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.

(G. S. 1866, c. 34, § 155, as amended 1870, c. 26, § 2; G. S. 1878, c. 34, § 404; 1881, c. 15, § 1.)

See, also, as to general powers:

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| <p>Sections</p> <p>2595.</p> <p>2633.</p> <p>2644-2645.</p> <p>2722-2723.</p> <p>2794.</p> <p>2798.</p> <p>2816.</p> <p>2827.</p> <p>2849.</p> <p>2908.</p> <p>2916.</p> <p>2933.</p> <p>2965.</p> <p>2976.</p> <p>2983.</p> <p>2987.</p> | <p>Of companies under title 1.</p> <p>Of companies for driving logs.</p> <p>Of railroad companies to acquire property.</p> <p>Of railroad companies to borrow money, etc.</p> <p>Of companies under title 2.</p> <p>Of companies under title 2 to acquire real estate.</p> <p>Of manufacturing companies.</p> <p>Of mining, etc., companies.</p> <p>Of annuity, safe-deposit, and trust companies.</p> <p>Of co-operative associations to acquire property.</p> <p>Of companies other than those for pecuniary profit.</p> <p>Of societies for securing homes for children.</p> <p>Of State Agricultural Society.</p> <p>Of county agricultural societies.</p> <p>Of chambers of commerce and boards of trade.</p> <p>Of Independent Order of Odd Fellows.</p> |
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¹⁰³ An act to cure certain irregularities in the organization of private corporations under the general laws of this state. Approved April 18, 1893.

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See, also, as to general powers:

Sections	
2992.	Of Ancient Order of United Workmen.
2996.	Of Masonic bodies.
3000.	Of Grand Army Posts.
3004.	Of Knights of Pythias.
3009.	Of Ancient Order of Hibernians.
3013.	Of Scandinavian Aid and Fellowship Society.
3016.	Of Minnesota Society for Prevention of Cruelty.
3028.	Of trustees of religious corporations.
3045.	Of religious corporations organized by clergy, etc.
3051.	Of parishes of Protestant Episcopal Church.
3067-3068.	Of diocesan council, presbytery, etc.
3081.	Of consolidated and reorganized religious societies.
3096.	Of cemetery associations to hold property.
3146.	Of deputy insurance commissioner.
3149.	Of insurance commissioner.
3231.	Of town insurance companies.
3255.	Of millers' and manufacturers' mutual insurance companies.
3338.	Of real-estate title insurance companies.
3362.	Of plank-road and turnpike companies to hold lands.

See, also, as to directors:

Sections	
2809, 2810.	Of manufacturing companies.
2846, 2848.	Of annuity, safe-deposit, and trust companies.
2857, 2885.	Of building, etc., associations doing a general business.
2905.	Of co-operative associations.
2919.	Of corporations other than those for pecuniary profit.
2947.	Of camp-meeting, etc., associations.
3235, 3236, 3244.	Of town insurance companies.
3256.	Of millers' and manufacturers' mutual insurance companies.
3270.	Of farmers' mutual insurance companies.
3349.	Of companies for mutual insurance against hail, etc.

§ 3408. First meeting, how called.

The first meeting of all corporations, when no other provision is specially made, shall be called by notice, signed by one or more of the persons named in, or associated as corporators under the law by which it is incorporated, setting forth the time, place and purposes of the meeting; and such notice shall, at least twenty days before the meeting, be delivered to each member, or published in some newspaper in the county where the corporation is established, or if no newspaper is published in the county, then in some newspaper printed and published at the capital of the state.

(G. S. 1866, c. 34, § 156; G. S. 1878, c. 34, § 405.)

§ 3409. Meeting may be called by justice of peace, when.

When, by reason of the death, absence, or other legal impediment of the officers of the corporation, there is no person duly authorized to call or preside at a legal meeting thereof, any justice of the peace of the county where such corporation is established, may, on a written application of three or more of the members, issue a warrant to either of them, directing him to call a meeting, by giving such notice as had been previously required by law; and the justice may, in the same warrant, direct such person to preside at such meeting, until a clerk is duly chosen and qualified, if no officer is present duly authorized to preside.

(G. S. 1866, c. 34, § 157; G. S. 1878, c. 34, § 406.)

See, also, as to meetings:

Sections	
2763.	Annual meeting of railroad companies.
2808, 2814.	Of manufacturing companies.
2847.	Of annuity, safe-deposit and trust companies.
2894.	Of building, etc., associations doing a general business.
2906.	Of co-operative associations.
2954.	Of State Agricultural Society.
2979.	Of county agricultural societies.
3052.	Of parishes of Protestant Episcopal Church.

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See, also, as to meetings:

- Sections
3099, 3101. Of cemetery associations.
3244. Of town insurance companies.
3310. Of co-operative, etc., insurance companies.

§ 3410. Powers of company at such meeting.

A corporation, when so assembled, may elect officers to fill all vacancies, and act upon such other business as may lawfully be transacted at a regular meeting.

(G. S. 1866, c. 34, § 158; G. S. 1878, c. 34, § 407.)

§ 3411. Confirmation of proceedings at irregular meeting.

When all the members of a corporation are present at any meeting, however called or notified, and sign a written assent thereto, on the record of such meeting, the doings of such meeting shall be as valid as if legally called and notified.

(G. S. 1866, c. 34, § 159; G. S. 1878, c. 34, § 408.)

§ 3412. Scope of by-laws—Penalties for violation.

Corporations may, by their by-laws, where no other provision is specially made, determine the manner of calling and conducting their meetings, the number of members that shall constitute a quorum, the number of shares that shall entitle the members to one or more votes, the mode of voting by proxy, the mode of selling shares for the non-payment of assessments, and the tenure of office of the several officers. They may annex suitable penalties to such by-laws, not exceeding twenty dollars for one offence.

(G. S. 1866, c. 34, § 160; G. S. 1878, c. 34, § 409.)

See, also, as to by-laws:

- Sections
2597. Of companies under title 1 to be posted for inspection.
2831. Of mining companies.
2857. Of building, etc., associations doing a general business.
2906. Of co-operative associations.
2947. Of camp-meeting associations, etc.
3030. Of religious corporations organized by election of trustees.
3045. Of religious corporations organized by clergy and laity.
3058. Of religious corporations organized at stated meeting.
3073. Of Young Men's Christian Associations.
3090. Of cemetery associations.
3236, 3248. Of town insurance companies.
3260. Of millers' and manufacturers' mutual insurance companies.
3271, 3274. Of farmers' mutual fire insurance companies.
3299, 3316. Of co-operative life, etc., insurance companies.
3350, 3353. Of companies for mutual insurance against hail, etc.
3407. All corporations may make by-laws in absence of special provision.

§ 3413. Remedies of company on subscription for stock.

If any subscriber for the stock of any corporation neglects to pay any instalment of his subscription when lawfully required by the directors or other managing officer of the corporation, he shall forfeit such stock, and the same may be sold in such manner as the directors in their by-laws prescribe, and after paying the amount of the instalment due or called for, and the expenses of sale, the balance of the proceeds of such sale shall be paid to such subscriber. An action may also be maintained against such subscriber upon his subscription.

(G. S. 1866, c. 34, § 161; G. S. 1878, c. 34, § 410.)

See, also, as to subscription to stock:

- Sections
2737. Of corporations under title 1.
2783. Of railroad companies by municipal corporations.
2815. Of manufacturing companies.

See *Minnehaha Driving-Park Ass'n v. Legg*, 50 Minn. 333, 52 N. W. Rep. 898.

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§ 3414. Power to convey lands.

Every corporation may convey lands to which it has a legal title.

(G. S. 1866, c. 34, § 162; G. S. 1878, c. 34, § 411.)

See, also, as to powers in respect to land:

- Sections
- 2798. Of corporations under title 2.
 - 2817. Of manufacturing companies.
 - 2835. Of mining companies.
 - 2922. Of corporations other than for pecuniary profit.
 - 3020. Of Minnesota Society for Prevention of Cruelty.
 - 3038-3040. By trustees of religious corporations.
 - 3045. Conveyance of real estate by religious corporations organized by clergy and laity.
 - 3097-3098. Of cemetery associations.
 - 3170. Of insurance companies.

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.)

(2) STOCK AND STOCK CERTIFICATES.

§ 3415. Shares not to be issued for less than par—Exception—Preferred stock.

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. Provided, That any corporation may, by its articles of incorporation or by any amended article of its articles of incorporation, provide for special, preferred and common stock, or special or preferred and common stock, of the capital stock of such corporation; and any corporation heretofore or hereafter organized without changing its articles of incorporation may issue its capital stock as a part special and a part preferred and a part common, or a part common and a part either special or preferred, by direction of its board of directors, when so authorized by a majority of its stockholders at its annual meeting or at a meeting called for that purpose; and said board of directors, when so authorized by said meeting of said stockholders, may give such preference as it may deem best to such special or preferred stock, or such special and preferred stock.

(G. S. 1866, c. 34, § 163, as amended 1867, c. 18, § 2; G. S. 1878, c. 34, § 412; 1887, c. 49; 1891, c. 71, § 1.)

See, also:

- Sections
- 2598. Statement concerning capital of companies under title 1 to be posted.
 - 2599. Transfer of shares of stock in companies under title 1.
 - 2715. Purchase of stock in railroad company by another company.
 - 2723. Bonds of railroad company convertible into stock.
 - 2734. Special and preferred stock in railroad companies.
 - 2743. Issue of fictitious stock or unpaid stock by railroad company.
 - 2744-2746. Annual statement of stock issued by railroad company.
 - 2772-2775. Issue of railroad stock to municipality in exchange for municipal aid.
 - 2777. Rights of municipality as stockholder in railroad.
 - 2797. Capital stock in companies under title 2.

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See, also:

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| <p>Sections</p> <p>2799.</p> <p>2800.</p> <p>2806.</p> <p>2819.</p> <p>2830.</p> <p>2832.</p> <p>2834.</p> <p>2836.</p> <p>2843.</p> <p>2869, 2880, 2881.</p> <p>2898-2900.</p> <p>2907.</p> <p>2942.</p> <p>3148.</p> <p>3165.</p> <p>3198.</p> <p>3211.</p> <p>3230.</p> <p>3318.</p> <p>3324.</p> <p>3326.</p> <p>3332.</p> <p>3338.</p> <p>6690.</p> | <p>Transfer of stock in such companies.</p> <p>Record of stock in such companies.</p> <p>Capital stock in manufacturing companies.</p> <p>Transfer of stock in manufacturing companies.</p> <p>Capital stock in mining companies.</p> <p>Transfer of stock in mining companies.</p> <p>Mining company may hold stock in other companies.</p> <p>Penalty for fraudulent issue of stock of mining company.</p> <p>Capital stock in annuity, safe-deposit, and trust companies.</p> <p>Capital stock in building, etc., associations doing a general business.</p> <p>Stock in building, etc., associations doing a local business.</p> <p>Capital stock in co-operative associations.</p> <p>Capital stock in camp-meeting associations, etc.</p> <p>Subd. 11. Impairment of capital stock of insurance companies.</p> <p>Investment of capital stock of insurance companies.</p> <p>Amount of capital required of joint-stock fire, inland, or marine insurance companies.</p> <p>What deemed to be capital of foreign insurance company.</p> <p>Making good impaired capital of insurance company.</p> <p>Capital required of foreign live-stock insurance companies.</p> <p>Impairment of capital of such company.</p> <p>Capital required of joint-stock marine insurance company.</p> <p>Capital required of insurance companies other than life, fire, or marine.</p> <p>Capital stock of real-estate title insurance companies.</p> <p>Subd. 5. As to forgery of certificate of stock.</p> |
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§ 3416. Certificates of stock.

Any owner or holder of any shares of a corporation, which issues certificates to such owners or holders when fees and dues are paid to such corporation shall be entitled to a certificate which shall show the number of shares to which he is entitled, and said certificate shall be prima facie evidence of such ownership.

(1893, c. 45, § 1.104)

§ 3417. Same—Company to issue new certificates, when.

If any such certificate be worn out or damaged then, upon the same being produced to the proper officers of said corporation issuing the same, and a demand being made, and an offer of surrender of such certificate so worn out or damaged, it shall be the duty of said corporation to issue to the party in whom such shares are vested a new and marketable one without requiring any indemnity. When any certificate is lost or destroyed upon proof thereof a new certificate shall be given upon sufficient indemnity being given to such corporation. If the evidence is clear that said certificate has been lost or destroyed and it has not been heard of for a period of seven years, it shall be the duty of said corporation to issue a new certificate without indemnity; and the secretary or other proper officer shall make record thereof in his register of shareholders and said corporation shall be relieved from all damages in reference thereto.

(Id. § 2.)

§ 3418. Executors, etc., may vote as stockholders.

An executor, administrator, guardian or trustee shall represent the shares or stock in his hands at all meetings of the corporation, and may vote as a stockholder.

(G. S. 1866, c. 34, § 164; G. S. 1878, c. 34, § 413.)

See, also, as to proxy and right to vote:

Sections

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| <p>2814.</p> <p>2952.</p> | <p>At meetings of manufacturing corporations.</p> <p>At meetings of State Agricultural Society.</p> |
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¹⁰⁴ An act to define who are entitled to stock certificates, of what they are evidence, and to provide for their renewal when worn out, damaged, lost or destroyed. Approved April 8, 1893.

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§ 3419. **Executors, etc., not to be personally liable.**

Persons holding stock in a corporation as executors, administrators, guardians or trustees shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in the trust fund would be, if they were respectively living and competent to act, and held the stock in their own names.

(G. S. 1866, c. 34, § 165; G. S. 1878, c. 34, § 414.)

(3) FOREIGN COMPANIES.*

*As to suits by, see §§ 5890, 5891. As to actions against, see § 5892.

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§ 3420. **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; 105 G. S. 1878, v. 2, c. 34, § 421a.)

See § 5875 et seq.

§ 3421. **Foreign corporation—Removal of cause.**

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; 106 G. S. 1878, v. 2, c. 34, § 421b.)

See § 2752, as to railroad companies organized under laws of Illinois.

See § 2863, as to building, etc., associations doing a general business.

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

¹⁰⁵ An act relating to foreign corporations. Approved March 4, 1881.

¹⁰⁶ An act relating to foreign corporations doing business in this state. Approved March 9, 1885.

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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.

§ 3422. Same—Additional penalty.

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, 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; G. S. 1878, v. 2, c. 34, § 421c.)

§ 3 amends § 3167, subd. 3.

§ 3423. 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.

(1885, c. 183, § 4; G. S. 1878, v. 2, c. 34, § 421d.)

§ 3424. 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.

(1885, c. 183, § 5; G. S. 1878, v. 2, c. 34, § 421e.)

§ 3425. 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.

(1885, c. 183, § 6; G. S. 1878, v. 2, c. 34, § 421f.)

§ 3426. Same—Action in federal courts—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.

(1885, c. 183, § 7; G. S. 1878, v. 2, c. 34, § 421g.)

§ 3427. 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

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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.

(1885, c. 183, § 8; G. S. 1878, v. 2, c. 34, § 421h.)

§ 3428. 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.

(1885, c. 183, § 9; G. S. 1878, v. 2, c. 34, § 421i.)

§ 3429. 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.

(1885, c. 183, § 10; G. S. 1878, v. 2, c. 34, § 421j.)

(4) DISSOLUTION.

§ 3430. Application to district court, when—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.

(G. S. 1866, c. 34, § 166; G. S. 1878, c. 34, § 415; as amended 1887, c. 70.)

A decree dissolving a corporation held to effect a total breach of an entire continuing contract, so that the other party had a single right of action for his entire damages. *Bowe v. Minnesota Milk Co.*, 44 Minn. 460, 47 N. W. Rep. 151.

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56-M - 182
59-NW - 636

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62-NW - 332

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57-M - 557
60-M - 284

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66-M - 384
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See, also, *Gray v. Merriman* (Minn.) 57 N. W. Rep. 463.

In proceedings under §§ 3430-3435, the constitutional or statutory liability of stockholders for debts of the corporation cannot be enforced. *Spilman v. Mendenhall* (Minn.) 57 N. W. Rep. 468.

See, also, *Olson v. State Bank* (Minn.) 59 N. W. Rep. 635.

§ 3431. Continuance for three years for certain purposes.

Corporations whose charters expire by their own limitation, or are annulled by forfeiture or otherwise, shall, nevertheless, continue bodies corporate for the term of three years after the time when they would have been so dissolved, for the purpose of prosecuting and defending actions by or against them, and of enabling them gradually to settle and close their concerns, to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which they were established.

(G. S. 1866, c. 34, § 167; G. S. 1878, c. 34, § 416.)

Under this section, a railroad company whose charter is annulled by judicial decree may within three years convey its lands to a trustee in trust to wind up its business. *Hanan v. Sage*, 58 Fed. Rep. 651.

Exemption from taxation during the three years, of lands acquired under the land-grant act of 1857. *Minnesota Cent. Ry. Co. v. Donaldson*, 38 Minn. 115, 35 N. W. Rep. 725.

See *Bowe v. Minnesota Milk Co.* and *Spilman v. Mendenhall*, cited in note to § 3430.

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§ 3432. Appointment of receiver, etc., by district court.

When the charter of a corporation expires or is annulled, or the corporation is dissolved as provided herein, the district court of the county in which such corporation carries on its business, or has its principal place of business, on application of a creditor, stockholder or member, at any time within said three years, may appoint one or more persons receivers or trustees, to take charge of its estate and effects, and to collect the debts and property due and belonging to it, with power to prosecute and defend actions in the name of the corporation or otherwise, to appoint agents under them, and do all other acts which might be done by such corporation if in being, that are necessary to the final settlement of the unfinished business of the corporation. The powers of such receivers may be continued as long as the court deems necessary for said purposes.

(G. S. 1866, c. 34, § 168; G. S. 1878, c. 34, § 417.)

See *Spilman v. Mendenhall*, cited in note to § 3430.

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§ 3433. Powers of district court.

Said court shall have jurisdiction, in equity, of the application, and of all questions arising in the proceedings thereon; and may make such orders, injunctions and judgments therein as justice and equity require.

(G. S. 1866, c. 34, § 169; G. S. 1878, c. 34, § 418.)

See *Spilman v. Mendenhall*, cited in note to § 3430.

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§ 3434. Duties of receivers.

The receivers shall pay all debts due from the corporation, if the funds in their hands are sufficient therefor; and if not, they shall distribute the same ratably among the creditors who prove their debts in the manner directed by the court.

(G. S. 1866, c. 34, § 170; G. S. 1878, c. 34, § 419.)

See *Spilman v. Mendenhall*, cited in note to § 3430.

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§ 3435. Balance of assets, how distributed.

If there is a balance remaining, after the payment of the debts, the receivers shall distribute and pay it to and among those who are justly entitled thereto, as having been stockholders or members of the corporation, or their legal representatives.

(G. S. 1866, c. 34, § 171; G. S. 1878, c. 34, § 420.)

See *Spilman v. Mendenhall*, cited in note to § 3430.

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(5) DUTY OF ATTORNEY GENERAL.

§ 3436. Duty of attorney general—Powers of attorney general and legislature.

The attorney general, whenever required by the governor, shall examine into the affairs and condition of any corporation in this state, and report such examination in writing, together with a detailed statement of facts, to the governor, who shall lay the same before the legislature; and for that purpose the said attorney general has power to administer all necessary oaths to the directors and officers of any corporation; and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition; and the legislature, or either branch thereof, has full power to examine into the affairs and condition of any corporation in this state, and at all times; and for that purpose any committee appointed by the legislature, or either branch thereof, shall have full power to administer all necessary oaths to the directors, officers and stockholders of said corporation, and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition, and to compel the production of all keys, books, papers and documents.

(G. S. 1866, c. 34, § 172; G. S. 1878, c. 34, § 421.)

See, also, as to duty of attorney general:

Sections

2753. When operation of whole or part of railroad has been abandoned.

3268. To examine articles of incorporation of farmers' mutual fire insurance companies.

3307. In connection with co-operative life, etc., insurance associations.

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