

CHAPTER 301

MINNESOTA BUSINESS CORPORATIONS

301.01 CITATION.

HISTORY. 1933 c. 300 s. 59; M. Supp. s. 7492-59.

Adopted by Montana, New Mexico, Texas and other states.

To show that one corporation is merely the instrument or servant of another corporation facts must be shown, and mere assertions, conclusions and suppositions are not sufficient to support the allegations. *In re Duluth, So. Shore and Atlantic*, 58 F. Supp. 734.

301.02 DEFINITIONS.

HISTORY. 1933 c. 300 s. 1; 1935 c. 117 s. 1; M. Supp. s. 7492-1.

Where a corporation is used by an individual as an instrument of fraud, or to hinder and delay creditors, or for other wrongful purposes, courts will go as far as necessary in disregarding the corporation and its doings in order to accomplish justice. *Matchan v Phoenix Land Inv. Co.* 159 M 132, 198 NW 417; *Lake Park v Steenberg*, 201 M 396, 276 NW 651.

The venue of a proceeding for the dissolution of a corporation under the Minnesota business corporation act is in the county of its principal place of business. *Radabaugh v Hudson*, 212 M 180, 2 NW(2d) 828.

Where a stockholder starts an action on behalf of a corporation, which action is taken over and prosecuted by the receiver, the stockholder is not a party aggrieved by a judgment against the receiver and is not entitled to appeal after the receiver is discharged. A corporation is an entity distinct from its stockholders. *Singer v Allied Factors*, 216 M 443, 13 NW(2d) 378.

There are cases where the concept that the corporation is an equity distinct from its stockholders must be abandoned or modified. *Erickson v Wells*, 217 M 361, 15 NW(2d) 162.

Dissolution proceedings for a cooperative corporation must be effected pursuant to the provisions of sections 316.07 to 316.11, which have not been repealed and continue in effect as to certain corporations, such as a cooperative corporation. 1938 OAG 108, March 7, 1938 (93a-10).

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

Participation in dividends and assets. 22 MLR 679.

Corporations; comparative tax burden. 23 MLR 507.

Financial provisions of the Minnesota business corporation act. 25 MLR 744.

Treasury shares. 25 MLR 776.

301.03 PURPOSE OF INCORPORATION AND QUALIFICATION OF INCORPORATORS.

HISTORY. 1933 c. 300 s. 2; M. Supp. s. 7492-2.

A corporation organized by investment brokers under business corporation laws, to represent holders of securities issued by states and their subdivisions in enforcement of such obligations for compensation, was "organized for profit" and not a "business league" exempt from income taxes and capital stock taxes. *Northwestern Municipal Ass'n v United States*, 99 F(2d) 460.

Private business corporations engaged in the creamery business may incorporate and do business under the business corporation act. They may also be incorporated under the cooperative laws. 1938 OAG 107, Feb. 10, 1937 (933a-33).

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301.04 ARTICLES OF INCORPORATION.

HISTORY. 1933 c. 300 s. 3; M. Supp. s. 7492-3.

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

A business corporation may not shorten the duration of its authorized existence by amendment of its articles. OAG Feb. 9, 1934.

By amendment of its articles, a corporation may limit the number of shares of stock that any one stockholder may own. OAG May 17, 1939 (92a-1).

Articles may provide that preferred shares may have a greater number of votes than has an equal number of common shares. OAG March 30, 1944 (92a-24).

Payment of dividends under Minnesota business corporation act. 17 MLR 698.

Comparison of articles of incorporation in Minnesota and Delaware. 22 MLR 663.

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

Minnesota business corporation act; elimination of accrued preferred dividends by charter amendment. 26 MLR 393.

301.05 CORPORATE NAME.

HISTORY. 1933 c. 300 s. 4; M. Supp. s. 7492-4.

Although courts will protect the use of a name that is so identified with their product that it has become well-known and respected in the trade, the production so favored need not be any greater than is reasonably necessary to accomplish the desired purpose. "*Brown Sheet Iron & Steel Company*," located in St. Paul, was not entitled to enjoin one by the name of "*Brown*" from incorporating under the name of "*Brown Steel Tank Company*," located in Minneapolis. *Brown Sheet Iron & Steel Co. v Brown Steel Tank Co.* 198 M 276 269 NW 633.

The names "*Domestic Credit Company*," "*Domestic Loan Company*" and "*Domestic Finance Company*" are deceptively similar within the prohibition of the statute. 1940 OAG 4, March 16, 1939 (92a-16).

The names "*Paul Bunyan, Inc.*" and "*Paul Bunyan Bait Company*" are not deceptively similar under the statute. OAG May 31, 1939 (92a-16).

301.06 FILING ARTICLES OF INCORPORATION.

HISTORY. 1933 c. 300 s. 5; M. Supp. s. 7492-5.

Minnesota corporation act; de facto corporations. 17 MLR 690.

301.07 FILING CERTAIN PAPERS WITH REGISTER OF DEEDS.

HISTORY. 1933 c. 300 s. 6; M. Supp. s. 7492-6.

301.08 VALIDITY AND EFFECT OF CERTIFICATE OF INCORPORATION.

HISTORY. 1933 c. 300 s. 7; M. Supp. s. 7492-7.

301.09 POWERS COMMON TO CORPORATIONS.

HISTORY. 1933 c. 300 s. 8; M. Supp. s. 7492-8.

Where employes purchased cooperative preferred stock from the defendant corporation, and the stock certificate and articles gave the owners the right to obtain redemption of the stock upon giving notice, and the defendant refused to redeem upon the ground that such redemption would prejudice the rights of creditors, the question as to whether such redemption would prejudice creditors was properly submitted to the jury and the finding by the jury in favor of the plaintiff is sustained. *Stacek v Marshall-Wells Co.* 194 M 564, 261 NW 398.

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Where the stockholders consented and acquiesced in the acts of their officer, it is no defense that the officer used the corporate name to hinder and delay and defraud his personal creditors. *Lake Park v Steenberg*, 201 M 396, 276 NW 651.

Courts will instruct corporation trustees to invest in manner prescribed by statute, and where authorized to invest in a prescribed manner it must exercise power of investment within express terms of the authority granted to them. *Jones v Mpls. Trust Co.* 202 M 187, 277 NW 899.

Unless expressly prohibited by the terms of its charter or by statute, every corporation has power to make such contracts as may be necessary to carry out the business it transacts. *Equitable Holding v Equitable Bldg. & L.* 202 M 529, 279 NW 736.

Where a holding company was organized and until his death conducted by the testator and settler of the trust, the fact that he took all increases of capital as income is inadmissible to show that his trustee and life tenant could do the same. The trust instrument (the will) limited her to income. *Clarke v Bennett*, 204 M 573, 284 NW 876.

See *Singer v Allied Factors*, 216 M 443, 13 NW(2d) 378; *Erickson v Wells*, 217 M 361, 15 NW(2d) 162, under section 301.02.

A corporation may be used as an agency to progress a testamentary intention. *Griffin v First Nat'l*, 218 M 206, 15 NW(2d) 590.

Generally a corporation is regarded as a legal entity, but courts of equity will ignore this fiction when it is used as an instrumentality to divide rights of creditors, justify a wrong, or perpetrate a fraud. Claims of general manager and assistant manager of the bankrupt corporation for salaries is properly disallowed, for the corporation was a mere instrumentality of each who were practically the owners of the corporation. *Cook v Miller*, 7 F. Supp. 785.

A corporation and its stockholders are considered as separate entities. *Albrecht Inc. v Landy*, 27 F. Supp. 65.

301.10 HOLDING SHARES AND SECURITIES OF OTHER CORPORATIONS.

HISTORY. 1933 c. 300 s. 9; M. Supp. s. 7492-9.

A corporation has only such powers as are expressly granted in its charter or by statute, and such implied powers as are necessary and proper for the purpose of carrying out its expressed powers. A corporation charter limiting its business to "publishing of newspapers," did not permit the corporation to engage in the business of buying and selling bonds and stocks. *Young v Blandin*, 215 M 111, 9 NW(2d) 313.

301.11 CONSTRUCTIVE NOTICE OF RECORDED ARTICLES AND CERTIFICATES NOT TO BE IMPLIED.

HISTORY. 1933 c. 300 s. 10; M. Supp. s. 7492-10.

301.12 ULTRA VIRES ACTS.

HISTORY. 1933 c. 300 s. 11; M. Supp. s. 7492-11.

Where a corporation has obtained money or property from another, the law does not forbid the corporation to repay even though the borrowing was ultra vires. *Equitable Holding Co. v Equitable Bldg. & L. Ass'n*, 202 M 529, 279 NW 736.

All torts are ultra vires, and a corporation cannot escape liability for the wrongful acts of its employees by claiming that such acts were beyond the scope of its corporate power. *Ziegler v Denver Hog Serum Co.* 204 M 156, 283 NW 134.

If stockholders are without equity in a suit for improper diversion of corporate property and funds, they cannot, by suing in the corporate name, obtain relief either for themselves or the corporation; and a stockholder who participates in, consents to, or who has been guilty of laches, and acquiesced in illegal or ultra vires transactions by the corporation, or who accepts pecuniary benefits thereunder is estopped from calling in question the legality of such acts. *Erickson v Wells*, 217 M 361, 15 NW(2d) 164.

Creditors' rights where a corporation purchases its own shares. 20 MLR 427.

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Comparison of Minnesota and Delaware incorporations; ultra vires acts. 22 MLR 673.

Municipal corporations, right to enforce contracts invalid under constitutional debt limitation provision. 24 MLR 580.

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

Minnesota business corporation act; dividends from surplus. 25 MLR 766.

Minnesota business corporation act; treasury shares. 25 MLR 776.

Minnesota business corporation act; consolidations and mergers. 25 MLR 783.

301.13 CONDITIONS PRECEDENT TO BEGINNING BUSINESS; LIABILITY.

HISTORY. 1933 c. 300 s. 12; M. Supp. s. 7492-12.

301.14 SHARES; FILING CERTAIN RESOLUTIONS; OPTIONS AND CONVERSION RIGHTS.

HISTORY. 1933 c. 300 s. 13; M. Supp. s. 7492-13.

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

Rights of preferred shareholders in excess of preference. 19 MLR 406.

Cumulative and non-cumulative preferred shares; dividends. 22 MLR 676.

301.15 SHARES; ALLOTMENT AND CONSIDERATION; LIABILITY FOR IMPROPER VALUATION.

HISTORY. 1933 c. 300 s. 14; 1935 c. 117 s. 2; M. Supp. s. 7492-14.

Purchase by corporation of its own shares. 20 MLR 422.

Liability of promoter for illegal profits. 20 MLR 552.

Minnesota and Delaware corporations; stock and stockholders. 22 MLR 668.

Subscriptions payable in property. 22 MLR 732.

Minnesota business corporation act; payment of dividends where a deficit exists. 25 MLR 770.

301.16 SHARES; ALLOTMENT AND CONSIDERATION.

HISTORY. 1933 c. 300 s. 15; 1935 c. 117 ss. 3 to 5; M. Supp. s. 7492-15.

Minnesota business corporation act; liability for dilution of existing shares. 17 MLR 697.

301.17 SUBSCRIPTION FOR SHARES; ACCEPTANCE THEREOF; CALLS; ENFORCEMENT.

HISTORY. 1933 c. 300 s. 16; M. Supp. s. 7492-16.

In an action against a corporation for breach of agreement to repurchase preferred stock, evidence supported a verdict for the purchaser on the ground the stock was sold and purchaser's money accepted by the corporation with knowledge of agreement by officers that the corporation would repurchase at par upon demand. *Warren v Merchants Co.*, 217 M 445, 14 NW(2d) 450.

301.18 PAYMENT FOR SHARES; ISSUE OF CERTIFICATE.

HISTORY. 1933 c. 300 s. 17; M. Supp. s. 7492-17.

Where stock was pledged for payment of note "or any other liabilities due or to become due, or that may hereafter be contracted" pledgee who marked the note "paid in full" was not precluded from asserting its rights as to other indebtedness. *McGhie v First National*, 217 M 325, 14 NW(2d) 436.

Minnesota does not recognize the trust fund theory adopted in South Dakota and certain other states. Under that theory the act of a corporation in purchasing

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its own stock is ultra vires where the effect of such purchase is to diminish the security of the creditors. *Erickson v Wells*, 217 M 361, 15 NW(2d) 162.

301.19 LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS.

HISTORY. 1933 c. 300 s. 18; M. Supp. s. 7492-18.

Where a person becomes a stockholder in a corporation organized under the laws of a foreign state, he contracts with reference to the constitution and laws of that state; and his liability as a shareholder is a contract and determined by the laws of that state. *Furst v Beygeh*, 192 M 454, 257 NW 79.

The power to expel members and stockholders from a corporation exists by virtue of the statute under which the corporation is organized, or its articles of incorporation; and, when the right exists, the power can only be exercised when delegated to the board. *Boldt v St. Cloud Milk Producers*, 200 M 1, 273 NW 603.

The reserved rights of stockholders are subordinate to the rights of creditors. *Equitable Holding Co. v Equitable Bldg. & L. Ass'n*, 202 M 529, 279 NW 736.

A stockholder who had knowledge of wrongdoing by officers, directors, or employes, is not thereby liable because he did not sue the wrongdoers. *Holtman v Crookston Co.* 217 M 303, 14 NW(2d) 470.

301.20 VALIDITY OF SHARES.

HISTORY. 1933 c. 300 s. 19; M. Supp. s. 7492-19.

301.21 STATED CAPITAL AND SURPLUS.

HISTORY. 1933 c. 300 s. 20; M. Supp. s. 7492-20.

301.22 DIVIDENDS AND PURCHASE OF OWN SHARES.

HISTORY. 1933 c. 300 s. 21; M. Supp. s. 7492-21.

While the directors occupy a fiduciary relation towards the stockholders, the declaration of a dividend rests in their sound discretion; and in order to warrant interference by a court, it must be shown that they not only acted in bad faith but also that there were surplus profits to divide which could be separated from the working capital without detriment to the interests of the corporation. *Schmidt v Eagle Roller Mill*, 199 M 382, 272 NW 277; *Keogh v St. P. Milk Co.* 205 M 96, 285 NW 809.

The pledgee of stock is entitled to dividends declared after the pledge to the extent of his interest, and the fact that stock has not been transferred on corporate stock books does not affect his rights against the pledgor. *McGhie v First National*, 217 M 325, 14 NW(2d) 436.

Where a corporation obtains a gain or meets a loss by sale of its stock in a subsidiary, such gain or loss is of capital and not of income. *Griffin v First National*, 218 M 206, 15 NW(2d) 590.

Purchase of a corporation of its own stock. 15 MLR 1.

Cumulative and non-cumulative preferred shares; dividends. 22 MLR 676.

Corporations rights where corporation purchases its own shares. 20 MLR 422.

301.23 LIABILITY OF SHAREHOLDERS AND DIRECTORS FOR DIVIDENDS UNLAWFULLY PAID; OR FOR CORPORATE ASSETS OTHERWISE UNLAWFULLY DISTRIBUTED.

HISTORY. 1933 c. 300 s. 22; M. Supp. s. 7492-22.

Where a stockholder brings a representative suit against the majority stockholders, nothing in section 544.27 would prevent amending the several accounts in conversion to allege fraud and conspiracy by a majority to create an illegal accumulation of surplus to pay excessive salaries, and the mismanagement of a subsidiary corporation and ultra vires investment of income in bonds. Unless salaries are unreasonable and excessive, courts are reluctant to interfere with corporate management, but the majority of stockholders in effect cannot give away

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corporate property against the interest of the minority. *Keogh v St. Paul Milk Co.* 205 M 96, 285 NW 809.

A bankruptcy referee's findings are presumed to be correct and will not be disturbed in absence of manifest error; or unless it clearly appears that the finding is unsupported by evidence, or resulted from a mistaken view of the law, or there is error which would result in a miscarriage of justice. *In re Fergus*, 41 F. Supp. 355.

Bonuses cannot be granted to corporate officers as additional compensation for services previously rendered, especially against protest of any stockholders; and such bonuses cannot be recovered at suit by any stockholder. *In re Fergus*, 41 F. Supp. 355.

Claims against bankrupt corporation by a majority stockholder who was dominating director, on notes and for services being founded on transactions between claimant and bankrupt must be subjected to the closest scrutiny, and court need not accept uncontradicted evidence as true if discredited by other testimony, or if improbable. *In re Fergus*, 41 F Supp. 355.

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

301.24 BY-LAWS.

HISTORY. 1933 c. 300 s. 23; M. Supp. s. 7392-23.

By-laws establish rules for internal government of a corporation, and have the same force and effect as provisions of charter or articles of incorporation, and must be obeyed by the corporation, its officers, directors, and stockholders until legally changed. *Diedrick v Helm*, 217 M 483, 14 NW(2d) 913.

301.25 SHAREHOLDERS' MEETING.

HISTORY. 1933 c. 300 s. 24; M. Supp. s. 7492-24.

301.26 VOTING RIGHTS.

HISTORY. 1933 c. 300 s. 25; M. Supp. s. 7492-25.

Cumulative voting of elections of directors. 21 MLR 351.

Minnesota business corporation act. 17 MLR 701.

Payment of dividends when a deficit exists. 25 MLR 776.

301.27 VOTING TRUSTS.

HISTORY. 1933 c. 300 s. 26; M. Supp. s. 7492-26.

301.28 DIRECTORS.

HISTORY. 1933 c. 300 s. 27; M. Supp. s. 7492-27.

See annotations under section 301.21.

Where one person owns practically all the stock in two mercantile corporations and is president and sole manager of one, which includes a guaranty of credit in behalf of the other corporation on the strength of which plaintiff sells goods to the latter corporation, a finding that the guaranty is authorized and valid will be sustained. *Stromberg v Beckwith*, 193 M 255, 258 NW 314.

An assignment of rentals made individually by the president of a corporation who owned substantially all the stock, was binding upon the corporation. *Prudential v Enkema*, 196 M 154, 264 NW 576.

Directors of a corporation cannot be compelled to declare a dividend unless by their refusal they are acting fraudulently, oppressively, unreasonably, or unjustly. Generally, a declaration of a dividend rests in the sound discretion of the board of directors. *Schmitt v Eagle Roller Mill*, 199 M 382, 272 NW 277.

An alleged ratification of corporate action relative to frauds and transfer actions perpetrated on the minority, and upon Patrick Keogh himself, was not binding upon him because not participated in by him as a stockholder, with knowledge of such frauds or oppression. *Keogh v St. P. Milk Co.* 205 M 96, 285 NW 809.

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The sole director and managing officer of a corporation while acting as liquidator of a corporation, invested assets of the corporation in stocks and bonds for the purpose of making a profit. These investments not being authorized by the charter of the corporation, the director was liable to a minority stockholder for a loss resulting from such breach of duty, and the minority's acceptance of dividends arising out of such unauthorized investment did not constitute an estoppel to bar recovery. *Young v Blandin*, 215 M 111, 9 NW(2d) 313.

Where directors with their own funds take advantage of an opportunity the profits belong to them, not to the corporation. *Diedrick v Helm*, 217 M 483, 14 NW(2d) 913.

The lack of a grant of authority to the board of directors to execute a mortgage, does not nullify the mortgage when all the stockholders by direct vote authorized the giving of the mortgage. *Erickson v Wells*, 217 M 361, 15 NW(2d) 162.

Three directors were elected in 1922, one of whom ceased to be a director in 1925. During the entire period from 1922 until the bankruptcy of the company in 1938 no formal meeting of the board was held. The two remaining members ran the business informally as they saw fit. This was contrary to their by-laws, and to section 301.28. The claim of Budge, the managing director may be allowed against the estate, but must be subordinated to that of the creditors. *Barlow v Budge*, 137 F(2d) 445.

Relation of director to individual stockholder from whom he purchases shares of the corporation. 14 MLR 530.

301.29 REMOVAL OF DIRECTORS.

HISTORY. 1933 c. 300 s. 28; M. Supp. s. 7492-28.
Cumulative voting. 21 MLR 366.

301.30 OFFICERS AND AGENTS.

HISTORY. 1933 c. 300 s. 29; M. Supp. s. 7492-29.

Upon demand of defendant's board of directors that defendant's temporary manager procure funds needed to pay defendant's pressing bills, the manager obtained from the plaintiff a sum of money which was placed in a special bank deposit and used to pay defendant's bills. The jury was warranted in finding the defendant company liable, and the fact that thereafter a corporation which had contracted with defendant to pay its bills gave its note for the amount of its loan, did not prevent recovery from the defendant. *Jackson v Equit. B. & L. Co.* 194 M 404, 260 NW 880.

The evidence sustains the verdict that defendant sold certain shares of stock with the provision that any time the plaintiff demanded, the stock would be repurchased at par. Evidence was properly admitted of other like sales carrying the same provision, and the verdict in favor of plaintiff is sustained. *Thomsen v Union Loan & Fin. Co.* 198 M 137, 269 NW 109.

Where an individual organizes a corporation to take over and carry on his business, transferring all his assets, subject to his liabilities, the corporation becomes obligated to fulfill the written contract of the individual whereby he employed the plaintiff for a term of years. The statute of frauds is not applicable; and the fact that the corporation took over and assumed this contract may be proved by parol. *McGahn v Weaver*, 198 M 328, 269 NW 830.

Minority stockholder, in order to prevail upon a court to interfere in the action of the directors paying what is claimed to be an excessive salary, must produce evidence showing the salary so fixed was the result of arbitrary and oppressive action. *Schmitt v Eagle Roller Mill*, 199 M 382, 272 NW 277.

A note executed by an officer of a corporation and payable to himself, is presumably invalid, and such presumption may be rebutted by proof that it was made in the ordinary course of business and for the use and benefits of the corporation; but as the evidence failed to establish that the money represented by these notes came into defendant's business, or to its use and benefit, a finding in favor of the plaintiff is sustained. *Swenson v Miller Tel. Co.* 200 M 354, 274 NW 222.

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A conspiracy to defraud is ordinarily provable only by circumstantial evidence. Where plaintiff placed special trust and confidence in the president and attorney of a corporation in charge of a stock-selling campaign, the evidence sustains a tort in the form of deceit, and the corporation is liable to the plaintiff under the rule of respondeat superior. *Sheele v Union Loan*, 200 M 554, 274 NW 673.

Where the corporation was under the sole control of the defendant, there is no room for the legal fiction separating the corporation from the defendant so far as defendant's acts are concerned. His acts, as officer of the corporation, were equivalent to his acts as an independent natural person. *Walsh v Mankato Oil*, 201 M 58, 275 NW 377.

Where the stockholders consented and acquiesced in the acts of the officer complained of, it is no defense that the officer used the corporate name and organization to hinder, delay and defraud his personal creditors. *Lake Park v Steenberg*, 201 M 396, 276 NW 651.

False representation as to credit standing made in a customer's report to a mercantile agency, and by the agency reported to another, who relies thereon in making a sale, constitutes actionable fraud. *Penn v Clarkson*, 205 M 517, 287 NW 15.

Where two corporations have interlocking and common management, and one of them procures the property of a third party by fraud, the other corporation is charged with notice and if it takes the property or its proceeds it is chargeable with the value thereof. *Penn v Clarkson*, 205 M 517, 287 NW 15.

Copies of a party's income tax statements are admissible as admissions, and his books and records are admissible as admissions without statutory authentication, where he offers them in his favor. *Wentz v Guaranteed Sand & Gravel*, 205 M 611, 287 NW 113.

It is not bad faith for corporations having common stockholders to furnish information to each other by which the one receiving the information may obtain a profit, nor is it irregular for a director to appropriate a business opportunity for himself, there being no corporate capital involved. *Diedrick v Helm*, 217 M 483, 14 NW(2d) 913.

Directors have power to delegate to business of even the highest importance, officers, employees or committees. *Social Security Board v Warren*, 142 F(2d) 974.

Liability of promoter on contracts made by him with third parties. 13 MLR 495.
Comparison of Minnesota and Delaware corporations; dividends. 22 MLR 670.

301.31 RELATION OF DIRECTORS AND OFFICERS TO CORPORATION.

HISTORY. 1933 c. 300 s. 30; M. Supp. s. 7492-30.

A director or officer does not stand in a fiduciary relation to a stockholder in respect to his stock, and has the same right as any other stockholder to buy stock from or sell stock to another stockholder. *Rodgers v Drewry*, 196 M 16, 264 NW 225; *Rodgers v Drewry*, 202 M 128, 277 NW 393.

In pleading fraud, the material facts constituting the fraud must be specifically alleged. A general charge of fraud is unavailing. *Rodgers v Drewry*, 196 M 16, 264 NW 225; *Rodgers v Drewry*, 202 M 128, 277 NW 393.

Where the president of a corporation deposited in the name of his wife funds of the corporation, purposing thereby to pay his personal debt to her, the deposit belonged to the corporation and was subject to the bank's right to offset it on a past due debt from corporation to the bank. *Skolnik v Gruesner*, 196 M 318, 265 NW 44.

An officer of the corporation has no authority to use the corporate property to pay his personal obligations except with the consent of all the stockholders. An action will lie by the corporation to recover property from one by whom it is so received. *Lake Park v Steenberg*, 201 M 396, 296 NW 651.

A minority stockholder, making no independent investigation, and relying upon investigations made by corporation liquidator who was also the controlling stockholder, that final distribution had to be delayed due to a federal tax claim and other contingent claims, was not barred by waiver, laches or estoppel from bringing action 12 years after the assets were sold but shortly after liquidator settled his final account, against the liquidator for the loss resulting from the

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liquidator's unauthorized speculation in corporation assets. *Young v Blandin*, 215 M 111, 9 NW(2d) 313.

Where an opportunity in the line of a corporation's business transpires, and an officer or director seizes the opportunity and promotes it for himself he is deemed to be trustee for the corporation and may be made to account for the profits; but where the opportunity cannot legally be taken advantage of by the corporation or is one in which it has no interest or expectancy, or one in which they decline to engage, a director seizing the opportunity may treat legally as his own. *Diedrick v Helm*, 217 M 483, 14 NW(2d) 913; *Boxrud v Ronning*, 217 M 518, 15 NW(2d) 113; *Lund's Estate*, 217 M 617, 15 NW(2d) 427.

While a corporate officer may not prefer himself as a creditor over general corporate creditors, the minority stockholders cannot complain that the corporation, while insolvent, executed a mortgage in favor of majority stockholders to whom the corporation was at that time indebted. *Erickson v Wells*, 217 M 361, 15 NW(2d) 162.

301.32 LOANS TO OFFICERS, DIRECTORS AND SHAREHOLDERS.

HISTORY. 1933 c. 300 s. 31; M. Supp. s. 7492-31.

301.33 REGISTERED OFFICE; CHANGES; PENALTY.

HISTORY. 1933 c. 300 s. 32; M. Supp. s. 7492-32.

On discovery by the secretary of state that a motor freight corporation has removed its office and has not registered showing a new office, that fact should be certified to the attorney general for legal action with respect to forfeitures. OAG June 30, 1936 (385a-2).

301.34 CORPORATE BOOKS AND RECORDS; RIGHT OF INSPECTION; PENALTIES.

HISTORY. 1933 c. 300 s. 33; M. Supp. s. 7492-33.

301.35 INFORMATION TO SHAREHOLDERS AND CREDITORS.

HISTORY. 1933 c. 300 s. 34; M. Supp. s. 7492-34.

301.36 VOLUNTARY TRANSFER OF CORPORATE ASSETS.

HISTORY. 1933 c. 300 s. 35; M. Supp. s. 7492-35.

In the formation of a contract, words alone are not the only medium of expression. There can be no distinction in the effect of a promise, whether it is expressed in writing, orally, in acts, or partly in one of these ways and partly in others. It is the objective thing, the manifestation of mutual assurance, which is essential to the making of a contract. *Zieve v Halstad*, 198 M 580, 270 NW 581.

Power of majority stockholders to authorize the sale of all of the corporate property. 14 MLR 58.

Intangible assets. 25 MLR 757.

301.37 AMENDMENTS OF ARTICLES OF INCORPORATION.

HISTORY. 1933 c. 300 s. 36; 1935 c. 117 ss. 6 to 8; M. Supp. s. 7492-36.

See annotations under sections 300.45 and 308.15.

The resolution adopted by defendant corporation not to accept or be bound by Laws 1933, Chapter 300, a business corporation act, was adopted under express statutory authority and was not in excess of its corporate powers. A vote of two-thirds of the stock of each class was not required. *Muller v Hamm*, 197 M 608, 268 NW 204.

A corporation may not amend its articles to shorten its corporate duration. OAG Feb. 9, 1934.

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A corporation may amend its articles limiting the number of shares that may be held by any one stockholder. OAG May 17, 1939 (92a-1).

A business corporation cannot be converted into a charitable corporation. OAG Sept. 1, 1939 (102).

Cumulative voting. 21 MLR 370.

Ultra vires acts; amendments of articles; merger and consolidation. 22 MLR 672.

The doctrine of vested rights. 26 MLR 393.

301.38 PROVISIONS RELATING TO CERTAIN AMENDMENTS.

HISTORY. 1933 c. 300 s. 37; M. Supp. s. 7492-37.

301.39 REDUCTION OF STATED CAPITAL.

HISTORY. 1933 c. 300 s. 38; M. Supp. s. 7492-38.

Minnesota business corporation act, (voting trusts). 17 MLR 700.

Right of parent corporation to set off deposit of subsidiary against parent's indebtedness to insolvent bank. 21 MLR 851.

Stated capital. 25 MLR 745.

Payment of dividend when deficit exists. 25 MLR 771.

301.40 RIGHTS OF SHAREHOLDERS NOT ASSENTING TO CERTAIN CORPORATE ACTION.

HISTORY. 1933 c. 300 s. 39; 1935 c. 212 s. 2; M. Supp. s. 7492-39.

Laws 1935, Chapter 212, Section 2, violates Article 4, Section 33, of the state constitution, and is unconstitutional. Warnock v Hudson, 200 M 196, 273 NW 710.

The provisions of section 301.60 are valid and effective. Warnock v Hudson, 200 M 196, 273 NW 710.

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

Extension of corporate existence. 22 MLR 108.

Amendments of articles; merger and consolidation. 22 MLR 674.

301.41 CONSOLIDATION AND MERGER AUTHORIZED.

HISTORY. 1933 c. 300 s. 40; 1935 c. 117 s. 9; 1937 c. 150 s. 1; M. Supp. s. 7492-40.

301.42 PROCEDURE OF CONSOLIDATION OR MERGER.

HISTORY. 1933 c. 300 s. 41; M. Supp. s. 7492-41.

301.43 EFFECT OF CONSOLIDATION OR MERGER.

HISTORY. 1933 c. 300 s. 42; M. Supp. s. 7492-42.

301.44 RIGHTS OF DISSENTING SHAREHOLDERS.

HISTORY. 1933 c. 300 s. 43; M. Supp. s. 7492-43.

301.45 ADDITIONAL PROVISIONS RELATING TO CONSOLIDATION OR MERGER.

HISTORY. 1933 c. 300 s. 44; M. Supp. s. 7492-44.

Consolidations and mergers. 25 MLR 783.

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301.46 PROCEEDINGS FOR DISSOLUTION.

HISTORY. 1933 c. 300 s. 45; M. Supp. s. 7492-45.

A corporation is not dissolved until a forfeiture is judicially ascertained and adjudged, and a cause of forfeiture can only be taken advantage of by the state in a direct proceeding for the purpose. *State v Trustees of Hamline*, 217 M 399, 14 NW(2d) 773.

This section applies only to corporations coming under the business corporation act and dissolution of cooperative associations must be effected pursuant to sections 316.07 to 316.11. 1938 OAG 108, March 7, 1938 (93a-10).

Disregarding the corporate entity in de facto dissolution. 15 MLR 210.

301.47 VOLUNTARY PROCEEDINGS FOR DISSOLUTION.

HISTORY. 1933 c. 300 s. 46; M. Supp. s. 7492-46.

When the corporate existence of a corporation has expired by the limitation of time, a certificate instituting voluntary dissolution may not be filed in the office of the secretary of state. OAG Feb. 20, 1939 (92a-29).

301.48 WINDING UP OUT OF COURT.

HISTORY. 1933 c. 300 s. 47; M. Supp. s. 7492-47.

Plaintiff, the owner, leased the store to a corporation. The corporation lessée dissolved and distributed its assets, and the place was continued by two of the stockholders as partners. They in turn sold out to Miller who later abandoned the store. There being no privity of contract between plaintiff and defendants, and as defendants did not formally assume the lease they can only be held liable for the time of their occupancy. *O'Neil v Oys*, 216 M 391, 13 NW(2d) 8.

Right of preferred shareholders to be paid dividends in arrears of capital assets before payment to holders of common stock. 16 MLR 313.

301.49 GROUNDS FOR INVOLUNTARY DISSOLUTION.

HISTORY. 1933 c. 300 s. 48; M. Supp. s. 7492-48.

The venue of a proceeding for the dissolution of a corporation under the Minnesota business corporation act, sections 301.49 and 301.50, is in the county of its principal place of business. *Radabaugh v Hudson*, 212 M 180, 2 NW(2d) 828.

State statute providing for winding up receivership as insolvency statute; suspension of national bankruptcy act. 25 MLR 103.

301.50 WHO MAY INSTITUTE INVOLUNTARY PROCEEDINGS.

HISTORY. 1933 c. 300 s. 49; M. Supp. s. 7492-49.

301.51 APPOINTMENT OF RECEIVERS.

HISTORY. 1933 c. 300 s. 50; M. Supp. s. 7492-50.

301.52 DUTIES AND POWERS OF TRUSTEES AND RECEIVERS.

HISTORY. 1933 c. 300 s. 51; M. Supp. s. 7492-51.

A receiver of a corporation having been discharged any assets remaining, including choses in action, or actions pending revert to the corporation. *Singer v Allied Factors*, 216 M 443, 13 NW(2d) 378.

301.53 EFFECT OF DISSOLUTION PROCEEDINGS.

HISTORY. 1933 c. 300 s. 52; M. Supp. s. 7492-52.

301.54 CLAIMS AGAINST CORPORATIONS IN DISSOLUTION SUBJECT TO COURT SUPERVISION.

HISTORY. 1933 c. 300 s. 53; M. Supp. s. 7492-53.

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301.55 COMPROMISE ARRANGEMENTS; REORGANIZATION; APPROVAL AND EFFECT.

HISTORY. 1933 c. 300 s. 54; M. Supp. s. 7492-54.

301.56 ORDER OR CERTIFICATE OF DISSOLUTION; FILING; OMITTED ASSETS.

HISTORY. 1933 c. 300 s. 55; M. Supp. s. 7492-55.

301.563 VOLUNTARY DISSOLUTION OF CERTAIN CORPORATIONS.

HISTORY. 1943 c. 209 s. 1.

301.57 ACTION TO TERMINATE CORPORATE EXISTENCE.

HISTORY. 1933 c. 300 s. 56; M. Supp. s. 7492-56.

301.58 MONOPOLIES AND RESTRAINT OF TRADE.

HISTORY. 1933 c. 300 s. 57; M. Supp. s. 7492-57.

301.59 RESERVATION OF RIGHT TO ALTER, AMEND OR REPEAL.

HISTORY. 1933 c. 300 s. 60; M. Supp. 7492-60.

Laws 1935, Chapter 212, Section 2, adding subdivision 4 to section 301.40, is unconstitutional. *Warnock v Hudson*, 200 M 203, 273 NW 710.

Laws 1935, Chapter 44, is not invalid or unconstitutional as impairing or taking away any vested property rights of the plaintiff. It is not unconstitutional as class legislation. It is not arbitrary or discriminatory. *Muller v Hamm*, 197 M 608, 268 NW 204.

Cumulative voting. 21 MLR 355.

Merger and consolidation. 22 MLR 674.

301.60 APPLICATION TO EXISTING CORPORATIONS; ELECTION NOT UNDER PROVISIONS; ACCEPTANCE WITHOUT ELECTION.

HISTORY. 1933 c. 300 s. 61; 1935 c. 117 ss. 10, 11; Ex. 1936 c. 53; M. Supp. s. 7492-61.

The provisions of this section that unless an existing corporation entitled to come under this act signifies within one year after the act took effect its election to come in thereunder it shall be conclusively presumed to have accepted the same, is valid and effective. *Warnock v Hudson*, 200 M 196, 273 NW 710.

Where, as here, the charter of a corporation has expired without steps having been taken under Section 301.60 to extend it, and a new corporation is organized to take over the business, a dissenting stockholder is not required to make an immediate election to accept stock in the new corporation or the cash value of the stock in the old at a special meeting of the stockholders for the purpose of considering and confirming the transaction, but has a reasonable time in which to make such election. *Polans v Oreck's*, 220 M —, 19 NW(2d) 435.

Renewal pursuant to curative act of corporate existence after expiration thereof is of same force and effect as if renewed prior thereto, although taken subsequent to the last date for filing election of non-compliance with the business corporation act, and subjects the corporation to the Minnesota business corporation act. OAG May 3, 1934 (92a-9).

A cooperative, by virtue of Laws 1939, Chapter 51, may qualify under this act without the two-thirds vote requirement. June 22, 1939 (93a-2).

301.61 LAWS NOT TO APPLY TO CORPORATIONS FORMED OR COMING UNDER SECTIONS 301.01 to 301.61.

HISTORY. 1933 c. 300 s. 62; 1935 c. 117 s. 12; M. Supp. s. 7492-62.

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301.62 MINNESOTA BUSINESS CORPORATIONS

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301.62 CORPORATIONS TO BE BOUND.

HISTORY. 1935 c. 44 s. 1; M. Supp. s. 7492-61a.

This section was not repealed by section 301.63. *Muller v Hamm*, 197 M 608, 268 NW 204.

The majority vote of all stockholders, including common and preferred, was all that was necessary to elect not to comply with this section. *Muller v Hamm*, 197 M 608, 268 NW 204.

Order of court appointing a receiver for corporations coming under this provision cannot be collaterally attacked in receiver's action to enforce double liability of stockholders as the court had jurisdiction of the corporation and the subject matter. The receiver should bring the stockholder's liability action. *Badger v Hoidale*, 88 F(2d) 208.

301.63 WHO MAY COME UNDER SECTIONS 301.01 TO 301.61.

HISTORY. 1935 c. 117 s. 13; M. Supp. s. 7492-65.

301.64 REORGANIZATION OF DISSOLVED CORPORATIONS.

HISTORY. Ex. 1936 c. 84 s. 1; M. Supp. s. 7492-69g.

301.65 LIMITATION OF ACTION TO QUESTION VALIDITY OF REORGANIZATION.

HISTORY. Ex. 1936 c. 84 s. 3; M. Supp. s. 7492-69i.

301.66 RENEWAL OF CORPORATIONS HAVING WORD "TRUST" IN NAME.

HISTORY. Ex. 1936 c. 97 s. 1; M. Supp. s. 7492-69L.

301.67 CORPORATIONS WHOSE CHARTERS HAVE BEEN FORFEITED.

HISTORY. Ex. 1936 c. 97 s. 2; M. Supp. s. 7492-69m.