

CHAPTER 48

BANKING DIVISION; BANKS AND TRUST COMPANIES

48.01 DEFINITIONS.

HISTORY. 1935 c. 319 s. 1; M. Supp. s. 7658-6.

48.02 CAPITAL AND SURPLUS; PREPAYMENT OF CAPITAL.

HISTORY. 1895 c. 145 s. 1; R.L. 1905 s. 2983; G.S. 1913 s. 6349; G.S. 1923 s. 7659; M.S. 1927 s. 7659.

CAPITAL STOCK of a bank need not be increased with an increase of the population of the city in which it is located. 1908 OAG 105.

48.03 STOCK LIST; FILING; TRANSFER; LIABILITY OF STOCKHOLDERS.

HISTORY. 1895 c. 145 s. 5; R.L. 1905 s. 2985; 1907 c. 137 s. 1; G.S. 1913 s. 6350; G.S. 1923 s. 7669; M.S. 1927 s. 7669.

NATURE OF LIABILITY. It is not a corporate asset but its proceeds are for creditors, *Minn. St. Bank v Tabbott*, 184 M 179, 239 NW 53; and therefore the corporation cannot release the stockholders from liability, *Northwestern Trust Co. v Bradbury*, 117 M 83, 134 NW 513, *Ann. Cas.* 1913D 69; nor can amounts paid under an assessment voted by the stockholders under section 49.02 be credited against this liability since they are corporate assets. *Minn. St. Bank v Tabbott*, 184 M 179, 238 NW 53.

No creditor of an insolvent bank can now maintain a separate action for his own exclusive benefit upon a claim against the individual liability of any stockholder, when it appears that there are other stockholders equally liable under the statute, and other creditors equally entitled to participate in the benefits of the liability. *Allen v Walsh*, 25 M 543.

TRANSFERRER'S LIABILITY. In computing the year during which the transferrer is liable, the first day is excluded. *Bank of Dassel v March*, 183 M 127, 235 NW 914. The right to enforce this liability depends on conditions arising within a year of the transfer but it may be enforced within six years from the debt's maturity. *Harper v Carroll*, 62 M 152, 64 NW 145.

A transferrer is not liable for the debts of the bank incurred after the transfer nor for debts existing at the time of the transfer and paid before the insolvency of the bank. *Bank of Dassel v March*, 183 M 127, 235 NW 914; *Harper v Carroll*, 62 M 152, 64 NW 145.

As between transferrer and transferee, the liability of the transferrer cannot be enforced until an attempt has been made to collect from the transferee. *Willius v Mann*, 91 M 494, 98 NW 341, 867.

The part of the indebtedness existing at the time of the transfer for which a transferrer can be held should be to the whole of such balance in the ratio which his stock bears to all the stock of all solvent stockholders, both present and prior, contributing to the satisfaction of this same balance. *Harper v Carroll*, 66 M 487, 69 NW 610, 1069.

FRAUD. Since plaintiff stockholder was guilty of laches it is unnecessary to determine whether or not the stockholder who became one through fraudulent representations and has remained one until the corporation has become insolvent and creditors have acquired rights, is absolutely bound as between him and the creditors or whether he is bound only when it is guilty of laches. *Dunn v St. Bank of Minneapolis*, 59 M 221, 61 NW 27.

CLAIM AGAINST ESTATE. A claim for stockholder's liability that matured by an assessment being levied before the administration of an estate was closed is barred against the stockholder's heirs by failure to present it to probate court for allowance. *Hunt v Burns*, 90 M 172, 95 NW 1110.

Not only did the bank records so show, but the law requires that the president and cashier shall at all times keep an accurate verified list of all stockholders with the amount of shares held by each, and on May 1 annually file a copy thereof with the register of deeds and the bank examiner: *Searing v Hubbard*, 93 M 394, 258 NW 588.

Transfer of shares to infant; liability of transferee on subsequent assessment. 17 MLR 547.

See 15 MLR 233, discussing the effect of prior payment of an assessment, and 19 MLR 338, which treats the liability of an unregistered transferee to his transferor.

48.04 INCREASE AND REDUCTION OF CAPITAL.

HISTORY. 1895 c. 145 s. 25; R.L. 1905 s. 3003; G.S. 1913 s. 6372; G.S. 1923 s. 7691; M.S. 1927 s. 7691.

STOCK ISSUED ON CREDIT. The court expressly refused to decide whether under a similar earlier statute, increase stock issued on credit or paid for by promissory notes instead of cash, would be not merely voidable, but absolutely void, even in the hands of innocent purchasers for value. *Dunn v State Bank of Minneapolis*, 59 M 221, 61 NW 27; *Olson v State Bank*, 67 M 267, 69 NW 904.

48.05 CAPITAL NOT TO BE WITHDRAWN; DIVIDENDS.

HISTORY. 1895 c. 145 s. 19; R.L. 1905 s. 2997; G.S. 1913 s. 6362; G.S. 1923 s. 7681; M.S. 1927 s. 7681.

STOCK DIVIDENDS may be lawfully declared by a state bank but it is essential that the surplus earnings of the bank remain equal to one-fifth of the capital. 1920 OAG 20.

48.06 DIRECTORS; QUALIFICATIONS.

HISTORY. 1899 c. 142 s. 1; R.L. 1905 s. 2986; G.S. 1913 s. 6451; G.S. 1923 s. 7670; 1927 c. 260 s. 1; M.S. 1927 s. 7670.

STOCK OWNERSHIP. Ownership of stock as executor or guardian is not enough to qualify a director. 1912 OAG 23.

48.07 OFFICERS; APPOINTMENT, REMOVAL.

HISTORY. 1927 c. 259 s. 1; M.S. 1927 s. 7699-4.

48.08 DIRECTORS AND OFFICERS, RESTRICTED USE OF BANK FUNDS; DEALINGS WITH BANK.

HISTORY. 1895 c. 145 s. 9; R.L. 1905 s. 2989; 1913 s. 6354; G.S. 1923 s. 7673; 1925 c. 305; M.S. 1927 s. 7673.

AUTHORITY OF OFFICERS. An officer of a bank has no power to bind it by a guaranty of his own paper when it is discounted for his own purposes. Such a guaranty would be for accommodation and *ultra vires* the corporation. *State Bank v. Lyon County Nat. Bank*, 170 M 161, 212 NW 177.

The authority of the president and cashier to accept the promise of one in discharge of a debt owed by another does not extend to a case where they, or either of them, were a party to the transaction. *Rhodes v Webb*, 24 M 292.

48.09 DIVIDENDS; SURPLUS.

HISTORY. 1899 c. 142 s. 2; R.L. 1905 s. 2987; G.S. 1913 s. 6352; G.S. 1923 s. 7671; M.S. 1927 s. 7671; 1939 c. 38 s. 1.

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STOCK DIVIDENDS. A state bank may lawfully declare a stock dividend but it is essential that the surplus earnings of the bank remain at all times equal to one-fifth of the capital. 1920 OAG 20.

48.10 EXAMINING COMMITTEE.

HISTORY. 1899 s. 142 s. 3; R.L. 1905 s. 2988; G.S. 1913 s. 6353; G.S. 1923 s. 7672; M.S. 1927 s. 7672; 1945 c. 94 s. 1.

48.11 CONTRACTS, HOW MADE.

HISTORY. 1895 c. 143 s. 16; R.L. 1905 s. 2994; G.S. 1913 s. 6359; G.S. 1923 s. 7678; M.S. 1927 s. 7678.

EXCEPTIONS. Taking security for loans already made is routine business, Harriet St. Bank v Samels, 164 M 265, 204 NW 938; as is the satisfaction of mortgages that are paid. Early v Farmers St. Bank of Goodridge, 165 M 165, 205 NW 952.

This section does not apply to a bond given for a depository of public moneys since the bond is not a contract but a security collateral to a contract. Board of County Comm'rs v Mfg'rs Bank, 69 M 421, 72 NW 701.

Where the vice-president and attorneys of a bank had authority to make a settlement and a note was part of it, the note is not invalid because not signed by the cashier or other officer of the bank in addition to the vice-president. Nelson v Central Met. Bank, 185 M 449, 241 NW 585.

Suit by minority stockholder to recover excessive salaries. 17 MLR 545.

48.12 BONDS OF OFFICERS AND EMPLOYEES.

HISTORY. 1925 c. 351 s. 1; M.S. 1927 s. 7699-1; 1945 c. 72 s. 1.

CREDIT UNIONS. The provisions pertaining to bonds or contracts of indemnity for officers and employees of state banks apply to credit unions. 1938 OAG 4.

48.13 BONDS OF OFFICERS AND EMPLOYEES, REQUISITES AND CONDITIONS.

HISTORY. 1925 c. 351 s. 2; M.S. 1927 s. 7699-2.

48.14 EXAMINATIONS, REPORTS TO SHOW NAMES OF BONDED OFFICERS AND EMPLOYEES.

HISTORY. 1925 c. 351 s. 3; M.S. 1927 s. 7699-3.

48.15 SPECIAL POWERS.

HISTORY. 1898 c. 145 s. 3; R.L. 1905 s. 2984; G.S. 1913 s. 6349; G.S. 1923 s. 7660; M.S. 1927 s. 7660.

SCOPE. Feeding and caring for cattle, the security for a chattel mortgage, is not outside the proper scope of banking activities. Sutley v Polk County St. Bank, 162 M 118, 202 NW 338.

Taking a special deposit is authorized, Hurley v Markville St. Bank, 185 M 56, 239 NW 769; as is the making of time certificates of deposit. Francois v Lewis, 68 M 409, 71 NW 621; or the giving of a bond to secure a checking account. Leonard Co-op. Cry. Ass'n v First St. Bank, 168 M 28, 209 NW 631.

EMERGENCY POWERS. Impending emergency endows the directors with power to prevent the sacrifice of assets and to transfer them to a going concern. First St. B. & T. Co. v First Nat. Bank, 193 M 414, 258 NW 593.

LIMITATIONS. A state bank has no power to pledge its assets to secure deposits except where given by statute in the case of public moneys. Farmers & M. St. Bank v Con. School Dist. 174 M 286, 219 NW 163, 65 ALR 1407.

A guaranty of an officer's own paper is for accommodation and ultra vires the corporation. *State Bank v Lyon County Nat. Bank*, 170 M 161, 212 NW 177.

An agreement by a bank which, as broker, submits farm loans to a trust company, that if the representations are not correct it will take the mortgages, is ultra vires and against public policy as is a guaranty upon a note given because of this agreement. *Farmers & M. Sav. Bank v Crookston St. Bank*, 169 M 249, 210 NW 998.

The powers of banks, mercantile and manufacturing corporations, and trust companies overlap or are the same in many details of their business. *Hurley v Markville Bank*, 185 M 56, 239 NW 769 is an instance; but unquestionably, banks are given greater powers than trust companies. *State ex rel v Crookston Trust*, 203 M 515, 282 NW 138.

48.153 BANKS; INSTALMENT LOANS; INTEREST IN ADVANCE.

HISTORY. 1945 c. 544 s. 1.

48.154 PREPAYMENT; REFUND; LIMITATION.

HISTORY. 1945 c. 544 s. 2.

48.155 ALLOWABLE ADDITIONAL CHARGES.

HISTORY. 1945 c. 544 s. 3.

48.156 LOAN DUE ON DEFAULT.

HISTORY. 1945 c. 544 s. 4.

48.157 COPY OF NOTE TO BORROWER.

HISTORY. 1945 c. 544 s. 5.

48.16 BANKS MAY NOT PLEDGE ASSETS; EXCEPTIONS.

HISTORY. 1927 c. 257 s. 1; M.S. 1927 s. 7699-14; 1931 c. 341; 1933 c. 149 s. 1; 1939 c. 46.

PUBLIC DEPOSITS. Where a depository bank pledges to a county securities in an amount in excess of its capital stock and permanent surplus, the county, upon the bank's failure, cannot hold the excess. 1930 OAG 198.

NO EXCEPTION. A bank cannot pledge its assets to secure deposits even to induce an extension of a past due deposit. *Farmers St. Bank v Marshall*, 175 M 363, 221 NW 242, discussed in 13 MLR 145.

This section does not prevent a bank from hypothecating its assets to secure money borrowed in good faith from banks to pay its obligations. That was the effect of the contract in the instant case. It was not unlawful to substitute one creditor who could wait for payment, for numerous creditors who may not have been. *First State Bank v First Nat'l*, 193 M 418, 258 NW 593.

Where a Minnesota bank borrows money on an R.F.C. debenture, to be paid out of future earnings of the bank, it becomes for all practical purposes, capital of the borrowing bank. 1934 OAG 35, Aug. 12, 1933 (29a-28).

Funds of the various societies and associations at the University of Minnesota are kept in one fund and controlled and supervised by University authorities. These cannot be considered as "public money". 1934 OAG 768, June 12, 1933 (618b).

48.17 OFFICERS OR EMPLOYEES, POWERS TO BORROW MONEY, MAKE GUARANTIES, ENDORSE, PLEDGE, OR HYPOTHECATE NOTES, BONDS, OTHER OBLIGATIONS.

HISTORY. 1927 c. 257 s. 2; M.S. 1927 s. 7699-15.

48.18 PLEDGES OR LIENS OF ASSETS SUBJECT TO PRIOR LIENS.

HISTORY. 1927 c. 257 s. 3; M.S. 1927 s. 7699-16.

48.19 LOANS ON REAL ESTATE RESTRICTED.

HISTORY. 1927 c. 257 s. 4; M.S. 1927 s. 7699-17.

Loans to veterans under G I bill of rights. OAG Nov. 27, 1944 (29a-20).

48.20 UNAUTHORIZED PLEDGES, NOTES, LIENS VOID.

HISTORY. 1927 c. 257 s. 5; M.S. 1927 s. 7699-18.

48.21 MAY HOLD REAL ESTATE; RESTRICTIONS.

HISTORY. 1895 c. 145 s. 17; R.L. 1905 s. 2995; G.S. 1913 s. 6360; 1919 c. 85 s. 1; 1921 c. 258 s. 1; G.S. 1923 s. 7679; M.S. 1927 s. 7679; 1929 c. 54; 1945 c. 63 s. 1.

BANKING HOUSE. Both the cash investment and the encumbrances must be included in computing the amount invested. 1926 OAG 1.

TAXATION. Under Laws 1921, Chapter 416, providing for assessment and taxation of moneyed capital of banks a deduction may be made of the amount of funds taken from the capital funds and legally invested in real estate, not of the value of the real estate held. Application of Farmers St. Bank of Windom, 160 M 320, 200 NW 89.

48.22 CASH RESERVE IN BANKS.

HISTORY. 1895 c. 145 s. 18; R.L. 1905 s. 2996; G.S. 1913 s. 6361; 1915 c. 362 s. 1; G.S. 1923 s. 7680; M.S. 1927 s. 7680; 1931 c. 93.

The trust company having continuously complied with the provisions of section 48.22, in the instant case may engage in a general commercial banking business as authorized by long practice and interpretation under the executive powers of the state. State ex rel v Crookston Trust, 203 M 514, 282 NW 138.

48.23 BANK NOT TO LEND ON ITS OWN STOCK OR PURCHASE SAME.

HISTORY. 1895 c. 145 s. 13; R.L. 1905 s. 2992; G.S. 1913 s. 6356; G.S. 1923 s. 7676; M.S. 1927 s. 7676.

EXTENT. This statute prevents a bank from having a lien on a stockholder's stock for his indebtedness to the bank. Anderson v Cook County St. Bank, 154 M 231, 191 NW 417.

Since a bank cannot indirectly purchase its own stock, an answer to a suit on a note brought by the assignee of an insolvent bank which answer alleges that the note was given without consideration for the purchase of the bank's stock on the market with the bank as the real party in interest, is demurrable. St. Paul & Minneapolis T. Co. v Jenks, 57 M 248, 59 NW 299.

After this stock was issued to defendant and her note taken for the price thereof, the bank could not lend on nor purchase its own stock. Searing v Hubbard, 193 M 394, 258 NW 588.

EQUITABLE LIEN. This section indicates a state policy prohibiting a bank from acquiring a lien upon its capital stock and makes it impossible for a court, with propriety, to give an equitable lien. Rockwood v Foshey T. & S. Bank, 195 M 64, 261 NW 697.

TIME OF DISPOSAL. The time within which stock lawfully acquired must be sold begins to run from the date of the acquisition, not from the due date of the secured obligation. Sigel v Sec. St. Bank, 134 M 272, 159 NW 567.

See generally Nicollet Nat. Bank v City Bank, 38 M 85, 35 NW 577, 8 ASR 643.

48.24. RESTRICTIONS UPON TOTAL LIABILITY OF INDIVIDUALS TO BANK; FIRST MORTGAGE SECURITY; LIABILITY OF OFFICERS; DISCOUNTS; EXCESS LIABILITY; PENALTY AND CIVIL LIABILITY.

HISTORY. 1895 c. 145 s. 15; 1897 c. 228 s. 1; 1901 c. 107 s. 1; R.L. 1905; s. 2993; 1907 c. 156; 1911 c. 160 s. 1; G.S. 1913 s. 6358; 1919 c. 103 s. 1; G.S. 1923 s. 7677; 1927 c. 258 s. 1; M.S. 1927 s. 7677; 1931 c. 9 s. 1; Ex. 1934 c. 70; 1943 c. 23 s. 1; 1945 c. 62 s. 1.

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SCOPE. This section limits the amount which a state bank may invest in the bonds of a foreign nation to 15 per cent of its capital and surplus. 1916 OAG 15.

LIMITATIONS. This statute does not cover a guaranty of paper assigned to the bank to make good depleted or questionable assets, *State v Flowers*, 187 M 493, 245 NW 834; nor security for loans. A bank is not prohibited from taking any amount or kind of security to protect it against possible loss from loans already made. *Harriet St. Bank v Samels*, 164 M 265, 204 NW 938.

STOCKHOLDERS' LIABILITY. Stockholders are not relieved of their liability upon the ground of ultra vires when the bank has made excessive loans, contrary to the statute, since this did not create liabilities to be proved against the bank. *Hanover St. Bank v Barry*, 170 M 445, 213 NW 36.

PENALTY. Section 47.26 is so indefinite that it cannot be held to apply to this section providing that the indebtedness of an officer to his bank shall not exceed ten per cent of the capital stock and surplus. *State v Voogd*, 170 M 255, 212 NW 528.

As to restrictions upon total liability of individuals to banks, see as to "national housing act" loans. 1938 OAG 5, March 18, 1937 (533i).

As to loans to veterans under servicemen's readjustment act of 1944. OAG Nov. 27, 1944 (29a-20).

See Laws 1945, Chapter 177, Section 1.

48.245 MINORITY OF WAR VETERANS NOT TO AFFECT THEIR CONTRACTS FOR LOANS.

HISTORY. 1945 c. 177 s. 1.

48.25 RATE OF INTEREST ON SAVINGS DEPOSITS.

HISTORY. 1929 c. 144 s. 1; M. Supp. s. 7699-13½.

48.26 APPLICATION.

HISTORY. 1929 c. 144 ss. 3, 4; M. Supp. ss. 7699-13½b, 7699-13½c.

48.27 NO DEPOSITS IN EXCESS OF 25 TIMES AMOUNT OF CAPITAL AND ACTUAL SURPLUS.

HISTORY. 1927 c. 325 s. 1; M.S. 1927 s. 7699-12; 1943 c. 342 s. 1; 1945 c. 73 s. 1.

48.28 COMMISSIONER TO TAKE POSSESSION AND LIQUIDATE UNLESS DEPOSITS ARE REDUCED.

HISTORY. 1927 c. 325 s. 2; M.S. 1927 s. 1699-13; 1943 c. 342 s. 2; 1945 c. 73 s. 2.

The commissioner of banks has wide discretionary power and control of the liquidation of state banks. His acts in respect of the liquidation of such banks and in proceedings with regard thereto represent the bank as an entity as well as its stockholders and all of the creditors. *Timmer v Hardwick Bank*, 194 M 586, 261 NW 456.

48.29 PAYMENT OF FORGED OR RAISED CHECK; LIABILITY; NOTICE TO DEPOSITOR.

HISTORY. 1911 c. 305 ss. 1, 2; G.S. 1913 ss. 6378, 6379; G.S. 1923 ss. 7698, 7699; M.S. 1927 ss. 7698, 7699.

SCOPE. This section does not apply to forged endorsements on state warrants. *State v Merch. Nat. Bank of St. Paul*, 145 M 322, 177 NW 135.

Absent an agreement as to the time within which a passbook together with canceled checks and bank statements should be examined by depositors, such examination must be made within a reasonable time.

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Passbook provision requiring depositor to give bank notice of errors within ten days after receiving monthly statements was reasonable and constituted a contractual obligation binding upon depositor whether or not depositor signed passbook or was aware of its contents.

Since plaintiff was bound by the passbook regulation limiting defendant's absolute liability, it is immaterial whether defendant was negligent in failing to detect the forgery. *Brunswick Corp. v N. W. Nat. B. & T. Co.* 214 M 370, 8 NW(2d) 333.

Provisions in a pass book requiring depositor to examine canceled checks and bank statements and to report errors or discrepancies within ten days is reasonable under the circumstances here disclosed and is binding upon the depositor. *Brunswick v Northwestern*, 214 M 370, 8 NW(2d) 333.

See 7 MLR 236 for a discussion of this section.

48.30 DEPOSITS BY MINOR OR IN TRUST; JOINT DEPOSITS.

HISTORY. 1879 c. 109 s. 24; G.S. 1878 Vol. 2 (1888 Supp.) c. 33 s. 90; G.S. 1894 s. 2560; 1901 c. 74; R.L. 1905 s. 3019; 1907 c. 468 s. 6; G.S. 1913 s. 6390; G.S. 1923 s. 7711; M.S. 1927 s. 7711.

SCOPE. In *McLeod v Henn. Co. Sav. Bank*, 145 M 299, 176 NW 987, discussed in 4 MLR 537, the court refused to determine whether this section is only for the protection of the bank or affects the rights of the depositors too, but later cases have held that the residue of a joint deposit is the absolute property of the survivor. *Zigan v LeBlanc*, 191 M 538, 254 NW 810; *Hall v Johnson*, 179 M 328, 229 NW 867; *Dyste v Farmers & Mech. Sav. Bank*, 179 M 430, 229 NW 865.

Trusts of this kind have repeatedly been held valid as express trusts and to vest title to funds deposited in the donee or donees unless disaffirmed by the depositor before his death, or set aside for fraud or incompetency. *Coughlin v Farmers & Mechanics*, 199 M 105, 272 NW 166.

See 12 MLR 285 for a discussion of statutes regulating joint deposits.

48.31 STATE BANKS ORGANIZED FROM NATIONAL BANKS.

HISTORY. 1895 c. 145 s. 28; R.L. 1905 s. 3006; G.S. 1913 s. 6375; G.S. 1923 s. 7695; M.S. 1927 s. 7695.

48.32 STATE BANKS OR TRUST COMPANIES MAY BE MEMBERS OF FEDERAL RESERVE BANKS.

HISTORY. 1915 c. 28 s. 1; G.S. 1923 s. 7649; M.S. 1927 s. 7649.

48.33 EXECUTION OF TRUST.

HISTORY. 1889 c. 63 s. 1; G.S. 1894 s. 2590; R.L. 1905 s. 3007; G.S. 1913 s. 6376; G.S. 1923 s. 7696; M.S. 1927 s. 7696.

48.34 BRANCH BANKS PROHIBITED.

HISTORY. 1923 c. 170 s. 1; G.S. 1923 s. 7693; M.S. 1927 s. 7693.

48.35 CLEARING HOUSES.

HISTORY. 1893 c. 46 s. 1; G.S. 1894 ss. 2533; 2535; R.L. 1905 s. 3008; G.S. 1913 s. 6377; G.S. 1923 s. 7697; M.S. 1927 s. 7697.

48.36 APPLICATION.

HISTORY. 1923 c. 274 s. 1; G.S. 1923 s. 7661; M.S. 1927 s. 7661.

48.37 CERTIFICATES FROM COMMISSIONER.

HISTORY. 1923 c. 274 s. 2; 1923 s. 7662; M.S. 1927 s. 7662.

48.38 POWERS AND DUTIES.

HISTORY. 1923 c. 274 s. 3; G.S. 1923 s. 7663; M.S. 1927 s. 7663.

Subd. 5. This subdivision does not authorize payment of fees and expenses to a trustee who has not discharged his trust faithfully. In re Trusteeship Under Will of Rosenfeldt, 185 M 425, 241 NW 573.

Subd. 6. The language of this subdivision authorizing the investment in "authorized securities then held by it or specially procured by it" does not authorize a trust company to buy as a trust investment securities which it owns. Kelly v First Minneapolis T. Co., 178 M 215, 226 NW 696; Larson v Sec. B. & T. Co., 178 M 209, 224 NW 235, 226 NW 697.

LIMITATION. Trust companies have no power to guarantee federal farm loans in which they have no beneficial interest and an effort to do so is ultra vires. Fed. Land Bank v Crookston T. Co. 180 M 319, 230 NW 797.

The word "may" is used in respect to the powers and duties of state banks, trust companies, and building and loan associations, and the word "shall" is used with respect to savings banks and the investment of accumulations by trust companies. The duty to observe the provisions of the statute should be equally obligatory on all. The use of the word "may" is not decisive. The meaning of the language may be sought by other aids. Trusteeship under Jones' Will, 202 M 193, 277 NW 899.

A buyer has the right to choose not only the goods he purchases but the seller as well; so where a dealer believing he was buying from Westinghouse bought electric coolers giving his check to "R. E. S., Westinghouse", an endorsement of the check by "R. E. S. Inc." did not convey title and the bank was liable to the dealer, he not accepting the goods. Jorgensen v First National, 217 M 413, 14 NW(2d) 618.

Where a shipper of livestock, under an arrangement with a commission firm engaged in the business of selling livestock on commission for others, drew drafts upon it whenever needed for his business; the proceeds of which were to be credited to his personal bank account and there commingled with his other bank credits, pursuant to an agreement with the commission firm to finance his business and to honor drafts up to a certain limit for that purpose, the relationship between the shipper and the commission firm was that of debtor and creditor, not trustee and beneficiary, and the bank in which the proceeds of the drafts were deposited was not liable to the commission firm for failing to see to it that its depositor applied the funds in accordance with the agreement between him and the commission firm. Farmers Bank v Ellingson, 218 M 411, 16 NW(2d) 319.

See also, Billings v Fed. Reserve, 46 F. Supp. 691, 135 F(2d) 108.

48.39 TRUST ACCOUNTS RECORDED.

HISTORY. 1923 c. 274 s. 4; G.S. 1923 s. 7664; M.S. 1927 s. 7664; 1943 c. 338 s. 1.

PREFERRED CLAIM. Plaintiff, who entrusted her property to defendant's trust department which violated this section and whose officer misappropriated the funds, is entitled to a preferred claim against defendant, now insolvent. Benson v Albert Lea St. Bank, 185 M 541, 241 NW 794, discussed in 16 MLR 848.

Deposit of funds held by bank as executor with itself as constituting wrongful mingling of funds. 17 MLR 318.

48.40 SUBJECT TO ORDERS OF COURT.

HISTORY. 1923 c. 274 s. 5; G.S. 1923 s. 7665; M.S. 1927 s. 7665.

48.41 CORPORATE NAME.

HISTORY. 1923 c. 274 s. 6; G.S. 1923 s. 7666; M.S. 1927 s. 7666.

48.42 BANK MAY BE DESIGNATED AS SAVINGS BANK.

HISTORY. 1923 c. 274 s. 7; G.S. 1923 s. 7667; M.S. 1927 s. 7667.

48.43 BANKS MAY CEASE OPERATIONS; DUTIES OF COMMISSIONER.

HISTORY. 1923 c. 274 s. 8; G.S. 1923 s. 7668; M.S. 1927 s. 7668.

48.44 BANKS MAY ORGANIZE AS TRUST COMPANY.

HISTORY. 1931 c. 267 s. 1; M. Supp. s. 7661-1.

48.45 CORPORATE NAMES.

HISTORY. 1931 c. 267 s. 2; M. Supp. s. 7661-2.

48.46 AUTHORIZED SECURITIES PURCHASED.

HISTORY. 1931 c. 267 s. 3; M. Supp. s. 7661-3.

48.47 BANKING AND TRUST COMPANY BUSINESS CARRIED ON.

HISTORY. 1931 c. 267 s. 4; M. Supp. s. 7661-4.

48.48 REPORTS TO COMMISSIONER.

HISTORY. 1895 c. 145 s. 10; R.L. 1905 s. 2990; G.S. 1913 s. 6355; G.S. 1923 s. 7674; M.S. 1927 s. 7674.

WITHHOLDING INFORMATION. The penal provisions of section 46.06 apply where false reports are made but to constitute the offense the withholding of information or the furnishing of false information must be knowingly, intentionally, or through negligence. State v Johnson, 179 M 217, 228 NW 926.

48.49 BOOKS TO BE KEPT.

HISTORY. 1895 c. 145 s. 12; R.L. 1905 s. 2991; G.S. 1913 s. 6356; G.S. 1923 s. 7675; M.S. 1927 s. 7675.

48.50 DEMAND DEPOSITS; INTEREST, WHEN NOT PAID ON.

HISTORY. 1937 c. 403; s. 1; M. Supp. s. 7697-10.

48.51 DEMAND DEPOSITS, WHAT ARE.

HISTORY. 1937 c. 358 s. 1; M. Supp. s. 7697-11.

48.521 DEFINITIONS.

HISTORY. 1943 c. 620 s. 1.

48.522 ABANDONED FUNDS.

HISTORY. 1943 c. 620 s. 2.

48.523 PRESUMPTION AS TO ABANDONED FUNDS.

HISTORY. 1943 c. 620 s. 3.

48.524 LISTS FILED.

HISTORY. 1943 c. 620 s. 4.

48.525 ESCHEATED FUNDS.

HISTORY. 1943 c. 620 s. 5.

48.526 TO GENERAL REVENUE FUND.

HISTORY 1943 c. 620 s. 6.

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48.527 RECOVERY OF MONEY.

HISTORY. 1943 c. 620 s. 7.

48.528 VIOLATIONS; PENALTIES.

HISTORY. 1943 c. 620 s. 8.

See 25 MLR 106 for a discussion of the validity of applying to national banks a state statute regulating abandoned deposits.

48.56 BANKING INSTITUTIONS MAY TAKE ADVANTAGE OF FEDERAL BANKING ACT.

HISTORY. 1935 c. 319 s. 2; M. Supp. s. 7658-7.

48.57 FEDERAL DEPOSIT INSURANCE CORPORATION MAY ACT AS A RECEIVER OR LIQUIDATOR.

HISTORY. 1939 c. 301 s. 1; M. Supp. s. 7690-31.

48.58 RIGHT OF SUBROGATION.

HISTORY. 1935 c. 319 s. 3; 1937 c. 404 s. 1; M. Supp. s. 7658-8.

48.59 COMMISSIONER MAY ACCEPT EXAMINATIONS AND REPORTS OF CORPORATION.

HISTORY. 1935 c. 319 s. 4; M. Supp. s. 7658-9.

48.60 COMMISSIONER MAY BORROW MONEY.

HISTORY. 1935 c. 319 s. 5; M. Supp. s. 7658-10.

48.61 AUTHORIZED INVESTMENTS FOR STATE BANKS.

HISTORY. 1935 c. 174; M. Supp. s. 7677-1.

48.62 BANKS MAY ISSUE NOTES OR DEBENTURES.

HISTORY. 1935 c. 305 s. 1; M. Supp. s. 7697-7.

Banking institutions may issue capital notes or debentures under the provisions of this section. 1936 OAG 3, Dec. 23, 1935 (844a-2).

48.63 BANKS NEED NOT GIVE SECURITY FOR DEPOSITS.

HISTORY. 1935 c. 317 s. 1; M. Supp. s. 7697-8.

COLLATERAL GIVEN. Where a deposit in excess of that covered by insurance is made and collateral is given by the bank, the collateral does not cover the same deposits covered by insurance, but only the excess. 1938 OAG 212.

48.64 DEPOSITS OF TRUST FUNDS.

HISTORY. 1935 c. 318 s. 1; M. Supp. s. 7697-9.

Where corporate stock is pledged as security for the payment of a note to which it is annexed "or any other liability or liabilities of the undersigned to said bank, due or to become due, or that may hereafter be contracted", the payment of the note does not cancel or fulfill the part of the contract pledging the securities for other obligations to the pledgee. Dividends accruing on the stock while pledged belong to the pledgee. *McGhie v First & Amer. Bank*, 217 M 325, 14 NW(2d) 436.

48.65 TRUST COMPANIES TO COMPLY WITH CERTAIN LAWS.

HISTORY. 1919 c. 117 s. 1; G.S. 1923 s. 7726; M.S. 1927 s. 7726.

CONSTRUCTION. This section does not imply that a trust company may conduct a banking business by merely complying with the reserve requirements of section 48.22. 1938 OAG 6.

48.66 NATIONAL BANKS MAY ACT AS TRUSTEES.

HISTORY. 1921 c. 490 s. 1; G.S. 1923 s. 7727; M.S. 1927 s. 7727.

COMPLIANCE WITH STATE LAW. A national bank, when acting as a fiduciary, must conform to the laws of the state in which it is located. In re Trusteeship Under Will of Jones, 202 M 187, 277 NW 899.

National banks are authorized to qualify under the statute of fiduciaries in the same manner as trust companies, and the statute provides that they shall not be required to give oath or bond. Trust of Butler, 203 M 558, 282 NW 462.

Securities deposited with commissioner of banks must be re-deposited with state treasurer. "Capital" under this section includes preferred stock. 1934 OAG 41, Jan. 13, 1934 (32j).

48.67 CAPITAL OF TRUST COMPANIES.

HISTORY. 1883 c. 107 ss. 3, 4, 5; 1885 c. 3 ss. 2, 3, 4; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 ss. 433, 434, 435; 1889 c. 234 ss. 1, 2; G.S. 1894 ss. 2843 to 2845; 1899 c. 200 s. 1; 1903 c. 70 s. 1; R.L. 1905 s. 3033; 1907 c. 225; 1911 c. 314 s. 1; G.S. 1913 s. 6405; G.S. 1923 s.7728; 1927 c. 323; M.S. 1927 s. 7728; 1931 c. 375; 1935 c. 339.

See, Trusteeship under will of Jones, 202 M 187, 277 NW 899; Trust of Butler, 203 M 558, 282 NW 462.

National housing act notes and mortgages are not "authorized securities" under provisions of this section. 1936 OAG 339, Nov. 14, 1935 (140e-5).

48.68 DIRECTORS; QUALIFICATIONS; VACANCIES, HOW FILLED.

HISTORY. 1899 c. 200 s. 4; R.L. 1905 s. 3034; G.S. 1913 s. 6406; 1919 c. 30 s. 1; G.S. 1923 s. 7729; M.S. 1927 s. 7729.

QUALIFICATIONS. It is within the power of a corporation to make by-laws prescribing the qualifications of its directors if the by-laws are not inconsistent with this section. 1922 OAG 18.

48.69 CERTAIN TRUST COMPANIES MAY ASSUME POWERS OF STATE BANKS.

HISTORY. 1929 c. 90 s. 1; M. Supp. s. 7733-1.

48.70 CERTIFICATES TO BE AMENDED.

HISTORY. 1929 c. 90 s. 2; M. Supp. s. 7733-2; 1945 c. 91 s. 1.

48.71 DEPARTMENT TO APPROVE CERTIFICATES.

HISTORY. 1929 c. 90 s. 3; M. Supp. s. 7733-3.

48.72 APPLICATION.

HISTORY. 1929 c. 90 s. 4; M. Supp. s. 7733-4.

48.73 POWERS AND DUTIES.

HISTORY. 1929 c. 90 s. 5; M. Supp. s. 7733-5.

48.74 TRUST ACCOUNTS KEPT SEPARATE; SECURITIES, HOW DEPOSITED.

HISTORY. 1883 c. 107 s. 4; 1885 c. 3 s. 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 434; 1889 c. 234 ss. 1, 2; G.S. 1894 s. 2844; 1899 c. 200 s. 5; 1903 c. 70 s. 2; R.L. 1905 s. 3044; G.S. 1913 s. 6416; G.S. 1923 7739; M.S. 1927 s. 7739; 1943 c. 339 s. 1.

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Deposit of funds held by bank as executor with itself as constituting wrongful mingling of funds. 17 MLR 318.

48.75 PROHIBITED DEALINGS AND INDEBTEDNESS.

HISTORY. 1883 c. 107 s. 11; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 441; G.S. 1894 s. 2851; R.L. 1905 s. 3045; G. S. 1913 s. 6417; G.S. 1923 s. 7740; M.S. 1927 s. 7740.

LARCENY. The law infers the felonious intent to appropriate funds of the company from the fact that an officer becomes indebted to it and no specific intent need be shown. *State v Barnes*, 108 M 227, 122 NW 4.

The powers of banks, mercantile and manufacturing corporations, and trust companies overlap or are the same in many details of their business. *Hurley v Markville Bank*, 185 M 56, 239 NW 769 is an instance; but unquestionably banks are given greater powers than trust companies. *State ex rel v Crookston Trust*, 203 M 515, 282 NW 138.

48.76 POWERS OF COURT; ANNUAL REPORT TO THE COURT AND TO THE COMMISSIONER.

HISTORY. 1883 c. 107 s. 12; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 442; G.S. 1894 s. 2852; 1899 c. 200 s. 6; R.L. 1905 s. 3046; G.S. 1913 s. 6418; G.S. 1923 s. 7741; M.S. 1927 s. 7741.

The district court has the power, with jurisdiction in personam of trustees and beneficiaries, to settle by order annual accounts of the trustees and to direct disposition of trust property. *Melgaard's Will*, 200 M 501, 274 NW 641; *Re Trust of Butler*, 203 M 558, 282 NW 462.

48.77 PROCEDURE UPON VIOLATION OF LAW OR INSOLVENCY.

HISTORY. 1883 c. 107 s. 14; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 444; G.S. 1894 s. 2854; 1899 c. 200 s. 8; R.L. 1905 s. 3047; G.S. 1913 s. 6419; G.S. 1923 s. 7742; M.S. 1927 s. 7742.

48.78 AGENT OR ATTORNEY IN FACT, ACTING AS.

HISTORY. 1885 c. 3 s. 5; 1887 c. 74 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 439; G.S. 1894 s. 2819; R.L. 1905 s. 3036; G.S. 1913 s. 6408; G.S. 1923 s. 7731; M.S. 1927 s. 7731.

A state bank not having the fiduciary powers granted by section 48.38 is without power to act as a broker of securities, and is ineligible to apply for a broker's license under the blue sky law of this state. 1934 OAG 15, Aug. 1, 1933 (616a-3).

48.79 ACTING AS ASSIGNEE, RECEIVER, OR EXECUTOR.

HISTORY. G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 439; G.S. 1894 s. 2849; R.L. 1905 s. 3038; G.S. 1913 s. 6409; G.S. 1923 s. 7733; M.S. 1927 s. 7733.

TRUSTEE. A corporate trustee may not be required to give bond under section 501.11 (5) which authorizes the district court to appoint trustees and requires them to give bond. This statute prescribes a general rule for trustees other than corporate trustees for whom the rule is prescribed by section 48.79. In *re Trust of Butler*, 203 M 555, 282 NW 462, 124 ALR 1178.

See, *Trust of Butler*, 203 M 555, 282 NW 462; *Probate practice*, 20 MLR 338.

48.80 COMPENSATION; COMMISSION NOT DEEMED INTEREST.

HISTORY. 1883 c. 107 c. 9; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 439; G.S. 1894 s. 2849; R.L. 1905 s. 3042; G.S. 1913 s. 6414; G.S. 1923 s. 7737; M.S. 1927 s. 7737.

Right to additional commission as testamentary trustee. 17 MLR 213.

48.81 INVESTMENTS, HOW LIMITED.

HISTORY. G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 439; G.S. 1894 s. 2849; R.L. 1905 s. 3035; G.S. 1913 s. 6407; G.S. 1923 s. 7730; M.S. 1927 s. 7730.

See, Trust of Butler, 203 M 558, 282 NW 462.

NON-TRUST FUNDS may be invested in the capital stock of other corporations. 1920 OAG 25.

48.82 DEPOSITS OF TRUST AND OTHER FUNDS RECEIVED.

HISTORY. 1885 c. 3 s. 6; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 439; G.S. 1894 s. 2849; R.L. 1905 s. 3037; G.S. 1913 s. 6409; G.S. 1923 s. 7732; M.S. 1927 s. 7732.

COMMERCIAL DEPOSITS. One case indicates, although it does not decide, that this section authorizes a trust company to receive commercial deposits. State ex rel v Crookston T. Co. 203 M 512, 282 NW 138.

48.83 DEPOSIT WITH TRUST COMPANY INSTEAD OF A LARGER BOND.

HISTORY. 1887 c. 74; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 439; G.S. 1894 s. 2849; R.L. 1905 s. 3039; G.S. 1913 s. 6411; G.S. 1923 s. 7734; M.S. 1927 s. 7734.

Court order in protection of the estate. Trust of Butler, 203 M 560, 282 NW 465.

48.84 CORPORATE TRUSTEE; INVESTMENT OF TRUST FUNDS; COM-MINGLING FUNDS.

HISTORY. G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 439; G.S. 1894 s. 2849; R.L. 1905 s. 3040; G.S. 1913 s. 6412; G.S. 1923 s. 7735; M.S. 1927 s. 7735.

AUTHORIZED INVESTMENTS. A participating first mortgage trust certificate is within the class of authorized investments for trust funds. Bowden v Citizens L. & T. Co. 194 M 113, 259 NW 815.

In this respect the statute is exclusive and mandatory. A corporate trustee does not have power to invest trust funds in corporate stocks in the absence of specific directions in the trust instrument. In re Trusteeship Under Will of Jones, 202 M 187, 277 NW 899.

Where a will creating a trust authorizes trustees to invest in securities and it appears that the word "securities" is used in the will to comprehend corporate stocks, the trustees are authorized to invest trust funds in corporate stocks. It is the duty of a corporate trustee, where the trust instrument directs the mode of investment of trust funds, to comply with the directions. Vanderlip's Will, 202 M 206, 277 NW 909.

NON-TRUST FUNDS. See 1920 OAG 25 under section 48.81.

Guardianships. 20 MLR 338.

Investments by corporate trustee in corporate stock. 22 MLR 1070.

Specific categories or circumstances justifying the imposition of a constructive trust or an equitable lien. 25 MLR 691.

Investments; duty of trustee to diversify. 25 MLR 807.

48.85 TRANSFER OF TRUSTS TO COMPANY; CONDITION.

HISTORY. G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 439; G.S. 1894 s. 2849; R.L. 1905 s. 3041; G.S. 1913 s. 6413; G.S. 1923 s. 7736; M.S. 1927 s. 7736.

48.86 TRUST FUNDS; INVESTMENT OF ACCUMULATIONS.

HISTORY. 1883 c. 107 s. 10; 1885 c. 3 s. 8; G.S. 1878 Vol. 2 (1888 Supp.) c. 34 s. 440; G.S. 1894 s. 2850; 1899 c. 200 s. 5; 1903 c. 70 s. 2; R.L. 1905 s. 3043; G.S. 1913 s. 6415; G.S. 1923 s. 7738; M.S. 1927 s. 7738.

See, Bowden v Citizens' Loan, 194 M 116, 259 NW 815; Trusteeship under Will of Jones, 202 M 191, 277 NW 896; 25 MLR 691.

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48.87 DEPOSIT OF SECURITIES.

HISTORY. 1905 c. 49 ss. 1 to 3; 1909 c. 495 ss. 1, 2; G.S. 1913 ss. 6420 to 6424; G.S. 1923 ss. 7743 to 7747; M.S. 1927 ss. 7743 to 7747.

48.88 VIOLATIONS; PENALTIES.

HISTORY. 1927 c. 257 s. 6; M.S. 1927 s. 7699-19; 1929 c. 144 s. 2; M. Supp. s. 7699-13½a.