Corporations

CHAPTER 300

GENERAL PROVISIONS RELATING TO CORPORATIONS

300.01 EXISTING CORPORATIONS CONTINUED.

HISTORY. R.L. 1905 s. 2838; G.S. 1913 s. 6133; G.S. 1923 s. 7429; M.S. 1927 s. 7429.

The right to exercise the power of eminent domain conferred upon a corporation organized under General Statutes 1894, Chapter 34, title one, was not abrogated but recognized, continued, confirmed, and reenacted by the provisions of the revised laws. M. & St. P. Sub. v Manitou, 101 M 132, 112 NW 13; State v Crystal Lake Cem. 155 M 193, 193 NW 173.

The combination, contract, or understanding, the direct and necessary effect of which is to stifle or restrict competition in trade or business, violates the anti-trust statute; but the rules of the Duluth Board of Trade do not create a monopoly. State v Duluth Board of Trade, 107 M 506, 121 NW 395.

The provisions of General Statutes 1866, Chapter 34, Section 1, and Laws 1893, Chapter 74, were carried forward into the revision of 1905 under a different arrangement; but such rearrangement made no alterations in the existing law and apparently no changes were intended. Duluth Term. v City of Duluth, 113 M 459, 130 NW 118.

The city of Duluth by ordinance granted to the Duluth-Thunder Bay R. R. Co. a franchise which the company accepted and started a construction. Prior to the passage of this ordinance, but subsequqent to its introduction in the council, the Duluth Term. Ry. Co. instituted condemnation proceedings to acquire the right to construct a railway along the same street. The two rights being inconsistent, the franchise granted by the ordinance is the prior and superior right. Duluth Term. Ry. v City of Duluth, 113 M 459, 130 NW 118.

Whether a rural telephone company incorporated under Revised Laws 1905, Chapter 58, but not in effect for the purpose of pecuniary profit but solely for the mutual benefit of the members of the corporation, is a public service corporation and as such under legal obligations to afford telephone facilities over its line to all applicants, the court is in doubt; but considering it to be such a corporation, the fact stated in the opinion regarding its refusal to serve the relators was neither arbitrary nor unreasonable. State ex rel v Hawk Creek Tel. Co. 120 M 395, 139 NW 711.

The statute making it a felony to do anything or remit anything "in violation of any of the provisions of this subdivision" contained in the chapter relating to corporations, is so indefinite and uncertain that it cannot be held to apply to the statute providing that the indebtedness of an officer to his bank shall never exceed ten per cent of the capital stock and surplus. State v Voogd, 170 M 255, 212 NW 528.

The articles of incorporation, together with applicable laws at the time of the incorporation, constitute the contract entered into by the stockholders and establish their rights, obligations and liabilities and the corporation's powers. Acts in excess of these are ultra vires. The attempt to amend the articles of a manufacturing and mechanical corporation so as to permit it to engage in mercantile trading business was ineffectual. West Duluth Land Co. v N. W. Textile Co. 176 M 588, 224 NW 245.

The statute limiting the time to sue for damages "caused by a mill dam" to two years after the cause of action accrues, applies to an action to recover damages for flooding caused by a dam erected by a public service corporation for the purpose of generating electricity to be distributed and sold to the public for

lighting, heating and power purposes. Zamani v Otter Tail Power Co. 182 M 355, 234 NW 457.

The revision of 1905, Section 2838, continued existing corporations with the powers and privileges which they then had under their articles of incorporation and subject to their duties and liabilities. The Minnesota statutes do not affect this case. The acts by the parties did not constitute a sale within the provisions of our statutes. Neither does the result of this section depend upon Laws 1925, Chapter 320. In the absence of unfairness or fraud, a court, upon petition of a small minority and when the fiduciary rights of the minority have been respected, the interests of which can be protected fully otherwise, will not restrain the corporation action to the determent of the majority. Patterson v Shattuck Ariz. Copper Co. 186 M 611, 244 NW 281.

Private bridge owners have the legally enforceable and uncompensable duty to alter the structures pursuant to a command under the police power. The city cannot undertake to perform this private duty, even though proper bridge clearances would permit the city to enjoy the benefits of river traffic when improvements were completed by the federal government. Bybee v Minneapolis, 208 M 55, 292 NW 617.

If it be assumed that under Laws 1851, Chapter 3, the organization of the University of Minnesota was defective or invalid, and hence there was no corporation even de facto, it became a corporation de jure by the constitutional confirmation of the "existing law" under which it was organized and functioning when the constitution was adopted. Peterson v Quinlivan, 198 M 65, 268 NW 858.

Do business trusts violate business laws? 8 MLR 475.

Control of public utilities; Revised Laws 1905. 16 MLR 495, 508.

Comparison of business corporation law of Minnesota and Delaware. 22 MLR 661, 679.

300.02 DEFINITIONS.

HISTORY. R.L. 1905 ss. 2839, 2840; G.S. 1913 ss. 6134, 6135; G.S. 1923 ss. 7430, 7431; M.S. 1927 ss. 7430, 7431.

The city of Mankato was liable for its negligence in its private or corporate capacity and not exempt because it was carrying out a governmental function. Keever v Mankato, 55 M 113, 129 NW 158, 775.

Comparative tax burden imposed upon corporations. 23 MLR 507.

300.025 ORGANIZATION; CERTIFICATE.

HISTORY. G.S. 1866 c. 33 s. 11; G.S. 1866 c. 34 ss. 3, 55; 1867 c. 21 s. 2; 1873 c. 11 s. 3; 1874 c. 60 s. 1; 1875 c. 17 s. 1; 1878 c. 33 s. 11; 1878 c. 34 ss. 3, 122, 167, 185; 1879 c. 8 s. 1; 1881 c. 75 s. 2; 1881 c. 77 s. 2; G.S. 1894 ss. 2491, 2594, 2807, 2914, 2976; R.L. 1905 s. 2849; 1907 c. 468 s. 1; G.S. 1913 s. 6147; 1919 c. 111 s. 1; G.S. 1923 s. 7443; M.S. 1927 s. 7443.

Subd. 5. A Minnesota bank may issue preferred stock. 1934 OAG 35.

This section does not impose a limitation upon the powers which a corporation, after its organization, can exercise through its stockholders and directors under G.S. 1913 s. 6193. 1920 OAG 167.

300.03 PUBLIC SERVICE CORPORATIONS; PURPOSES.

HISTORY. 1858 c. 55 s. 1; P.S. 1858 c. 17 s. 299; G.S. 1866 c. 34 s. 1; 1875 c. 14 s. 1; G.S. 1878 c. 34 s. 1; 1885 c. 18; 1887 c. 161; 1889 c. 221; 1893 c. 74 s. 1; G.S. 1894 s. 2592; R.L. 1905 s. 2841; G.S. 1913 s. 6136; G.S. 1923 s. 7432; 1925 c. 73; M.S. 1927 s. 7432.

1. Occupancy of streets

2. Diversion of navigable waters; water power

1. Occupancy of streets

Telephone companies are given the right to erect poles and wires within the urban ways and streets of this state, as well as upon rural highways. The provi-

sions of the charter of Minneapolis confer upon that city no authority to arbitrarily order a removal of such poles and wires but only the right to regulate the placing of the same in its streets and to compel the telephone companies to put their wires in subsurface conduits when good government of the municipality requires it. N.W. Tel. Co. v Minneapolis, 81 M 140, 83 NW 527, 86 NW 69.

The crossing of streets and alleys incidental to constructing a railroad does not constitute the occupancy of such streets or alleys for the purpose of operating a railway thereon; and the railroad company has the right to acquire by condemnation a right of way over streets and alleys, and over private property, without securing a franchise from the municipal authorities. Minneapolis & St. Paul Sub. v Manitou, 101 M 132, 112 NW 13; Excelsior v Minneapolis & St. Paul Sub. 108 M 407, 120 NW 526, 122 NW 486; Int'l Falls v Minn. Dak. & Western, 117 M 14, 134 NW 302; Duluth Term. v City of Duluth, 113 M 459, 130 NW 18.

The city of Minneapolis has no power to enter into a contract with the company operating a commercial railway, by which the city agrees to bear part of the expense of strengthening a city bridge which the railway company desires to cross, the bridge being already of sufficient strength to accommodate general travel. M. St. P. & Dub. Ry. Co. v Minneapolis, 124 M 351, 145 NW 609.

The owners of lots abutting a public street in a city upon and along which a commercial railroad maintains a track and operates cars, whose rights the railroad has not acquired by condemnation proceedings or otherwise, are entitled to enjoin the maintenance and operation of such railroad. Larson v Minn. N. W. Ry. Co. 131 M 183, 154 NW 948.

The fact that a street car company made no objection to the attachment of a city's fire alarm wire to one of the company's poles, imposed no liability on the company for the maintenance of the pole in such a condition that appellant who was not an employee of the city might safely go upon the pole to repair the wire after he had broken it. Howard v Mpls. & St. P. Sub. Ry. Co. 171 M 395, 214 NW 658.

Where owner of platted area organized a utility company to furnish water and sewer facilities but the utility remained inactive and the owner installed the systems at its own expense and to induce purchase of lots in area represented to buyers that no assessments therefor would be imposed, and no claim was made against the village for fire hydrant and storm sewer purposes for ten to twelve years, the village was not liable for such service on the basis of a "quasi contract" or a "contract implied in fact." Country Club Dist. v Edina, 214 M 26, 8 NW(2d) 321.

2. Diversion of navigable waters; water power

A corporation organized to improve a stream for driving logs but which is not empowered by a charter to drive or handle logs, cannot collect tolls and, further, the power to drive or handle logs is not incidental to the power to improve the stream. N. W. Improvement v O'Brien, 75 M 335, 77 NW 989.

The statutes under which the petitioner is organized do not, as an incident to the construction of a canal and the creation of a water power, authorize a corporation to withdraw and divert the waters from public navigable lakes and streams to such an extent as to interfere with present or future navigation. Minnesota Canal v Koochiching County, 97 M 429, 107 NW 405.

A public service corporation authorized to condemn private property for the construction of canals and reservoirs for the generation of electric power, may not exercise such power when the particular enterprise contemplates an interference with the navigable capacity of navigable waters of the state unless such interference is expressly authorized by statute. Minnesota Canal v Pratt, 101 M 197, 112 NW 395.

The furnishing of electric light and power to the public is a public service, and land or water taken to forward such enterprise is taken for public use. Such corporation authorized to condemn private property cannot interfere with the navigable capacity of any navigable stream unless authorized by statute; but it may take the private rights of property of the riparian owner upon making just compensation, whether the stream be navigable or not. Otter Tail v Brastad, 128 M 415, 158 NW 198.

Partition of lands in kind instead of by sale is preferred; and the burden is on the one demanding a sale to prove that a partition in kind cannot be made without great prejudice to all the owners. Pigeon River v McDougall, 169 M 83, 210 NW 850.

Limiting the time to sue for damages "caused by a mill dam" to two years after the cause of action accrues, applies to an action to recover damages for flooding caused by a dam erected by a public service corporation for the purpose of generating electric current to be distributed and sold to the public. Zamani v Otter Tail County, 182 M 355, 234 NW 457.

A contract for the furnishing to the city of electric current, to be delivered and metered at the city's power plant, authorized the utility company to make use of the streets only for the purpose of making the connection with the city's plant necessary for the performance of the contract. It did not give to the utility company any right to deal with, or serve, the public. N. S. Power Co. v Granite Falls, 186 M 209, 242 NW 714.

300.04 STATE AND LOCAL CONTROL; EMINENT DOMAIN.

HISTORY. 1858 c. 55 s. 1; P.S. 1858 c. 17 s. 299; 1865 c. 6 s. 5; G.S. 1866 c. 34 ss. 1, 13; 1875 c. 16 s. 1; G.S. 1878 c. 34 ss. 1, 13, 107; 1885 c. 18; 1887 c. 161; 1889 c. 221; 1893 c. 74 s. 1; G.S. 1894 ss. 2592, 2604, 2619; 1895 c. 19; R.L. 1905 s. 2842; G.S. 1913 s. 6137; G.S. 1923 s. 7433; M.S. 1927 s. 7433.

1. Generally
2. Supervision and regulation
3. Rates
4. Eminent domain

1. Generally

Under a charter which authorizes a railroad company to acquire by condemnation proceedings a strip of land 200 feet in width over private property for a right of way, for the purpose of maintaining and operating a railroad thereon, the company abandons the right of way by failing to operate trains thereon for a period of ten years, and by removing track and bridges, and by constructing and operating a new line to accomplish the same purpose. The title acquired to the lands was in the nature of an easement or terminable fee and the lands revert to the original owner when abandoned by the railroad company. Chambers v G. N. Power Co. 100 M 214, 110 NW 1128.

In determining under what title the corporation was organized; the fact that the organizers denominated the proposed improvement a "street railway" is not controlling, since it conclusively appears from the articles that it was not the purpose of the company to construct and operate not street, but interurban, railways from place to place. Mpls. & St. P. Sub. Ry. Co. v Manitou, 101 M 132, 112 NW 13.

On the question of the right of a corporation to condemn private property, the term "public business" as so used includes the construction of works for supplying the public with water, light, heat and power. Minn. Canal v Pratt, 101 M 197, 112 NW 395.

Partition of lands in kind instead of by sale is preferred. Pigeon River v McDougall, 169 M 83, 210 NW 850.

2. Supervision and regulation

Telephone companies are given the right to erect poles and wires within the urban ways and cities of this state, as well as upon rural highways; but the provisions of the charter of Minneapolis confer upon that city no authority to arbitrarily order a removal of such poles and wires, but only the right to regulate the placing of the same in its streets and to compel the telephone companies to put their wires in subsurface conduits when good government of the municipality requires it. N. W. Tel. Co. v Minneapolis, 81 M 140, 83 NW 527, 86 NW 69.

Where a public service corporation was organized to furnish water, light, heat and power for public use and authorized to use the power of eminent domain, it becomes subject to state regulation and control. The actual exercise of the state's

power to regulate and control such corporation did not constitute a condition precedent to the use of its power of eminent domain, the state being authorized to pass such regulatory measures as the future business of the corporation might require. N. W. Tel. Co. v Minneapolis, 81 M 140, 83 NW 527, 86 NW 69.

The common council of the city of St. Paul is justified in ordering the construction of a new line of street railway only where public convenience and necessity will be promoted thereby; and the question whether public interest will be promoted to such an extent as to justify a new line or an extension is legislative, and the determination thereon by the municipal authorities is ordinarily final in the absence of some provision in the law for a judicial review. The presumption of reasonableness is not conclusive. The street car company is entitled to a hearing thereon in proceedings to enforce compliance thereof of the order. State ex rel v St. P. S. Ry. Co. 122 M 163, 142 NW 136; Matthias v M. St. P. & S. Ry. Co. 125 M 224, 146 NW 353.

Corporations with a power of eminent domain cannot divert water from the navigable streams of one drainage basin into those of another drainage basin for such diversion will impair the navigability of the streams from which the water is supposed to be taken. Minn. Canal v Fall L. Boom Co. 127 M 23, 148 NW 561.

St. Paul may impose regulations upon a common carrier operating motor buses upon its streets for the purpose of transportation of passengers for hire, and may compel its acceptance of a franchise as a condition for its use of such streets. St. Paul v Twin City Motor Bus, 187 M 212, 245 NW 33.

3. Rates

While in a proper action, the reasonableness of an established rate may be the subject of judicial intervention and adjudication, courts are without authority to find by injunction or otherwise rates for public service corporations. The remedy of consumers for discrimination in rates by a public service corporation is ordinarily an action at law and not by injunction. St. Paul Book v St. Paul Gas Light Co. 130 M 171, 153 NW 262.

A city charter providing for the payment of "a license fee in a sum equal to five per cent of the gross earnings" is construed as vesting in the city council the power and duty of fixing the license fee, which must not be less than the named minimum, the charter not being self-executing. St. Paul v Twin City Motor Bus, 187 M 212, 245 NW 33.

The state may authorize a municipal corporation to establish by contract the rates to be charged by a public service corporation for a definite term, not grossly unreasonable in time; and the effect of such contract is to suspend during its life the governmental power of regulating the rates, and under such circumstances the rates are enforceable under the obligation of the contract, even though they become "confiscatory." St. Cloud Public Service v St. Cloud, 265 US 352.

Where a city operates under a home rule charter, it has authority to regulate the rate of a public service corporation and may require such reasonable extension as the facts warrant. OAG Aug. 20, 1934 (624c-11).

A village operating under the Laws of 1885 is bound by a 25-year franchise granted to a power company and is bound by the contract and cannot lower the rates by the passage of an ordinance. 1938 OAG 72, Sept. 16, 1937 (624-6).

Control of public utilities in Minnesota. 16 MLR 496, 508.

4. Eminent domain

A railroad corporation organized under the general law found in General Statutes 1866, Chapter 34, can lawfully take private property for the purpose of its road by proceeding in accordance with the provisions of such chapter. Weir v St. P. S. & T. F. Co. 18 M 155(139).

The railroad company is authorized to take, use, and operate the land of a citizen only for the purposes of the road; and the laying out and the opening of a common public highway is not such a purpose, and no authority is given to the railroad to condemn the land of a citizen for such purposes. Curtis v St. P. S. & T. F. Co. 20 M 28(19).

The legislature intended that the right of a railway company to exercise the power of eminent domain should be subject to the control and discretion vested in the courts. In re St. P. & N. P. Ry. Co. 37 M 164, 33 NW 701.

Where land is taken for its use by a railway corporation having the right to exercise the power of eminent domain, the question whether the use is public or private depends upon the right of the public to use the road and to require the corporation as a common carrier to transport freight or passengers from the same, and not upon the amount of business. Kettle R. R. Co. v Eastern Ry. Co. 41 M 461, 43 NW 469; C. B. & N. Ry. Co. v Porter, 43 M 527, 46 NW 75.

The general rule is that land already devoted to another public use cannot be taken under general laws where the effect would be to extinguish a franchise; but if the taking would not materially injure the prior holder, the condemnation may be sustained. N. S. Tel. Co. v C. M. & St. P. Ry. Co. 76 M 335, 79 NW 315.

The creation of a water power plant for the purpose of "supplying water power from the wheels thereof" to the public, is a private enterprise in the aid of which the power of eminent domain cannot be exercised. Minn. Canal v Koochiching County, 97 M 429, 107 NW 405.

Where a sidetrack becomes part of the trackage of a railroad to be operated as a part of its railway system, the taking of property therefor is a taking for a public purpose. Ochs v C. & N. W. Ry. Co. 135 M 323, 160 NW 866.

300.05 MUNICIPALITY MAY PURCHASE.

HISTORY. 1858 c. 55 s. 1; P.S. 1858 c. 17 s. 299; G.S. 1866 c. 34 s. 1; 1875 c. 14 s. 1; G.S. 1878 c. 34 s. 1; 1885 c. 18; 1887 c. 161; 1889 c. 221; 1893 c. 74 s. 1; G.S. 1894 s. 2592; R.L. 1905 s. 2843; G.S. 1913 s. 6138; G.S. 1923 s. 7434; M.S. 1927 s. 7434.

The city of Northfield by a majority vote of the electors and a two-thirds vote of the council may acquire a gas plant by eminent domain. A provision in the gas franchise permitting the right to purchase at the end of each five year term does not affect the right to presently acquire. OAG May 24, 1944 (624c-10).

Public utility legislation since the Revised Laws. 16 MLR 497.

300.06 FILING AND RECORD OF CERTIFICATE.

HISTORY. 1858 c. 55 s. 3; P.S. 1858 c. 17 s. 301; G.S. 1866 c. 34 s. 2; G.S. 1878 c. 34 s. 2; G.S. 1894 s. 2593; R.L. 1905 s. 2850; G.S. 1913 s. 6148; G.S. 1923 s. 7444; M.S. 1927 s. 7444.

Any officer, director or member of a corporation is liable for corporate debts when he "is guilty of any fraud, unfaithfulness or dishonesty in the discharge of any official duty." "Unfaithfulness," as here used means any violation or neglect of official duty. These provisions give the creditor a right of action against the official only when his unfaithfulness has resulted in damage peculiar to such creditor, but not when the only damage or loss is to the corporation, and by reason thereof to all the creditors in common. First New Haven Bank v N. W. Guaranty, 61 M 375, 63 NW 1079.

Construction of buildings. First National v Corp. Securities, 120 M 105, 139 NW 296.

300.07 PUBLICATION OF CERTIFICATE.

HISTORY. 1865 c. 6 s. 2; G.S. 1866 c. 34 s. 3; 1874 c. 60 s. 1; G.S. 1878 c. 34 s. 3; G.S. 1894 s. 2594; 1901 c. 99; R.L. 1905 s. 2851; G.S. 1913 s. 6149; G.S. 1923 s. 7445; M.S. 1927 s. 7445.

The failure to file the certified certificate provided for in General Statutes 1878, Chapter 34, Sections 128 to 137, does not affect the lawful character of the corporation referred to in these sections. In re Shakopee Mfg. Co. 37 M 91, 33 NW 219.

Laws 1887, Chapter 132, was pertinent and effectual to validate the class of corporations therein designated, but that act did not interfere with vested rights, or cut off and destroy an existing right of action. Christian v Bowman, 49 M 99, 51 NW 663.

In an action to recover the balance of an unpaid subscription for stock, the defendant recognized, dealt with, and became a stockholder in a de facto corporation, and is not estopped from questioning its existence, or ascertaining that it was never legally organized by reasons that it failed to comply with the provisions of this section by filing with the secretary of state proof of the publication of its articles. Hause v Mannheimer, 67 M 194, 69 NW 810.

When articles of incorporation have been executed, filed and published as required by law, a proof of their publication is then filed in the office of the secretary of state, the corporate organization is complete; and a corporation de jure is brought into existence, notwithstanding the fact that no capital stock was subscribed or paid for, no books kept, no by-laws adopted, and no meetings held or any officers elected. Moe v Harris, 142 M 442, 172 NW 494.

Corporation, amending its articles by changing its purpose to a manufacturing purpose exclusively, became at least a de facto manufacturing corporation by filing the amendment, regardless of failure to file affidavit of publication; the stockholders and creditors, by subsequent course of dealings in a period of more than six years were, as respected stockholders' liability, estopped to deny corporate existence as thus amended. Henry v Markesan, 68 Fed(2d) 554.

Disregarding the corporate entity in a de facto dissolution. 15 MLR 220.

300.08 GENERAL POWERS.

HISTORY. 1860 c. 24 s. 3; 1865 c. 6 s. 2; G.S. 1866 c. 34 ss. 4, 45, 163; 1867 c. 18 s. 2; 1867 c. 71; 1873 c. 11 s. 1; 1873 c. 12 s. 1; 1876 c. 28 s. 1; 1878 c. 10 s. 1; G.S. 1878 c. 34 ss. 4, 109, 120, 144, 412; 1881 c. 27 s. 1; 1885 c. 9; 1887 c. 49; 1891 c. 71 s. 1; G.S. 1894 ss. 2594, 2595, 2805, 2827, 3415; R.L. 1905 s. 2844, 2852, 2853; G.S. 1913 ss. 6139, 6151, 6153; G.S. 1923 ss. 7435, 7447, 7452; M.S. 1927 ss. 7435, 7447, 7452.

A corporation may execute promissory notes to evidence debts which it may contract. Sullivan v Murphy, 23 M 6; Auerbach v Le Sueur, 28 M 291, 9 NW 799.

The ultra vires act of the directors in executing accommodation paper in the name of the corporation, or in lending its funds to others, constitutes a violation of the act "by the corporation" within the meaning of the statute. Patterson v Stewart, 41 M 84, 42 NW 926.

While a corporation has no power to make accommodation paper, yet a bona fide purchaser for value of such paper of a corporation, having general power to deal in mercantile paper in the course of its business, made by an officer having apparent power to issue it, may recover thereon from the corporation. American Trust v Glueck, 68 M 129, 70 NW 1085.

A corporation organized for the purpose of generating electricity for distribution to the public is a manufacturing corporation. Vancedor v Highland, 125 M 20, 145 NW 611.

A corporation authorized to deal in lands, to act as insurance broker, to loan and borrow money, with general power to carry out specifically granted powers, is not authorized to engage in contracting for hauling gravel, though it may be the owner of automobile trucks used in such work. National Finance Co. v Cramer, 156 M 79, 194 NW 108.

In equity proceedings, all persons whose rights may be injuriously affected by the proposed decree should be made parties to the action; and when stockholders sue to cancel all of the stock of the corporation, the corporation should be a party to the action. Mortgage Land Investment Co. v McMains, 172 M 394, 215 NW 521.

The test as to whether a Minnesota corporation is authorized to do an exclusively manufacturing business so that its stockholders are no subject to a double liability, is whether under its articles of incorporation the corporation can maintain the right to conduct other than a manufacturing business against the objection of the state or dissenting stockholders. Sibley v Crescent Milling, 172 M 394, 215 NW 521.

Except as expressly authorized by statute, a bank has no power to pledge any of its assets to secure the repayment of deposits; and where an unauthorized pledge is made, and the bank becomes insolvent, the receiver may recover pledged assets, or if they have converted may recover damages. Farmers & Merchants Bank v Consolidated School District, 174 M 286, 219 NW 163.

Minnesota trustees have no power to guarantee reserve under the federal farm loan act, in which they have no beneficial interest and an effort to do so is ultra vires; and where such trust company has not participated in the benefits of the transaction wherein it is admitted to guaranty such paper, it is not estopped from asserting the defense of ultra vires. Federal Land Bank v Crookston, 180 M 319, 230 NW 797.

In this case the articles of incorporation do not authorize it to become an accommodation guarantor of the obligations of others in which it had no interest, and an effort by the secretary-treasurer to execute such guaranty was ultra vires. Rodgers v Kranenhagen, 181 M 306, 232 NW 327.

Though the bonds were defectively executed and not certified by the trustee, and though it was declared in the deed of trust and the bonds that they should not have any validity unless so certified, a court of equity will supply the want of proper execution and overlook the lack of certification and declare the bonds a lien secured by the trust deed. Hicks v Fruen Cereal Co. 182 M 93, 233 NW 828.

The evidence compels a finding that a 30-year lease and a subsequent modification thereof taken by the promoter of the bank about to be organized, was not adopted by the bank occupying the premises, improving the same and paying rent; for the covenants contained in the lease to be performed by the lessee were ultra vires as to the bank. Veigel v O'Toole, 183 M 407, 236 NW 710.

An individual organized and controlled a corporation using the very name under which he had long done business as a sole trader, for the purpose of taking over that business; the corporation expressly took over the contracts of the former business, and would be liable for a debt of the business outstanding when the corporation took it over. Fena v Peppers Fruit Co. 185 M 137, 239 NW 898.

An ultra vires contract not expressly prohibited by statute, fully performed on one side, is enforceable by the one who has performed. Benson v Thornton, 185 M 230, 240 NW 651.

Acceptance from the benefits of a contract with knowledge of the facts and rights, creates an estoppel. Under the circumstances the plaintiff stockholders were estopped from questioning the validity of a chattel mortgage given to secure money lent to the corporation. Bacich v Northland, 185 M 544, 242 NW 379.

In a mismanagement suit, the adjustment of lawsuits, the payment of disputed taxes, and payment for services and expenses in connection therewith, may not be questioned on the ground of improvident loan. Butler v Butler, 186 M 144, 242 NW 701.

A stockholder of a corporation may contract with the corporation in the same manner as any other individual. Heider v Hermann Sons Hall Assn. 186 M 494, 293 NW 699.

Where the interests of the minority may be otherwise protected, and where there is no evidence of unfairness or fraud, a court will not upon the petition of the minority of stockholders restrain the corporation from selling its property or merging with another corporation where it appears that restraining the transaction would be to the detriment of the majority stockholders. Paterson v Shattuck, 186 M 611, 244 NW 281.

In the law of agency, expressed authority is that which the principal directly grants to his agent, and may be founded upon implication; where such powers are proper and necessary as a means of effectuating the purpose of the agency. Dimond v D.A.V. 196 M 52, 264 NW 125.

Under the circumstances in this case, a majority of the stockholders of the Minnesota corporation were justified in authorizing the sale of all of its assets to a Delaware corporation against the protest of minority stockholders; and the Minnesota corporation, under the circumstances, was justified in accepting stock of the Delaware corporation in payment for the property. Hill v Page & Hill, 198 M 30, 368 NW 705, 927.

General laws providing for the extension of corporate existence do not confer contract rights to corporations organized thereunder to have their existence extended in the same manner and on the same conditions as when organized. The power is reserved to the state to alter or modify the general law in that respect. Warnock v Hudson, 200 M 196, 273 NW 710.

Relations of a stockholder to a corporation and to the public require good faith and fair dealing in every transaction between the stockholder and the corporation which may universally affect the rights of creditors and the general public. In re Burntside Lodge, Inc. 7 Fed. Supp. 785.

Where a variable clause appears in the certificate of incorporation, the commissioner of banks may insist on the adoption of a by-law fixing a definite number and term of the board of directors. 1938 OAG 3, June 2, 1937 (29a-13).

In cooperative associations, amendments to the by-laws need not originate with the directors except in cases where the vote is to be by mail. 1938 OAG 106, Jan. 5, 1938 (93a-4).

Suits against state boards, commissions, institutions and corporations in which the state or the United States owns all or part of the stock. 8 MLR 432.

300.09 SALE, LEASE, OR EXCHANGE OF PROPERTY; PROCEDURE.

HISTORY. 1925 c. 320 s. 1; M.S. 1927 s. 7447-1; 1933 c. 300 s. 62.

Where a Minnesota corporation transferred its assets to a Delaware corporation, and the minority stockholders were not prejudiced by the exchange of stock, the minority stockholders cannot complain of the transfer. Bacich v Northland, 185 M 544, 242 NW 379.

Under the power granted to trustees in this case, they could legally vote their consent to exchange of stock in one corporation for property or for stock in another corporation. Butler v Butler, 186 M 144, 272 NW 701.

The finding of the trial court that there was a deficiency of over $100,000 in the "net quick assets" of certain corporations whose stock and assets were sold by plaintiffs to defendants, is sustained by the evidence. Under the sales contract in question, defendants were entitled to recover for a deficiency in net quick assets of the corporation whose stock and assets they purchased whether or not they, or anyone other than plaintiffs, had restored such assets. Sheffield v Clifford, 186 M 300, 243 NW 129.

The usual stated rule is that a corporation under ordinary circumstances cannot sell all of its property and disable itself from the business intended by its charter as against the objection of a single stockholder; but it is recognized that conditions may be such as to justify such sale. Paterson v Shattuck, 186 M 611, 244 NW 281; Hill v Page & Hill, 198 M 30, 268 NW 705; Warnock v Hudson, 200 M 196, 273 NW 710.

Power of majority stockholders to authorize the sale of all of the corporate property. 14 MLR 63.

300.10 DEEDS OF TRUST MAY DRAW INTEREST AT EIGHT PER CENT.

HISTORY. 1917 c. 10 s. 1; 1919 c. 127 s. 1; 1921 c. 131 s. 1; G.S. 1923 s. 7449; M.S. 1927 s. 7449.

After-acquired property under conflicting corporate mortgage indentures. 13 MLR 81.

300.11 EXECUTION OF MORTGAGES AND DEEDS OF TRUST LEGALIZED.

HISTORY. 1917 c. 10 s. 2; 1921 c. 131 s. 2; G.S. 1923 s. 7450; M.S. 1927 s. 7450.

300.12 BY-LAWS; STATEMENTS.

HISTORY. 1858 c. 55 ss. 1, 3, 12, 13; P.S. 1858 c. 17 ss. 299, 301, 310, 311; G.S. 1866 c. 34 ss. 1, 2, 6, 7, 155; 1870 c. 26 s. 2; 1875 c. 14 s. 1; G.S. 1878 c. 34 ss. 1, 2, 6, 7, 404; 1881 c. 15 s. 1; 1885 c. 18; 1887 c. 161; 1889 c. 221; 1893 c. 74 s. 1; G.S. 1894 ss. 2592, 2593, 2597, 2598, 3407; R.L. 1905 ss. 2854, 2855; G.S. 1913 ss. 6154, 6155; G.S. 1923 ss. 7453, 7454; M.S. 1927 s. 7453, 7454.

Where a creditor has obtained judgment against a corporation, it was no doubt intended by the legislature to make it imperative that the liability of the corporation should be determined and the legal remedy against it exhausted before

the individual property of the stockholder should be resorted to; but it is difficult to see why this is not as effectually done by first obtaining a judgment against the corporation, and exhausting the remedies against it, and then bringing suit against the stockholder, as by joining both in one action and having the liability of both determined at the same time. Nolan v Hazen, 44 M 478, 47 NW 155.

The statute that provides that private property of a stockholder shall be liable for corporate debts "for a failure by the corporation to comply substantially with the provisions aforesaid as to organization and publicity," has no reference to the violation of the provisions of this section which provides for the posting up of the by-laws and certain statements. The liability refers to the sections relative to the filing and publishing of articles of incorporation. Nat'l New Haven Bank v N. W. Guaranty Co. 61 M 375, 63 NW 1079.

The corporation having provided in its by-laws that all notes issued by it should be signed by both its president and secretary, no actual authority is either expressed or implied, as distinguished from apparent authority, existed in the president to execute such notes by his act alone. Bloomingdale v Cushman, 134 M 445, 159 NW 1078.

The provisions by the by-laws of the corporation for the creation of a sinking fund out of which its directors could, at such time as they should order, redeem outstanding bonds, the provision not being included or referred to in the bonds themselves, did not make such sinking fund the sole fund for the payment of the bonds, or relieve the corporation from its obligation to pay the bonds at maturity. Heider v Hermann Sons Hall Assn. 186 M 494, 243 NW 699.

Where a mailed ballot is used to vote on an amendment to the by-laws, the proposal should originate with the directors and be submitted to the stockholders for approval in the same manner as an amendment to the articles of incorporation. 1938 OAG 106, Jan. 5, 1938 (93a-4).

300.13 CORPORATE EXISTENCE; DURATION; RENEWAL; NOTICES OF RENEWAL, PUBLICATION.

HISTORY. 1860 c. 24 s. 3; 1875 c. 14 s. 2; G.S. 1878 c. 34 ss. 5, 117; 1889 c. 237 s. 1; G.S. 1894 ss. 2596, 2802; 1901 c. 207; R.L. 1905 ss. 2856, 2857; 1907 c. 468 s. 2; G.S. 1913 ss. 6156, 6157; 1921 c. 39 s. 1; G.S. 1923 ss. 7455, 7456; 1927 c. 32; M.S. 1927 ss. 7455, 7456; 1933 c. 189; 1933 c. 300 s. 62; 1945 c. 509 s. 1.

Although it is claimed that the corporate existence of the agency expired by limitation, it is a de facto corporation, but it is wholly dormant, and for purposes of the trust it no longer exists. Under such circumstances, however, the court of equity will look to the substance and will not be deterred by obscure shadows or fictitious obstructions from exercising its functions to grant relief. Townsend v Milaca Motor Co. 194 M 423, 260 NW 525.

The general laws providing for the extension of corporate existence do not confer contract rights to corporations organized thereunder to have their existence extended in the same manner and on the same conditions as when organized. The power to alter or modify the general law in that respect is reserved to the state. Warnock v Hudson, 200 M 197, 273 NW 710.

The re-enactment of a statute after it has been construed by the courts, adopts such instruction as part of the statute. In re Trusteeship under Will of Jones, 202 M 200, 277 NW 899.

To renew its corporate existence, prior to the expiration of its present existence, the members, of a county agricultural society, (more than three-fourths voting) may by a majority vote pass and file a resolution to that effect. No fee is necessary. OAG June 13, 1944 (772a-5).

Corporate existence after expiration of charter; de facto corporations. 14 MLR 270.

300.131 INSURANCE COMPANIES MAY HAVE PERPETUAL CORPORATE EXISTENCE.

HISTORY. 1943 c. 72 s. 1.

300.14 CONSOLIDATION OF CERTAIN CORPORATIONS; MANNER OF; RECORDING; PUBLICATION; CERTIFIED COPY AS EVIDENCE.

HISTORY. 1927 c. 385 s. 1; M.S. 1927 s. 7457-12.

Laws 1927, Chapter 385, controls instead of Laws 1927, Chapter 328, relating to consolidation of corporations. Jaques v Pike Rapids Power, 172 M 306, 215 NW 221.

The trend is away from the strict rule and toward holding that, in the absence of unfairness or fraud, a court upon the petition of a small minority and when the fiduciary rights of the minority have been respected, will not restrain corporate action to the detriment of the majority, nor appoint a receiver if the interests of the minority can be protected otherwise. Paterson v Shattuck, 186 M 611, 629, 244 NW 281.

Consolidation; rights of dissenting shareholders. 17 MLR 328.

300.15 POWERS, RIGHTS, LIABILITIES, AND DUTIES OF CONSOLIDATED CORPORATION.

HISTORY. 1927 c. 385 s. 2; M.S. 1927 s. 7457-13.

300.16 DISSENTING STOCKHOLDERS; RIGHTS, HOW DETERMINED.

HISTORY. 1927 c. 385 s. 3; M.S. 1927 s. 7457-14.
See annotations to section 300.14.

300.17 LIABILITIES OF CORPORATIONS, STOCKHOLDERS, AND OFFICERS; RIGHTS OF CREDITORS.

HISTORY. 1927 c. 385 s. 5; M.S. 1927 s. 7457-16.

300.18 CAPITAL STOCK OF CONSOLIDATED CORPORATION.

HISTORY. 1927 c. 385 s. 6; M.S. 1927 s. 7457-17.

300.19 FILING FEE.

HISTORY. 1927 c. 385 s. 7; M.S. 1927 s. 7457-18.

300.20 BOARD OF DIRECTORS, ELECTION; VACANCY, HOW FILLED.

HISTORY. 1865 c. 6 s. 2; G.S. 1866 c. 34 s. 3; G.S. 1878 c. 34 s. 3; 1879 c. 109 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 33 s. 69; G.S. 1894 ss. 2539, 2594; R.L. 1905 s. 2858; G.S. 1913 s. 6171; 1919 c. 311 s. 1; G.S. 1923 s. 7458; M.S. 1927 s. 7458.

The general rule is that the governing body, as such, of a corporation is an agent of the corporation only as a board, and not individually. They have no authority to act for the corporation, save when assembled at the board meeting. Baldwin v Canfield, 26 M 43, 1 NW 261; Pink v Metropolitan, 129 M 353, 152 NW 725.

The board of directors of a corporation has no authority to appropriate its funds in paying claims which the corporation is under no legal or moral obligation to pay, and any authority exercised by the board must be for the benefit of the stockholders and pursuant to the company's chartered purposes. Jones v Morrison, 31 M 140, 16 NW 854.

Where a corporation used, free of charge, a patented invention with the consent of the owner, who was also a director and officer of the corporation, the owner by reason of his relationship to the company was not necessarily precluded from recovering a reasonable compensation. It would be for the jury to consider whether, under the circumstances, there was an express or implied agreement that the patent be used without compensation. Deane v Hodge, 35 M 146, 27 NW 917.

A trustee is not permitted to be a party to a contract entered into between himself and other trustees of the school district stipulating for his services or employment, or for compensation fixed by such contract. Such a contract is voidable at the election of the district. Currie v School District, 35 M 163, 27 NW 922.

When the majority of the stockholders of a corporation divert it and its assets from the legitimate purposes to the use and benefit of one of such majority, a minority stockholder may bring suit without applying to have the suit brought in the name of the corporation. Rothwell v Robinson, 39 M 1, 38 NW 772.

Where a corporation has no provision in its articles to divide the duties of the officers or directors, and where there are no by-laws, the board may permit its principal stockholder, who is also president and secretary, to transact all of its business; and where this officer, with the secretary, executed a mortgage to secure a note issued by the corporation, the act is valid. Gross v Paulle, 132 M 160, 156 NW 268.

The law imposed upon the directors of a corporation the duty of exercising the measure of good faith towards their corporation which trustees should exercise; and a mortgage made by the corporation to the directors to secure them against liability on the guaranty to a bank made to enable the corporation to obtain money, the transaction being made in good faith and entirely fair and without wrong to others, is valid. Minn. Loan v Peteler, 132 M 277, 156 NW 255; Marin v Calmenson, 158 M 282, 197 NW 262; Fraser v Farmers Cooperative, 176 M 516, 233 NW 785.

The president of a mercantile corporation is presumptively a director and a stockholder, and a person interested in the event of an action against the corporation, and is presumptively incompetent to give evidence concerning a conversation with a deceased person relative to a matter at issue in the action. Caldwell v May, 141 M 255, 169 NW 797.

The evidence was sufficient to show authority in the general manager of the defendant corporation to transfer a cause of action for an injury to the property which he sold to the respondent. Winans v N. S. Power Co. 158 M 62, 196 NW 811.

The law requires the director to be a stockholder, and hence it will be presumed that one acting as a director is a stockholder. Zander v Shackel, 161 M 116, 201 NW 308.

De facto officers cannot invoke the aid of their own acts as such to promote their individual interest. The doctrine of defendant officers is applicable when third persons are involved and not in a case of direct attack. Mortgage Land Inv. Co. v McMains, 172 M 110, 215 NW 192.

Defendant was active in the management, and for more than four years had been a stockholder and director. Upon the insolvency of the company and an assessment upon the stockholders, he is estopped from setting up a defense that he was induced to become a stockholder through deceit. Johnson v Christliev, 178 M 9, 235 NW 927.

The evident notice upon the validity of the election of corporation directors. State ex rel v Kylmanen, 180 M 486, 231 NW 197.

Plaintiffs in a stockholders' action, themselves formed directors of the corporation, are barred by acquiescence therein from complaining of unlawful expenditures by the management which were made pursuant to fixed policies of the company established and long maintained. Barrett v Smith, 183 M 431, 237 NW 15.

Where it appears that plaintiffs, when members of the board for many years, sanctioned the practice of permitting appellants to make illegal political contributions from corporate funds, equity will have compelled the members of the board to pay back such funds at the suits of the plaintiffs. Barrett v Smith, 185 M 596, 242 NW 392.

A share of stock may be freely sold by its owner, there being no prohibition in the corporate articles or by-laws and there being no statutory limitation; and the fact that the owner of the stock is also an officer or director does not prevent him from selling his stock. An officer or director has the same right as any other stockholder to buy stock from or sell his stock to another. Nelson v Northland Life, 197 M 151, 266 NW 857.

It is the duty of the directors to cause vacancies in their membership to be filled with reasonable expedition and permanence, having due regard for the exercise of proper discretion and judgment to make selection of qualified successors. 1938 OAG 3, June 2, 1937 (29a-13).

Minnesota business corporation act; power to hold stock in other corporations. 18 MLR 1.

300.21 OFFICERS.

HISTORY. R.L. 1905 s. 2859; 1909 c. 298 s. 1; G.S. 1913 s. 6172; G.S. 1923 s. 7459; M.S. 1927 s. 7459.

This section does not in any way apply to chapter 301.

Laws 1909, Chapter 298, changed the defendant from a de facto corporation to a de jure corporation; but Laws 1870, Chapter 29, under which it was organized, still controls as to the powers of the corporation and of its officers, directors or managers, and as to the rights of stockholders in such corporation. Healey v Steele Center, 115 M 451, 133 NW 69.

A holder "in due course" of the corporation notes is charged with notice of the articles of incorporation and by-laws and must show, in order to recover, that the officer purporting to have executed the notes had expressed, implied or apparent authority to do so. Bloomingdale v Cushman, 134 M 445, 159 NW 1078; Caldwell v May, 141 M 255, 169 NW 797.

De facto officers cannot invoke the aid of their own acts as such to promote their individual interest. The doctrine of de facto officers is applicable when third persons are involved, and not in case of direct attack. Mortgage Company v McMains, 172 M 110, 215 NW 192.

During an automobile race at a fair, a car left the track and injured spectators. The race was run under a contract by which the defendant association and the drivers each received one-half of the gate receipts. They were joint adventurers, and defendant corporation is liable for the negligence which resulted in the accident. Ellingson v World Amusement Service, 175 M 563, 222 NW 335.

Defendant Sloan was an officer of defendant corporation but had no part in managing or conducting the races, and he is not liable for torts committed by the corporation or its officers or agents. Ellingson v World Amusement Service, 175 M 563, 222 NW 335.

Neither the president nor, in his absence, the vice president of an ordinary corporation, has the power by virtue of his office alone to employ a broker for the sale of his company's real estate, and fix his compensation. Thompson v North Star Muskrat Farm, 183 M 314, 236 NW 461.

Under the facts in this case, the complaining stockholders are estopped from questioning the right of the president and secretary of the Eagle Company to hold their offices. Bacich v Northland, 185 M 544, 242 NW 379.

Bonuses received by officers without authority must be returned; and in this case an increase in the salaries of the officers of from 40 to 60 per cent more than had ever before been paid, indicates a desire to wrongfully absorb the earnings, to the detriment of the minority stockholders, and the corporation may recover. Barrett v Smith, 185 M 596, 252 NW 392.

A corporation transacting its business in the name of another corporation, its agent, may be held as the undisclosed principal of the latter for loans obtained to conduct the business for the former. American Fund v Associated Textiles, 187 M 300, 245 NW 376.

A cause of action for secret profits made by a promoter (the fraud in the first instance being practiced on plaintff as a co-promoter); vested in the corporation upon its organization when it consummated the purchase in the course of which the secret profit was made. This release by the corporation bars the present action by plaintiff against his co-promoter. Barrett v Shambeau, 187 M 430, 245 NW 830.

An officer or agent in charge of the business of a corporation who secretly and fraudulently diverts corporate business to himself and receives the profits, is accountable to the corporation for such profits and likewise for any secret commissions received by him upon goods purchased for the corporation. Chicago Flex-o-Tile Co. v Lane, 188 M 422, 247 NW 517.

The evidence sustains the finding of the jury that the president of the corporation in this case had authority to bind the corporation in a contract for an audit of the corporation books. Temple v Greater St. Paul Corporation, 189 M 236, 248 NW 819.

300.22 CLASSIFICATION OF MANAGERS.

HISTORY. G.S. 1866 c. 34 s. 155; 1870 c. 26 s. 2; G.S. 1878 c. 34 s. 404; 1881 c. 15 s. 1; G.S. 1894 s. 3407; R.L. 1905 s. 2860; G.S. 1913 s. 6173; G.S. 1923 s. 7460; M.S. 1927 s. 7460.

This section is not applicable to chapter 301.

300.23 VOTING, HOW REGULATED.

HISTORY. G.S. 1866 c. 34 s. 160; G.S. 1878 c. 34 s. 409; G.S. 1894 s. 3412; R.L. 1905 s. 2861; G.S. 1913 s. 6174; G.S. 1923 s. 7461; M.S. 1927 s. 7461.

This section does not apply to chapter 301.

While the Eagle Company was insolvent, it sold and issued to defendant Glynn 240 shares of its stock at 25 cents on the dollar. Such stock, in the absence of a judicial determination that it was invalid, was entitled to vote; and plaintiffs and the Eagle Company are estopped from questioning the validity of such stock or its voting privilege. Bacich v Northland, 185 M 544, 242 NW 379.

Voting trust agreement by common stockholders of a Delaware corporation doing business in Minnesota is not affected by, or violative, of this section. Common stock voting trust agreement, made to provide for continuity of management as an inducement to, and for protection of, bond and preferred stockholders, who invested over six times the par value of common stock to finance building the hotel, is valid. Mackin v Nicollet Hotel, 10 Fed(2d) 375.

The fact that the state in which a corporation was incorporated passed a law authorizing voting trust agreements does not justify a holding that previous to such law, voting trusts were illegal. Voting trust agreements previous to the law were valid. Legislation is addressed to the future and not to the past. Mackin v Nicollet Hotel, 25 Fed(2d) 783.

Paid up members of a social and charitable corporation may vote by proxy. OAG Feb. 14, 1945 (102).

300.24 CUMULATIVE VOTING.

HISTORY. R.L. 1905 s. 2862; G.S. 1913 s. 6175; G.S. 1923 s. 7462; M.S. 1927 s. 7462.

This section does not apply to chapter 301.

Cumulative voting; Minnesota business corporation act. 17 MLR 702.

300.25 TRANSFER OF STOCK.

HISTORY. 1858 c. 55 s. 20; P.S. 1858 c. 17 s. 318; 1860 c. 24 s. 14; G.S. 1866 c. 34 ss. 8, 49; 1873 c. 11 s. 15; G.S. 1878 c. 34 ss. 8, 114, 135; 1883 c. 107 s. 12; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 442; G.S. 1894 ss. 2599, 2799, 2819, 2832; R.L. 1905 s. 2863; G.S. 1913 s. 6176; G.S. 1923 s. 7463; M.S. 1927 s. 7463; 1933 c. 300 s. 62.

The provision providing that stock shall be transferable only upon the books of the corporation in such form as the directors prescribe is intended solely for the protection and benefit of the corporation, and does not incapacitate the shareholder from transferring his stock without any entry upon the corporation books. Baldwin v Canfield, 26 M 43, 1 NW 261; Nicollet Nat'l v City Bank, 38 M 85, 35 NW 577; Joslyn v St. Paul Distill. Co. 44 M 183, 46 NW 337; Lund v Wheaton Roller Mill, 50 M 36, 52 NW 268; Prince v St. Paul & S. C. Ry. Co. 68 M 121, 70 NW 1079; St. P. Nat'l v Life Ins. 71 M 123, 73 NW 713.

A sale and transfer of corporate stock, although not entered on the books of the corporation, is effectual as between the parties, and takes precedence of a subsequent attachment in behalf of a creditor of the vendor. Lund v Wheaton Roller Mill, 50 M 36, 52 NW 268.

A transfer on the corporation books is designed for the benefit of the corporation itself and possibly in some instances is protection to its creditors. Basting v Northern Trust, 61 M 307, 63 NW 721.

Stock certificate is an assurance to the commercial world that the shares of stock are the property of the person designated, and that he has the power and

right to transfer and sell the stock until this power has been lawfully terminated. Joslyn v St. Paul Distilling Co. 44 M 183, 46 NW 337.

In order to constitute one a stockholder in a corporation, it is not necessary that the certificate, to which he is entitled, be issued. Holland v Dul. Iron M. Co. 65 M 324, 68 NW 350.

Plaintiff did not cease to be a stockholder by simply pledging his shares. The bank did not become a stockholder in the defendant corporation by simply receiving the stock shares as collateral security. McMullan v Dickinson, 63 M 405, 65 NW 661.

Certificates of stock in a foreign corporation are personal property, and when in the hands of third parties, within this state, are subject to garnishment. Puget Sound v Mather, 60 M 362, 62 NW 396.

A lien given to a corporation upon stock for debts to it from the stockholders attaches whether the debt accrued before or after he acquired the stock. Schmidt v Hennepin Co. Barrel Co. 35 M 511, 29 NW 200; Prince v St. P. & S. C. Ry. Co. 68 M 121, 70 NW 1079; Dorr v Life Ins. Clearing Co. 71 M 38, 73 NW 635; St. P. Nat'l v Life Ins. Clearing Co. 71 M 123, 73 NW 713; Holland Piano Co. v Smith, 155 M 6, 192 NW 355.

The provision in this section that stock shall not be transferred from the books of a corporation while any debts of the record holder thereof to the corporation remains unpaid, creates a lien on the stock in favor of the corporation; and such lien may be foreclosed in equitable action. U. S. v Sullivan, 113 M 27; 128 NW 1112.

One to whom corporate stock has been transferred as collateral security, but who appears upon the books of the corporation as the general owner thereof, is liable as stockholder for the debts of the corporation; but where shares are transferred as collateral security and are so registered on the stock record of the corporation, he is not liable as a stockholder for the debts of the corporation. Marshall Field v Evans Johnson Co. 106 M 85, 118 NW 55.

The provision in Laws 1870, Chapter 29, relating to cooperative associations that "no person shall be allowed to become a shareholder in such association except by the consent of the managers of the same" is valid, and applies to this defendant. The provision is not repealed or modified by section 300.25. Healey v Steele Center, 115 M 451, 133 NW 69.

When the corporation records indicate that the stock was issued to the record holder as owner, and do not show the fact of the pledge, or that the stock is held as collateral security, the stockholder of record is estopped as against creditors to deny his liability as a stockholder. Way v Barney, 127 M 346, 149 NW 462, 646.

A state bank has no lien on its stock for the owner's debt to the bank. Anderson v Cook Co. State Bank, 154 M 231, 191 NW 417; Rockwood v Foshay, 195 M 64, 261 NW 697.

The statutory lien of a corporation on its own stock is a creature of statute. It is for the benefit of the corporation alone. It is not assignable by the corporation. Benson v Saffert, 159 M 54, 198 NW 297.

Plaintiff discovered she had been defrauded, tendered the corporation stock to the defendants, demanded a return to what they had received, and was refused. The stock involved gave her corporate control. During this time the corporation used the merchandise on hand to pay its debts and made an effort to keep the corporation business alive. In the absence of waste or fraud, her tender was good and was kept good. Billings v Johnson, 160 M 148, 199 NW 566.

Where a stockholder's indebtedness to the corporation is paid by the stockholder's sureties, equity will keep the lien alive for their benefit, and the payment will operate as a purchase, and the sureties are heir to all the remedies the corporation possesses against the stockholder. Benson v Saffert, 161 M 269, 201 NW 424.

A complaint alleging duress exercised by the defendants upon the plaintiff causing her to sell certain shares of stock to the defendants, does not state a cause of action. Zimmerman v Benz, 162 M 47, 202 NW 272.

The contract in this case is not a subscription for capital stock and must be construed to be an executory contract for the sale and purchase of the stock. Stern v Mayer, 166 M 346, 207 NW 737.

Plaintiff sued in replevin for certain shares of plaintiff's capital stock, issued to Thomson. The defendant bank, by a counterclaim, in its answer asserted a lien upon the stock for loans to Thomson, and asked to foreclose the lien. Plaintiff dismissed its complaint and cause of action in replevin, and in its reply to the counterclaim asserted a statutory lien for indebtedness due from Thomson prior and paramount to that of the defendant. Although the reply is a departure from the complaint, if that pleading had remained in the case, it was admissible as a defense to the counterclaim. Hormel v First Nat'l Bank, 171 M 65, 212 NW 738; Benson Lbr. Co. v Thornton, 185 M 230, 240 NW 651.

One who, by fraudulent representation of individual defendants, was induced to buy the stock of a corporation, upon rescinding the transaction for the fraud, cannot recover from the defendants as for money had and received, in the absence of proof that the defendants were personally enriched by the transaction. Erickson v Borchardt, 177 M 381, 225 NW 145.

A corporation without express authority and when not prohibited by its own charter or by statute, may buy and sell its own shares provided it does so in good faith without intending to injure and without in fact injuring its creditors; and in this case stock was issued to persons already stockholders who furnished money to the corporation and while as between the parties the transaction was a loan, as to the creditors it was a sale of stock. O'Brien v Bay Lake Fruit Co. 178 M 179, 226 NW 513; Nelson v Northland Life, 197 M 151, 266 NW 857; State v First Bank Stock Corp. 197 M 544, 266 NW 519; 301 US 234; 57 SC 677.

A sale and assignment of shares of stock under our statutes passes legal title thereto without registration on the books of the corporation; the right to vote at a stockholders' meeting is an incident of ownership and follows the legal title; and the regulations prescribed in sections 300.25 and 300.26 are for the protection of the corporation and its creditors, and the corporation may by its charter or by its by-laws, provide that the tranfers of its stock must be entered upon the books of the corporation before the transferee shall be entitled to vote. Dennistoun v Davis, 179 M 373, 221 NW 353.

Members of a non-stock cooperative marketing corporation have a right to inspect the books, records and papers of the corporation under all reasonable circumstances. State ex rel v St. Cloud Milk Producers Ass'n, 200 M 1, 273 NW 603.

One of the defendants was a lawyer and, as president, in charge of the stock-selling campaign of the defendant corporation, charged as a co-conspirator with him. Plaintiff placed special confidence in the lawyer, and where such confidence is reposed it must be respected and kept free from over-reaching or bias. In this case the plaintiff is not estopped by reason of the fact that she held the stock in the corporation for some years and received dividends thereon. Sheele v Union Loan, 200 M 554, 274 NW 673.

Where one intention appears in one clause in an instrument, and a different conflicting intention appears in another clause in the same instrument, that intention should be given effect which appears in the principal and more important clause; and in this case the contract is construed to be a sale, though in one clause it is nominated an option to buy. Oleson v Bergwell, 204 M 450, 283 NW 770.

Liability of record owner to creditors for unpaid balance of stock. 8 MLR 542.

Subrogation of statutory lien of corporation upon stock. 9 MLR 292.

Minnesota business corporation act. 18 MLR 1.

300.26 EFFECT OF TRANSFER; STOCK BOOKS.

HISTORY. 1858 c. 55 s. 20; P.S. 1858 c. 17 s. 318; G.S. 1866 c. 34 s. 8; G.S. 1878 c. 34 s. 8; G.S. 1894 s. 2599; R.L. 1905 s. 2864; G.S. 1913 s. 6177; G.S. 1923 s. 7464; M.S. 1927 s. 7464.

This section is not applicable to corporations governed by chapter 301.

A stockholder was liable upon his stock notwithstanding the fact that he had subsequently transferred the same in good faith for a valuable consideration. Tiffany v Giesen, 96 M 488, 105 NW 901.

It is the general rule not changed by the laws of Arizona that a stockholder's liability for unpaid subscriptions does not continue after a transfer of the stock, but follows the stock, except where transferred for the purpose of defrauding creditors. McConey v Belton Oil Co. 97 M 190, 106 NW 900.

The records of a private corporation are competent evidence of the ownership of corporate stock where an alleged stockholder denies such ownership. Lebens v Nelson, 148 M 240, 181 NW 350.

As between the members, a transfer of stock is good without any book entries. Mortgage Land Co. v McMains, 172 M 110, 215 NW 192.

Rent accruing subsequent to the date upon which a stockholder transfers his stock by virtue of a lease existing at the time of the transfer, is not a debt at the time of the transfer because not fixed nor capable of liquidation. Crowley v Potts, 180 M 234, 230 NW 645.

Ownership of stock in a corporation may be proven by the corporate books and records; but they are not conclusive evidence. Johnson v Fried, 181 M 316, 232 NW 519.

Under sections 300.25 and 300.26, a transferee who never was a registered stockholder, who never held himself out as such, has not interfered with his transferor's liability (the registered owner's) nor exercised a stockholder's privileges, nor participated in the corporate management, is not liable under the Minnesota Constitution, Article 10, Section 3, making the stockholders in certain corporations liable for corporate debts to the amount of their stock. Hamilton v Loeb, 186 Fed. 7.

Under this section, a stockholder of a corporation belongs to the class in which stockholders are subject to personal liability, because his stock is subject to a continuation of his liability after a transfer in case there remain debts of the corporation incurred while he was a stockholder. Hamilton v Selig, 195 Fed. 153; 234 US 652.

Statutory or double liability; method of enforcement. 7 MLR 104.

Liability of record owner to creditors for unpaid balances of stock. 8 MLR 542.

Stockholders; constitutional liability after forfeiture. 13 MLR 61.

Liability of unregistered transferee to transferor after resale. 19 MLR 339.

300.27 STOCKHOLDERS, LIABILITIES.

HISTORY. 1858 c. 55 ss. 14, 17, 23; P.S. 1858 c. 17 ss. 312, 315, 321; G.S. 1866 c. 34 s. 9; 1875 c. 15 s. 1; G.S. 1878 c. 34 s. 9; G.S. 1894 s. 2600; R.L. 1905 s. 2865; G.S. 1913 s. 6178; G.S. 1923 s. 7465; M.S. 1927 s. 7465; 1931 c. 210 ss. 1, 2; M. Supp. ss. 7465-1, 7465-2.

1. **Generally**
2. **Personal liability**
3. **Exemptions**
4. **Application**

This section does not apply to chapter 301.

1. Generally

Where the stockholders of a corporation are liable for its debts 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. Dodge v Minnesota Plastic, 16 M 368(327); Mchts. Nat'l v Bailey, 34 M 323, 25 NW 639; In re Peoples Livestock Ins. 56 M 180, 57 NW 468.

While the affairs of an insolvent corporation are in the hands of a receiver, a creditor may not maintain an action in his own behalf against a stockholder to recover for stock held by the stockholder, but never paid for. Mchts. Nat'l v N. W. Mfg. Co. 48 M 361, 51 NW 119.

Remedy for enforcing the constitutional or double liability of stockholders of a corporation is that provided by General Statutes 1894, Sections 5889 to 5911, and that is the only remedy. Winnebago v N. W. Printing, 61 M 373, 63 NW 1024.

The right of creditors to recover of stockholders unpaid stock subscriptions does not depend upon constitutional or statutory provisions imposing the liability

of stockholders to the corporation, but is based upon fraud. The remedy is governed by the law of the forum, and there is no distinction between domestic and foreign corporations in respect to such right of creditors to recover. Randall Prtg. Co. v Sanitas, 120 M 268, 139 NW 606.

The receiver of a corporation may sell notes representing unpaid stock subscriptions and pass to the purchaser whatever title he has. Wilcox v Rosenberger, 156 M 487, 195 NW 489.

A receiver of a corporation takes its assets by a process equivalent to attachment and, representing the creditors, his equities with respect to a note evidencing an unpaid stock subscription, are superior to those of the maker who had a right to rescind the note while the corporation was a going concern, and failed to do so. Henderson v Crosby, 156 M 323, 194 NW 641; Wilcox v Rosenberger, 156 M 487, 195 NW 489.

In a suit to enforce stockholders' liability for debts incurred by a domestic corporation prior to the 1930 amendment of Minnesota Constitution, Article 10, Section 3, it is held that the liability of the stockholder attaches as soon as the relationship is assumed; is fixed by the constitution, and stands as surety for corporate debts; and when such corporation goes into the hands of receiver all corporate debts mature, and the stockholders' liability is stationary because fixed as of that date. Knipple v Lipke, 211 M 238, 300 NW 620.

The 1930 amendment to Minnesota Constitution, Article 10, Section 3, does not purport to be self-enforcing, nor itself to alter the terms of existing constitutional provisions in advance of action by the legislature on which it conferred power to provide for limit, and otherwise regulate the liability of stockholders. The legislative enactment did not take effect until April 18, 1931, pursuant to Laws 1931, Chapter 210. Saetre v Chandler, 57 Fed(2d) 959; Badger v Hoidale, 88 Fed(2d) 208.

The so-called "double liability" fee of corporations is no longer a part of our laws. It is noteworthy, however, that the original constitutional provision was self-executory while the 1930 amendment was not. The amendment merely authorized the legislature to limit and regulate the liability of stockholders, regardless of how organized. At present, shares in a cooperative organized after 1931 are not assessable in case of dissolution of the cooperative. 1940 OAG 2, June 30, 1939 (93a-18).

Rights of creditors against stockholders by reason of constitutional liability. 7 MLR 97, 111.

Liability of transferor or subsequent assessments; transfer to infant. 17 MLR 546.

2. Personal liability

Where a creditor has obtained judgment against the corporation and execution thereon has been returned unsatisfied, the creditor in bringing an action against a stockholder to enforce his individual liability need not join the corporation as a party. Nolan v Hazen, 44 M 478, 47 NW 155; McConey v Belton, 97 M 190, 106 NW 900.

In case of the death of a stockholder, a creditor may present and prove his claim against the stockholder's estate in the probate court. Nolan v Hazen, 44 M 478, 47 NW 155; State ex rel v Probate Court, 66 M 246, 68 NW 1063.

A stockholder's liability for unpaid subscriptions to stock does not continue after he has transferred the stock, except where the transfer was for the purpose of defrauding creditors. The transferee of the stock is liable for unpaid subscriptions to the stock transferred to, and held by him. In re Peoples Livestock Ins. Co. 56 M 180, 57 NW 468.

A shareholder cannot affect his constitutional liability for the prior debts of the corporation by a bona fide sale of his stock to a solvent party, and a transfer thereof on the books of the corporation. Gunnison v U. S. Invest. Co. 70 M 292, 73 NW 149.

The liability of stockholders for the debts of the corporation is contractual and several, and a judgment against part of them does not have the effect of releasing the others. Hanson v Davison, 73 M 454, 76 NW 254.

In an action by a receiver to recover the par value of capital stock issued as fully paid for nothing of value, the stock was bonus stock and liability rested upon fraud. Ewing v Gmeinder, 170 M 242, 212 NW 446.

A certificate of deposit payable in "six or twelve months" is payable at the expiration of six months at the election of the depositor; and if he does not elect to take the payment at the end of six months, the certificate then becomes a twelve-months certificate; and the fact that it is the custom for banks to pay certificates of deposit upon demand of the depositor and before they become due, does not change the contract evidenced by the certificate. Barsness v Burkie, 176 M 355, 233 NW 298.

Mere employees of a corporation, having no duties in handling stock, could not be held responsible on theory of conspiracy for alleged wrongful issuance of stock. A stockholder having knowledge of wrong-doing of officers, directors, or employees of corporation is not liable for failure to sue the wrongdoers on behalf of the corporation. Holtman v Crookston Milling Co. 217 M 303, 14 NW(2d) 470.

3. Exemptions

A creditor who has dealt with a corporation de facto in its corporate name and capacity, and given credit to it, and not to its members or stockholders, can not, in the absence of fraud, charge them as partners with the debts of the corporation. Richards v Minn. Savings Bank, 75 M 196, 77 NW 822; National New Haven Bank v N. W. Guaranty, 61 M 375, 63 NW 1079.

When a stockholder has the right to rescind his stock subscription for fraud, he is not prejudiced because, instead of rescinding by his own act, he commenced a suit for rescission. Wilcox v Rosenberger, 156 M 487, 195 NW 489.

A Minnesota corporation authorized to quarry stone and market product without use of mechanical or manufacturing processes other than excavation of the rock, is not organized exclusively to carry on "any kind of mechanical or manufacturing business" in such fashion as to exempt its stockholders under Minnesota Constitution, Article 10, Section 3. Veigel v Mpls. Stone Co. 186 M 182, 242 NW 621.

4. Application

The remedy provided by this section is not applicable where it is sought to reach unpaid subscriptions to the stock of a foreign corporation. Rule v Omega, 64 M 326, 67 NW 60.

The venue is removable to the county of the defendant. The action is not penal. Flowers v Bartlett, 66 M 213, 68 NW 976.

An action arising under this section cannot be joined with one to enforce the constitutional liability. Flowers v Bartlett, 66 M 213, 68 NW 976; N. W. Railroader v Prior, 68 M 95, 70 NW 869.

Facts that will render a stockholder liable. Nat'l New Haven Bank v N. W. Guaranty, 61 M 375, 63 NW 1079; Rice v Madelia Farmers Whse. 78 M 124, 80 NW 853; Rice v Madelia Farmers Whse. 87 M 398, 92 NW 225.

The owner of all the stock issued by a corporation who converts the entire assets of the corporation to his own use and permits it to lie dormant, holds such assets as trustee of the creditors of the corporation; and upon finding that the assets so converted existed, the claim of the creditor and personal judgment was properly rendered against him upon such claim. Segal v Davis, 166 M 265, 207 NW 620.

In an action by a receiver of an insolvent domestic corporation to enforce an assessment ordered by the court against the stockholders, the complaint is not demurrable because of the absence of an allegation that the complaint in the action, which resulted in the sequestration of the assets of the corporation and the appointment of a receiver, alleged that the debt the plaintiff therein sought to enforce accrued prior to the repeal of Minnesota Constitution, Article 10, Section 3, (Laws 1931, Chapter 210) abolishing the so-called stockholders' double liability, effective April 18, 1931. Miller v Ryan, 188 M 35, 246 NW 465.

Where a person becomes a stockholder in a corporation organized under the laws of a foreign state, he must be held to contract with reference to all of the

laws of the state under which the corporation is organized and which enter into its constitution; and the extent of his individual liability as a shareholder to the creditors of the company must be determined by the laws of that state. Furst v Beygeh, 192 M 554, 257 NW 9.

300.28 PROPERTY OF STOCKHOLDERS LEVIED ON, WHEN.

HISTORY. 1858 c. 55 s. 24; P.S. 1858 c. 17 s. 322; G.S. 1866 c. 34 s. 10; G.S. 1878 c. 34 s. 10; G.S. 1894 s. 2601; R.L. 1905 s. 2866; G.S. 1913 s. 6179; G.S. 1923 s. 7466; M.S. 1927 s. 7466.

This section does not apply to chapter 301.

Judgment having been recovered against defendant corporation in Minnesota where it maintained its principal place of business, and it having no assets in Arizona where it was incorporated, it was not necessary to secure a judgment against the corporation in Arizona preliminary to bringing an action against the stockholders in this state. McConey v Belton, 97 M 190, 106 NW 900.

The owner of all the stock issued by a corporation who converts the entire assets to his own use allowing the corporation to lie dormant, holds the assets as trustee for the creditors of the corporation. Segal v Davis, 166 M 265, 207 NW 620.

300.29 PROCEDURE OF OFFICER LEVYING.

HISTORY. 1858 c. 55 s. 25; P.S. 1858 c. 17 s. 323; G.S. 1866 c. 34 s. 11; G.S. 1878 c. 34 s. 11; G.S. 1894 s. 2602; R.L. 1905 s. 2867; G.S. 1913 s. 6180; G.S. 1923 s. 7467; M.S. 1927 s. 7467.

This section does not apply to chapter 301.

300.30 CAPITAL STOCK.

HISTORY. 1860 c. 24 s. 5; G.S. 1866 c. 34 s. 47; 1873 c. 14 s. 1; G.S. 1878 c. 34 s. 112; 1881 c. 57 s. 2; 1883 c. 4 s. 1; 1889 c. 220 s. 1; G.S. 1894 s. 2797; 1901 c. 347; R.L. 1905 s. 2868; G.S. 1913 s. 6181; G.S. 1923 s. 7468; M.S. 1927 s. 7468.

This section does not apply to chapter 301.

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 new stock in proportion to the old stock held by him. Jones v Morrison, 31 M 140, 16 NW 854.

A stockholder may transmit his preference right. Van Slyke v Norris, 159 M 63, 198 NW 409.

Based on the evidence in this case, the stockholders were estopped from questioning the validity of stock issued while the corporation was insolvent, the stock being sold for less than its par value but the proceeds being used in an effort to save the life of the corporation. Bacich v Northland, 185 M 544, 242 NW 379.

Stockholders' liability in Minnesota. 7 MLR 81.

300.31 CAPITAL STOCK OF CERTAIN TELEPHONE COMPANIES.

HISTORY. 1909 c. 68 s. 1; G.S. 1913 s. 6182; G.S. 1923 s. 7469; M.S. 1927 s. 7469.

This section does not apply to chapter 301.

300.32 RECORD OF STOCK; REPORTS; DIVIDENDS.

HISTORY. 1860 c. 24 s. 15; G.S. 1866 c. 34 s. 50; G.S. 1878 c. 34 s. 115; G.S. 1894 s. 2800; R.L. 1905 s. 2869; G.S. 1913 s. 6183; G.S. 1923 s. 7470; M.S. 1927 s. 7470.

This section does not apply to chapter 301.

The right of a stockholder to inspect the books of a corporation is not a qualified right but is subject to the conditions that the information is not sought from curiosity or for an improper purpose. The use of the information for the purpose of prosecuting a claim of the stockholders against the corporation is a proper purpose. State ex rel v Monida, 110 M 193, 124 NW 971, 125 NW 676; State

ex rel v Displayograph, 135 M 479, 160 NW 486; Gunther v Bullis, 173 M 198, 217 NW 119; State v St. Cloud Milk Prod. Assn. 200 M 1, 273 NW 603.

The declaration of dividends creates a debt against the corporation in favor of the stockholder. There can be no preference or discrimination among the stockholders in the payment of dividends. A corporation attempting to discriminate against the stockholders is estopped from setting up the defense of the illegality of the dividend. Segerstrom v Holland, 160 M 95, 199 NW 897.

The purpose for which inspection of the books is demanded is not such as to warrant mandamus to compel the corporation to permit inspection. Gunther v Bullis, 173 M 198, 217 NW 119; State v St. Cloud Milk Prod. Assn. 200 M 1, 273 NW 603.

Officers of a corporation who, through the ownership of the majority of stock, control its activities, occupy a fiduciary relation to minority stockholders, and at their peril must act in strictest good faith in guarding the interest of the minority stockholders. Bachus v Finkelstein, 23 Fed. (2d) 357.

300.33 CORPORATE STOCK WITHOUT NOMINAL OR PAR VALUE; CLASSES OF; PREFERRED STOCK.

HISTORY. 1925 c. 333 s. 1; M.S. 1927 s. 7470-1.

This section does not apply to chapter 301.

Whether a corporation is to exchange its capital stock for an issue of non-par stock rests in the judgment of the majority stockholders, and the courts will not interfere therewith at the instance of the minority stockholders. Laws 1925, Chapter 333, does not contravene Minnesota Constitution, Article 10, Section 3. Jaques v Missabe, 172 M 303, 215 NW 185.

Stock without par value; constitutionality of in Minnesota. 10 MLR 235.

Stock without par value. 12 MLR 772.

300.34 CERTIFICATES OF INCORPORATION; STATEMENTS THEREIN AS TO PAR VALUE, WHAT TO CONTAIN.

HISTORY. 1925 c. 333 s. 2; M.S. 1927 s. 7470-2.

This section does not apply to chapter 301.

300.35 STOCK CERTIFICATES TO SHOW NUMBER OF SHARES.

HISTORY. 1925 c. 333 s. 3; M.S. 1927 s. 7470-3.

This section does not apply to chapter 301.

300.36 VALUE FOR DETERMINING PRESCRIBED MINIMUM OR MAXIMUM CAPITAL.

HISTORY. 1925 s. 333 s. 4; M.S. 1927 s. 7470-4; 1935 c. 230 s. 1.

Stock without par value. 10 MLR 238.

Minnesota business corporation act; stated capital. 25 MLR 745.

300.37 VALUE OF CAPITAL STOCK FIXED BY DIRECTORS.

HISTORY. 1925 c. 333 s. 5; M.S. 1927 s. 7470-5.

This section does not apply to chapter 301.

300.38 INCREASE OR REDUCTION OF VALUE OF CAPITAL STOCK.

HISTORY. 1925 c. 333 s. 6; M.S. 1927 s. 7470-6.

This section does not apply to chapter 301.

300.39 PAR VALUE STOCK CHANGED TO NON-PAR VALUE STOCK.

HISTORY. 1925 c. 333 s. 7; M.S. 1927 s. 7470-7.

This section does not apply to chapter 301.

300.40 CERTIFICATES OF INCORPORATION TO PROVIDE FOR CONVERSION OF SHARES.

HISTORY. 1925 c. 333 s. 8; M.S. 1927 s. 7470-8.

This section does not apply to chapter 301.

300.41 POWERS OF DIRECTORS TO ISSUE STOCK.

HISTORY. 1925 c. 333 s. 9; M.S. 1927 s. 7470-9.

This section does not apply to chapter 301.

300.42 COMPUTATION OF VALUE OF STOCK.

HISTORY. 1925 c. 333 s. 10; M.S. 1927 s. 7470-10.

This section does not apply to chapter 301.

Minnesota business corporation act; payment of dividends. 17 MLR 699.

300.43 LAWS APPLICABLE.

HISTORY. 1925 c. 333 s. 11; M.S. 1927 s. 7470-11.

This section does not apply to chapter 301.

300.44 OFFICES WITHOUT AND WITHIN THE STATE.

HISTORY. 1860 c. 24 s. 16; G.S. 1866 c. 34 s. 51; G.S. 1878 c. 34 s. 116; G.S. 1894 s. 2801; R.L. 1905 s. 2870; G.S. 1913 s. 6184; G.S. 1923 s. 7471; M.S. 1927 s. 7471.

This section does not apply to chapter 301.

It is incumbent upon a private corporation, organized under the laws of this state, to have its place of business and keep its books therein to an extent necessary to the fullest jurisdiction and visitorial power of the state and its courts. Unless there is a substantial compliance with the statute, the charter of the corporation may be vacated, and the corporation existence annulled. State ex rel v Park, 58 M 330, 59 NW 1048.

300.45 AMENDMENTS TO CERTIFICATES OF INCORPORATION.

HISTORY. 1865 c. 6 ss. 3, 25; G.S. 1866 c. 34 ss. 4, 42; 1873 c. 12 s. 1; G.S. 1878 c. 34 ss. 4, 79; 1883 c. 5 s. 1; 1885 c. 9; G.S. 1894 ss. 2595, 2738; 1895 c. 38; 1902 c. 9; R.L. 1905 s. 2871; 1913 c. 247 s. 1; G.S. 1913 s. 6185; 1917 c. 404 s. 1; 1923 c. 405 s. 1; G.S. 1923 s. 7472; 1927 c. 293; M.S. 1927 s. 7472; 1929 c. 275.

This section does not apply to chapter 301.

When used with reference to a corporation and its general office, the word "home" is equivalent to "residence". State ex rel v District Court, 120 M 103, 139 NW 135.

An issuance of stock by a corporation with a stipulation that, in the event of failure of the corporation to move its general offices the transaction shall be null and the money refunded, is a sale of the stock with an option to return upon failure of the condition. The subscriber's remedy on such failure is to return the stock and demand a return of his money. Gasser v Great Northern, 145 M 205, 176 NW 484.

A majority stockholder who brought this suit to annul the rescinding resolution prior to the attempted ratification law would, if the ratification be given effect, be deprived of constitutional rights; and since those rights were in no manner protected, a ratification becomes inoperative and of no force. Naftalin v LaSalle, 153 M 482, 190 NW 887.

The stock of the Goodhue Company issued in excess of $100,000, was invalid. Defendant is liable on his constitutional double liability for his shares of stock which were a part of the $100,000; but he is not liable beyond such shares. MacLaren v Wold, 172 M 334, 215 NW 428.

The attempt to amend the articles of a manufacturing corporation so as to permit it to engage in mercantile business, was ineffectual. It was ultra vires,

there being no unanimous vote of the stockholders, as required by law. A double liability was not unenforceable. West Duluth v N. W. Textile, 176 M 588, 224 NW 245.

The exchange of stock, the par value of which was $100.00 per share, and the issuance of ten shares of new stock at $10.00 per share in place of each share of old stock, and an amendment increasing the amount of its authorized capital, held valid. Mertz v Hudson, 194 M 636, 261 NW 472.

A regular meeting may be adjourned from time to time. Such meeting is but a continuation of the original. Any business which might have been transacted at the first meeting may be transacted at the adjourned meeting. Nelson v Northland, 197 M 151, 266 NW 857.

An amendment of articles of incorporation by a wholesale oil corporation so as to authorize it to engage in any mercantile, jobbing, wholesale or retail, mining, manufacturing, or mechanical business, is a fundamental alteration of the corporation not comprehended within the reserved power to amend the articles. Midland v Range Coop. Oil, 200 M 538, 274 NW 624.

Stockholders are bound by an amendment of the articles of incorporation unless there is some fundamental defect in the proceedings; but fundamentally, amendments of the articles which change the nature and purposes of the corporation, must be accepted by the stockholders in order to bind them. Henry v Markesan, 68 F(2d) 554.

A Minnesota bank may issue preferred stock. 1934 OAG 35, Aug. 12, 1933 (29a-38).

300.46 CORPORATIONS NOT ORGANIZED FOR PECUNIARY PROFIT; TRUSTEES; NUMBER OF CHANGED.

HISTORY. 1917 c. 155 s. 1; G.S. 1923 s. 7473; M.S. 1927 s. 7473.

300.47 CERTAIN SOCIAL AND EDUCATIONAL CORPORATIONS MAY AMEND ARTICLES.

HISTORY. 1933 c. 167 s. 1; M. Supp. s. 7473-1.

300.48 CERTAIN CORPORATIONS MAY HAVE TERRITORIAL UNITS IN STATE AND A GENERAL GOVERNMENTAL BODY.

HISTORY. 1933 c. 167 s. 2; M. Supp. s. 7473-2.

300.49 FILING FEES.

HISTORY. 1889 c. 225 ss. 1, 2; G.S. 1894 ss. 3391, 3392; 1901 cc. 206, 245; R.L. 1905 s. 2873; 1907 c. 329; 1909 c. 202 s. 1; G.S. 1913 s. 6188; G.S. 1923 s. 7475; M.S. 1927 s. 7475; 1935 c. 230 s. 2; 1945 c. 238 s. 1.

The provision that before filing any certificate of incorporation, renewal, or amendment increasing the capital stock, there shall be paid to the state treasurer certain fees, has no application to a corporation organized without capital stock and not for pecuniary profit. State ex rel v Schmahl, 118 M 319, 136 NW 870.

Whether a corporation is to exchange its capital stock for an issue of non-par stock, rests in the judgment of the majority stockholders, and the courts will not interfere. Jaques v Missabe, 172 M 303, 215 NW 185.

The Virginia statute, imposing graded fees on foreign corporations measured on authorized capital stock for authority to do business in the state, does not operate arbitrarily or unequally between appellant and other foreign corporations seeking the same privilege. And there is nothing to show that the entrance fee of $5,000, charged to the corporation in this case, was more than reasonable compensation for the privilege granted. Atlantic Ref. Co. v Virginia, 302 US 22, 58 SC 78.

A statute of Minnesota denying to all foreign corporations the right to maintain any action in the courts of the state unless they have previously obtained a certificate of authority to do business within the state, for which a filing fee of

$5.00 plus an initial license fee of $50.00 is exacted, is valid as applied to a federally licensed customhouse broker. Affirming 215 M 207, 9 NW(2d) 721. Union Brokerage v Jensen, 322 US 207.

The instant corporation is not subject at this time, for the purpose of applying for a certificate of authority to do business in this state, to penalties which have not been determined, fixed, or liquidated by a proper tribunal. 1938 OAG 116, Jan. 28, 1937 (92c).

Comparison of business corporation law of Minnesota and Delaware. 22 MLR 661.

Minnesota business corporation act; stated capital. 25 MLR 745.

300.50 COUNTY AGRICULTURAL SOCIETIES MAY RENEW CORPORATE EXISTENCE.

HISTORY. 1931 c. 165; M. Supp. s. 7475-1.

A county agricultural society may renew its corporate existence if before its existence expires, the members, more than three-fourths voting, resolve to extend its period of existence and file and publish a certified copy. OAG June 13, 1944 (772a-5).

300.51 CERTIFICATE OF INCORPORATION ISSUED BY SECRETARY OF STATE.

HISTORY. 1889 c. 226 ss. 1, 2; G.S. 1894 ss. 3394, 3395; R.L. 1905 s. 2874; G.S. 1913 s. 6189; G.S. 1923 s. 7476; M.S. 1927 s. 7476.

300.52 MEETINGS.

HISTORY. G.S. 1866 c. 34 ss. 156, 157, 158; 1873 c. 11 s. 4; 1878 c. 28 s. 1; G.S. 1878 c. 34 ss. 123, 405 to 407; G.S. 1894 ss. 2808, 3408 to 3410; R.L. 1905 ss. 2875, 2876; G.S. 1913 ss. 6190, 6191; G.S. 1923 ss. 7477, 7478; M.S. 1927 ss. 7477, 7478.

This section does not apply to chapter 301.

Officers and directors who have been removed and ousted from office have no legal standing to enforce the calling of a stockholders' meeting. State ex rel v John Kylmanen, 181 M 281, 232 NW 262.

300.53 IRREGULAR MEETINGS, HOW VALIDATED.

HISTORY. G.S. 1866 c. 34 s. 159; G.S. 1878 c. 34 s. 408; G.S. 1894 s. 3411; R.L. 1905 s. 2877; G.S. 1913 s. 6192; G.S. 1923 s. 7479; M.S. 1927 s. 7479.

This section does not apply to chapter 301.

Stockholders of a corporation at a special meeting unanimously adopted a resolution amending the articles of incorporation. They adjourned the meeting to a future named date for the express purpose of carrying the resolution into effect. The resolution could not lawfully be rescinded at the adjourned meeting, attended by a majority of the stockholders only, since the business at the adjourned meeting by the terms of the adjournment, was limited to such acts as would effectuate the purpose of the resolution, and not to rescind it. The rescinding resolution was subject, however, to ratification at a subsequent general meeting of the corporation, provided the substantial rights of objecting minority stockholders were not materially prejudiced. Naftalin v LaSalle, 153 M 482, 190 NW 887.

300.54 CAPITAL STOCK; HOW CLASSIFIED AND ISSUED.

HISTORY. G.S. 1866 c. 34 s. 163; 1867 c. 18 s. 2; G.S. 1878 c. 34 s. 412; 1887 c. 49; 1891 c. 71 s. 1; G.S. 1894 s. 3415; R.L. 1905 s. 2878; G.S. 1913 s. 6193; G.S. 1923 s. 7480; M.S. 1927 s. 7480.

This section does not apply to chapter 301.

An agreement entered into by the subscribers for stock shares in a corporation that for each share paid for, a certificate for two or more shares shall be

issued to the shareholders, is nonenforceable and void. Rogers v Gross, 67 M 224, 69 NW 894.

This section does not authorize a manufacturing corporation or any other, to issue its stock as fully paid up, to sell the same for less than par, and on such terms as its directors deem advisable. Hospes v Northwestern, 48 M 174, 50 NW 1117; Hastings v Iron Range, 65 M 28, 67 NW 652; Wallace v Carpenter, 70 M 321, 73 NW 189.

The plaintiff bank held the notes of Dorr, secured by a real estate mortgage. Dorr was a stockholder in the defendant company whose subscription was unpaid. The bank released its mortgage on the real estate, and Dorr gave his note to the defendant secured by a mortgage on the same real estate and defendant issued the Dorr stock directly to the bank. The effect of this was that the defendant corporation waived its corporate lien upon the stock so issued, and delivered to the bank; and the rights of the bank in the stock were superior to those of the defendant. St. Paul Natl. v Life Ins. Clearing, 71 M 123, 73 NW 713.

Shares issued and sold as fully paid stock, but for a sum less than its par value, are not void; but the agreement between the holder and the corporation that it shall be considered and treated as paid in full is voidable as to the creditors of the corporation. Shaw v Staight, 107 M 152, 119 NW 951.

Under the statute authorizing amendment of corporate articles on majority vote of the stock, an amendment of the articles of a manufacturing corporation adopted by such majority authorizing an agreement whereby lenders of money who receive preferred stock, possess the sole voting power and control of the corporation until repayment in full, is valid, although all the existing stockholders did not assent to it. In re Sharood Shoe Co. 192 Fed. 945.

A corporation has the right to test, by legal action, the validity of a certain stock issue; and where defendants, the sole owners and officers of a newly formed corporation, issued part of its stock to themselves as fully paid, in exchange for property excessively evaluated, and thereafter like stock was sold to other persons at par and for face value received, the corporation cannot recover damages from defendants nor cancel their shares in excess of the value of the property given therefor. Hoffman v Erickson, 124 M 279, 144 NW 952.

A secret agreement between plaintiff and the promoter to induce the issuance of stock subsequently divided between the plaintiff and the promoter, was fraudulent, illegal, and void, and violation of the duty they owed to their associate promoters and the corporation, and unenforceable. De la Motte v N. W. Clearance Co. 126 M 197, 148 NW 47.

An issue of preferred stock held valid. Booth v Union Fibre Co. 137 M 7, 162 NW 677.

The issuance of stock on payment of less than par, is illegal. Hosford v Cuyuna, 153 M 186, 189 NW 1025.

Appellants wilfully and deliberately caused corporate stock to be issued to them without authority or sanction of law, using said stock in an open fight for corporate control. Such stock could be cancelled without payment for legal services claimed to have been given for the stock. Mortgage Land Co. v McMains, 172 M 110, 215 NW 192.

Whether a corporation may exchange its capital stock for an issue of non-par stock rests in the judgment of the majority stockholders, and the courts will not interfere. Jaques v Missabe, 172 M 303, 215 NW 185.

An action in equity to compel the issuance to plaintiff of certificates for capital stock may be maintained where the remedy in damages is uncertain or inadequate. Falk v Dirigold, 74 M 219, 219 NW 82.

When defendant's common stock consisted of 1,000 shares without par value, plaintiff for a valuable consideration obtained 100 shares. Thereafter, without any change of the actual capital, defendant changed the number of shares from 1,000 to 35,000. The plaintiff is entitled to the same proportionate part of the present common stock that he held of the original stock, and may maintain this action to enforce his right thereto. Falk v Dirigold, 174 M 219, 219 NW 82.

A Minnesota bank may issue preferred stock; may borrow money on proposed RFC capital notes or debentures, and may consider the proceeds of such moneys

obtained on the RFC debentures as additional capital. 1934 OAG 35, Aug. 12, 1933 (29a-28).

Stockholders' liability in Minnesota. 7 MLR 90.

Distinction between underwriting agreements and subscriptions for stock. 8 MLR 618.

Stock without par value. 10 MLR 239.

300.55 STOCK CERTIFICATES, TO WHOM ISSUED.

HISTORY. 1893 c. 45 s. 1; G.S. 1894 s. 3416; R.L. 1905 s. 2879; G.S. 1913 s. 6194; G.S. 1923 s. 7481; M.S. 1927 s. 7481.

This section does not apply to chapter 301.

In a suit on a promissory note given and accepted in payment of one share of stock in the payee corporation, a defense is not made out merely by a plea and proof that no certificate had been delivered, or tendered, to the purchaser of the share. Galbraith v McDonald, 123 M 208, 143 NW 353.

The records of a private corporation and a list of stockholders prepared under the direction of the officers of the corporation by copying the names appearing on the original subscriptions for stock, are admissible in evidence to show that the persons of record as stockholders and whose names are entered on the list, were stockholders. Lebens v Nelson, 148 M 240, 181 NW 350.

300.56 NEW CERTIFICATE.

HISTORY. 1893 c. 45 s. 2; G.S. 1894 s. 3417; R.L. 1905 s. 2880; G.S. 1913 s. 6195; G.S. 1923 s. 7482; M.S. 1927 s. 7482.

An action may be maintained by a stockholder against a foreign corporation to compel it to issue to him a new or duplicate stock certificate in place of one which has been lost or destroyed. Guilford v Western Union, 59 M 332, 61 NW 324.

300.57 EXECUTORS, ADMINISTRATORS, GUARDIANS, TRUSTEES MAY VOTE.

HISTORY. G.S. 1866 c. 34 ss. 164, 165; G.S. 1878 c. 34 ss. 413, 414; G.S. 1894 ss. 3418, 3419; R.L. 1905 s. 2881; G.S. 1913 s. 6196; G.S. 1923 s. 7483; M.S. 1927 s. 7483.

This section does not apply to chapter 301.

The executor, pursuant to the provisions of the will, procured stock which stood in his own name on the books of the corporation to be transferred to him as executor. Thereafter the corporation went into insolvency. The estate thereby became primarily liable and the executor secondarily liable on such stock. Markell v Ray, 75 M 138, 77 NW 788.

The order of assesment is final and conclusive adjudication that the corporation is one in which its stockholders are subject to constitutional liability. The enforcement of the constitutional liability of a decedent stockholder in an insolvent domestic corporation is properly made in the probate court, whenever an order of assessment has been made before the final settlement and distribution of the decedent's estate. Hoidale v Vogtel, 158 M 106, 196 NW 939.

300.58 DISSOLUTION OF CORPORATIONS.

HISTORY. G.S. 1866 c. 34 s. 166; G.S. 1878 c. 34 s. 415; 1887 c. 70; G.S. 1894 s. 3430; R.L. 1905 s. 2882; G.S. 1913 s. 6197; G.S. 1923 s. 7484; M.S. 1927 s. 7484.

This section does not apply to chapter 301.

Where a mutual endowment association whose policies are to be paid from a fund raised by assessments on the policy holders, is dissolved, the maturing of its immature policies is arrested and the rights of holders thereon is to share, as members of the association, in its assets after its liabilities are discharged. In re Educational Endowment Assn. 56 M 171, 57 NW 463.

In proceedings under this section, the constitutional or statutory liability of stockholders for debts of the corporation cannot be enforced. In re Peoples Livestock Ins. Co. 56 M 180, 57 NW 468.

By the dissolution, the corporation was disabled from further performing the obligations of the lease, and the breach of contract to pay which ran for the unexpired term of the lease became total and final, and thereupon a cause of action immediately accrued to the appellants for the recovery of all damags present and prospective which they sustained by the laws of their contract. Kalkhoff v Nelson, 60 M 284, 62 NW 332; Mpls. Baseball Co. v City Bank, 74 M 98, 76 NW 1024.

In the case of "moneyed corporations," an action may be instituted by any contract creditor to sequester the corporate assets and to enforce the individual liability for the deficiency. In the case of other corporations, action can only be instituted by a judgment creditor. But where there are no corporate assets subject to sequestration in the action, and hence the only relief obtainable is the enforcement of the individual liability of the stockholder, an action for that purpose may be instituted by a contract creditor. Mpls. Paper v Swinburne, 66 M 378, 69 NW 144.

Where an endowment association is unable because of the general impracticability of its scheme to carry out its plan, it is not "insolvent" in any proper sense of the word; and therefore should not make an assignment for the benefit of its creditors. It should wind up its affairs and distribute its assets, or institute an equitable proceeding for that purpose. Youths' Temple of Honor, 73 M 319, 76 NW 59.

When the Minneapolis Police Department Relief Association was organized to accumulate funds through dues, assessments, contributions, and donations, to be used for purposes wholly beneficial in their nature, and a donation is given to said corporation and the corporation declines to use the money for the purpose for which it was donated and by decree of court voluntarily dissolves its corporate existence, the amount of the gift reverts to the donor. Cone v Wold, 85 M 302, 88 NW 977.

A petition for dissolution of a corporation may be made by a majority of the members of a known stock corporation or by the holder or holders of the majority of the stock of a stock corporation. Byer v Wollpert, 99 M 475, 109 NW 1116

It was the general rule that courts are without authority to dissolve a corporation at the suit of a minority stockholder, unless such authority has been conferred by statute. Different courts recognize various exceptions to this rule; but the facts in the instant case do not bring it within any of the exceptions. Thwing v McDonald, 134 M 148, 156 NW 780, 158 NW 820.

The usually stated rule is that a corporation cannot sell all its property and disable itself from the business intended by its charter, as against the objection of a single stockholder. But it is recognized that conditions may be such as to justify such action by the corporation. Paterson v Shattuck, 186 M 611, 244 NW 281.

Where a bank transfers all its deposits to another bank and desires to wind up its affairs, it should apply to the district court for an order of dissolution, and obtain a certificate from the commissioner of banks that deposit liabilities have been paid or have been made secure in a manner satisfactory to the commissioner. OAG July 26, 1936 (29a-6).

300.59 CONTINUANCE TO CLOSE AFFAIRS.

HISTORY. G.S. 1866 c. 34 s. 167; G.S. 1878 c. 34 s. 416; G.S. 1894 s. 3431; R.L. 1905 s. 2883; G.S. 1913 s. 6198; G.S. 1923 s. 7485; M.S. 1927 s. 7485.

Lands acquired by the railroad company under the Land Grant Act of 1857, as amended, are exempt from taxation during the grace period of three years unless leased, sold or contracted to be sold during that time. Minn. Central v Donaldson, 38 M 115, 35 NW 725.

When the Hastings & Dakota Railroad Company was finally completed there was found a deficiency in the primary limits of its land grant of about 800,000 acres, with only 70,000 acres available to make up the loss, so all of the 70,000 acres were selected. When the company's franchise was forfeited, the company transferred to the respondent all its property for the benefit of its stockholders. Acts of Congress of September 29, 1890, and Laws of Minnesota 1895, Chapter 165,

did not affect respondent's title in such lands, the same having been earned by the completion of the road. Sage v Crowley, 83 M 314, 86 NW 409; Norton v Frederick, 107 M 36, 119 NW 492; Hanan v Sage, 58 Fed. 651.

Under the three-years grace period, a dissolved corporation enjoys most of the powers with which it is vested, except the right to continue in business. And in the absence of express statutory exclusion, the continuing powers should be liberally construed. In re Int'l. Sugar Beet Co. 23 Fed. Supp. 197.

The bank closed after transferring all of its assets to another bank, which assumed all of its liability for deposit and bills payable; but having other debts, may be liquidated by the commissioner of banks, and its stockholders assessed for the amount necessary to pay its creditors. Bank of Litchfield v McClure, 191 M 308, 253 NW 764.

As to whether a corporation may continue to exist as a de facto corporation after the expiration of the limit of its term. Townsend v Milaca Motor, 194 M 423, 260 NW 525.

An incorporated benevolent society is authorized to classify its membership into units and, the by-laws permitting, a member may be a member of more than one unit. Olson v Gopher State, 203 M 267, 281 NW 43.

Many corporations, both private and cooperative, fail to take steps to extend their corporate terms of existence; and it is the custom of the legislature to pass special curative acts by which they permit such corporations, if they act within the time limited by the curative act, to extend their corporate terms. As long as a corporation is solvent and remains in control of its assets, it may dispose of them as an individual, and may turn the assets over to a new corporation which will issue new stock to the stockholders of the old company, provided the rights of creditors are protected and provided the stockholders who do not desire to receive payment in stock of the purchasing company are paid in cash. 1938 OAG 109, Jan. 31, 1938 (93a-8).

Right of stockholder to sue in individual capacity where the corporation is dissolved and he is the sole party to act or benefit by the suit. 8 MLR 348.

Power of trustee to lease trust property. 14 MLR 274.

300.60 DIVERSION OF CORPORATE PROPERTY A FELONY.

HISTORY. 1858 c. 55 s. 15; P.S. 1858 c. 17 s. 313; G.S. 1866 c. 34 s. 44; G.S. 1878 c. 34 s. 81; G.S. 1894 s. 2793; R.L. 1905 s. 2884; G.S. 1913 s. 6202; G.S. 1923 s. 7439; M.S. 1927 s. 7489.

This section does not apply to chapter 301.

Even though the purchase by the vendee corporation was ultra vires, it is estopped after it has received the goods from continuing its liability to pay for them; and the vendor cannot afterwards rescind the sale by reason of the ultra vires character of the contract; and this even though by statute the ultra vires contract was punishable as a crime. Erb v Yoerg, 64 M 463, 67 NW 355.

Respondent advancing money to his brother to enable him to purchase certain property, and in lieu of interest was to receive his share of the net annual earnings of the property. Respondent's share in the profits was to be paid annually, and the fact that his share proved more than the interest at the legal rate did not taint the transaction with usury, and he may recover his share from the date of the loan. Andrews v Andrews, 170 M 175, 212 NW 408, 213 NW 899.

Where officers, directors and stockholders of a solvent corporation, by long course of dealing, ratified payments of individual stockholders' debts by corporation's checks, neither corporation nor its receiver may refute the transaction, or require restitution. Solvent corporations may deal with, and dispose of, its assets in any way it wishes with the consent of directors and stockholders, and creditors will not be heard to complain if the corporation is not thereby rendered insolvent. Sweet v Lang, 14 F(2d) 762.

An ultra vires contract not expressly prohibited by statute, fully performed on one side is enforceable by the one who has performed. A corporation which has received the full benefit of such contract, cannot repudiate the contract without restoring the benefit received; and an individual who has received money or property from a corporation under an ultra vires contract cannot repudiate the con-

tract without restoring what he has received. Benson v Thornton, 185 M 230, 240 NW 651.

The state is entitled to interest according to the terms of its deposit contract on preferred claims against an insolvent bank, and a surety company who pays the state under its bond is entitled to subrogation. American Surety v Peyton, 186 M 588, 244 NW 74.

Massachusetts business trust. 8 MLR 244.

When must a receiver appointed by a state court relinquish property of a bankrupt to the trustee in bankruptcy? 14 MLR 658.

The law of joint adventures. 15 MLR 657.

300.61 FALSE STATEMENT A FELONY.

HISTORY. 1895 c. 145 s. 11; R.L. 1905 s. 2885; G.S. 1913 s. 6203; G.S. 1923 s. 7490; M.S. 1927 s. 7490.

300.62 EXISTING CORPORATION, HOW TO REORGANIZE.

HISTORY. 1857 c. 39 s. 12; P.S. 1858 c. 129 s. 12; G.S. 1866 c. 34 s. 12; G.S. 1878 c. 34 s. 12; G.S. 1894 s. 2603; R.L. 1905 s. 2886; G.S. 1913 s. 6204; G.S. 1923 s. 7491; M.S. 1927 s. 7491.

This section does not apply to chapter 301.

300.63 ATTORNEY GENERAL TO EXAMINE.

HISTORY. G.S. 1866 c. 34 s. 172; G.S. 1878 c. 34 s. 421; G.S. 1894 s. 3436; R.L. 1905 s. 2887; G.S. 1913 s. 6205; G.S. 1923 s. 7492; M.S. 1927 s. 7492.

300.64 WITHDRAWAL OF CAPITAL; LIABILITY OF STOCKHOLDERS; PAYMENT OF DIVIDEND WHEN INSOLVENT, ASSENTING DIRECTORS LIABLE.

HISTORY. 1873 c. 11 ss. 20 to 23; G.S. 1878 c. 34 ss. 139 to 142; G.S. 1894 ss. 2822 to 2825; R.L. 1905 s. 3069; G.S. 1913 s. 6450; G.S. 1923 s. 7776; M.S. 1927 s. 7776.

This section does not apply to chapter 301.

A creditor of the corporation may sue one or more of the directors to enforce liability under this section without joining all the creditors to whom the directors are liable, nor need he sue all the directors who are subject to the liability. Patterson v Stewart, 41 M 84, 42 NW 926; Minn. Thresher v Langdon, 44 M 37, 46 NW 310; Nat'l New Haven Bank v N. W. Guaranty, 61 M 375, 63 NW 1079.

Directors assenting to the unlawful acts are liable, but to constitute "assent" there must be something more than mere negligence. There must be some wilful or intentional violation of duty. Patterson v Stewart, 41 M 84, 42 NW 926; Citizens' State Bank v Story, 84 M 408, 87 NW 1016.

A receiver, duly appointed for an insolvent corporation, is the only one authorized to bring suit for capital wrongfully withdrawn from the corporation. Minn. Thresher v Langdon, 44 M 37, 46 NW 310.

An action by a creditor of an insolvent corporation against its directors to enforce a statutory liability, is governed by that clause of the statute of limitations which prescribes three years as the period of limitation in respect to actions upon "a statute for a penalty or forfeiture, where the action is given to the party aggrieved." Mchts. Bank v Northwestern, 48 M 349, 51 NW 117; Flowers v Bartlett, 66 M 213, 68 NW 976; Paterson v Shattuck, 186 M 629, 244 NW 281.

The intention of the members is not a constituent element of a creditor's cause of action rendering corporate stockholders liable to creditors to the extent of withdrawals and refundments of amounts paid for stock. Preiss v Zins, 122 M 441, 142 NW 822.

Dividends paid to stockholders out of the capital of a corporation at a time when it had made no profits, owed debts, but was not then insolvent, may, the corporation thereafter becoming bankrupt, be recovered back by the trustee in bankruptcy for the benefit of creditors who became such after the payment of

such dividend. Mackall v Pocock, 136 M 10, 161 NW 228; Booth v Union Fibre, 142 M 127, 171 NW 307.

300.65 MEETINGS OF MINING CORPORATIONS, WHERE HELD; MAY HOLD STOCK IN OTHER COMPANIES; FRAUDULENT ISSUE OF STOCK A FELONY.

HISTORY. 1876 c. 28 ss. 7, 8; G.S. 1878 c. 34 ss. 150, 151; 1881 c. 27 s. 4; G.S. 1894 ss. 2833, 2834; R.L. 1905 s. 3071; G.S. 1913 s. 6452; G.S. 1923 s. 7778; M.S. 1927 s. 7778.

This section does not apply to chapter 301.

The mining of iron ore is a mechanical business, and stockholders of a corporation organized for that purpose are exempt from stockholders' "double liability." One of the sections going into the making of section 300.65, that is, the provision relative to the acquiring of stock in other corporations, might affect the question of double liability; but in this case the corporation never took the benefit of that provision. Cowling v Zenith, 65 M 263, 68 NW 48.

Liability of stockholders to refund dividends paid out of capital. 16 MLR 706.