CHAPTER 316

ACTIONS RESPECTING CORPORATIONS

316.01 MODE OF PROSECUTION.

HISTORY. R.S. 1851 c. 76 ss. 2 to 4; P.S. 1858 c. 66 ss. 2 to 4; G.S. 1866 c. 76 ss. 2 to 4; G.S. 1878 c. 76 ss. 2 to 4; G.S. 1894 ss. 5890 to 5892; R.L. 1905 s. 3169; G.S. 1913 s. 6630; G.S. 1923 s. 8009; M.S. 1927 s. 8009.

The right of foreign receivers of a foreign corporation to sue in the state was properly sustained as against the demurrer; and the rule of comity is not affected by the fact that plaintiffs were appointed by a federal court. Stevens v Tilden, 122 M 250, 142 NW 315.

The remedial provisions of this chapter are to be applied to the enforcement of rights against foreign corporations and stockholders therein in so far as it is practicable; and where the sole claim to be asserted against the shareholders of a foreign corporation is that the shares were issued under agreement that they should not be paid for, an assessment is not necessary or proper preliminary to suit. Dispatch v Security Bond, 154 M 211, 191 NW 601.

Laws 1899, Chapter 272, providing for the better enforcement of the liability of stockholders, was expressly restricted to domestic corporations; but when it was carried into the Revision of 1905, the words restricting the scope of the law were omitted. There being nothing to indicate it, the mere omission from the Revision of the few restrictive words cannot be construed as making the sweeping change necessary to being foreign corporations within the scope of the statute. Consequently, liability of stockholders in a foreign corporation under the present statute must be enforced in this state by a suit in the nature of a creditor's bill. Firehammer v Interstate Securities, 170 M 475, 212 NW 911.

Conviction of defendant of having made a false statement in writing to the bank for the purpose of obtaining credit, is sustained. State v Eidsvold, 172 M 208, 215 NW 206.

This state will not deny to citizens of sister states the right to maintain in its courts such actions as its own citizens may maintain. Such trials do not unreasonably burden interstate commerce. The courts in this state will not discriminate between resident plaintiffs and non-resident plaintiffs, and resident defendants and non-resident defendants; and transitory actions whether founded on a common-law liability or a liability created by a sister state statute, or one created by the federal government, are triable if jurisdiction of the defendant is acquired, though the plaintiff to be a non-citizen or non-resident and the defendant be likewise so but be doing business within the state. Boright v Chic. R. I. Ry. Co. 180 M 52, 230 NW 457.

The court, in Firehammer v Interstate Securities, 170 M 475, 212 NW 911, held that Laws 1899, Chapter 272, as carried into the Revision of 1905 and now sections 316.17 to 316.23, did not bring foreign corporations within its scope. It must follow that the proviso added to section 316.20, that action to enforce assessments against stockholders must be brought within two years after order for payment is made, does not apply to an action brought to enforce the statutory liability of a stockholder in a foreign corporation. Johnson v Johnson, 194 M 617, 261 NW 450.

Method of enforcement of statutory or double liability. 7 MLR 104.

316.02 MANDATORY AND RESTRAINING ORDERS.

HISTORY. R.S. 1851 c. 77 ss. 1, 2; P.S. 1858 c. 67 ss. 1, 2; G.S. 1866 c. 76 ss. 5, 6; G.S. 1878 c. 76 ss. 5, 6; G.S. 1894 ss. 5893, 5894; R.L. 1905 s. 3170; G.S. 1913 s. 6631; G.S. 1923 s. 8010; M.S. 1927 s. 8010.

316.03 POWER OF COURT OVER CORPORATION OFFICERS.

HISTORY. R.S. 1851 c. 77 ss. 3, 4; P.S. 1858 c. 67 ss. 3, 4; G.S. 1866 c. 76 ss. 7, 8; G.S. 1878 c. 76 ss. 7, 8; 1893 c. 88 s. 1; G.S. 1894 ss. 5895, 5896; R.L. 1905 s. 3171; G.S. 1913 s. 6632; G.S. 1923 s. 8011; M.S. 1927 s. 8011.

Power of the court over corporations and officers thereof. National New Haven Bank v N. W. Guaranty, 61 M 375, 63 NW 1079.

When the assets of a corporation not a moneyed corporation, have been sequestrated by an assignment under the insolvency law, an action may be maintained by a simple contract creditor on behalf of himself and of other creditors to enforce the constitutional liability of the stockholders of the corporation. Minneapolis Paper Co. v Swinburne, 66 M 378, 69 NW 144; Sturtevant-Larrabee v Mast, Buford & Burwell, 66 M 437, 69 NW 324.

Judgment for a preemptory mandamus should not be granted, upon the relation of a foreign holding corporation, to compel the secretary of another holding and foreign corporation to call a meeting of its stockholders for the purpose of taking action necessary to bring about a change in the articles of incorporation of two other foreign corporations. State v De Groat, 109 M 168, 123 NW 417.

Where the constitution of a fraternal benefit association provided that its imperial good samaritan might call special meetings of its governing board and that notices be sent to each member of the council by the imperial scribe, and the scribe refused to mail such notices, the subsequent mailing by the imperial good samaritan was valid and a meeting held pursuant to notice was a legally called meeting of the council. Whipple v Christie, 122 M 73, 141 NW 1107.

In equity proceedings, all persons whose rights may be universally affected by the proposed decree should be made parties to the action. When stockholders sue to cancel stock of a corporation, the corporation must be made a party. Mortgage Land Invest. Co. v McMains, 172 M 110, 215 NW 192.

In suing for the conversion of the proceeds of the sale of the property of the corporation, the sale must be considered valid and effective to pass title; and it appearing that the proceeds of the sale were used to pay just obligations, it is unimportant that in doing business the corporation had exceeded the debt limit fixed in its articles. Williams v Davis, 182 M 186, 234 NW 11.

316.04 APPEAL, EFFECT.

HISTORY. R.S. 1851 c. 77 s. 3; P.S. 1858 c. 67 s. 3; G.S. 1866 c. 76 s. 7; G.S. 1878 c. 76 s. 7; G.S. 1894 s. 5895; R.L. 1905 s. 3172; G.S. 1913 s. 6633; G.S. 1923 s. 8012; M.S. 1927 s. 8012.

316.05 SEQUESTRATION; RECEIVER; DISTRIBUTION.

HISTORY. R.S. 1851 c. 77 ss. 6, 7; P.S. 1858 c. 67 ss. 6, 7; G.S. 1866 c. 76 ss. 9, 10; G.S. 1878 c. 76 ss. 9, 10; 1887 c. 25; G.S. 1894 ss. 5897, 5898; R.L. 1905 s. 3173; G.S. 1913 s. 6634; G. S. 1923 s. 8013; 1925 c. 224; M.S. 1927 s. 8013.

1. **Generally**
2. **Parties plaintiff**
3. **Parties defendant**
4. **Prevention or defeat of action**
5. **Receiverships**
6. **Nature of action**
7. **Enforceable liabilities**
8. **Pleadings**
9. **Assessments**
10. **Allowance of claims**
11. **Judgment**

1. Generally

Following Arthur v Willius, 44 M 409, and Willius v St. Paul, 48 M 140, and discussing their cases and outlining the history of this cause of action, it is held that the constitution of the state relating to the liability of stockholders for creditor debts is self-executing; and individual liability of stockholders for corporate debts may be enforced in a sequestration proceeding against the corporation under the provision of General Statutes 1878, Chapter 66, upon the application or complaint of any creditor. McKusick v Seymour, Sabin & Co. 48 M 158, 50 NW 1114.

In the case of "moneyed corporations" an action may be instituted by a simple contract creditor to sequester the corporate assets and to enforce the individual liability of stockholders for the deficiency. In case of other corporations, whenever their corporate assets are subject to sequestration, an action to enforce the liability of stockholders for corporate debts can only be instituted by a judgment creditor. Where there are no corporate assets subject to sequestration, and the only relief obtainable is enforcement of the individual liability of the stockholders, an action for that purpose may be instituted by a simple contract creditor. If a corporation has made an assignment, a simple contract creditor may institute a subsequent action to enforce the liability of stockholders for such part of the corporate debts as remain unsatisfied after administration after the assignment. Mpls. Paper v Swinburne, 66 M 378, 69 NW 144.

Under the provision of the statute authorizing actions against insolvent corporations, after judgment and execution returned unsatisfied, to sequestrate their property and recover unpaid subscriptions of stock, such action may be brought by the assignee of such judgment, as well as by the judgment creditor himself. The statute should be liberally construed. Argall v Sullivan, 83 M 71, 85 NW 931.

An action to sequestrate the property and have a receiver appointed for a corporation, except banking and insurance companies, cannot be maintained by a creditor who has not first exhausted his legal remedies as required by this section, save possibly in cases where it is made to appear that it would be a useless gesture to exhaust such remedies. Klee v Steele, 60 M 355, 62 NW 399.

Unless expressly limited, modified or excepted, all of the provisions of this chapter are applicable to all corporations. Allen v Walsh, 25 M 543; McKusick v Seymour, Sabin & Co. 48 M 158, 50 NW 1114; Anchor v Columbia, 61 M 510, 63 NW 1109.

The provisions of General Statutes 1866, Chapter 33, Section 21, as amended by Laws 1869, Chapter 85, apply to the stockholders of all banks organized under that chapter as amended. The remedy for enforcing such statutory liability is that provided in this chapter and it is the only remedy. Allen v Walsh, 25 M 543; Johnson v Fischer, 30 M 173, 14 NW 799; In re Martin's Estate, 56 M 420, 57 NW 1065; Winnebago v N. W. Prtg. 61 M 373, 63 NW 1024; Way v Barney, 116 M 285, 133 NW 801.

A judgment against a corporation and others jointly for the recovery of money is a debt of the corporation for the purpose of enforcing against stockholders' liabilities for unpaid subscriptions and their statutory liability. Frost v St. Paul Banking, 57 M 325, 59 NW 308.

In an action by a judgment creditor for the sequestration of the assets of the corporation and the appointment of a receiver, the judgment against the corporation upon which the action is predicated is, in the absence of fraud, conclusive upon the stockholders as well as the corporation. Oswald v Mpls. Times, 65 M 249, 68 NW 15; Basting v Northern Trust, 61 M 307, 63 NW 721; Frost v St. Paul Banking, 57 M 325, 59 NW 308; Holland v Duluth Iron Mfg. 65 M 324, 68 NW 50; Hinckley v Kettle River R. R. 80 M 32, 82 NW 1088.

Defendant Ames demurred in that there was a defect of parties defendant, all stockholders not having been made parties. Demurrer was properly overruled. Mendenhall v Duluth Dry Goods, 72 M 312, 75 NW 232.

In an action by the judgment creditor for the appointment of a receiver, the return of the execution unsatisfied by the sheriff is conclusive and cannot be collaterally assailed. Spooner v Bay St. Louis Syndicate, 44 M 401, 46 NW 848.

A judgment of the district court may be levied upon by execution and the fact that the property of the judgment debtor is in custodia legis or has been an assign-

ment in part does not prevent a levy by execution upon the judgment. Wheaton v Spooner, 52 M 417, 54 NW 372.

The receiver appointed to enforce the individual liability of stockholders may attach the property of a stockholder against whom proceedings are pending. Bailey v Stearns, 80 M 354, 83 NW 1118.

The court has power to make an order substituting legatees and devisees of a deceased stockholder as defendants in place of the deceased as his representative and successor in interest. Willoughby v German Ins. 80 M 432, 83 NW 77; Markell v Ray, 75 M 138, 77 NW 788; In re Martin's Est. 56 M 420, 57 NW 1065.

All the parties to the action, but one, entered into a stipulation for judgment which ignored the rights of such other party. The court ordered judgment accordingly which was then entered, the order compromising stockholders' liability. On appeal of such other party, the judgment was reversed as to her, the order of compromise not being binding on a non-assenting creditor. State v Merchants Bank, 74 M 175, 77 NW 31.

The equity rule that, where one of many parties having a common interest in a trust fund successfully prosecutes proceedings to collect it for the benefit of all interested, he is equitably entitled to reimbursement for his reasonable expenses in the premises out of the fund before its division applies to an action to enforce stockholders' liability, where the action is so prosecuted by one creditor for all, and this includes an allowance for the services of plaintiff's attorney. Helm v Smith, Fee Co. 79 M 297, 82 NW 639.

Where proceedings to enforce personal liability of the stockholders were abandoned and nothing having been realized out of them, the attorney is not entitled to payment of his services out of the corporate assets in the hands of the receiver, but must look to his client, the intervening creditor, for his pay. Dwinnell v Badger, 74 M 405, 77 NW 219.

It is the duty of the courts, whether objections are or are not made by the creditors of a trust account, to supervise and closely scrutinize the trust account, and the matter of allowance of fees to the attorney for the receiver. Olson v State Bank, 72 M 320, 75 NW 378.

Where under an irregular amendment there was an increase in capitalization and increased stock was issued, and thereafter the bank became insolvent, the holders of the new stock are estopped from denying its validity, as creditors are presumed to have trusted the bank on the faith of the increase of the stock from the time that such increase was voted. As against creditors who became such before such increase in capitalization, the new stockholders are not estopped unless there is in favor of such creditors some special equity which creates an estoppel. Palmer v Bank of Zumbrota, 72 M 266, 75 NW 380.

The statute which provides that the stockholders of all banks of deposit and discount shall be individually liable in an amount equal to double the amount of stock owned by them for all the debts of the bank, and such individual liability shall continue for one year after a transfer of their stock shares, means that at the end of the year of continuing liability the novation of the parties may be complete, the old stockholder being relieved of further responsibility. But if within the year an action to enforce stockholders' liability is commenced, the right is complete. Harper v Carroll, 62 M 152, 64 NW 145; Harper v Carroll, 66 M 487, 69 NW 610, 1069.

The filing of complaints in this action by creditors exhibiting their claims against the corporation tolled the statute of limitations both as to it and its stockholders. London v St. Paul Park, 84 M 144, 86 NW 872.

Michael Doran, on October 19, 1896, was the owner of ten shares of capital stock of the Allemannia Bank on which day he, in good faith, sold his stock. On January 4, 1897, the bank became insolvent, and on May 26, 1898, the bank was reorganized and reopened, defendant Doran paying a $500.00 assessment to the reorganization committee. On June 9, 1900, the bank again became insolvent and receiver was appointed and an action brought against Doran to enforce his stockholder's liability. The court found that the action was barred by the statute of limitations. Hunt v Michael Doran, 92 M 423, 100 NW 222.

The mere commencement of an action by a judgment creditor for the sequestration of the property of a debtor and the appointment of a receiver, did not stop

the running of the statute of limitations against the claims of other creditors. But the filing of a complaint by a creditor intervening, in pursuance of an order of court, tolled the statute as of the date of the filing. Downer v Union Land, 103 M 392, 115 NW 207.

Two separate and independent actions were brought by judgment creditors to enforce the stockholders' liability. Thereafter the court made an order consolidating the two actions under the name and title of both plaintiffs. Six days before the making of this order, stockholders who were made the defendants in one action but not in the other demurred to the complaint in the former action, which demurrer was brought on for hearing after the order of consolidation. Such order consolidated both complaints, so that the alterations contained in one supplemented the other; and the case stood as if the complaint demurred to had been amended after the demurrer was served, and before it was argued. Pioneer Fuel v St. Peter St. Improv. Co. 64 M 386, 67 NW 217.

The receiver sale is absolute and a creditor who recovers a judgment against a corporation after the property is taken in custodia legis has no right to redeem real estate sold by the receiver under direction of the court. Watkins v Minnesota Thresher, 41 M 150, 42 NW 862.

The stockholders' double liability is an unliquidated demand; and in an action to enforce the liability, interest should be allotted on the amount of the double liability from the time of filing the decision in the court below, but not before; and where the purchaser of a number of the claims of creditors owed no fiduciary relation to the bank or its stockholders, and paid a price which was not so inadequate as to shock the conscience, the purchaser is entitled to a dividend on the full face of the claims. Palmer v Bank of Zumbrota, 72 M 266, 75 NW 380.

The personal property of the corporation for which the receiver has been appointed continues assessable at the place at which it was assessable before the receiver was appointed, without reference to the residence of such receiver. State v Red River Valley Elev. 69 M 131, 72 NW 60.

The finding that certain persons were "stockholders" in the corporation includes the finding that every condition precedent to their becoming full stockholders and subject to liability has been performed or waived. Arthur v Clarke, 46 M 491, 49 NW 252; Commercial Bank v Azotine Co. 66 M 413, 69 NW 217.

On appeal from an order confirming a sale made upon the referees' report and the records, files, and papers in the case, or from an order denying a motion to vacate the order of confirmation, the return must show either by certificate of the judge that it contains all that was offered or considered on the motion; or by certificate of the clerk that it contains all the records and files in the action. It is for the judge, and not for the clerk, to certify that it contains all that was offered or considered on the hearing of the motion. Hospes v N. W. Mfg. Co. 41 M 256, 43 NW 180.

Where proceedings were had upon due notice that the court judged a decree and sale of all the corporate property free and clear of all liens and encumbrances, the proceeds to be held subject to the consideration of the court, and reserving the question of the propriety of the claims of lien creditors, creditors so appearing were bound in the decree in that action, and cannot attack it collaterally. Nelson v Jenks, 51 M 108, 52 NW 1081.

An action to set aside a fraudulent transfer of all the corporate assets was commenced by a stockholder against the corporation and the transferee, and a receiver was appointed. Such action cannot be pleaded either in bar or abatement of an action afterwards brought under the provisions of this chapter, being a creditor of said corporation in favor of himself and of other creditors, for the appointment of receiver. It is the duty of the receiver appointed under the provisions of this chapter to obtain an order ordering creditors to exhibit their claims, and become parties to the second action. An order to that effect in the former action was irregular and void. Oswald v St. Paul Globe, 60 M 827, 61 NW 902.

The court may, under this section, sequestrate property within this state of a foreign corporation and appoint a receiver thereof. Rittle v Owens, 136 M 93, 161 NW 401.

Where a judgment creditor after return of an execution unsatisfied, brings an action under this section and has a receiver appointed, the corporation cannot de-

feat the appointment of a receiver by paying the judgment of the plaintiff. Partin v Southern Colonization Co. 146 M 287, 178 NW 744.

A conveyance of land by an insolvent corporation to the wife of the manager of the corporation in payment of a debt due to her from the corporation, and also an indebtedness due to the manager, is presumptively fraudulent as to other existing creditors, and may be avoided in statutory sequestration proceedings. Aitkin v Timm, 147 M 317, 180 NW 234.

A general creditor by virtue of the power of equity and by virtue of section 576.01, has a standing before the court equal to that of a judgment creditor, except as to the burden of proof. O'Brien v Bay Lake, 173 M 493, 217 NW 940.

When in a temporary receivership of a solvent charitable organization, it appears that conditions warrant a winding up of the business and distribution of assets, annuitants will not be entitled to a preference over other creditors. Peterson v N. W. Baptist Hospital, 194 M 399, 260 NW 512.

The receiver is not transferee of property of the corporation but is, for the time being, the corporation; and when he sues or does any other act, it is in the place and in the right of the corporation; and hence could enforce claim against the federal government under war minerals relief act in the loss sustained in producing and preparing to produce, manganese. Crowley v Ickes, 83 Fed (2d) 573.

The state, being a preferred creditor, is entitled to all assets if the amount sequestrated is not sufficient to pay the state's claim in full. OAG Aug. 1, 1933.

Stockholders' liability in Minnesota; method of enforcement. 7 MLR 105.

When must a receiver appointed by a state court relinquish property of a bankrupt to a trustee in bankruptcy. 14 MLR 664.

Applicability of a reorganization statute, Laws 1925, Chapter 38, to deposits made before or renewed after statute became effective. 14 MLR 677.

Preference of prereceivership claims. 15 MLR 286.

Payment of workmen's compensation by an operating receiver. 19 MLR 253.

Collection of taxes from a receiver in supplementary proceedings. 23 MLR 859.

2. Parties plaintiff

An action to sequestrate the property and have a receiver appointed for a corporation, except banking and insurance companies, cannot be maintained by a creditor until he has first exhausted his legal remedies, save possibly cases where it appears that it would be useless to exhaust such remedies. Klee v Steele, 60 M 355, 62 NW 399.

An action to sequestrate the property and have a receiver appointed for a corporation may be brought by the assignees of a judgment as well as by the judgment creditor himself. Argall v Sullivan, 83 M 71, 85 NW 931.

Prior to Revised Laws 1905, and under certain circumstances, a simple contract creditor might maintain an action to enforce the liability of stockholders. Mpls. Paper Co. v Swinburne, 66 M 378, 69 NW 144; Sturtevant v Mast, Buford & Burwell, 66 M 437, 69 NW 324; O'Brien v Bay Lake, 173 M 493, 217 NW 940.

The omission of General Statutes 1894, Section 5905, from Revised Laws 1905, and the passage of Laws 1899, Chapter 272, overrule or modify previously decided cases; and a stockholder or director who is also a creditor may bring an action to enforce liability of stockholders, but the court in its discretion may turn the further progress of the action over to disinterested persons. Maxwell v Northern Trust Co. 70 M 334, 73 NW 173; Mendenhall v Duluth Dry Goods, 72 M 312, 75 NW 232; Janney v Mpls. Industrial Exposition, 79 M 488, 82 NW 984.

In an action for the appointment of a receiver for the purpose of sequestration where it appears on the face of the complaint that the plaintiff had no interest in the property for which a receiver was asked, the plaintiff had no right of action and the order appointing a receiver was without authority. Kelley v Carver, 153 M 372, 190 NW 483.

3. Parties defendant

The court practice is to include all stockholders defendants at the first institution of the action; but if the plaintiff in the first instance makes the corporation

the sole defendant, the proceedings are intended to be elastic and are susceptible to being molded into almost any form necessary to accomplish their purpose, or secure a full and final judgment of the rights and liabilities of all parties growing out of the corporate business, and new parties may be admitted and brought in. Arthur v Willius, 44 M 409, 46 NW 851; Nat'l German-American Bank v St. Anthony Park, 61 M 359, 63 NW 1068; Palmer v Bank of Zumbrota, 65 M 90, 67 NW 893.

All the stockholders within the jurisdiction of the court should be made defendants. Allen v Walsh, 25 M 543; Clarke v Cold Spring Opera, 58 M 16, 59 NW 632.

If a stockholder's liability is not enforced in the original action because the court had no jurisdiction of him or his property, but for other cause, an ancillary action may be maintained against him. Hanson v Davison, 73 M 454, 76 NW 254.

If the plaintiff does not make the stockholders defendants at the outset, he may do so later. Palmer v Zumbrota Bank, 65 M 90, 67 NW 893.

If the plaintiff does not make the stockholders defendants for the purpose of enforcing their liability, other creditors may obtain leave of court to bring all stockholders into the action. Arthur v Willius, 44 M 409, 46 NW 851; McKusick v Seymour, Sabin & Co. 48 M 158, 50 NW 1114; Nat'l German-American Bank v St. Anthony Park, 61 M 359, 63 NW 1068; Pioneer Fuel v St. Peter St. Improv. 64 M 386, 67 NW 217; Palmer v Bank of Zumbrota, 65 M 90, 67 NW 893.

Stockholders may be made parties to the action on the complaint of a creditor other than the plaintiff, either before or after the expiration of the time limited by the court for creditors to exhibit their claims. Nat'l German-American Bank v St. Anthony Park, 61 M 359, 63 NW 1068.

4. Prevention or defeat of action

When proceedings are pending under the insolvency law, in which a receiver or assignee has been selected and has qualified, and under the supervision of the court has entered upon and is discharging the duties of his trust, the plaintiff in an action brought under this chapter for the purpose of sequestrating the property of the corporation and enforcing the constitutional liability of its stockholders, is not entitled on the pleadings and as a matter of absolute right, to have a receiver appointed. Walther v Seven Corners Bank, 58 M 434, 59 NW 1077; International Trust v American L. & T. Co. 62 M 501, 65 NW 78, 632.

Where a mortgage is being foreclosed on the property of a corporation and a receiver appointed in that action, an action may still be brought under this chapter in proceedings to sequestrate all the property and effects of the corporation for the benefit of all its creditors. St. Louis Car v Stillwater Street Ry. 53 M 129, 54 NW 1064.

An action to set aside a fraudulent transfer of all the corporate assets was commenced by a stockholder against the corporation and the transferee, and a receiver was appointed. That action cannot be pleaded either in bar or abatement of an action brought under this chapter by a creditor of said corporation in favor of himself and all other creditors, and against the corporation and all its stockholders, and for the appointment of a receiver. Oswald v St. Paul Globe, 60 M 82, 61 NW 902.

When a creditor has commenced an action under this chapter, an appointment by the corporation under the insolvency law will not defeat or impair the pending proceedings. State v Bank of New England, 55 M 139, 56 NW 575; London v St. Paul Pk. Improv. 84 M 144, 86 NW 172.

The attorney general brought this action to forfeit the charter of a bank; and thereafter and before judgment therein, a creditor with the consent of the attorney general and with leave of court, intervened in the action, violated a complaint in intervention, and brought in the stockholders as defendants for the purpose of enforcing their double liability. Further proceedings must be under the provisions of this chapter. State v Merchants Bank, 67 M 506, 70 NW 803.

The complaint was demurrable which merely stated that dissension had arisen between plaintiff owning the beneficial interest in half of a block of shares, and the individual defendants owning such stock in the other half, and because of such dissension a new board of directors could not be elected in the holding corporation. McGuire v Kayson, 184 M 553, 229 NW 616.

In an action by creditors to reach property in the possession of the appellant, which property was formerly owned by plaintiff's debtors, the plaintiff asked for the appointment of a receiver and have the appellant adjudged a trustee of the property for the benefit of plaintiffs and of others similarly situated. The evidence is insufficient to support a finding that the property was in reach of plaintiffs, or that appellant was a trustee of the property, or to warrant the appointment of a receiver. Asleson v Allison, 188 M 496, 247 NW 579.

Where in a stockholders' suit to wind up the affairs of a corporation a receiver is appointed, the assets seized, claims of creditors filed and allowed, such creditors whose claims are allowed acquire a lien on the property of the corporation in the custody of the court; and where such lien is acquired more than four months before the filing of a petition in bankruptcy, it is not divested by such petition. Cohen v Mirviss, 178 M 20, 266 NW 198.

This action to recover the constitutional liability of the stockholders was commenced more than six years after a receiver had been appointed and had taken possession of the property of the corporation. If the cause of action accrued at the time the receiver was appointed, the action was barred. Miller v Bonneman, 183 M 12, 235 NW 622.

5. Receiverships

A receiver appointed under this chapter may by proper action avoid a chattel mortgage on the ground that it was not filed as required by the statute. Farmers L. & T. Co. v Mpls. Engine Wks. 35 M 543, 29 NW 349.

A creditor cannot maintain an action for the recovery of corporate assets after a receiver has been appointed, or at least the creditor's right to do so is suspended during the pendency of the proceedings. Minn. Thresher v Langdon, 44 M 37, 46 NW 310; Mchts. Nat'l v N. W. Mfg. & Car, 48 M 361, 51 NW 110.

While it is discretionary with the court to appoint a receiver or not, if the facts which give the right of action exist, and there is no defense, it is an abuse of discretion if the court refuses to appoint. State v Bank of New England, 55 M 139, 56 NW 575.

The regularity, propriety and validity of the appointment of a receiver is not subject to collateral attack, and can only be questioned in a direct proceeding to test that question. Basting v Ankeny, 64 M 133, 66 NW 266.

A receiver succeeds to the rights of both the creditors and the corporation. He has substantially the same powers as a trustee in bankruptcy, or a receiver of a creditors' bill, or in supplementary proceedings. Everything belonging to the corporation becomes an asset in his hands, and those assets are in custodia legis which were assets as to the creditors or as to the corporation. Farmers L. & T. v Mpls. Engine Wks. 35 M 543, 29 NW 349; Minnesota Thresher v Langdon, 44 M 37, 46 NW 310; St. Louis Car v Stillwater St. Ry. 53 M 129, 54 NW 1064.

Receiver's sale is absolute and a creditor of the corporation who recovers a judgment after the receiver has been appointed has no right to redeem real state sold by the receiver under the direction of the court. Watkins v Minnesota Thresher, 41 M 150, 42 NW 865.

The personal property of a corporation is assessable at the same place at which it was assessable before the receiver was appointed, and not at the residence of such receiver. State v Red River Vally Elev. 69 M 131, 72 NW 60.

The duties of the receiver are administrative and even if the receiver happens to be an attorney, he is not required to perform legal services. He may employ counsel. Olson v State Bank, 72 M 320, 75 NW 378.

An independent action against a receiver to recover judgment upon a claim existing against the insolvent when the receivership proceedings were instituted, or to establish or to have such claim allowed against the trust fund, cannot be maintained. The receiver can not allow or disallow claims. Buffum v Hale, 71 M 190, 73 NW 856.

It is the duty of the receiver to contest improper claims. Danforth v Nat'l Chem. Co. 68 M 308, 71 NW 274.

Where the attorney for the creditor gave the receiver a copy of his verified complaint instead of the original, and the receiver accepted the copy, it was the

duty of the receiver and not the creditor to file the complaint. Potts v St. Paul Pk. 84 M 217, 87 NW 604.

All actions brought or proceedings instituted by a receiver, should be brought or instituted by the receiver as such and in his own name. Ueland v Haugen, 70 M 349, 73 NW 169.

A receiver in his official capacity as an officer of the court, may enforce an undertaking notwithstanding that the consideration for which the undertaking was executed was the doing of an act on the part of the receiver in violation of the order of the court and a breach of his official duty. O'Gorman v Sabin, 62 M 46, 64 NW 84.

The municipal court of the city of St. Paul has jurisdiction of a suit by a receiver to recover from a stockholder the amount due upon his subscription to the capital stock of the corporation. Hause v Newell, 60 M 481, 62 NW 817.

A receiver may avoid a chattel mortgage upon the property of the corporation on the ground that it was not filed as required by law. Farmers L. & T. v Mpls. Engine Wks. 35 M 543, 29 NW 349.

The sole right to recover capital withdrawn and refunded by the corporation to its stockholders passes to the receiver as a representative of all the creditors. Minn. Thresher v Langdon, 44 M 37, 46 NW 310.

It is the receiver's duty to avoid a fraudulent mortgage to the directors and to avoid a fraudulent judgment against the corporation. Taylor v Mitchell, 80 M 492, 83 NW 418; Taylor v Fanning, 87 M 52, 91 NW 269.

It is the duty of the receiver to enforce the liabilities mentioned under "7. Enforceable liabilities."

The receiver not being appointed under General Statutes 1913, Chapter 90, the limitations placed upon the fees therein of a receiver and his attorneys, do not apply. The court may allow what the services are reasonably worth. Lamb-McGregor Co. v Canton Grain Co. 158 M 256, 197 NW 487.

The right of a judgment creditor with execution returned unsatisfied to the appointment of a receiver of the property of a corporate judgment debtor, in sequestration proceedings under section 316.05, cannot be defeated by an offer to pay the judgment if there are other unpaid creditors. This section is not an insolvency section. National Guardian v Schwentz, 217 M 289, 14 NW(2d) 347.

Prior to the passage of Laws 1897, Chapter 341, and Laws 1899, Chapter 272, the receiver could not enforce stockholders' liability by action in another state. Hale v Allinson, 188 US 56, 23 SC 244; Finney v Guy, 189 US 335, 23 SC 558.

State statute providing for winding up receivership as insolvency statute. Suspension by national bankruptcy act. 25 MLR 105.

6. Nature of action

The object of the action is to wind up the affairs of the corporation; to collect and convert all the corporate assets appropriating them ratably among all the creditors; and if there is a deficiency, to enforce the individual liability of stockholders. Rules of equity practice apply; but the proceedings are flexible and susceptible of being molded into such form as may be necessary to accomplish their purpose of adjusting the rights and liabilities growing out of the corporate business. Allen v Walsh, 25 M 543; Mchts. Nat'l v Bailey, 34 M 323, 25 NW 639; Farmers L. & T. v Mpls. Eng. Wks., 35 M 543, 29 NW 349; Minn. Thresher v Langdon, 44 M 37, 46 NW 310; Arthur v Willius, 44 M 409, 46 NW 851; Spooner v Bay St. Louis, 47 M 464, 50 NW 601; In re People's Livestock Ins. 56 M 180, 57 NW 468; Northwestern Railroader v Prior, 68 M 95, 70 NW 869; Mendenhall v Duluth Dry Goods, 72 M 312, 75 NW 232; Hanson v Davison, 73 M 454, 76 NW 254.

After the action is begun and the complaint filed, the proceeding is under the control of the court and the plaintiff has no greater right than has any other creditor who appears, files a claim, and takes part in the litigation. Maxwell v N. Trust, 70 M 334, 73 NW 173; Mendenhall v Duluth Dry Goods, 72 M 312, 75 NW 232; State ex rel v Germania Bank, 103 M 129, 114 NW 651.

The action in all cases is deemed to be in behalf of all the creditors who joined in the proceedings, and the original plaintiff cannot maintain the action solely for his own benefit. Allen v Walsh, 25 M 543; Farmers L. & T. v Mpls. Engine Wks.,

35 M 543, 29 NW 349; Spooner v Bay St. Louis, 47 M 464, 50 NW 601; Nat'l German-American Bank v St. Anthony Pk., 61 M 359, 63 NW 1068; Pioneer Fuel v St. Peter St. Improv., 64 M 386, 67 NW 217; Hanson v Davison, 73 M 454, 76 NW 254; Helm v Smith-Fee Co. 79 M 297, 82 NW 639.

The action is similar and of the nature of insolvency proceedings. Merrill v Ressler, 37 M 82, 33 NW 117; Spooner v Bay St. Louis, 47 M 464, 50 NW 601.

The action is in effect sequestration as of an attachment or execution on behalf of creditors. Farmers L. & T. v Mpls. Engine Wks., 35 M 543, 29 NW 349; Minn. Thresher v Langdon, 44 M 37, 46 NW 310.

Questions of fact may be submitted to a jury. State ex rel v Germania Bank, 103 M 129, 114 NW 651.

Our statutes contemplate that a suit to enforce liability of stockholders to creditors shall be a plenary suit for the benefit of all creditors who have an opportunity to join and participate in its benefits. When one such suit is prosecuted to a finality, it is a bar to further piecemeal pursuit by the same stockholders of creditors who had an opportunity to participate, but who saw fit to permit their opportunity to pass. Goldman v Christy, 155 M 91, 192 NW 360.

7. Enforceable liabilities

Proceedings to enforce the liability of stockholders is not an independent action, but incidental, and a step in the original action to appoint a receiver, and for the sequestration of the corporate property. Hospes v N. W. Car Co. 48 M 174, 50 NW 1117; Palmer v Bank of Zumbrota, 65 M 90, 67 NW 893; Ueland v Haugen, 70 M 349, 73 NW 169.

Sections 316.17 to 316.23 do not authorize an independent action but merely regulate the practice in an action or proceeding already begun. Straw v Kilbourne, 80 M 125, 83 NW 36.

The liability of stockholders is not a corporate asset and can only be enforced for the benefit of creditors so far as may be necessary to pay corporate debts remaining unpaid after the assets have been exhausted. General Statutes 1894, Section 5905, authorizing an independent action, was omitted from Revised Laws 1905. Richardson v Merritt, 74 M 354, 77 NW 234.

Enforcement of stockholders' liability is an exercise of the inherent equitable powers of the court. Way v Barney, 116 M 285, 133 NW 801.

Actions relating to bonus stock and actions enforcing the constitutional stockholders' liability, may be enforced under this section. Hospes v N. W. Car Co. 48 M 174, 50 NW 1117; Wallace v Carpenter, 70 M 321, 73 NW 189.

Under this section an action may be brought on account of stock fraudulently issued. N. W. Railroader v Prior, 68 M 95, 70 NW 869.

Actions may be brought for the recovery of unpaid stock subscriptions. Spooner v Bay St. Louis, 47 M 464, 50 NW 601; Basting v Ankeny, 64 M 133, 66 NW 266.

Recovery of stock received where the property was overvalued. Hastings v Iron Range, 65 M 28, 67 NW 652.

Action relating to a guaranty of corporate bonds. Winthrop v Mpls. Terminal, 77 M 329, 79 NW 1010.

An action to recover capital wrongfully withdrawn. Minn. Thresher v Langdon, 44 M 37, 46 NW 310.

An action against transferor of stock. Harper v Carroll, 62 M 152, 64 NW 145.

The liability of stockholders under section 300.27, subd. 3, cannot be enforced. Sturtevant v Mast, 66 M 437, 69 NW 324.

An action in the nature of a creditor's bill under this section to reach unpaid stock subscriptions of resident stockholders of a foreign corporation may be maintained in this state. Randall v Sanitas, 120 M 268, 139 NW 606.

The enforcement of the constitutional liability of a decedent stockholder in an insolvent domestic corporation is properly made in the probate court, the order of assessment having been made before the final distribution of the decedent's estate. Hoidale v Vogtel, 158 M 106, 196 NW 939.

An order of assessment made in sequestration action is conclusive as to the amount and necessity therefor; but the stockholder may, in this action, litigate the claim when the facts are insufficient to constitute a cause of action against him. Crowley v Potts, 180 M 234, 230 NW 645.

The corporation issued special stock to stockholders as security for loan, but there being no creditor whose claim did not come into existence until after the corporation gave its notes and canceled the stock, no rights arose in the receiver as against the holders of the stock so issued. O'Brien v Bay Lake, 178 M 179, 226 NW 513.

8. Pleadings

A cause of action against the officers of a corporation for their fraud, unfaithfulness or dishonesty resulting in loss to the particular creditor, cannot properly be joined with a cause of action to enforce the constitutional liability of stockholders. Sturtevant-Larrabee v Mast, Buford & Burwell, 66 M 437, 69 NW 324.

An insolvent corporation having made an assignment, a judgment creditor commenced action under this section to enforce the stockholder's individual liability. Thereafter another judgment, by leave of court, intervened in this action and filed a cross complaint alleging stock fraudulently issued. On demurrer to the cross complaint, it was held that two causes of action are not improperly united in the same action, but the uniting of the same is authorized by chapter 316. Northwestern Railroader v Prior, 68 M 95, 70 NW 869.

An action to set aside a fraudulent transfer of all the corporate assets was commenced by a stockholder against the corporation and the transferee, and a receiver appointed. That action cannot be pleaded either in bar or abatement of an action afterwards brought under this chapter. Oswald v St. Paul Globe, 60 M 82, 61 NW 902.

In an action by the receiver appointed under this section to collect unpaid subscriptions, certain alleged equitable defenses set forth in the defendant's answer are not available in this action but his remedy must be enforced in the sequestration proceedings. Basting v Ankeny, 64 M 133, 66 NW 266.

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. He is now estopped from questioning the existence of the corporation or asserting that it was never legally organized. Hause v Mannheimer, 67 M 194, 69 NW 810.

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

The articles of incorporation limited the stockholders to Norwegians, but accepted these defendants as stockholders without objection, and they appeared on the books of the corporation for many years prior to the insolvency of the corporation. Defendants are estopped as against creditors to assert that they are not stockholders merely because they were, in fact, eligible to membership according to the corporate articles. Blien v Rand, 77 M 110, 79 NW 606.

To secure payment of its bonded indebtedness, defendant corporation executed and delivered a trust deed upon its property. Two of its principal stockholders guaranteed in writing the payment of the bonds, and also included in the deed certain individual property. In an action to enforce the stockholders' liability under the constitutional provision, other stockholders contended that the two principal stockholders above named should protect and bear harmless all other stockholders. It was held that the evidence produced at the trial was not sufficient to support a finding that would impress the claimed liability upon the two individual stockholders. Winthrop v Mpls. Terminal, 77 M 329, 79 NW 1010.

After having received dividends for a number of years upon its stock investment with the knowledge of all the stockholders, the malting company is estopped from asserting that its purchase and ownership of the stock was ultra vires, and the defendant cannot set up its ultra vires act as a defense in a suit by the receiver of the corporation to recover stockholders' liability. Hunt v Hauser, 90 M 282, 96 NW 85; Hunt v Hauser, 95 M 206, 103 NW 1032.

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

A complaint in an action under this section which alleged as to the stockholders "that defendants now are or hereafter have been owners or holders of the shares of stock of said company and constitute and compromise all of the stockholders of said company" did not state a cause of action as against any stockholder separately demurring, since it did not show that any one defendant was a stockholder when the corporate debt in suit was contracted, or at any subsequent time. International Trust v American Loan, 62 M 501, 65 NW 78, 632.

Where two separate and independent actions are brought by judgment creditors under this action, and the court consolidated the two actions under the name and title of both plaintiffs, such order consolidated both complaints so that the allegations contained in one aided and cured the defects in the other. Pioneer Fuel v St. Peter St. Improv. 64 M 386, 67 NW 217.

Where a creditor other than the plaintiff intervenes and files his claim under the order of court, he may supplement the complaint of the plaintiff and may plead additional matters by filing, with leave of court, a cross bill. Pioneer Fuel v St. Peter St. Improv. 64 M 386, 67 NW 217.

In an action pending under this section another creditor, who was also a stockholder, filed, by leave of court, a supplemental complaint against all stockholders. This complaint supplements the original complaint of the plaintiff and becomes the complaint of every creditor who files a claim. The court in its discretion, may assign the management of the stockholders' action to a creditor rather than the original plaintiff; but in this instance the last named creditor, being himself a stockholder, was not a proper person to conduct proceedings on behalf of the creditors. Maxwell v Northern Trust, 70 M 334, 73 NW 173; Anderson v Seymour, 70 M 358, 73 NW 171.

The complaint was not demurrable because all of the stockholders of the insolvent corporation had not been joined as defendants, nor because plaintiff is a stockholder. Mendenhall v Duluth Dry Goods, 72 M 312, 75 NW 252.

If all the stockholders are not joined as parties to the proceedings, the defect is waived as objection is not taken by answer or demurrer. Arthur v Willius, 44 M 409, 46 NW 851; Densmore v Shepard, 46 M 54, 48 NW 528; Harper v Carroll, 66 M 507, 69 NW 1069.

In an action by the assignee of a corporation against stockholders to recover the amount due and unpaid on their stock, the allegation of the complaint being merely that no part of the stock except a specified sum, had been paid, evidence is inadmissible to prove that the corporation had accepted in payment of the stock property at a greatly overvalued price. The cause of action alleged was founded on a contract, while the one sought to be proved was founded on fraud. It was not abuse of discretion to refuse to allow the complaint to be amended on the trial. Smith v Prior, 58 M 247, 59 NW 1016.

If, in fact, the creditor had knowledge of the arrangement by which the bonus stock was issued, that was a matter of benefits to be set up by the defendant stockholder. The complaint in this action is sufficient. Hospes v N. W. Car, 48 M 174, 50 NW 1117.

In an action brought by an assignee for the purchase price of stock issued by the corporation to the defendant, the amount due belongs equally to all the creditors, and he cannot obtain a preference over the other creditors by offsetting an indebtedness due him from the corporation. Richardson v Merritt, 74 M 354, 77 NW 234.

A claim against an insolvent corporation of a stockholder therein is not a proper counter-claim in an action brought by a judgment creditor to enforce the stockholder's liability. The creditor's claim should be presented by petition or a complaint filed in the original action. Helm v Smith, Fee Co. 76 M 328, 79 NW 313.

The individual liability of a stockholder is not to the corporation but to its creditors; and hence in a suit by a receiver to enforce stockholder's liability, the

defendant cannot set off an indebtedness due from the corporation to him. Hale v Calder, 113 Fed. 670; Robinson v Brown, 126 Fed. 429.

Five years before this action was commenced, one of the stockholders, who was also one of its creditors, made an assignment under the insolvency law; and his stock, and the debt due to him from the corporation, passed to his assignee. The liability on his stock is not, at law, a claim against the assets in the hand of his assignee, but equity will set off one claim against the other. Markell v Ray, 75 M 138, 77 NW 788.

Where a state bank ceases to do business, pledging certain assets to another bank which assumes its liabilities, and proceeds to liquidate, and, after its stockholders have authorized dissolution, declares a liquidating dividend of $30.00 a share on its capital stock, the receiver of an insolvent corporation, the owner of certain shares of such bank stock, is entitled to receive such dividend, and the bank may not set off debts due from the corporation to the bank at the time the receiver was appointed and when the bank ceased to function as a bank. Rockwood v Foshay, 195 M 64, 261 NW 697.

9. Assessments

In a proceeding by a creditor under this section, if the plaintiff bring in as defendants only part of the stockholders to enforce their statutory liability, it is proper for the court to charge each of them within that liability only the proportion of the plaintiff's claim which the stock held by each bears to the whole stock outstanding. Clarke v Cold Spring, 58 M 16, 59 NW 632.

All those who are stockholders at the time the action is commenced are liable, although some of them were not stockholders at the time the corporate liability was incurred. The court cannot by construction limit this liability by holding that each stockholder is liable only ratably when some of the stockholders are insolvent, or beyond the jurisdiction of the court. First Nat'l v Winona Plow, 58 M 167, 59 NW 997.

10. Allowance of claims

The receiver has no power to allow or disallow claims; that is within the exclusive jurisdiction of the court. Buffum v Hale, 71 M 190, 73 NW 856; Mercantile Nat'l v McFarlane, 71 M 497, 74 NW 287; Palmer v Bank of Zumbrota, 72 M 266, 75 NW 380.

Proceedings by way of motion and order to show cause for the allowance of a claim determined adversely to plaintiff, does not estop the plaintiff from an action on the judgment. Thomas v Hale, 82 M 423, 85 NW 156.

Where a plaintiff obtained a judgment against a corporation by default, his action having been brought after a receiver had been appointed, the mere exhibiting of the judgment against the estate is not sufficient proof of the existence and bona fide claim on which the judgment was predicated. The creditor instituting the judgment must prove his claim de novo. Danforth v Nat'l Chemical, 68 M 308, 71 NW 274.

The holder of a note endorsed by one who becomes insolvent is not required to surrender the original obligation as a condition to protesting any dividends. In the absence of a statute, the creditor may proceed against the insolvent estate and also against the other parties to the obligation. Mercantile Nat'l v McFarlane, 71 M 497, 74 NW 287.

On disallowance of a claim, the only question for review on appeal is whether the creditors' claim was allowed in accordance with the provisions of the judgments in that respect, and that it was so adjusted. If such provisions are erroneous, his remedy was to move the court to vacate and modify them; and if the motion was denied, appeal from the order. See Cameron v Chicago, Milwaukee & St. Paul, 60 M 100, 61 NW 814; Freeman v Children's Endowment, 63 M 393, 65 NW 626.

In an action to wind up an insolvent banking corporation, the State of Minnesota is a preferred creditor. State v Bell, 64 M 400, 67 NW 212; American Surety v Pearson, 146 M 342, 178 NW 817.

The question whether certain creditors are entitled to share in the distribution of funds cannot properly be raised by an objection to the allowance of their

claims, unless it affirmatively appears that the fund so to be raised is the only fund for distribution among the creditors and for some valid reason the particular creditors are excluded. Standard v Twin City Motor, 139 M 120, 165 NW 967; Greenfield v Hill City, 141 M 393, 170 NW 343.

Claims deposited in a state bank by guardian of a permanently disabled world war veteran were funds of the federal government, and entitled to preference. Anderson v Olivia State Bank, 186 M 396, 243 NW 398.

The court has authority to permit a claim to be filed more than 18 months after the giving of notice to file claims where there has been no adjudication other than an order appointing a receiver, and no final settlement. There was no abuse of judicial discretion. American Fund v Associated Textiles, 187 M 300, 245 NW 376.

The general rule that interest is not allowed on claims against an insolvent where the fund is insufficient to pay all the claims, does not apply as against the preferred claim of the state against an insolvent bank in favor of the surety claiming through subrogation. The contract provided interest at three per cent, and the contract rate of interest applies rather than the legal rate. American Surety v Peyton, 186 M 588, 244 NW 74.

While equity favors ratable distribution of assets of an insolvent corporation, where a bank receives and debits its depositor's check the same as so much cash in collecting similar items with another bank, giving such other bank its draft with an agreement that it was not to operate as payment until after actually presented to and paid by the drawee, thereby augmenting its assets, a trust arises in favor of the draft holder authorizing the invocation of the "trust fund" theory. First Nat'l v Benson, 192 M 90, 255 NW 482.

Where the efforts of certain employees of a railroad operating receivership had brought about a financial condition which made it possible for the court to restore salary cuts to such employees, on the basis of equitable grounds, the court's refusal to order restoration of salary cut as to an employee who had died prior to the improved financial condition of the railroad was not an abuse of the court's discretion. Smith v Sprague, 143 F(2d) 647.

11. Judgment

Creditors are entitled to a judgment against each stockholder for the full amount of his statutory liability, even though the aggregate amount of this judgment exceeds the aggregate amount of all the corporate indebtedness, and costs and expenses of the action to be satisfied by such judgment. Clarke v Opera House, 58 M 16, 59 NW 632, distinguished; Harper v Carroll, 66 M 487, 69 NW 1069; Palmer v Bank of Zumbrota, 72 M 266, 75 NW 380.

The liability of stockholders for the debts of the corporation is several, and a judgment against part of them does not have the effect to release the others. Judgment in the original action is conclusive as to the creditors against whom judgment was opened. Hanson v Davison, 73 M 454, 76 NW 254.

Right of amendment on appeal. Rogers v Gross, 75 M 441, 78 NW 12.

Judgment in favor of the receiver against the stockholder for a debt due from him to the corporation for an unpaid stock subscription may be taken on default. Spooner v Bay St. Louis, 47 M 464, 50 NW 601.

Interest is chargeable from the date of the filing of the findings. Palmer v Bank of Zumbrota, 72 M 266, 75 NW 380.

Creditors appearing in these proceedings are bound by the decree and cannot attack it collaterally. Nelson v Jenks, 51 M 108, 52 NW 1081.

Before the time for taking an appeal from a judgment has expired, the court in which it was entered has authority on cause shown to modify, vacate or set the same aside; but such right is limited to six months, and the judgment in all respects becomes res judicata after the period has expired. Gallagher v Irish-American Bank, 79 M 226, 81 NW 1057.

Defendant stockholder may by answer assail for fraud or collusion the judgment for the plaintiff upon which the proceeding rests. Greenfield v Minnesota Mining, 138 M 446, 165 NW 274.

316.06 FORFEITURE OF RIGHTS; DISSOLUTION.

HISTORY. R.S. 1851 c. 77 s. 8; P.S. 1858 c. 67 s. 8; G.S. 1866 c. 76 s. 11; 1871 c. 37 s. 1; G.S. 1878 c. 76 s. 11; G.S. 1894 s. 5899; R.L. 1905 s. 3174; G.S. 1913 s. 6635; G.S. 1923 s. 8014; M.S. 1927 s. 8014.

It is a tacit condition annexed to or implied in the charter of every private corporation that the government may assume its corporate privileges for a misuser or non-user thereof; but the corporation is not to be deemed dissolved until such forfeiture is officially asserted and declared. State ex rel v Minn. Central, 36 M 246, 30 NW 816.

The word "forfeiture" as used in an ordinance of the city of Tower did not signify a non-enforceable penalty or liquidated damages; but authorized the court upon default of the conditions of the grant to declare, in a proper action, an absolute forfeiture of the railway franchise including rails, ties, roadbed and things granted. City of Tower v Soudan Street Ry., 68 M 500, 71 NW 691.

Suspension of teaching functions by Hamline University from 1869 to 1880 caused by forces beyond its control was not an abandonment or surrender of charter rights including privilege of exemption of its property from taxation; nor did adoption of state constitution abrogate the contract. State v Trustees of Hamline, 217 M 399, 14 NW(2d) 773.

316.07 DISSOLUTION ON PETITION OF CORPORATION.

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. 3175; 1909 c. 276 s. 1; G.S. 1913 s. 6636; G.S. 1923 s. 8015; M.S. 1927 s. 8015.

This section does not apply to corporations governed by Minnesota business corporation act.

Defendant corporation contracted to furnish plaintiff milk cans, and to take all the milk he could produce for a period of one year. A receiver was appointed for the defendant corporation. Plaintiff brought an action for breach of contract and for damages covering the months of April, May and June, and recovered a judgment. About a year later he brought an action to cover the balance of the term. Plaintiff cannot recover because of defendant's inability to perform by reason of its dissolution, and a single right of action immediately accrued to the plaintiff, and his recovery in the first action was a bar to the second case. Bowe v Minn. Milk Co., 44 M 460, 47 NW 151.

Where a mutual endowment association, whose policies are to be paid from a fund accrued by assessments, the maturing of its immature policies is arrested, and the right of holders thereof is to share, as members of the association, in its assets, after its liabilities are discharged; and where policies are payable to the beneficiaries on arrival at a specified age, they do not mature so as to be debts of the association, until the beneficiaries reach the specified age, even though all dues and assessments have been paid. In re Educational Endowment Assn., 56 M 171, 57 NW 463.

A stockholders' liability for unpaid subscriptions does not continue after he has transferred it, except where the purpose of the transfer was the defrauding of creditors. The transferee of the stock becomes liable for unpaid subscriptions. The court may bring in the stockholders and enforce their liability on the petition of any creditor who has proven his claim. In re Peoples' Livestock, 56 M 180, 57 NW 468.

The plaintiff leased property to the defendant corporation and during the term of the lease the corporation was declared insolvent and a receiver appointed. The corporation was disabled from performing its obligations under the lease, and the breach of its contract to pay rent became total and final. Plaintiff is entitled to prove his claim for damages and share ratably in the distribution of the assets. Kalkhoff v Nelson, 60 M 284, 62 NW 332.

In case of "moneyed corporations", an action may be instituted by a simple contract creditor; but in case of other corporations, an action to enforce stockholders' liability can only be instituted by a judgment creditor. When there are no assets, and the only relief obtainable is the enforcement of the stockholders' liability, an action for that purpose may be instituted by a simple contract cred-

itor; and where the corporation has made an assignment under the insolvency law, a simple contract creditor may enforce a subsequent action to enforce stockholders' liability. Mpls. Paper Co. v Swinburne, 66 M 378, 69 NW 144.

An endowment association discovering the general impracticability of its scheme and its inability to carry out its plan, is not insolvent and may therefore make an assignment for the benefit of its creditors. In proceeding with the dissolution, the expenses incident are first to be paid, then the general creditors, if any, in full; and the residue of the fund must be distributed pro rata among certificate holders, without regard to maturity. In re Youths' Temple of Honor, 73 M 319, 76 NW 59.

Where a banking corporation is placed in the hands of a receiver and the corporation's lease of its occupied premises are repudiated by the receiver, and the leased premises abandoned, there is a final breach of the contract. The lessor should immediately declare the breach total, and in the insolvency proceedings establish his claim for damages against the estate. Mpls. Baseball Co. v City Bank, 74 M 98, 76 NW 1024.

A petition may be made by the majority of members of a non-stock corporation, or by holders of the majority of stock of a stock corporation. Buyer v Wollfort, 99 M 475, 109 NW 1116.

Where creditors' claims are filed and allowed in a receivership proceeding, such allowance constitutes a lien; and, if acquired more than four months prior to the filing of a petition in bankruptcy against the corporation, the jurisdiction of the said court is not divested thereby. Cohen v Mirviss, 178 M 20, 226 NW 198.

An action to recover the constitutional liability of the stockholders of a business corporation commenced more than six years after a receiver had been appointed, is barred by the statute of limitations. Miller v Ahneman, 183 M 17, 235 NW 262.

Where the holdings of the dissenting stockholders are small in comparison with the satisfied majority, the court will not appoint a receiver but will give the dissatisfied minority stockholders the option to take stock in the consolidated company on the basis of a fair exchange, or take the value of the stock as it may be determined. Paterson v Shattuck, 186 M 611, 244 NW 281.

Where there has been no adjudication other than an order appointing a receiver, and no final settlement, there is no abuse of judicial discretion in permitting a claim to be filed, although more than 18 months has expired since creditors were given notice to file claims. American Fund v Asso. Textiles, 187 M 300, 245 NW 376.

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.

As soon as a corporation is solvent and remains in control of its property and assets, it may dispose thereof the same as an individual subject only to charter limitations upon its powers, and provided that the corporation is not a public corporation. Where the charter of the corporation has expired by limitation, section 300.59 authorizes corporations to continue their existence three years for the purpose of winding up their affairs. 1938 OAG 109, Jan. 31, 1938 (93a-8).

Power of the directors and majority shareholders to dissolve a prosperous corporation against the protest of minority shareholders. 2 MLR 528.

316.08 HEARING; NOTICE.

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. 3176; G.S. 1913 s. 6637; G.S. 1923 s. 8016; M.S. 1927 s. 8016.

This section does not apply to the corporations governed by Minnesota business corporation act.

316.09 CERTIFIED COPY OF ORDER FILED.

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. 3176; G.S. 1913 s. 6637; 1917 c. 383 s. 1; G.S. 1923 s. 8017; M.S. 1927 s. 8017.

This section does not apply to the corporations governed by Minnesota business corporation act.

316.10 STATE INTERESTED, PROCEEDINGS.

HISTORY. R.S. 1851 c. 77 s. 8; P.S. 1858 c. 67 s. 8; G.S. 1866 c. 76 s. 11; 1871 c. 37 s. 1; G.S. 1978 c. 76 s. 11; G.S. 1894 s. 5899; R.L. 1905 s. 3177; G.S. 1913 s. 6638; G.S. 1923 s 8018; M.S. 1927 s. 8018.

316.11 RECEIVER, APPOINTMENT, DUTIES.

HISTORY. R.S. 1851 c. 42 s. 9; P.S. 1858 c. 17 s. 347; G.S. 1866 c. 34 ss. 166, 168, 170, 171; G.S. 1878 c. 34 ss. 415, 417, 419, 420; G.S. 1894 ss. 3430, 3432, 3434, 3435; R.L. 1905 s. 3178; G.S. 1913 s. 6639; G.S. 1923 s. 8019; M.S. 1927 s. 8019.

This section does not apply to the corporations governed by Minnesota business corporation act.

In proceedings under General Statutes 1878, Chapter 34, Sections 415 to 420, (section 316.11), the constitutional or statutory liability of stockholders for debts of the corporation cannot be enforced. In re Peoples' Livestock Ins., 56 M 180, 57 NW 468.

In dissolution under General Statutes 1894, Sections 3430 to 3434, (section 316.11), a lessor is entitled to prove his claim for damages for a breach of a contract of leasing and to share ratably in the distribution of the assets of the insolvent corporation. Kalkhoff v Nelson, 60 M 284, 62 NW 332.

A corporation brought an action against its president to recover money in his hands wrongfully withheld from the corporation, and asked for and obtained the appointment of a receiver. There not being any showing with the corporation so insolvent, the receiver was wrongfully appointed. Congress Garage v Nelson, 157 M 224, 195 NW 922.

In the instant case in an action for an accounting of the affairs of the corporation and of the stewardship of the individual defendant, a receiver was rightfully appointed. Owens v Owens, 167 M 468, 210 NW 59.

The rule that money paid voluntarily cannot be recovered by the payer does not prevent the court from ordering a receiver to refund money so paid. Peterson v Darelius, 168 M 365, 210 NW 38.

A receiver, as representative of the creditors, may enforce their rights against stockholders and appeal from an order disposing of money in his custody, if there are corporate creditors whose rights are prejudiced. Peterson v Darelius, 168 M 365, 210 NW 38.

Where creditors' claims have been filed and allowed, and more than four months have elapsed, their lien on the assets of the corporation is final and cannot be disturbed by the filing of a petition in bankruptcy. Cohen v Mirviss, 178 M 20, 226 NW 198.

Rights of creditors upon the consolidation of several corporations. Paterson v Shattuck, 186 M 611, 244 NW 281.

316.12 INSOLVENT BANKS AND INSURANCE COMPANIES.

HISTORY. R.S. 1851 c. 77 s. 9; P.S. 1858 c. 67 s. 9; G.S. 1866 c. 76 s. 12; G.S. 1878 c. 76 s. 12; G.S. 1894 s. 5900; R.L. 1905 s. 3179; G.S. 1913 s. 6640; G.S. 1923 s. 8020; M.S. 1927 s. 8020.

This section is applicable to a corporation engaged in the business of life, endowment, or casualty insurance on the cooperative or assessment plan. State ex rel v Educational Endowment, 49 M 158, 51 NW 908.

This section is applicable to a building and loan association. State v American Svgs. & Loan Assn., 64 M 349, 67 NW 1.

Where a building and loan association has no creditors or liabilities, except its liability to its own stockholders, it is not "insolvent" in the sense that the word is used in this section. When there is a deficiency in its assets, so that it cannot mature its stock, or pay back to its stockholders the actual money paid for stock, under a proper showing the court of equity has jurisdiction to wind

up the affairs of such an association, and for that purpose to appoint a receiver. Sjoberg v Sec. S. & L., 73 M 203, 75 NW 1116.

Under this section the bank is restrained by injunction from exercising any of its corporate functions until such time as the court may, by order, relieve it from the prohibition. Mpls. Baseball Co. v City Bank, 74 M 103, 76 NW 1024.

In the instant case, corporation was not organized as a manufacturing corporation and its stockholders are liable to the amount of their stock for corporate debts. Anchor v Columbia, 61 M 510, 63 NW 1109.

Where the assets of a corporation, not a moneyed corporation, have been sequestrated by an appointment under the insolvency law, an action may be maintained by a simple contract creditor under this section to enforce the constitutional liability of the stockholders. Sturtevant, Larrabee v Mast, Buford & Burwell, 66 M 437, 69 NW 324.

The exclusive power to liquidate insolvent state banks is in the state commissioner of banks. Where he is admitted to exercise such power, the district court is without jurisdiction to appoint a receiver in proceedings brought by a judgment creditor to enforce the "double liability of shareholders". N. W. Fuel v Livestock State Bank, 182 M 276, 234 NW 304.

316.13 FORFEITURE OF CHARTER; RECEIVER; SUIT BY CREDITOR.

HISTORY. R.S. 1851 c. 77 ss. 10 to 12; P.S. 1858 c. 67 ss. 10 to 12; G.S. 1866 c. 76 ss. 13 to 15; G.S. 1878 c. 76 ss. 13 to 15; G.S. 1894 ss. 5901 to 5903; R.L. 1905 s. 3180; G.S. 1913 s. 6641; G.S. 1923 s. 8021; M.S. 1927 s. 8021.

An action to sequestrate property and to have a receiver appointed for a corporation, except banking and insurance companies, cannot be maintained by a creditor who has not first exhausted his legal remedies as required by section 316.05 save, possibly in cases where it is made to appear that it would be useless to exhaust such remedies. Klee v Steele, 60 M 355, 62 NW 399.

In winding up the affairs of an insolvent banking corporation, the State of Minnesota is a preferred creditor. State v Bell, 64 M 400, 67 NW 212.

A creditor of a corporation having banking powers may, without having obtained a judgment at law against it, maintain an action on behalf of himself and other creditors who may choose to become parties thereto against the corporation, to obtain the relief provided in sections 316.12 and 316.13. American Svgs. & Loan v American Farmers & Mchts., 65 M 139, 67 NW 800.

In case of "moneyed corporations", an action may be instituted by a simple contract creditor; in case of other corporations, an action to sequestrate the assets and enforce the liability of stockholders may only be instituted by a judgment creditor; but if no corporate assets are subject to sequestration, and the only relief obtainable is an enforcement of stockholders' liability, an action for that purpose may be instituted by a simple contract creditor. Minneapolis Paper v Swinbourne, 66 M 378, 69 NW 144.

While it is within the discretion of the court to appoint a receiver or not, yet if the facts give a right of action and there is no defense, it is an abuse of discretion to refuse to appoint. State v Bank of New England, 55 M 139, 56 NW 575.

Where the creditor of an insolvent banking corporation secures the appointment of a receiver but fails to take steps toward bringing in the stockholders, any other creditor may, upon ex parte application to the court and proper showing, obtain an order allowing him in his own behalf and on behalf of all other creditors, to intervene and file a complaint, making the stockholders parties defendant. Palmer v Bank of Zumbrota, 65 M 90, 67 NW 893.

The attorney general may exercise his discretion as to whether or not he shall ask for the appointment of a receiver; but if the public examiner files a statement with him showing a violation of law, the attorney general must proceed against such banking association as provided by law, or institute such other proceeding as the occasion may require. State ex rel v Amer. Svgs. & L., 64 M 349, 67 NW 1.

The creditor may maintain a separate action to enforce stockholders' liability during pendency of an action by the attorney general for forfeiture of

charter. Or, a creditor may obtain the consent of the attorney general and, upon obtaining it, may intervene in the forfeiture action brought by the state. State ex rel v Mchts. Bank, 67 M 506, 70 NW 803.

The court, having directed the receiver of an insolvent banking institution to sell the assets, and the sale having been made and reported to the court, the court refused to confirm on the ground that the prices obtainable for the assets were inadequate. The purchasers at the sale appealed from the order of the court refusing to confirm the sale, and the appellate court held that the trial court did not abuse its discretion in its refusal to confirm. Mchts. Bank v Moore, 68 M 468, 71 NW 671.

Where the receiver of a banking corporation repudiates the contract of leasing made by the bank and abandons the leased premises, there is a final breach of the contract. The lessor should immediately declare the breach to be total, and in the insolvency proceedings the lessor must be allowed to establish his claim for damages. Mpls. Baseball Co. v City Bank, 74 M 98, 76 NW 1024.

An independent action against a receiver can be maintained on any claim which may be filed under section 316.15. Buffum v Hale, 71 M 190, 73 NW 856.

In an action against stockholders to recover for creditors, a motion to modify the judgment may be made before the time for taking an appeal has expired, and the court may modify, vacate or set aside the judgment; but such right is limited in time to six months, and the grace period having expired, the matter becomes res judicata. Gallagher v Irish-American Bank, 79 M 226, 81 NW 1057.

By Laws 1909, Chapter 179, as amended by Laws 1913, Chapter 447, and Laws 1927, Chapter 254, the exclusive power to liquidate insolvent state banks is placed in the commissioner of banks; and where he has attempted to exercise such power, the district court is without jurisdiction to appoint a receiver in proceedings brought to enforce the double liability of shareholders. N. W. Fuel Co. v. Livestock St. Bank, 182 M 276, 234 NW 304.

This action to recover constitutional liability of the stockholders of a business corporation was commenced more than six years after a receiver had been appointed. The cause of action accrued at the time the receiver was appointed, and this action is barred by the statute of limitations. Miller v Ahneman, 183 M 12, 235 NW 622.

Laws 1899, Chapter 272, as carried into the Revision of 1905, (Sections 316.17 to 316.23), did not bring foreign corporations within its scope; and the proviso added to section 316.20 that actions to enforce assessments against stockholders must be brought within two years after the order for payment is made, does not apply to an action brought to enforce the statutory liability of a stockholder in a foreign corporation. Johnson v Johnson, 194 M 617, 267 NW 450.

316.14 UNPAID STOCK SUBSCRIPTION.

HISTORY. R.S. 1851 c. 77 ss. 19, 20; P.S. 1858 c. 67 ss. 19, 20; G.S. 1866 c. 76 ss. 21, 22; G.S. 1878 c. 76 ss. 21, 22; G.S. 1894 ss. 5909, 5910; R.L. 1905 s. 3181; G.S. 1913 s. 6642; G.S. 1923 s. 8022; M.S. 1927 s. 8022.

This section does not apply to the provisions of the Minnesota business corporation act.

In an action brought by creditors against a corporation and certain alleged stockholders therein, from whom amounts are due and unpaid on shares of stock, a finding that such persons were "stockholders" includes a finding that every condition precedent to their becoming full stockholders and subject to liability has been performed or waived. Arthur v Clarke, 46 M 491, 49 NW 252; N. W. Railroader v Prior, 68 M 95, 70 NW 869.

A receiver of a corporation in selling the assets may sell and pass to the purchaser title to unpaid stock subscription notes; and the makers of such notes cannot rescind the same as against the receiver, and cannot do so as against a purchaser from him. Henderson v Crosby, 156 M 323, 194 NW 641; Wilcox Trux v Rosenberger, 156 M 487, 195 NW 489.

The commencement of a suit by a stockholder for the rescission of his subscription to stock is a repudiation of the contract and the rights of the parties are to be determined as of the date of the commencement of the action. Wilcox Trux v Rosenberger, 156 M 487, 195 NW 489.

When the receiver of an insolvent corporation sues the holder of its shares of stock to recover the unpaid part of the par value, the burden is upon the receiver to prove the amount unpaid; and if it appears that a prior holder of the shares paid full par value to the corporation, the holder being purchaser from a prior holder, is not liable. Ewing v Swenson, 167 M 113, 208 NW 645.

Where, in a receivership action, claims of creditors have been allowed more than four months before the initiation of bankruptcy proceedings, the court is entitled to retain jurisdiction and will not be directed to turn the assets over to a trustee in bankruptcy. Cohen v Mirviss, 178 M 20, 226 NW 198.

316.15 ORDER LIMITING TIME TO PRESENT CLAIMS; EXTENSION.

HISTORY. R.S. 1851 c. 77 s. 25; P.S. 1858 c. 67 s. 25; G.S. 1866 c. 76 s. 23; G. S. 1878 c. 76 s. 23; G.S. 1894 s. 5911; R.L. 1905 s. 3182; G.S. 1913 s. 6643; G.S. 1923 s. 8023; M.S. 1927 s. 8023.

This section does not apply to the corporations governed by Minnesota business corporation act.

A creditor may be allowed by the court, upon a proper showing, to come in and become a party to such proceeding after the expiration of the time previously limited for such purpose. Spooner v Bay St. Louis, 48 M 313, 51 NW 377; Straw & Ellsworth v Kilbourne, 92 M 399, 100 NW 100; American Fund v Asso. Textiles, 187 M 300, 245 NW 376.

In the instant case, the trial court properly denied the petitioner's motion to vacate the judgment and permit him to become a party to the action. First Natl. v Northern Trust, 69 M 176, 71 NW 928.

Although the court may permit a creditor to present his claim after the time limit has expired, there is no abuse of discretion in the instant case when the trial court denied the motion. Hove v Bankers Exchange Bank, 75 M 286, 77 NW 967.

The order requiring creditors to exhibit their claims was irregular. It was not void, however, and cannot be impeached collaterally in the second action, and takes effect after the commencement of the second action. Oswald v St. Paul Globe, 60 M 82, 61 NW 902.

The action of the attorney general in proceeding to forfeit the charter of a bank should proceed without being embarrassed or delayed by additional litigation necessary to enforce stockholders' liability; but this does not entitle the stockholders to immunity from a stockholders' liability action during the pendency of the action in forfeiture, and a creditor may during such pendency proceed by a separate action to enforce stockholders' liability or, with the consent of the attorney general and leave of court, intervene in the forfeiture action. State v Mchts. Bank, 67 M 506, 70 NW 803.

In an action brought by a creditor, another creditor who was also a stockholder, filed by leave of court, a supplemental complaint against the stockholders. The fact that the last creditor was a stockholder makes him an improper person to conduct the proceedings on behalf of the creditors against the stockholders. Maxwell v Northern Trust, 70 M 334, 73 NW 173.

The commencement of an action to sequestrate the property of a corporation by a creditor, and his exhibiting his claim against it, tolls the statute of limitations both as to the corporation and its stockholders; and the provisions of Laws 1899, Chapter 272, apply to actions begun before its enactment if such prior proceedings have been taken therein to enforce the liability of stockholders. London v St. Paul Park, 84 M 144, 86 NW 872; Potts v St. Paul Athletic, 84 M 217, 87 NW 604.

Orders made under the statute allowing claims against an insolvent corporation and assessing its stockholders, are final and do not authorize or require the entry of judgment thereon. This must be appealed from, if at all, within 30 days from notice. In re Olivia Cooperative, 169 M 131, 210 NW 628.

A director, officer or stockholder of a domestic mining corporation is not debarred from asserting a claim against the corporation when it is insolvent; and he has the right to resort to the stockholders' double liability for its payment, the same as any other creditor. Ebert v Scott, 177 M 72, 224 NW 454.

When action has been brought to wind up the affairs of a corporation and a receiver appointed, and claims of creditors have been filed and allowed before the initiation of bankruptcy proceedings, the court nominating the receiver is entitled to retain jurisdiction and the receiver to keep possession of the assets as against the trustee in bankruptcy. Cohen v Mirviss, 178 M 20, 226 NW 198.

316.16 NOTICE OF HEARING.

HISTORY. R.S. 1851 c. 77 s. 25; P.S. 1858 c. 67 s. 25; G.S. 1866 c. 76 s. 23; G.S. 1878 c. 76 s. 23; G.S. 1894 s. 5911; R.L. 1905 s. 3183; G.S. 1913 s. 6644; G.S. 1923 s. 8024; M.S. 1927 s. 8024.

This section does not apply to the corporations governed by Minnesota business corporation act.

Claims filed are deemed controverted without an answer or reply and must be proved on the hearing unless expressly admitted; and where an order is made consolidating two cases, such order consolidated both complaints, so that the allegations contained in one aided to cure any defect in the other. Pioneer Fuel v St. Peter St. Improv., 64 M 386, 67 NW 217; Windham v O'Gorman, 66 M 368, 69 NW 317; Helm v Smith, 76 M 328, 79 NW 313.

Distinguishing Harper v Carroll, 62 M 152, 64 NW 145, a party other than the plaintiff asking other relief than the allowance of his claim, may do so upon obtaining leave of court and filing a cross bill. Pioneer Fuel Co. v St. Paul Street Improv., 64 M 386, 67 NW 217.

Where a receiver has been appointed by the court an independent action against the receiver to recover judgment upon a claim existing against the insolvent when the receivership proceedings were instituted, cannot be maintained. Filing his claim is a creditor's exclusive remedy. Buffum v Hale, 71 M 190, 73 NW 856.

It is the duty of the receiver to comply with the court's order and file in the office of the clerk of the district court complaints delivered to him by creditors filing claims. Potts v St. Paul Athletic, 84 M 217, 87 NW 604.

The presentation of a claim by a creditor in the instant case is in no sense a cross complaint. A cross bill is a suit brought by defendant against the plaintiff, or against him and a co-defendant, to obtain independent relief. It has no place in an action in the nature of insolvency proceedings. Spooner v Bay St. Louis, 47 M 464, 50 NW 601.

Creditors may file their claims in the shape of an intervenor's complaint made under oath in the clerk's office, and thus become parties to the proceedings. No subsequent formal order is necessary. Palmer v Bank of Zumbrota, 65 M 99, 67 NW 893.

Creditors filing their claims and appearing in the action are bound by the decree and cannot attack it collaterally. Nelson v Jenks, 51 M 108, 52 NW 1081.

Creditors not filing and proving their claims cannot share in the proceeds of the estate; but any creditor who files a claim may be heard in contest of the claims of other creditors. Danforth v National Chemical, 68 M 308, 71 NW 274; Buffum v Hale, 70 M 190, 73 NW 856.

Orders allowing claims and assessing stockholders are final and must be appealed from, if at all, within 30 days from notice. It is not necessary that judgment be entered thereon. In re Olivia Co-operative, 169 M 131, 210 NW 628.

Stockholders' liability; method of enforcement. 7 MLR 104.

316.17 ENFORCEMENT OF STOCKHOLDERS' LIABILITY; HEARING; NOTICE OF.

HISTORY. 1899 c. 272 ss. 1, 2; R.L. 1905 s. 3184; G.S. 1913 s. 6645; G.S. 1923 s. 8025; 1925 c. 273 s. 1; M.S. 1927 s. 8025.

This section does not apply to corporations governed by Minnesota business corporation act.

By constitutional amendment, the legislature was given power to provide for, limit, and otherwise regulate the liability of stockholders, or members or corpora-

tions, and co-operative corporations or associations, however organized. Provided every stockholder in a banking or trust corporation or association shall be individually liable in an amount equal to the amount of stock owned by him. This amendment was adopted November 4, 1930. Minnesota Constitution, Article 10, Section 3. Under authority granted by the amendment of the constitution adopted on November 4, 1930, the legislature enacted a provision as follows: "Except as provided by section 300.27, subd. 1, no stockholder or member of any corporation or of any co-operative corporation or association, however or whenever organized, except a stockholder in a banking or trust corporation or association, shall be liable for any debt of such corporation, co-operative corporation, or association. This act shall not affect any existing liability." This act was approved April 18, 1931. See section 300.27, subds. 2, 3.

A receiver appointed in an action for the sequestration of the assets of an insolvent corporation, under the provisions of General Statutes 1894, Chapter 76, has no authority, except in cases where it is otherwise provided by statute, to enforce the individual liability of the stockholders for the debts of the corporation. It was error on the part of the trial court to deny the application of the intervenors. Minneapolis Baseball v City Bank, 66 M 441, 69 NW 331.

Laws 1897, Chapter 341, was not repealed by Laws 1899, Chapter 272. The latter is cumulative, and the two acts embrace consistent remedies. Laws 1897, Chapter 341, was thereafter repealed by Revised Laws 1905. Sommers v Dawson, 86 M 42, 90 NW 119.

Prior to the passage of Laws 1897, Chapter 341, a receiver had no authority except in cases expressly provided by statute to enforce the individual liability of the stockholders for the debts of the corporation. Minneapolis Baseball v City Bank, 66 M 441, 69 NW 331.

There is no such thing as a vested right to a particular remedy, and Laws 1899, Chapter 272, is a supplementary practice act formulated after the practice followed for the collection of unpaid stockholders' subscriptions. Straw v Kilbourne, 80 M 125, 83 NW 36.

Laws 1899, Chapter 272, is constitutional. Straw v Kilbourne, 80 M 125, 83 NW 36; London v St. Paul Park, 84 M 144, 86 NW 872.

Contractual obligations arising out of General Statutes 1894, Chapter 76, adopted to enforce the liability of stockholders prescribed by Minnesota Constitution, Article 10, Section 3, are not impaired by Laws 1899, Chapter 272. This latter law was enacted to provide a more effectual remedy, because under the old law stockholders who could not be reached by personal service were immune from liability; while under Laws 1899, Chapter 272, the stockholders need not be served with process in the action in which the assessment is made. Bernheimer v Converse, 206 US 516, 27 SC 755.

Laws 1899, Chapter 272, merely provided a cumulative remedy for the enforcement of super-added statutory liability of stockholders. It did not repeal General Statutes 1878, Chapter 76, Sections 16, 17; and where two forms of procedure exist to enforce the super-added liability of the stockholder in a corporation, the statute of limitations commences to run from the time that suit might have been brought against the stockholder under either form of procedure. Willius v Albrecht, 100 M 436, 111 NW 387.

The validity of an assessment against the stockholders of an insolvent corporation is not affected as to a particular non-resident stockholder by the fact that such stockholder died before the assessment was made, nor because notice was addressed to him and not to his executor. These proceedings are in rem, and all stockholders are represented by the corporation. Spargo v Converse, 191 Fed. 823.

The discharge of a corporation under the federal bankruptcy act does not discharge the constitutional liability of its stockholders. The constitutional provision is self-executing and exists independent of the legislature which merely regulates the procedure. If, for any reason, it is impossible to enforce the liability under the statutory procedure, the court, under its equity powers, will give to the creditors an adequate remedy, and permit the appointment of a receiver, who may enforce the liability as provided in sections 316.17 to 316.23. Way v Barney, 116 M 285, 133 NW 801.

Cases cited as to grounds and procedure. Gould v Fuller, 79 M 414, 82 NW 673; State ex rel v Savings Bank, 87 M 473, 92 NW 403; Merchants Natl. v Minn. Thresher, 90 M 144, 95 NW 769; Robinson v Wellington, 126 Fed. 429; Hunt v. Burns, 90 M 172, 95 NW 1110; Hunt v Hauser, 90 M 282, 96 NW 85; Hunt v Dean, 91 M 96, 97 NW 574; Straw v Kilbourne, 92 M 399, 100 NW 100; Hunt v Hauser, 95 M 206, 103 NW 1032; Lagerman v Casserly, 107 M 491, 120 NW 1086.

To enforce stockholders' liability, it must appear that the stock was issued or that stockholders were entitled to have it issued. Robinson v Nashville, 115 M 43, 131 NW 856.

The discharge of a corporation in bankruptcy does not release the stockholders from constitutional liability. Way v Barney, 116 M 285, 133 NW 801.

The corporation records failed to show that the stock was issued to and held by defendant as collateral security for an advance made, and the fact that the records did not show otherwise was due to defendant's negligence; and he was, therefore, estopped as against creditors to deny his liability as a stockholder. Way v Barney, 127 M 347, 149 NW 462, 646.

Proceedings are summary and informal, and stockholders are not entitled to a jury trial. Finch v Vanasek, 132 M 9, 155 NW 754.

The sale and transfer of his stock does not release a stockholder from liability for debts existing at the time of the transfer; and his liability is secondary to that of the transferee, and the liability of both is secondary to that of the corporation. Way v Mooers, 135 M 339, 160 NW 1014.

The cause of action to enforce the constitutional double liability of a stockholder accrues when the corporation is declared insolvent, and a receiver appointed to wind up its affairs. Shearer v Christy, 136 M 111, 161 NW 498.

The order appointing a receiver cannot be attacked collaterally; and when the receiver files a petition for the assessment of stockholders, the stockholders cannot resist the making of the assessment on the ground that the appointment of the receiver was invalid, unless such invalidity appears upon the face of the record. The only way to question the validity of an appointment is by direct proceedings to vacate the order. Greenfield v Hill City, 141 M 393, 170 NW 343; Dispatch v Security Bond, 154 M 211, 191 NW 601.

Although a stockholder was induced to enter into a contract for the purchase of stock by reason of false and fraudulent representations, if he was not diligent in discovering the fraud and repudiating the transaction before insolvency proceedings were commenced, it was then too late to avoid the contract. Henderson v Crosby, 156 M 323, 194 NW 641; Provan v Bondeson, 157 M 478, 196 NW 659.

When the residue of the indebtedness of a corporation to be collected by assessment is less than the charter limitation, the stockholders cannot resist an assessment pro tanto because the assets of the corporation have been used to pay indebtedness in excess of the charter maximum. In re Owatonna Co-operative, 157 M 482, 196 NW 654.

Order of assessment is a final and conclusive adjudication that the corporation is one in which its stockholders are subject to the constitutional liability. Hoidale v Vogtel, 158 M 106, 196 NW 939.

The court determines whether the character of the corporation is such that its stock is assessable under the provisions of the constitution; and the court's finding is binding in subsequent actions. Farwell v Goodhue, 160 M 64, 199 NW 436.

The defendant transferred his stock to his agent for the purposes of sale, but continued to be the real owner, and his liability as stockholder continued. Boyd v Bruce, 163 M 83, 203 NW 456.

A stockholder cannot defend against an assessment on his constitutional liability on the ground that his stock was sold to him in violation of the blue sky law. Parker v Merritt, 164 M 305, 204 NW 941.

The evidence was sufficient to support a holding refusing to grant an order assessing stockholders until some attempt was made by the receiver to recover the subscription price of stock where stock was issued and not paid for. Akron v Goodhue, 167 M 20, 208 NW 424.

Stockholders are liable only to the amount of indebtedness lawfully contracted, not exceeding par value of stock held by them. National v Clefton, 167 M 238, 208 NW 959.

There were irregularities in the increase of stock, but the defendant bought the stock issued on the increase and received benefits and, notwithstanding the unauthorized increase, he is liable as a stockholder. MacLaren v Wold, 168 M 234, 210 NW 29.

The South Dakota code makes every stockholder of a South Dakota corporation personally liable for its debts "to the extent of the amount that is unpaid upon the stock owned by him." This is declaratory of the common-law rule that when a subscriber in good faith makes a legally complete transfer of stock which has not been fully paid, he is released from further liability to the corporate creditors. N. W. Paper v Neill, 168 M 406, 210 NW 148.

Laws 1899, Chapter 272, was expressly restricted to domestic corporations; but when it was carried into the revision of 1905, the words restricting the scope of the law to Minnesota corporations were omitted. The mere omission from the revision of the few restrictive words does not bring foreign corporations within the scope of the statute. Liability of stockholders in foreign corporations must be enforced by a statute in the nature of a creditors' bill. Firehammer v Interstate Securities, 170 M 475, 212 NW 911.

The service in the instant case was sufficient on which to base the levying of an assessment. Merchants v Dyste, 171 M 133, 213 NW 560.

A judgment in Minnesota levying an assessment binds non-resident stockholders not served with process in Minnesota, and must be given full faith and credit by the courts of the states of their residence in actions brought by the receiver to collect the assesment. The judgment of assessment cannot be attacked collaterally. Chandler v Peketz, 297 US 609, 56 SC 602; 298 US 691, 56 SC 746.

Service by publication, in such manner as the court shall direct, of non-resident stockholders is sufficient notice of hearing on a petition for the assessment. Merchants v Dyste, 173 M 436, 217 NW 483.

The fact that some of the corporate assets have been used to pay debts incurred in excess of the charter limit, is immaterial. The question of the amount of the indebtedness relates to the time of the making of the assessment. Kuhlman v Granite City, 174 M 166, 218 NW 885.

In establishing the existence of ultra vires indebtedness, the burden rests upon the stockholder who makes the assertion. Kuhlman v Granite City, 174 M 166, 218 NW 885.

Stockholders cannot resist an assessment upon the ground that the debts remaining unpaid were in excess of the charter limit when they were contracted. Barnes v Campbell, 174 M 192, 218 NW 887.

A stockholder in a corporation when sued on an assessment for super-added liability cannot offset the corporation's indebtedness to him. Everett v Felska, 174 M 387, 219 NW 452.

The provisions of section 308.07 for forfeiting and retiring the stock of an offending stockholder does not free him from the double liability imposed by Minnesota Constitution, Article 10, Section 3. Zander v Peterson, 174 M 427, 219 NW 466.

The voluntary composition agreement between a corporation and all its creditors, whereby the corporation transfers all its property to the creditors in consideration of being released, which agreement is fully performed, waives and releases the constitutional liability of the stockholders. O'Donnell v Benson, 175 M 382, 221 NW 426.

A director, officer or stockholder of a domestic mining corporation, is not debarred from asserting a claim against it when insolvent; and has a right to resort to the stockholders' double liability for its payment, the same as any other creditor of the corporation. Ebert v Scott, 177 M 72, 224 NW 454.

The court acquired jurisdiction, even though there was an obvious misprint of the year in the published notice of hearing. In re Farmers' Dairy Co. 177 M 211, 225 NW 22.

For more than four years defendant was a stockholder and director in Company No. 2 and active in its management. Upon its insolvency, he avers that

through deceit he was induced to believe he was a stockholder in Company No. 1, the names of the two companies being almost identical. Under the facts, he was estopped from setting up such defense. Johnson v Christliev, 178 M 9, 225 NW 927.

There being no creditor whose claim did not come into existence until after the corporation gave its notes for and canceled certain stock, the receiver is not in a position to attack the transaction. O'Brien v Bay Lake, 178 M 179, 226 NW 513.

Where a stockholder, prior to bankruptcy of corporation, complained that he had been defrauded, but took no steps to perfect a rescission of his purchases, he had no defense which he could urge against the suit brought against him to enforce an assessment. Barnes v Nelson, 179 M 259, 228 NW 917.

The defendant who subscribed to the stock of one corporation but received the stock in another, did not become a stockholder, and may deny his liability as such. Johnson v Fried, 181 M 316, 232 NW 519.

Defendant was estopped to deny that he was a stockholder of the corporation of which for some years he was an active director. Johnson v Burmeister, 182 M 385, 234 NW 590.

Facts indicating a previous settlement of his double liability warranted entry of judgment nunc pro tunc for defendant. Robie v McDougall, 183 M 41, 235 NW 384.

Defendant was a Delaware corporation, organized solely to do business in Minnesota where all its stockholders reside; execution was returned unsatisfied; respondent was appointed receiver; claims were allowed; no assets existed; respondent petitioned the court to assess one stockholder on the ground that the corporation had issued to him bonus stock. The court could properly order the receiver to sue the stockholder, but it was error to assess the stockholder or determine that his stock was bonus, or in any manner to adjudge his liability. U. S. v Eagle, 189 M 187, 248 NW 729.

The petition and notice of hearing for an order of assessment on the liability imposed by the constitution contained the statements required by sections 316.17 and 316.18, and were not vitiated by some palpably inadvertant errors. Mutual Trust v Alamoe, 196 M 226, 265 NW 48; Hatelstad v Anderson, 196 M 230, 265 NW 50.

More than three years having elapsed between the dissolution proceedings resulting in receivership, and the commencement of the present proceeding for the enforcement of stockholders' liability, the court properly ordered judgment for the defendant, as it is well settled that the statute of limitations starts running against the stockholders' constitutional liability from the date the corporation goes into the hands of a receiver. Cashman v Bremer, 206 M 250, 288 NW 709.

Action by the receiver of a bank for the benefit of its only creditor against its only stockholder to recover assets of the bank alleged to have been fraudulently transferred to the stockholder, the issue as to whether the creditor's claim was satisfied is conclusively decided against the creditor in a proceeding brought under this section et seq., for an order assessing stockholder's liability, because the determination of such issue in that procedure related to "the propriety and necessity of the assessment." Bolsta v Bremer, 212 M 269, 3 NW(2d) 430.

Stockholders' liability in Minnesota; bonus and underpaid stock. 7 MLR 109.

When stockholder may assert fraud in judgment against the corporation as a defense to suit to enforce constitutional liability. 14 MLR 90.

316.18 HEARING; EVIDENCE; ORDER FOR ASSESSMENT.

HISTORY. 1899 c. 272 s. 3; R.L. 1905 s. 3185; G.S. 1913 s. 6646; G.S. 1923 s. 8026; 1925 c. 272 s. 1; M.S. 1927 s. 8026.

This section does not apply to corporations governed by Minnesota business corporation act.

Laws 1899, Chapter 272, is constitutional. Straw v Kilbourne, 80 M 125, 83 NW 36; London v St. Paul Park, 84 M 144, 86 NW 872.

The order and assessment levied by the court is conclusive upon and against all parties so liable as to all matters relating to the amount of the property and the necessity for an assessment. Straw v Kilbourne, 80 M 125, 83 NW 36; Neff v Lamm, 99 M 115, 108 NW 849.

Basic facts to be considered in determining the amount of the assessment. London v St. Paul Park, 84 M 144, 86 NW 872.

The commencement of an action to sequestrate the property of a corporation by a creditor, and his exhibiting his claim against it, tolls the statute of limitations both as to the corporation and its stockholders. London v St. Paul Park, 84 M 144, 86 NW 872; Potts v St. Paul Athletic, 84 M 217, 87 NW 604.

Proceedings under section 316.18 for an assessment against stockholders of an insolvent corporation are summary and informal, not controlled by the forms of ordinary judicial procedure; and the stockholders are not entitled to jury trial on the questions involving the authority of the court to order an assessment. Finch v Vanasek, 132 M 9, 135 NW 754; Hosford v Cuyuna, 153 M 186, 189 NW 1025.

The remedial provisions of sections 316.01 to 316.23 are to be applied to the enforcement of rights against foreign corporations and stockholders therein in so far as it is practicable. Dispatch v Security, 154 M 211, 191 NW 601.

When sued for the assessment, a stockholder may interpose any defense personal to himself, but is barred from attacking the assessment as either unnecessary or exclusive. State ex rel v Mortgage Security. 154 M 461, 192 NW 348.

In the enforcement of the constitutional double liability of stockholders of a banking corporation, it is for the commissioner of banks to prove the necessity for an assessment, and in the instant case the finding of a 100 per cent assessment is sustained. Hanover v Barry, 170 M 445, 213 NW 36.

The court determines whether the character of the corporation is such that its stock is assessable under the provisions of the constitution; whether it is one of the corporations excepted by the constitution from liability. The determination of the character of the corporation is binding in subsequent actions. Farwell v Goodhue, 160 M 64, 199 NW 436; Phelps v Consol. Vermillion, 157 M 209, 195 NW 923.

Objecting stockholders may insist that the receiver make proper and sufficient proof of the grounds for an assessment. The degree and kind of proof must be left largely to the requirements of each case, and the discretion of the trial judge. Drovers' Bank v Drovers' Loan, 167 M 283, 208 NW 997.

The petition for an order of assessment contained the requirements set forth in sections 316.17 and 316.18, and were sufficient notwithstanding palpably inadvertent errors. Mutual Trust v Alamoe, 196 M 226, 265 NW 48.

A judgment in Minnesota levying an assessment attaches when the petition of the receiver is filed and the resulting judgment of assessment cannot be attacked collaterally for procedural irregularities or errors. Chandler v Peketz, 297 US 609, 56 SC 602; 298 US 691, 56 SC 746.

The fact that assets, two years after the appointment of a receiver, exceed the debts does not change the rule as to assessment of stockholders, or as to payment of the expense of receivership; and where the assets are not sufficient to pay the expense plus debts, stockholders are liable up to par value of stock for full amount of deficiency. Bartlett v Humiston, 173 M 10, 216 NW 252.

The receiver in charge of the liquidation of an insolvent state bank is a competent witness as to the value of assets, the amount of the liabilities, and the necessity for an assessment. Merchants v Dyste, 173 M 436, 217 NW 483.

The creditors of a corporation may waive their right to resort to the constitutional liability of stockholders in consideration of the corporations signing of its property to a trustee; and such agreement does not offend the rule that a written contract cannot be contradicted by parol; and the defense, by waiver, is not determined by the order of assessment but may be interposed by the stockholders when sued by the receiver. Robie v Holdahl, 175 M 44, 219 NW 945.

The court is not required to determine the liability of the individual stockholder; nor to take into account the desire of numerous creditors that the stockholders' double liability be not enforced. Farmers' Dairy Receivership, 177 M 211, 225 NW 22.

316.19 ENFORCEMENT OF STOCKHOLDERS' LIABILITY; HEARING; ORDER.

HISTORY. 1899 c. 272 ss. 4, 5; R.L. 1905 s. 3186; G.S. 1913 s. 6647; G.S. 1923 s. 8027; M.S. 1927 s. 8027.

This section does not apply to corporations governed by Minnesota business corporation act.

As to constitutionality and conclusiveness as to order of assessment, see notes under sections 316.17 and 316.18.

In making an assessment, the court determines whether the corporation is one in which there is a stockholders' liability; and such determination is binding upon the stockholders in subsequent actions to collect assessments. Boyd v Bruce, 163 M 83, 203 NW 456.

Orders allowing claims against a corporation and assessing its stockholders are final and do not require the entry of judgment thereon; and must be appealed from, if at all, within 30 days from notice. In re Olivia Cooperative, 169 M 131, 210 NW 628.

An order requiring stockholders to pay assessments forthwith includes the imposition of liability upon a non-resident shareholder. Chandler v Peketz, 297 US 609, 56 SC 602; 298 US 691, 56 SC 746.

An order of assessment is conclusive only as to total amount, propriety and necessity; and anything in such order relative to personal defenses is not final. McCabe v Farmers' Grain, 172 M 33, 214 NW 764.

In establishing the existence of ultra vires indebtedness, the burden rests upon the defending stockholder. Kuhlman v Granite City, 174 M 166, 218 NW 885.

Where a stockholder claimed fraud and expressed a desire to surrender his stock on that ground, but took no steps to perfect rescission prior to the bankruptcy of the corporation, it is too late to set up such defense in an action by the receiver to enforce an assessment. Barnes v Nelson, 179 M 259, 228 NW 917.

The order for assessment is conclusive as to the amount and necessity; but under the facts in the instant case, the stockholder may litigate the claim that the facts are insufficient to constitute a cause of action against him. Crowley v Potts, 180 M 234, 230 NW 645.

Where more than three years had elapsed between the dissolution proceedings resulting in a receivership, and the commencement of the present action for enforcement of stockholders' liability, the court properly ordered judgment for the defendant on the ground that the statute of limitations starts running against the stockholders constitutional liability from the date the corporation goes into the hands of a receiver. In re State Bank of Correll, 206 M 250, 288 NW 709.

In an action brought by the receiver for the benefit of the only creditor against the sole stockholder to recover assets of the bank alleged to have been wrongfully transferred to the defendant, a dismissal was properly granted because the plaintiff had, in a prior action, intervened in an action brought to enforce stockholders' liability. Bolsta v Bremer, 212 M 269, 3 NW(2d) 430.

316.20 ACTION FOR ASSESSMENTS.

HISTORY. 1899 c. 272 s. 6; R.L. 1905 s. 3187; G.S. 1913 s. 6648; G.S. 1923 s. 8028; M.S. 1927 s. 8028; 1931 c. 205 s. 2.

This section does not apply to corporations governed by Minnesota business corporation act.

Where an assessment has been ordered and the receiver has filed a claim in probate court against the estate of the deceased stockholder, it is too late for the executor to raise the question as to whether the corporation was of a class wherein stockholders were subject to assessment. Neff v Lamm, 99 M 115, 108 NW 849.

A stockholder who transferred his stock at a time when the corporation was indebted to the plaintiffs is liable, even if the transferee is not made a party. If the defendant desired to have the transferee made a party because of the transferee's primary liability, the defendant should have made an application to the court. Tiffany v Giesen, 96 M 488, 105 NW 901.

A receiver may sue in a foreign jurisdiction to collect statutory liability of stockholders where the statute confers that right upon him. Bernheimer v Converse, 206 US 516, 27 SC 755.

A receiver procuring an action to collect assessments based on stockholders' liability must sue each stockholder separately. Zander v Affeldt, 173 M 496, 217 NW 595.

The federal court has jurisdiction to empower a receiver of a Minnesota corporation appointed by it to institute actions in a state district court to enforce the constitutional super-added liability of stockholders using the remedy provided by the state statute. Crowley v Goudy, 173 M 603, 218 NW 121.

The order of assessment is conclusive as to the amount and necessity therefor; but the stockholder in the instant case may litigate the claim that the facts are insufficient to constitute a cause of action against him. Crowley v Potts, 180 M 234, 230 NW 645.

In the instant case where the defendant subscribed to the stock of one corporation but received stock in another, he is not estopped from denying his stockholder's liability. Johnson v Fried, 181 M 316, 232 NW 519.

Title to chapter of Laws 1931, Chapter 205, is not objectionable because while it was an amendment of two sections, the sections covered but one subject, and amendments did not enlarge but only modified and restricted the law. Sweet v Richardson, 189 M 489, 250 NW 46.

The proviso that actions to enforce assessments against stockholders must be brought within two years after the order for payment is made, does not apply to an action brought to enforce the statutory liability of a stockholder in a foreign corporation. Johnson v Johnson, 194 M 617, 261 NW 450.

The liability of the stockholder attaches as soon as his relationship is resumed, and as fixed by the constitution, stands as surety for corporate debts. When the corporation is declared insolvent, all corporate debts mature, and the stockholder's liability as surety becomes fixed as of that date. Knipple v Lipke, 211 M 238, 300 NW 620.

316.21 ADDITIONAL ASSESSMENTS, HOW LEVIED; JOINDER OF CAUSES.

HISTORY. 1899 c. 272 ss. 7 to 9; R.L. 1905 s. 3188; G.S. 1913 s. 6649; G.S. 1923 s. 8029; M.S. 1927 s. 8029.

This section does not apply to corporations governed by Minnesota business corporation act.

If an order of assessment expressly reserves the question for future determination, the court's jurisdiction is not exhausted, and the receiver may later apply to the court for a further hearing on the question of assessment. Phelps v Consol. Vermillion, 157 M 209, 195 NW 923.

The complaint is not demurrable because of the absence of an allegation that the complaint in the sequestration proceedings failed to allege that the debt the plaintiff therein sought to enforce accrued prior to the constitutional amendment and prior to the passage of Laws 1931, Chapter 210, abolishing the so-called stockholders' double liability. Miller v Ryan, 188 M 35, 246 NW 465.

In collecting assets based on stockholders' liability, each stockholder must be sued separately. Zander v Affeldt, 173 M 496, 217 NW 595.

316.22 PROCEEDINGS ON FAILURE OF ASSIGNEE OR RECEIVER TO PROSECUTE.

HISTORY. 1899 c. 272 s. 10; R.L. 1905 s. 3189; G.S. 1913 s. 6650; G.S. 1923 s. 8030; M.S. 1927 s. 8030.

This section does not apply to corporations governed by Minnesota business corporation act.

316.23 SURPLUS TO BE DIVIDED AMONG STOCKHOLDERS.

HISTORY. 1899 c. 272 s. 11; R.L. 1905 s. 3190; G.S. 1913 s. 6651; G.S. 1923 s. 8031; M.S. 1927 s. 8031.

This section does not apply to corporations governed by Minnesota business corporation act.

It did not appear from the showing made that the court failed to consider assets of the corporation which should have been taken into account in determining whether or not a stockholders' assessment was necessary, so the order

refusing to vacate the order of assessment was justified. Hosford v Cuyuna, 153 M 186, 189 NW 1025.

The assets of a bank in liquidation are preserved, and if the stockholders respond to their liability and if there is at the end a surplus, it must equitably be distributed to the stockholders. Hanover State Bank v Barry, 170 M 445, 213 NW 36.

The fact that assets, two years after the appointment of a receiver, exceed the debts, does not change the rule as to assessment of stockholders or payment of expenses of receivership. Barlett v Humiston, 173 M 10, 216 NW 252.