

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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REPORTER SYSTEM

COMPLETE IN TWO VOLUMES

VOL. 2

CONTAINING

Sections 4822 to 8054 of the General Statutes, and the General Index

ST. PAUL, MINN.
WEST PUBLISHING CO.

1894

CHAPTER 76.

ACTIONS RESPECTING CORPORATIONS.

§ 5889. Chapter embraces all corporations and associations.

This chapter embraces all corporations, including in such designation all associations having any corporate rights, whether created by special acts or under general laws.

(G. S. 1866, c. 76, § 1; G. S. 1878, c. 76, § 1.)

§ 5890. Foreign corporations may sue.

A foreign corporation may prosecute in the courts of this state, in the same manner as corporations created under the laws thereof.

(G. S. 1866, c. 76, § 2; G. S. 1878, c. 76, § 2.)

See *Becht v. Harris*, 4 Minn. 504, (Gil. 394.)

§ 5891. Limitation on actions by foreign corporations.

A foreign corporation cannot maintain an action in this state upon an obligation or liability arising out of, or in consideration of, an act which is contrary to the law or policy of the state, or which is thereby forbidden in respect to corporations or associations therein whose general business is similar to that of such foreign corporation.

(G. S. 1866, c. 76, § 3; G. S. 1878, c. 76, § 3.)

§ 5892. Actions against corporations, how commenced.

Actions may be commenced against corporations, whether created under the laws of this state, or any other state or country, except as otherwise expressly provided, in the same manner as other civil actions; and where service of summons is made according to the statute, the plaintiff may proceed thereupon in the same manner as in civil actions against natural persons.

(G. S. 1866, c. 76, § 4; G. S. 1878, c. 76, § 4.)

§ 5893. Injunction against usurpation of corporate powers.

Upon a complaint filed under the direction of the attorney general in any district court, such court has power to restrain, by injunction, any corporation from assuming or exercising any franchise, liberty or privilege, or transacting any business not authorized by the act by or under which such corporation was created, and to restrain any individuals from exercising any corporate rights, privileges or franchises not granted to them by law.

(G. S. 1866, c. 76, § 5; G. S. 1878, c. 76, § 5.)

§ 5894. Same—Injunction before answer.

Such injunction may be issued before the coming in of the answer, upon satisfactory proof that the defendant complained of has usurped, exercised or claimed any franchise, privilege, liberty, or corporate right not granted to it.

(G. S. 1866, c. 76, § 6; G. S. 1878, c. 76, § 6.)

§ 5895. Power of district court over officers of corporations.

The district court may compel the officers of any corporation—

First. To account for their official conduct in the management and disposition of the funds and property committed to their charge;

Second. May decree and compel payment by them, to the corporation which they represent, and to its creditors, of all sums of money, and of the value of all property, which they have acquired to themselves, or transferred to others, or have lost or wasted by any violation of their duties as such officers;

Third. May suspend any such trustee or other officer from exercising his office, whenever it appears that he has abused his trust;

Fourth. May remove any trustee or officer from his office, upon proof or conviction of gross misconduct;

Fifth. May direct, if necessary, a new election to be held, by the body or board duly authorized for that purpose, to supply any vacancy created by such removal; Provided, that in case of the removal of a director or directors, or trustee or trustees, or other officer, the election shall be conducted under and pursuant to the order, direction and control of the court by a disinterested person appointed by the court; and, provided further, that in case of the removal of a majority of the directors or trustees, the court may appoint a person who shall act as temporary receiver of the corporation until a new election shall be held and the newly elected directors or trustees shall have qualified. Said receiver shall give a bond in such amount as the court may require and shall continue the business of the corporation under and pursuant to the order, direction and control of the court. An appeal from an order or judgment removing an officer or trustee shall not operate to stay the effect thereof or proceedings thereunder, but the term of office of any officer, director or trustee so elected to fill any vacancy, or of any receiver so appointed by the court, shall be terminated by a reversal or vacation of said order or judgment by the supreme court.

Sixth. May set aside all alienations of property made by the trustees or other officers of any corporation, contrary to the provisions of law, or for purposes foreign to the lawful business and objects of such corporation, in cases where the person receiving such alienation knew the purpose for which the same was made; and

Seventh. May restrain and prevent any such alienation, in cases where it is threatened, or there is good reason to apprehend that it is intended.

(G. S. 1866, c. 76, § 7; G. S. 1878, c. 76, § 7; as amended 1893, c. 88, § 1.)

§ 5896. Preceding section, how construed.

Whenever any visitatorial powers over any corporation are vested by statute in any corporate body or public officer, the provisions of the preceding section shall not be construed to impair the powers so vested.

(G. S. 1866, c. 76, § 8; G. S. 1878, c. 76, § 8.)

§ 5897. Return of execution unsatisfied—Complaint—Sequestration—Receiver.

Whenever a judgment is obtained against any corporation incorporated under the laws of this state, and an execution issued thereon is returned unsatisfied in whole or in part, upon the complaint of the person obtaining such judgment, or his representatives, the district court within the proper county may sequester the stock, property, things in action and effects of such corporation, and appoint a receiver of the same.

(G. S. 1866, c. 76, § 9; G. S. 1878, c. 76, § 9.)

The purpose of the proceeding under this section and § 5898 is to take all the property of the corporation, and to apply its proceeds in payment of its debts. *Farmers' L. & T. Co. v. Minneapolis E. & M. Works*, 35 Minn. 543, 29 N. W. Rep. 349.

The receiver may avoid a chattel mortgage of the corporation, not filed according to law. *Id.*

A creditor who has proved his claim may appeal from an order directing or confirming a sale. *Hospes v. Northwestern Manuf'g & Car Co.*, 41 Minn. 256, 43 N. W. Rep. 180.

A creditor claiming a judgment lien on real estate of the corporation, who files his claim and submits to the jurisdiction, is bound by a decree ordering sale of the real estate free from liens. *Nelson v. Jenks*, 51 Minn. 103, 52 N. W. Rep. 1031.

A sale of real estate by the receiver is not subject to redemption by a creditor who recovers judgment after the receiver's appointment. *Watkins v. Minnesota Thresher Manuf'g Co.*, 41 Minn. 150, 42 N. W. Rep. 862.

The return of the execution unsatisfied by the sheriff cannot be collaterally assailed. *Spooner v. Bay St. Louis Syndicate*, 44 Minn. 401, 46 N. W. Rep. 848.

As to the effect of the appointment of a receiver of a mutual fire insurance company on outstanding policies. *Taylor v. North Star Mut. Ins. Co.*, 46 Minn. 193, 48 N. W. Rep. 772.

See *In re Minneapolis Mut. Fire Ins. Co.*, 49 Minn. 291, 51 N. W. Rep. 921.

A receivership in a suit to foreclose a mortgage on property of a corporation will

not prevent another receivership under this chapter. *St. Louis Car Co. v. Stillwater St. Ry. Co.*, 53 Minn. 129, 54 N. W. Rep. 1064.

See *Wheaton v. Spooner*, cited in note to § 5449; *State v. Bank of New England*, cited in note to § 5905; *Spilman v. Mendenhall* (Minn.) 57 N. W. Rep. 463; *National German-American Bank v. Tapley*, Id. 1065.

§ 5898. Sequestration—Order of distribution.

Upon a final judgment on any such complaint, the court shall cause a just and fair distribution of the property of all such corporations, and of the proceeds thereof, not distributed prior to the passage of this act, to be made in the following manner: After the payment of costs, debts due the United States, the state of Minnesota, all taxes or assignments levied and unpaid, expenses of the receivership and executing the trust, the receiver shall pay in full, if sufficient there remains for that purpose, the claims duly proven of all servants, clerks, or laborers for personal services or wages owing from such corporation, for services performed for the three months preceding the appointment of a receiver of such corporation as provided in section nine, and the balance of said estate shall then be distributed among the general creditors of such corporation, under the direction of the court.

(G. S. 1866, c. 76, § 10; G. S. 1878, c. 76, § 10; as amended 1887, c. 25.)

§ 5899. Action for dissolution of railroad and other companies—Grounds of action.

Whenever any railroad company doing business in this state shall charge, demand or receive unreasonable rates for the transportation of freight or passengers over any portion of its line of railroad, or violate any of the provisions of its act or acts of incorporation, or any other law binding upon such corporation, or if any incorporated company remain insolvent for one year, or for one year neglects or refuses to discharge its notes or other evidence of debt, or for one year suspends the lawful business of such corporation, such company or corporation shall be deemed to have forfeited the rights, privileges and franchises granted by any act or acts of incorporation, or acquired under the laws of this state, and shall be adjudged to be dissolved; and it is hereby made the duty of the attorney general to make complaint in the district court in any county in which such company or corporation may be doing business, against any company or corporation who shall in any manner violate any of the provisions of this section, or commit any of the acts herein recited; and upon the trial in said court, or any court to which the same may be transferred, if it shall be established, by the finding of the court, or the verdict of the jury, that any of the acts herein recited have been committed by such corporation or company, the said court shall render judgment of forfeiture and the dissolution of such corporation, and may appoint receivers as in other cases provided for in this act. Upon the trial of any action commenced against any railroad company or corporation for charging, demanding or receiving unreasonable rates for the transportation of freights or passengers, under the provisions of this section, the court or jury before whom the same is tried shall find, specially whether such company or corporation has charged, demanded or received unreasonable rates for such transportation.

(G. S. 1866, c. 76, § 11, as amended 1871, c. 37, § 1; G. S. 1878, c. 76, § 11.)

The corporation is not dissolved until the forfeiture is judicially ascertained and declared. *State v. Railroad Co.*, 36 Minn. 246, 30 N. W. Rep. 816.

See *McKusick v. Seymour, Sabin & Co.*, 48 Minn. 158, 168, 169, 50 N. W. Rep. 1114.

§ 5900. Proceedings against insolvent banking and insurance companies—Injunction.

Whenever any corporation having banking powers, or the power to make loans on pledges or deposits, or authorized by law to make insurances, becomes insolvent, or unable to pay its debts, or neglects or refuses to pay its notes or evidences of debt on demand, or violates any of the provisions of its act or acts of incorporation, or of any other law binding on such corporation, the district court may, by injunction, restrain such corporation and its officers from exercising any of its corporate rights, privileges and fran-

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chises, and from collecting or receiving any debts or demands, and from paying out, or in any way transferring or delivering, to any person, any of the moneys, property or effects of such corporation, until such court shall otherwise order.

(G. S. 1866, c. 76, § 12; G. S. 1878, c. 76, § 12.)

A corporation organized under Laws 1855, c. 184, engaged in the business of life or endowment or casualty insurance on the co-operative or assessment plan, may be proceeded against under this section. *State v. Educational Endowment Ass'n of Minneapolis*, 49 Minn. 158, 51 N. W. Rep. 908.

See *McKusick v. Seymour, Sabin & Co.*, 48 Minn. 158, 168, 169, 50 N. W. Rep. 1114; *State v. Bank of New England*, cited in note to § 5905.

§ 5901. Same—Forfeiture of charter, etc.

Such injunction may be issued on the complaint of the attorney general, in behalf of the state, or on the complaint of any creditor or stockholder of such corporation. Whenever such injunction issues against any bank for any violation of its charter, on the complaint of any creditor, the court shall proceed to final judgment in such case, and adjudge a forfeiture, if the proof is sufficient, notwithstanding such creditor may settle with such corporation, and relinquish his claim against said corporation; and in all such cases, the attorney general, or any creditor, shall have the right to appear and prosecute such action; and such action shall not be discontinued, if either of them so appear and prosecute the same.

(G. S. 1866, c. 76, § 13; G. S. 1878, c. 76, § 13.)

§ 5902. Same—Appointment of receiver.

The court, in any stage of the proceedings, may appoint one or more receivers to take charge of the property and effects of such corporation, and to collect, sue for and recover the debts and demands that are due, and the property that belongs to such corporation, who shall in all respects be subject to the control of the court.

(G. S. 1866, c. 76, § 14; G. S. 1878, c. 76, § 14.)

See *State v. Bank of New England*, cited in note to § 5905.

§ 5903. Suit by creditor—Parties defendant.

If such application is made by a creditor of any corporation whose directors or stockholders are made liable by law for the payment of such debts, in any event or contingency, such debtors [directors] or stockholders, or any of them, may be made parties to the action, either at the time of filing the complaint, or in any subsequent stage of the proceedings, whenever it becomes necessary to enforce such liability.

(G. S. 1866, c. 76, § 15; G. S. 1878, c. 76, § 15.)

See *McKusick v. Seymour, Sabin & Co.*, 48 Minn. 158, 168, 169, 50 N. W. Rep. 1114.

§ 5904. Supplemental complaint by creditor against stockholders, etc.

If any creditor of a corporation desires to make such directors or stockholders parties to the action, after a judgment therein against the corporation, he may do so, on filing a supplemental complaint against them, founded upon such judgment; and if such decree was rendered in a proceeding instituted by the attorney general, such creditor may, on his application, be made complainant therein, and may, in like manner, make the directors and stockholders sought to be charged, defendants in such action.

(G. S. 1866, c. 76, § 16; G. S. 1878, c. 76, § 16.)

See *McKusick v. Seymour, Sabin & Co.*, 48 Minn. 158, 168, 169, 50 N. W. Rep. 1114.

§ 5905. Action by creditor against stockholders, etc., when brought.

Whenever any creditor of a corporation seeks to charge the directors, trustees, or other superintending officers of such corporation, or the stockholders thereof, on account of any liability created by law, he may file his complaint

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for that purpose, in any district court which possesses jurisdiction to enforce such liability.

(G. S. 1866, c. 76, § 17; G. S. 1878, c. 76, § 17.)

The remedy for enforcing the statutory liability of stockholders is that provided by this chapter, and it is the only remedy. *Allen v. Walsh*, 25 Minn. 543. Followed, *Johnson v. Fischer*, 30 Minn. 173, 14 N. W. Rep. 799.

See, also, *Mohr v. Minnesota Elevator Co.*, 40 Minn. 343, 347, 41 N. W. Rep. 1074.

Under §§ 2600-2602 a creditor of a corporation, such as those provided for in c. 34, 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.

The liability of directors under the manufacturing act (§ 2825) may be enforced in a suit by a creditor against one or more directors without joining all the creditors to whom they are liable, or all the directors, and without first obtaining judgment against the corporation. The right of action is not affected by the fact that the corporation is in the hands of a receiver. *Patterson v. Stewart*, 41 Minn. 84, 42 N. W. Rep. 926.

After a corporation has been adjudged insolvent, and a receiver appointed, 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.

The individual liability of stockholders may be enforced in a sequestration proceeding upon the application of any creditor who has become a party, though the plaintiff's complaint demands no such relief. *Arthur v. Willius*, 44 Minn. 409, 46 N. W. Rep. 851; *McKusick v. Seymour, Sabin & Co.*, 48 Minn. 153, 50 N. W. Rep. 1114 (appeal dismissed 12 Sup. Ct. Rep. 876); *Hospes v. Northwestern Manuf'g & Car Co.*, 48 Minn. 174, 50 N. W. Rep. 1117.

The failure to join all the stockholders is waived, if objection is not taken by answer or demurrer. *Arthur v. Willius*, supra.

See *Densmore v. Shepard*, 46 Minn. 54, 49 N. W. Rep. 523, 631.

In an action under this chapter by a judgment creditor against a corporation and its stockholders, the receiver may have judgment by default against a defendant stockholder for an unpaid stock subscription, at least to the amount necessary to satisfy all creditors who have proved their claims. *Spooner v. Bay St. Louis Syndicate*, 47 Minn. 464, 50 N. W. Rep. 601.

If the plaintiff brings in only a part of the creditors to enforce their statutory liability, they should be charged, respectively, only the proportion of the plaintiff's claim which the stock held by each bears to the whole stock, unless some reason appears, such as insolvency, death, or inability to reach the other stockholders, for charging them more. *Clark v. Cold Spring Opera House* (Minn.) 59 N. W. Rep. 632.

The remedy to enforce the liability of the estate of a deceased stockholder under Const. art. 10, § 3, is under this chapter. Such a claim cannot be presented in the probate court. *National German-American Bank v. Tapley* (Minn.) 57 N. W. Rep. 1065.

After institution by a creditor of an action against an insolvent banking corporation under this chapter, his right to the appointment of a receiver and to an injunction under this chapter cannot be affected by an assignment by the corporation under the insolvent law of 1881. *State v. Bank of New England* (Minn.) 56 N. W. Rep. 575.

The statutory liability of stockholders cannot be enforced in insolvency proceedings against the corporation under the act of 1881, but pending such insolvency proceedings the creditors may bring an action to enforce that liability under this section, in which the court may at once determine the maximum liability of each stockholder, and await the result of the insolvency proceedings, to ascertain how much of it shall be enforced by execution. *Olson v. Stato Bank* (Minn.) 59 N. W. Rep. 635.

In an action brought for the purpose of sequestrating the property of an insolvent corporation and enforcing the constitutional liability of its stockholders, the plaintiff is not entitled, on the pleadings and as a matter of absolute right, to have a receiver appointed, when it appears that proceedings are pending under the insolvency law in which a receiver or assignee has been designated or selected, who has qualified, and under the supervision of the court has entered upon and is discharging the duties of his trust. *Walther v. Seven Corners Bank* (Minn.) 59 N. W. Rep. 1077. Cf. § 4240 and note.

See *McKusick v. Seymour, Sabin & Co.*, 48 Minn. 172, 50 N. W. Rep. 1116.

§ 5906. Same—Account—Receiver.

The court shall proceed thereon as in other cases, and, when necessary, shall cause an account to be taken of the property and debts due to and from such corporation, and shall appoint one or more receivers.

(G. S. 1866, c. 76, § 18; G. S. 1878, c. 76, § 18.)

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§ 5907. Same—Proceedings when corporation is proved insolvent.

If, on the coming in of the answer, or upon the taking of any such account, it appears that such corporation is insolvent, and that it has no property or effects to satisfy such creditors, the court may proceed, without appointing any receiver, to ascertain the respective liabilities of such directors and stockholders, and enforce the same by its judgment as in other cases.

(G. S. 1866, c. 76, § 19; G. S. 1878, c. 76, § 19.)

§ 5908. Same—Judgment—Distribution of corporate assets.

Upon a final judgment in any such action to restrain a corporation, or against directors or stockholders, the court shall cause a just and fair distribution of the property of such corporation, and of the proceeds thereof, to be made among its creditors.

(G. S. 1866, c. 76, § 20; G. S. 1878, c. 76, § 20.)

§ 5909. Same—Collection of dues for stock subscriptions.

In all cases in which the directors or other officers of a corporation, or the stockholders thereof, are made parties to an action in which a judgment is rendered, if the property of such corporation is insufficient to discharge its debts, the court shall proceed to compel each stockholder to pay in the amount due and remaining unpaid on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the company.

(G. S. 1866, c. 76, § 21; G. S. 1878, c. 76, § 21.)

The finding that the defendants were "stockholders" includes a finding that any condition precedent to their becoming such, and to their liability, was waived. *Arthur v. Clarke*, 46 Minn. 491, 49 N. W. Rep. 252.

§ 5910. Same—Judgment against officers and stockholders.

If the debts of the company remain unsatisfied, the court shall proceed to ascertain the respective liabilities of the directors or other officers, and of the stockholders, and to adjudge the amount payable by each, and enforce the judgment as in other cases.

(G. S. 1866, c. 76, § 22; G. S. 1878, c. 76, § 22.)

§ 5911. Same—Notice to creditors to exhibit claims.

Whenever any action is brought against any corporation, its directors or other superintending officers, or stockholders, according to the provisions of this chapter, the court, whenever it appears necessary or proper, may order notice to be published, in such manner as it shall direct, requiring all the creditors of such corporation to exhibit their claims and become parties to the action, within a reasonable time, not less than six months from the first publication of such order, and, in default thereof, to be precluded from all benefit of the judgment which shall be rendered in such action, and from any distribution which shall be made under such judgment.

(G. S. 1866, c. 76, § 23; G. S. 1878, c. 76, § 23.)

A creditor may be allowed to come in after the time limited. *Spoooner v. Bay St. Louis Syndicate*, 48 Minn. 313, 51 N. W. Rep. 377.