

MINNESOTA STATUTES 1947 ANNOTATIONS

717

MINNESOTA BUSINESS CORPORATIONS 301.01

CHAPTER 301

MINNESOTA BUSINESS CORPORATIONS

NOTE: There is no uniform business corporation act. The national conference of commissioners on uniform state laws in 1928 approved a model business corporation act which has been used as a basis for many of the acts now on the statute books of the various states.

Our present Chapter 301, cited as the Minnesota Business Corporation Act, is L. 1933, c. 300, sparingly amended. Except for slight changes by the legislature, it was prepared and recommended by a special Minnesota state bar association committee of which Mr. Joseph H. Colman was the chairman.

The only other complete revision of the business laws of Minnesota is found in the Revised Statutes 1866, c. 34. Messrs. Gordon E. Cole, E. C. Palmer, S. J. R. McMillan, and Thomas Wilson were the revision commissioners.

As to the revision of 1866, it was favorably accepted because as enacted it was liberal in its invitation to risk capital to invest in Minnesota corporations; while the 1933 revision gave corporate management as wide latitude as possible so that business might be carried on without vexatious interference.

Each revision was careful to protect the rights of individual shareholders and of the public generally.

301.01 CITATION.

Where all the stock of a securities holding company is owned by a trustee who has in consequence kept control of the company, the company is but another self for the trustee, and its action in respect to dividends is that of the trustee. *Clarke v Bennett*, 204 M 574, 284 NW 876.

Dividends received by a corporation having a commercial domicile within the state from stocks of its subsidiaries, not employed in its but in their business, are assignable to the state of Minnesota under section 23(b) of the state income tax law. As a rule a corporation and the sole owner of its stock are separate for income tax purposes. *Cargill v Spaeth*, 215 M 540, 10 NW(2d) 728.

All corporate powers, franchises, and rights are vested in the corporation and not in its stockholders, and included among such rights is that of suing and defending in its own name. *Singer v Allied Factors*, 216 M 443, 13 NW(2d) 378.

A parent corporation and its wholly owned subsidiary may for certain purposes and under proper circumstances be treated as separate entities; but a parent corporation will not be permitted to organize a subsidiary merely in order to use it as a device to evade the parent corporation's tax responsibilities. *Albrecht v Landy*, 114 F(2d) 202.

Passing of the corporation in business. 2 MLR 401.

Minnesota business corporation act. 17 MLR 689; 18 MLR 1.

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

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

Comparative tax burden between partnerships and corporations. 23 MLR 506.

Federal incorporation or licensing of interstate corporate business. 23 MLR 710.

Disregard of the corporate entity; trust cases. 24 MLR 107.

MINNESOTA STATUTES 1947 ANNOTATIONS

301.02 MINNESOTA BUSINESS CORPORATIONS

718

Financial provisions of the Minnesota business corporation act; treasury shares. 25 MLR 744, 774.

Elimination of accrued preferred dividends by charter amendments. 26 MLR 387.

Protective coloring in corporation law. 26 MLR 824.

The corporate entity concept. 28 MLR 341.

Revision of British company law. 30 MLR 585.

301.02 DEFINITIONS.

While a corporation is not a person and has a legal and real individuality, where all the stock of a securities holding company is owned by a trustee, who has in consequence kept control of the company, the corporation is but another self for the trustee, and the company's action in respect to dividends will be considered that of the trustee. *Clarke v Bennett*, 204 M 574, 284 NW 876.

A corporation is an artificial person created by law or under authority of law from a group or succession of natural persons, but in the instant case where defendant as president of a corporation actively managed the business and supervised and controlled an employee who sold intoxicating liquor on the premises in violation of a municipal ordinance such defendant is guilty as a principal in the commission of the offense. Where a corporation is used by an individual as an instrument of fraud or for other wrongful purposes courts will go as far as necessary in disregarding the corporation and its doing in order to accomplish justice. *State v Horrigan*, 215 M 123, 9 NW(2d) 416.

The sale of its newspaper publishing business in toto to another company amounted to a dismissal of all defendant's employees engaged in that part of defendant's business and entitled them to severance pay under the provisions of their employment contract. A corporation is an entity separate and distinct from the body of its stockholders, and it is not a fiction of law but a real legal unit possessing individuality and endowed by law with many of the attributes of persons. *Matthews v Minnesota Tribune*, 215 M 370, 10 NW(2d) 230.

A corporation and the sole owner of its corporate stock are as a rule separate for income tax purposes. *Cargill v Spaeth*, 215 M 540, 10 NW(2d) 728.

In proceeding for reorganization of the first railroad, the evidence failed to establish that the first railroad acted as a mere tool of the second railroad which was a controlling stockholder or that alleged sinister domination caused the abrogation of the traffic agreement under consideration in the instant case. Mere assertions, conclusions, and suppositions cannot be substituted for facts in asserting a cause of action; and something more is necessary to wipe out a corporate entity than the mere fact that its stock is controlled by another company. *In re Duluth, South Shore & Atlantic Ry.* 58 F. Supp. 733.

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

Participation in dividends and assets. 22 MLR 679.

Corporations; comparative tax burden. 23 MLR 507.

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

Treasury shares. 25 MLR 776.

301.03 PURPOSE OF INCORPORATION AND QUALIFICATION OF INCORPORATORS.

A corporation, organized by investment brokers under business corporation laws to represent holders of securities issued by states and their subdivisions in the enforcement of such obligations for compensation, was "organized for profit" and hence was not a "business league" exempt from income taxes and capital stock taxes. The purpose of an organization, as affecting its liability for income taxes and

MINNESOTA STATUTES 1947 ANNOTATIONS

719

MINNESOTA BUSINESS CORPORATIONS 301.05

capital stock taxes, must be determined from the purpose declared in the instrument creating it. *Northwestern Municipal Assn. v United States*, 99 F(2d) 460.

Disregard of corporate entity; liability of shareholders of a holding company on bank stock held in the corporate name. 20 MLR 312.

301.04 ARTICLES OF INCORPORATION.

The evidence does not sustain the defendant's claim that the plaintiff, the purchaser of a draft accepted by the defendant, and the director of the draft were together conducting a business in connection with which the draft was drawn so that the plaintiff was not an innocent purchaser. Where there was no common stock ownership, nor common directors or officers, nor joint management of the purchaser of the trade acceptance and the seller, and where purchaser's business with the seller was but a fraction of its total business, the two concerns were not operating a joint enterprise precluding the purchaser from being an innocent purchaser. *United States Mortgage Co. v Hotel Radisson*, 161 M 231, 201 NW 318.

Upon refusal of a receiver of a corporation to bring an action any stockholder has the right to sue as a representative of the corporation and of the other stockholders. *Singer v Allied Factors* 216 M 443, 13 NW(2d) 378.

The articles of incorporation are the sole criterion for determining the purposes for which a corporation is formed and fix the rights of the stockholders and constitute the fundamental and organic law of the corporation. *Henry v Markesan*, 68 F(2d) 554.

Statement that the corporation is formed for the purpose of "organizing lawful business" is too vague and indefinite. OAG June 28, 1943 (92-A).

A corporation may be organized with shares of stock carrying multiple voting rights. OAG March 30, 1944 (92-A-24).

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

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

Comparative tax burden as between small close corporations and partnerships. 23 MLR 506.

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

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

301.05 CORPORATE NAME.

An operator of gasoline and oil filling stations at which automobile accessories and other merchandise are sold, who by appropriation and use has acquired a trade name, is not entitled to protection of the trade name against the operator of a similar station in a market where it has no station and where it does not compete for business. *Direct Service Oil Co. v Honzay*, 211 M 361, 2 NW(2d) 434.

Where generic words are used in a trade name as against a later user, the first is entitled only to have the manner of use so reasonably restricted as to avoid deception and confusion. "Food Centre" as the name of retail grocery stores is generic generally descriptive only and so not susceptible of monopolization as a trade name. *Houston v Berde*, 211 M 528, 2 NW(2d) 9.

It being shown clearly that because of defendant's name, window, and neon signs, and the advertising of its business, mail and telephone messages intended for plaintiff went to defendant, and mail and telephone messages intended for defendant came to plaintiff, it was an abuse of discretion to deny plaintiff's motion for a temporary injunction pending suit. *Personal Loan Co. v Personal Finance Co.* 212 M 600, 5 NW(2d) 61.

Except as specifically authorized by statute, domestic corporations are prohibited from using the word "bank" in the corporate name. OAG July 15, 1943 (29-A-1).

301.06 FILING ARTICLES OF INCORPORATION.

Trustee for de jure corporation's bankrupt owner cannot recover a deposit applied on the corporation's note by a bank dealing with the corporation. The signing, filing, and publication of the articles of incorporation created a de jure corporation with which the bank could deal. *Rodgers v National Citizens Bank*, 40 F(2d) 554.

301.08 VALIDITY AND EFFECT OF CERTIFICATE OF INCORPORATION.

One may be estopped by his conduct from denying the legality of the organization of a corporation or the validity of the stock it has issued. By becoming an incorporator and by continuing to act as a director, the defendant is estopped from asserting that the corporation was doing business contrary to the statute and that its stock was void and its stockholders not liable to creditors. *Zander v Schackel*, 161 M 116, 201 NW 308.

Corporations by estoppel; liability of associates. 7 MLR 42.

301.09 POWERS COMMON TO CORPORATIONS.

Where one person owns practically all the stock in two mercantile corporations and acts as president and sole manager of one corporation which executes, by him as president, a guaranty of credit in behalf of the other corporation upon the strength of which plaintiff sells goods to the latter corporation, there is a warrant for finding an authorized and valid guaranty. *Stromberg-Carlson v Beckwith*. 193 M 255, 258 NW 314.

Where, as in the instant case, the corporate entity was under the sole control of defendant and subservient to his will, there is no room for the legal fiction of separate corporate personality or for the distinction between defendant's acts as an officer of the corporation and his acts as an independent natural person. *Walsh v Mankato Oil Co.* 201 M 58, 275 NW 377.

The plaintiff, as the personal representative of Frederica, was before the court only as the representative of the corporation asserting its cause of action against the defendants, but there was nothing to prevent him from appearing with the consent of all concerned to assert claims due to the estate of Frederica. By causing judgment to be entered in accordance with findings of fact and conclusions of law, plaintiff consented to the decision and appeared in his own behalf as representative. *Briggs v Kennedy*, 209 M 312, 297 NW 342.

Where financial difficulties beset a co-partnership the expedient of adopting a corporate name identical or similar with the partnership name and having the corporation take over the entire business structure of the partnership, including name, properties, and purposes, will not be effective to purge the organizers in their corporate capacity of the indebtedness previously incurred as a copartnership. *Range Ice Co. v Barnsdall Oil Co.* 209 M 260, 296 NW 407.

Where the owner of a platted area, who has installed improvements such as water and sewage systems at his own expense and who to induce purchase of lots in the area reports to buyers that no assessments therefor will be imposed because the purchase price of the lots includes payment of the improvements, cannot thereafter claim full ownership of the improvements. The legal entity of plaintiff, as a separate corporation from the corporation selling the land, will be ignored and the rights of the parties determined on the basis of the actual nature of the transaction involved. *Country Club Service Co. v Village of Edina*, 214 M 26, 8 NW(2d) 321.

Where the person with whom an insured dealt was a sub-agent of one expressly authorized to act for the insurer, upon the facts developed in the instant case the insurer cannot escape liability for acts of the sub-agent which were within the scope of the sub-agent's authority and essential to his operative field of action. Notwithstanding the fact that a corporation is a legal entity distinct from the natural persons composing it, if it is to function at all, it must act through human effort or by means of human direction. *Rommel v New Brunswick Fire Insurance Co.* 214 M 251, 8 NW(2d) 28.

MINNESOTA STATUTES 1947 ANNOTATIONS

721

MINNESOTA BUSINESS CORPORATIONS 301.10

The charter of the corporation here involved does not authorize or permit it to engage in the business of "buying and selling bonds and stocks with the cash assets of the company for the purpose of making a profit on the rise in the market value." A corporation has only such powers as are expressly granted in its charter or by statute, and such implied powers as are necessary and proper for the purpose of carrying out its express powers. *Young v Blandin*, 215 M 111, 9 NW(2d) 313.

Where a corporation is used by an individual as an instrument of fraud or, for other wrongful purposes, courts will go as far as necessary in disregarding the corporation and its doing in order to accomplish justice. In the instant case, the evidence is sufficient to sustain the conviction of defendants and each of them of the offense of selling intoxicating liquor without a license in violation of the city ordinance and this irrespective of the fact that the corporation was used as a cloak in making the sales. *State v Horrigan*, 215 M 123, 9 NW(2d) 416.

A distribution of stock pursuant to a plan for reorganization whereby the old company turned all its assets over to the new company in consideration for stock in the new company which was then given pro rata to old company preferred stockholders was a distribution in the nature of a liquidating dividend within the express exemption of section 80.06(4). *Dworsky v Buzza*, 215 M 282, 9 NW(2d) 767.

Where a corporation organized under the laws of one state transacts no business there and establishes its principal office in another where it manages and directs its business, it acquires a commercial domicile there in virtue of which it is subject to taxation there upon its intangibles even though its business may extend into other states. *Cargill v Spaeth*, 215 M 540, 10 NW(2d) 728.

A corporation which has its principal and only place of business in a given county and no office or resident agent elsewhere is, within the meaning of section 542.09, a resident of the county. A corporation is located where it exercises its corporate powers. *Thomas v Hector Construction Co.* 216 M 208, 12 NW(2d) 769.

Where plaintiff corporation was at all times here material under the domination and control of one person, who made use of the corporate entity merely as his agency to hide and obscure his own property, seeking thereby to prevent his judgment creditor from reaching it, the trial court did not err in setting aside the corporate entity to ascertain and determine who was in fact such owner. *Central Motors v Brown*, 219 M 467, 18 NW(2d) 236.

Foreign corporations in all their obligations are subject to such local laws as are made applicable, and the rule of comity merely enables incorporators to exercise the franchise for acting in the corporate capacity in foreign states. *Warner v Foshay*, 57 F(2d) 656.

A corporation is not liable for acts of another corporation merely because it controls such other corporation by ownership of its stock. *Lober v Canadian Pacific*, 151 F(2d) 758.

There was no domination shown. A mere holding of corporate stock control is not sufficient to show domination. In the absence of showing of wrongful domination, fraud, or other unlawful conduct, equity does not permit a finding that the claims of the Canadian Pacific be subordinated to the claims of certain bondholders. *In re Duluth, South Shore, & Atlantic*, 58 F. Supp. 733.

Except as restricted by the provisions of section 53.01 et seq. or where chapter 301 is in conflict with section 53.01 et seq., industrial loan and thrift companies have the powers of corporations organized under chapter 301. OAG Oct. 19, 1945 (53-F).

301.10 HOLDING SHARES AND SECURITIES OF OTHER CORPORATIONS.

See, *Young v Blandin*, 215 M 111, 9 NW(2d) 313, and *Cargill v Spaeth*, 215 M 540, 10 NW(2d) 728, under section 301.09.

An industrial loan and thrift company has no power, in the absence of specific provision in its charter, to form a subsidiary or affiliated company the stock of which would be wholly or partially owned by the industrial loan and thrift company and carried on the parent company's books as an asset. OAG May 22, 1946 (53-F).

Power to hold stock in other corporations. 18 MLR 1.

MINNESOTA STATUTES 1947 ANNOTATIONS

301.12 MINNESOTA BUSINESS CORPORATIONS

722

301.12 ULTRA VIRES ACTS.

The case comes within the rule that a party who has fully performed his part of an ultra vires contract with a corporation which is not forbidden by statute or contrary to public policy may compel it to perform on its part. Before the corporation will be allowed to disaffirm upon the grounds that preference involves ultra vires acts on its part, common honesty requires that it disgorge what it has received to the rightful owners. It cannot at one and the same time refuse to perform upon the grounds of ultra vires and keep what it has received. *Griffin v First National Bank*, 218 M 206, 15 NW(2d) 598.

A spiritualistic church whose articles of incorporation and constitution and by-laws provide for affiliation with state and national spiritualistic organizations, as part of the fundamental purpose of organization, cannot by a majority vote, as against any dissenting member, amend the charter to effect a transfer of affiliation to another organization or effect a diversion of use of property to a purpose other than that for which it was organized. *Trinity Church v First Spiritualistic Church*, 221 M 15, 20 NW(2d) 535.

Denial of corporation's right to sue an officer for losses in ultra vires transactions because of assent of directors. 3 MLR 206.

Nature and effect of ultra vires acts. 7 MLR 332.

Subscriptions to educational institutions or gratuities generally; implied powers; ultra vires acts. 7 MLR 408.

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

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

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

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

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

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

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

301.13 CONDITIONS PRECEDENT TO BEGINNING BUSINESS; LIABILITY.

When persons associate together and do business as a corporation and the corporation is defectively organized their rights, duties and liabilities as between themselves should be determined and governed by the express or implied terms, conditions and limitations contemplated by their agreement and there are no partners unless they have agreed to be such. *Kingsley v English*, 202 M 58, 278 NW 154.

In granting a corporate charter, a state may impose such conditions as it deems proper and, when the corporation accepts the charter, it is bound by the conditions prescribed by the state; and a default decree of a Wyoming state court holding that defendant had title under a tax deed which made no mention of mineral reserves, is res judicata as to the title to mineral rights. *Badger Dome Co. v Hallam*, 99 F(2d) 293.

Liability of promoter on contracts made by him with third parties. 13 MLR 495.

Corporate adoption of promoter's contracts. 23 MLR 224.

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

The evidence justified the trial court in finding that the original division of stock in the corporation was not according to the contribution of capital and that plaintiff Keough should have had thirteen and one-half shares which went to Patrick Ryan, and this distribution was the result of fraud perpetrated by Ryan to whom the distribution of stock was confided by others; nor is Keough barred by laches. *Keough v St. P. Milk Co.* 205 M 99, 285 NW 809.

MINNESOTA STATUTES 1947 ANNOTATIONS

723

MINNESOTA BUSINESS CORPORATIONS 301.16

Certificates of stock in a foreign corporation are personal property, and when in the hands of third parties they are subject to garnishment proceedings; but this does not apply to certificates of stock in corporations subject to the jurisdiction of the courts of Minnesota. *Wackerbarth v Weisman*, 207 M 507, 292 NW 214.

Where as in this case the court finds that the receiver, after judgment has been rendered against him, abandons, with the stockholders' consent and approval, the cause of action sued upon, the stockholder will be denied leave of court to prosecute as plaintiff a bill on behalf of the corporation. A corporation and its stockholders are separate entities and stockholders may not sue in the corporation's behalf. *Singer v Allied Factors*, 216 M 443, 13 NW(2d) 378.

"Where, subsequent to issuance of stock purchase warrants conferring option to purchase 1,000 shares of treasury stock at \$3 per share, corporation increased capital stock from 1,000,000 to 1,500,000 and reduced par value thereof from \$10. to \$2.50 per share, warrant holder's demand for amount of stock which he was entitled to receive by virtue of warrants was not rendered nugatory by inclusion of statement that as long as corporation had incapacitated itself from delivering stock of par value of \$10, plaintiff was willing to accept in lieu thereof stock of par value of \$2.50 per share at rate of four shares of stock of \$2.50 par value for one share of \$10 par value stock." *Tripp v North Butte Mining Co.* 100 F(2d) 188.

"Evidence that warrants giving option to purchase treasury stock were duly executed by secretary-treasurer of corporation and delivered to bondholder upon his payment for bonds pursuant to negotiations with president of corporation, that directors were subsequently advised of transaction, and that bondholder's payment was retained by corporation, established that issuance of warrants was ratified by directors, in absence of any claim prior to suit for breach of warranty that corporation was not obligated thereon." *North Butte Mining Co. v Tripp*, 117 F(2d) 304.

Right of preferred stockholders to participate equally with common stockholders in dividends. 3 MLR 65.

Shares with no par value. 5 MLR 493.

Constitutionality in Minnesota of stock without par value. 10 MLR 235.

Special assessments and special benefits. 10 MLR 427.

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

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

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

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

Stockholders in going concern not liable to pay in full for stock issued at less than par. 3 MLR 281.

Creditors' rights where corporation purchases its own shares. 20 MLR 422.

Liability of promoter for illegal profits. 20 MLR 552.

Stock and stockholders, comparison of Minnesota and Delaware laws. 22 MLR 668.

Subscriptions payable in property. 22 MLR 732.

Payment of dividends where deficit exists. 25 MLR 770.

301.16 SHARES; ALLOTMENT AND CONSIDERATION.

Liability for dilution of existing shares under Minnesota business corporation act. 17 MLR 697.

Shareholders' derivative suits; discontinuance without notice to other shareholders under rule 23(c). 26 MLR 267.

MINNESOTA STATUTES 1947 ANNOTATIONS

301.17 MINNESOTA BUSINESS CORPORATIONS

724

Shareholders' derivative suits; limitations of actions; laches. 26 MLR 269.

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

An option is an offer to sell coupled with an agreement to hold the offer open for a specified time. Such contract secures the privilege of buying but is not of itself a purchase. The owner does not sell his property by such agreement but simply gives to another the right to buy at the latter's election. In the instant case the agreement was not an option but a purchase and an action for damages may be maintained for a breach of the contract. This determination arises from a practical construction of the agreement. *Johnson v Kruse*, 205 M 237, 285 NW 715.

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

Right to rescind subscription to stock after insolvency; status of stockholders after rescission. 5 MLR 219.

Stockholders' liability to creditors after forfeiture of shares for delinquent assessments. 5 MLR 313.

Distinction between a subscription to stock and an executory contract for the purchase of stock. 13 MLR 257.

Subscriber estopped to set up conditional delivery. 14 MLR 816.

301.18 PAYMENT FOR SHARES; ISSUE OF CERTIFICATE.

Status of employee holding stock under contract to repurchase. 5 MLR 147.

Issue of corporate stock for a promissory note; what constitutes property actually received. 10 MLR 536.

301.19 LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS.

"Where a person becomes a stockholder in a corporation organized under the laws of a foreign state, he must be held to contract with reference to all of the laws of the state under which the corporation is organized and which enter into its constitution; and the extent of his individual liability as shareholder to the creditors of the company must be determined by the laws of that state, not because such laws are in force in this state, but because he has voluntarily agreed to the terms of the company's constitution." *Furst v Beygeh*, 192 M 454, 257 NW 79.

Liability for negligent transfer of control. 26 MLR 118.

301.20 VALIDITY OF SHARES.

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

301.21 STATED CAPITAL AND SURPLUS.

The net worth or book value of the corporation, determinative of the book value of its stock, was but the favorable difference between its assets and liabilities correctly computed; its assets, but especially its surplus, reflected the profits on the construction jobs. *Bass v Ring*, 210 M 598, 299 NW 679.

The financial provisions of the Minnesota business corporation act. 25 MLR 745.

301.22 DIVIDENDS AND PURCHASE OF OWN SHARES.

Where it appears that the directors have acted in good faith and have not been guilty of preference or unjust action, they will not be compelled to declare a stock dividend where to do so would force the stockholders to increase their capital invest-

MINNESOTA STATUTES 1947 ANNOTATIONS

725

MINNESOTA BUSINESS CORPORATIONS 301.23

ment in the corporation, and restrict, to the extent of the dividends so declared, the right of the directors to declare cash dividends out of the surplus so capitalized. *Schmitt v Eagle Roller Mill*, 199 M 382, 272 NW 277.

Money or other property received by a trustee as proceeds of sale or exchange of capital of trust property is capital, not income. In this case it was the duty of the trustee, who was also a life tenant, to allocate to corpus rather than income, all dividends of the corporation as far as they constituted all increases in its capital, in the instant case from profits of sale of securities. *Clarke v Bennett*, 204 M 574, 284 NW 876.

The pledgee of corporate stock is entitled to dividends acquired on the stock subscriptions to the pledge to the extent of his interest, and the fact that the stock has not been transferred on the corporate stock books does not affect the pledgee's rights as against the pledgor. If the pledgor collects the dividends, he holds them as trustee for the pledgee, who may recover them from him to the extent of the debt as for money had and received. *McGhie v First & Amer. Natl.* 217 M 325, 14 NW(2d) 436.

Instead of using profits for the payment of dividends, it is within the sound discretion of corporate management, in the exercise of honesty and good faith, to devote the profits to the gradual retirement of debts; and in the instant case an agreement by the stockholders that no dividends be declared or paid by the Sports Afield Publishing Co. until the loan from M. J. Bell has been paid or unless special permission of the creditor is given for the payment of dividends, is within the discretion of the stockholders and valid. *Hart v Bell*, 222 M 72, 23 NW(2d) 375, 24 NW(2d) 41.

Power of a corporation to buy its own stock. 2 MLR 456; 4 MLR 367; 15 MLR 1.

Purchase of own shares by corporation in violation of statute; right to recover money paid under an executed illegal contract. 10 MLR 535.

Right of preferred stockholder to stock dividends. 19 MLR 239.

Creditors' rights where corporation purchases its own shares. 20 MLR 422.

Right of stockholder to compel distribution of surplus. 21 MLR 849.

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

Apportionment of dividends between life beneficiaries and remainderman. 22 MLR 909.

The financial provisions of the Minnesota business corporation act. 25 MLR 744.

Dividend credit theory as to non-cumulative preferred shareholders in years in which net earnings are insufficient to offset capital impairment. 26 MLR 117.

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

The rights and obligations of corporate stockholders, as well as the ultra vires character of corporate acts, are determined by the laws of the state of the corporation's origin. Contract rights between the corporation and its creditors are determined by the law of the state in which the contract is made. A corporation, as well as its minority stockholders who claim injury or damage by fraudulent acts of the director or by ultra vires acts of the corporation, must act promptly and not wait an unreasonable time. *Erickson v Wells*, 217 M 380, 15 NW(2d) 162, 459.

Recovery from insolvent Delaware corporation's directors of dividends unlawfully paid is governed by Delaware statute; and equity proceedings is the appropriate remedy to recover dividends unlawfully paid for which the directors of the insolvent corporation are liable to creditors under the statute. *Rockwood v Foshay*, 66 F(2d) 625.

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

Declaration of dividends; cumulative and non-cumulative preferred shares; participation in dividends and assets. 22 MLR 676.

MINNESOTA STATUTES 1947 ANNOTATIONS

301.25 MINNESOTA BUSINESS CORPORATIONS

726

Director's liability for illegal dividends. 26 MLR 400.

Protective coloring in corporation law. 26 MLR 824.

301.25 SHAREHOLDERS' MEETING.

An alleged ratification of corporate action relative to frauds and oppressive actions perpetrated upon the minority and upon Patrick Keough himself is not binding upon him because not participated in by him either as stockholder or director with knowledge of such frauds or oppression. *Keough v St. Paul Milk Co.* 205 M 98, 285 NW 809.

The existence and extent of the right of the members of a corporation to control the actions of the corporate officers or agents is determined by the law of the state of incorporation. *Farmers Union v Farmers Cooperative*, 207 M 80, 289 NW 884.

301.26 VOTING RIGHTS.

While the Eagle company was insolvent it legally sold and issued to Glynn 240 shares of its capital stock of par value of \$24,000 for \$6,000. Such stock, in the absence of a judicial determination that it was invalid, was entitled to vote; and plaintiffs and the Eagle company are estopped from questioning the validity of such stock on its voting privilege. *Bacich v Northland*, 185 M 544, 242 NW 379.

An agreement by a number of stockholders to combine their votes in order to effectuate a particular policy is not of itself unlawful in the absence of evidence of an intent to defraud the other stockholders or to secure a private benefit at the expense of the corporation or the other stockholders. *Hart v Bell*, 222 M 70, 23 NW(2d) 375, 24 NW(2d) 41.

Articles may provide that preferred shares may have a greater number of votes than has an equal number of common shares. 1944 OAG 33, March 30, 1944 (92-a-24).

Minnesota business corporation act. 17 MLR 701.

Cumulative voting at elections of directors. 21 MLR 351.

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

301.27 VOTING TRUSTS.

Under a power given to trustees to consent to reorganization and to accept in lieu of stock held in trust the stock of any reorganized corporation, and to have the same power and to exercise the same judgment and discretion with respect to the stock held in trust as an absolute owner would have or exercise, such trustees may vote their consent to the exchange of stock of the corporation for property or stock of another corporation or may change their trust stock for stock in another corporation, where individual stockholders may. *Butler v Butler*, 186 M 144, 242 NW 701.

An agreement by a number of stockholders to combine their votes in order to effectuate a particular policy is not of itself unlawful in the absence of evidence of an intent to defraud the other stockholders or to secure a private benefit at the expense of the corporation or the other stockholders. *Hart v Bell*, 222 M 69, 23 NW(2d) 376.

Validity of voting trusts. 10 MLR 344.

Voting trusts. 17 MLR 700.

Voting trusts currently observed. 24 MLR 347.

301.28 DIRECTORS.

Nor is there anything to the point that plaintiff could only institute suit after he had requested the finance company to commence suit and there had been a refusal. The complaint shows a demand would have been futile. *Savory v Berkey*, 212 M 6, 2 NW(2d) 146.

MINNESOTA STATUTES 1947 ANNOTATIONS

727

MINNESOTA BUSINESS CORPORATIONS 301.30

Although a director or other officer of a corporation is not liable, ordinarily, for acts performed by other officers or agents of the corporation, he is criminally liable for his own acts, although done in his official capacity, if he participated in the unlawful act, either directly or as an aider, abettor, or accessory. *State v Horrigan*, 215 M 123, 9 NW(2d) 416.

A business opportunity ceases to be a "corporate opportunity" and becomes "personal" when the corporation is definitely no longer able to avail itself of the opportunity. *Hart v Bell*, 222 M 69, 23 NW(2d) 376.

The board of directors of a Minnesota corporation has authority to make a general assignment; or it may adopt a resolution declaring the corporation is unable to pay its debts and is willing to be declared bankrupt on that ground, without the authority of stockholders. *Dodge v Kenwood Ice Co.* 204 F. 577.

At common law corporate directors have power without statutory authority to delegate to officers, agents, or executive committees the power to transact not only ordinary and routine business, but business requiring the highest degree of judgment and discretion. *Social Security Board v Warren*, 142 F(2d) 974.

Corporations right to profits made by directors. 4 MLR 513.

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

Right of directors to use corporate funds to defend suit against them as individuals. 16 MLR 102.

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

Power of majority stockholders to ratify acts of directors. 21 MLR 596.

Director's liability for declaration of illegal dividends. 26 MLR 400.

301.29 REMOVAL OF DIRECTORS.

Cumulative voting. 21 MLR 366.

301.30 OFFICERS AND AGENTS.

On the question of authority of an agent of a business concern; the party dealing with him may prove the course and manner of the business in that concern as connected with such agent, from which actual authority may be implied. *Ziegler v Denver Hog Serum Co.* 204 M 156, 283 NW 134.

Where all the stock of a securities holding company is owned by a trustee who has in consequence complete control of the company, the latter is but another self for the trustee, and its action in respect to dividends will be considered that of the trustee. *Clarke v Bennett*, 204 M 574, 284 NW 876.

The trial court did not err in submitting to the jury the salesman Olson's authority to accept in behalf of plaintiff notice of defendant's termination of the lease and the disposition of the machine let. *Jaeger v Mirau*, 206 M 468, 289 NW 51.

Dahl sold two-thirds of his option in a placer mine to the mining company for enough to take up an option and this left him with a one-third interest. He had secretly given two of the directors a percentage of his one-third. Upon discovery of the secret profit, the two directors voluntarily transferred their secret profit to the corporation. It is held that the corporation may not mulct Dahl and his non-director associates of their share. *Risvold v Gustafson*, 207 M 359, 292 NW 103.

A proposed written contract, employing plaintiff as agent to sell all the property of defendant corporation, upon specified commission and expense money, which the stockholders at a stockholders' meeting authorized and directed its officers to execute, and which was duly executed, may not be modified as to compensation of plaintiff by an oral agreement between the president and general manager of the corporation, not authorized so to do by either the stockholders or board of directors. *Foley v Wabasha-Nelson Bridge Co.* 207 M 399, 291 NW 903.

Where stockholders of a corporation (in this case there were only three) over a long period have committed its business to the control and management of its

president and general manager, there is evidence of his authority to act for the corporation in contracting for the rendition of services needed by it even though there is no formal action by stockholders or directors so authorizing. The authority so conferred, implied from the facts, is really actual authority expressed by conduct. *Lewin v Proehl*, 211 M 256, 300 NW 814.

Notwithstanding the fact that a corporation is a legal entity distinct from the natural persons composing it, if it is to function at all, it must act through human effort or by means of human direction; and where an insurance company which has appointed an agent with general authority to act in its behalf throughout a considerable territory is charged with knowledge of the reasonable needs of such agent to appoint assistants or sub-agents to solicit insurance within the assigned area, and where such assistant or sub-agent acts within the scope of his appointment, his acts bind the company to the same extent as if his appointment came directly from the company. *Rommel v New Brunswick Insurance Co.* 214 M 251, 8 NW(2d) 28.

Corporation A, under the employment and security act, succeeds to the status of employer B as an employing unit where employer A acquires employer B's business and payroll by purchase from and through an intervening promotion partnership acting as a conduit in operation until A could organize and receive a conveyance. *State v Industrial Tool Co.* 220 M 591, 21 NW(2d) 31.

A private trading corporation has the implied power to issue promissory notes, and one who purchases notes executed in behalf of such corporation and signed by its officers may rely upon the presumption that such officers have discharged their duty and have not exceeded their authority in executing the notes; and this is true though the note be given for salary of an officer. *National Loan & Investment Co. v Rockland Co.* 94 F. 335.

A corporation is not liable for acts or obligations of another corporation merely because it controls such other corporation by ownership of its stock. *Lober v Canadian Pacific*, 151 F(2d) 758.

Attack by minority stockholders upon reasonableness of officers compensation; evidence; burden of proof. 7 MLR 347.

Liability of promoter on contracts made by him with third parties. 13 MLR 495.

Comparison between Minnesota and Delaware corporations; dividends. 22 MLR 670.

301.31 RELATION OF DIRECTORS AND OFFICERS TO CORPORATION.

Where the relationship is one of confidence and fraud has occurred, the evidence should be very convincing before the defrauded party should be barred. *Keough v St. Paul Milk Co.* 205 M 104, 285 NW 809.

A stockholder bringing a representative action on a cause of action belonging to the corporation is not entitled to recover a judgment in the same action in his favor against the corporation on a debt or other liability which he claims it owes to him. *Briggs v Kennedy*, 209 M 312, 297 NW 342.

In the conduct of its business, directors and officers of a corporation are fiduciaries; and if, in the transacting of the corporation business, they acquire property in violation of their duty as fiduciaries, they hold it upon a constructive trust for the corporation; and the corporation affirming the transaction may recover from the unfaithful directors the secret profits. *Risvold v Gustafson*, 209 M 357, 296 NW 411.

In an action by a stockholder in behalf of a corporation to recover of the officers and directors funds of the corporation misappropriated and lost through their alleged fault, the burden is upon the plaintiff to prove such misappropriation and loss. *Savory v Berkey*, 212 M 1, 2 NW(2d) 146.

The rights and obligations of corporate stockholders, as well as the ultra vires character of corporate acts, are determined by the laws of the state of the corporation's origin; but the contract rights between the corporation and its creditors

MINNESOTA STATUTES 1947 ANNOTATIONS

729

MINNESOTA BUSINESS CORPORATIONS 301.36

are determined by the law of the state in which the contract is made. *Erickson v Wells*, 217 M 361, 15 NW(2d) 162, 459.

Where a business opportunity is in the line of a corporation's activities, especially if intended for it, the opportunity, as one in which it has a legitimate interest or expectancy, belongs to the corporation and not to its officers or directors, and if an officer or director diverts the opportunity and embraces it as his own, he is chargeable as a constructive trustee for the benefit of the corporation; but where the opportunity is one in which the corporation has no interest or expectancy, the opportunity is not a corporate but a personal one, and the director may treat it as his own. *Dedrick v Helm*, 217 M 483, 14 NW(2d) 913; *Baxrud v Ronning Machine Co.* 217 M 518, 15 NW(2d) 112; *Backus v Finkelstein*, 23 F(2d) 531.

Imposing debt and mortgage on corporation property for use and benefit of management officers was unwarranted use of corporate credit. *Backus v Finkelstein*, 23 F(2d) 531.

Corporations right to profits made by directors. 4 MLR 513.

Nature of statutory liabilities imposed on officers and stockholders. 6 MLR 300.

301.32 LOANS TO OFFICERS, DIRECTORS AND SHAREHOLDERS.

Under Minnesota law, as against existing creditors or stockholders, a corporation cannot legally make bonus payments to officers which are not a matter of contractual obligation; and only where the amount of an officer's compensation has either expressly or impliedly been left open contractually, can the board of directors legally make an allowance after the duties of the officer have been performed. *Boyun v Johnson*, 127 F(2d) 431.

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

A member of a non-stock cooperative marketing corporation has the right to inspect the books, records, and papers of the corporation in proper cases and under reasonable circumstances. *State ex rel v St. Cloud Milk Assn.* 200 M 1, 273 NW 603.

Right of stockholders to inspect corporate books and records. 4 MLR 296.

301.36 VOLUNTARY TRANSFER OF CORPORATE ASSETS.

Plaintiff claims she consented to sell her stock at \$150 per share. The stock was sold for less. The correspondence relied upon by plaintiff was insufficient to establish a binding contract. *Young v St. Paul Publishers*, 210 M 346, 298 NW 251.

The right of plaintiffs to have their stock redeemed or retired in case of the sale of all the assets of the Delaware corporation to a Minnesota corporation for the latter's stock, made without plaintiffs' consent, is governed by the law of Delaware, and under that law the sale was authorized, and plaintiffs cannot disturb or set aside the transaction between the two corporations. *Peterson v New England Co.* 210 M 449, 299 NW 208.

A distribution of stock pursuant to a plan for reorganization whereby the old company turned over all its assets to the new company in consideration for stock in the new company which was then given pro rata to old company preferred stockholders was a distribution in the nature of a liquidating dividend. *Dworsky v Buzza*, 215 M 282, 9 NW(2d) 767.

The sale of a newspaper publishing business in toto to another company amounted to a dismissal of all defendant's employees engaged in that part of defendant's business and entitled them to severance pay under the provisions of their employment contract. *Matthews v Minnesota Tribune*, 215 M 370, 10 NW(2d) 230.

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

Intangible assets. 25 MLR 757.

MINNESOTA STATUTES 1947 ANNOTATIONS

301.37 MINNESOTA BUSINESS CORPORATIONS

730

301.37 AMENDMENTS OF ARTICLES OF INCORPORATION.

Articles of association fix the rights of stockholders and are in the nature of contract between incorporators which neither party is at liberty to violate; and under Minnesota law, unless some fundamental defect compels contrary view, corporation, under attempted amendment changing purpose, had de facto existence which stockholders and creditors would be estopped to deny so far as technical omission to file affidavit of publication with secretary of state is concerned. *Henry v Markesan*, 68 F(2d) 554.

Upon renewal of corporate existence after time for renewal had expired, the fees paid into the state treasury must be the same as would have been paid if renewal had been made before expiration of limit of expiration. OAG June 29, 1943 (11-A-1).

Cumulative voting. 21 MLR 370.

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

Doctrine of vested rights. 26 MLR 393.

301.38 PROVISIONS RELATING TO CERTAIN AMENDMENTS.

Where certificates of indebtedness were issued to retire preferred stock, and the certificates at once exchanged for common stock, it is deemed as one proceeding, and cannot be considered a reduction in the amount of capital, nor the issuance of the new common stock as an increase in capital stock. *Weidenfeld v Northern Pacific*, 129 F. 305.

Elimination of accrued preferred dividends by charter amendment. 26 MLR 387.

301.39 REDUCTION OF STATED CAPITAL.

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

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

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

Stated capital. 25 MLR 745.

Payment of dividend when deficit exists. 25 MLR 771.

301.40 RIGHTS OF SHAREHOLDERS NOT ASSENTING TO CERTAIN CORPORATE ACTION.

The right of plaintiffs to have their stock redeemed or retired in case of sale of all of the assets of a Delaware corporation to a Minnesota corporation for the latter's stock, made without plaintiffs' consent, is governed by the laws of Delaware, and under that law the sale was authorized, and plaintiffs cannot disturb or set aside the transaction between the two corporations. *Peterson v New England F. and C. Co.* 210 M 449, 299 NW 208.

The charter of a corporation having expired and no proceedings having been taken under section 301.60 to extend it, and a new corporation having been organized to take over the business, a dissenting stockholder has a reasonable time in which to elect to take stock in the new corporation, or the cash value of his interest in the old corporation. *Polans v Oreck's*, 220 M 249, 19 NW(2d) 435.

Where a transaction is fair and free from overreaching, a minority stockholder who is fully informed of all its details and does not dissent within a reasonable time, and his failure to do so is not explained, will be deemed to have acquiesced and cannot maintain an action to set aside sale of corporate assets. Such stockholder must be vigilant in protection and assertion of his rights. *Polans v Oreck's*, 220 M 249, 19 NW(2d) 435.

Rights of dissenting shareholders on consolidation. 17 MLR 328.

MINNESOTA STATUTES 1947 ANNOTATIONS

731

MINNESOTA BUSINESS CORPORATIONS 301.50

Extension of corporate existence. 22 MLR 108.

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

301.41 CONSOLIDATION AND MERGER AUTHORIZED.

The effect of merger or consolidation of corporations depends on the statute authorizing it. A combination of two corporations may result in coalescence or union thereof without extinguishing either, extinction of one corporation and its absorption by another, which constitutes a merger, or vital succession or extinction of both corporations, and the creation of a new one, which constitutes a consolidation. In view of statute authorizing consolidation of bank with trust company, no capital stock tax is collectable. *United States v Northwestern National Bank*, 137 F(2d) 761.

301.43 EFFECT OF CONSOLIDATION OR MERGER.

See, *United States v Northwestern Natl. Bank*, 137 F(2d) 761.

Power to eliminate dividend arrearages on cumulative preferred stock by merger with wholly owned subsidiary. 24 MLR 992.

Effect of state dissolution of a corporation upon reorganization proceedings. 25 MLR 512.

301.44 RIGHTS OF DISSENTING SHAREHOLDERS.

See, *Peterson v New England Co.* 210 M 449, 299 NW 208; *Polans v Oreck's*, 220 M 249, 19 NW(2d) 435, noted under section 301.40.

301.45 ADDITIONAL PROVISIONS RELATING TO CONSOLIDATION OR MERGER.

Consolidation and mergers. 25 MLR 783.

301.46 PROCEEDINGS FOR DISSOLUTION.

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

301.47 VOLUNTARY PROCEEDINGS FOR DISSOLUTION.

Board of directors are authorized to make a general assignment, or admit insolvency and a willingness to be adjudicated bankrupt on that ground. *Dodge v Kenwood Ice Co.* 204 F. 577.

Power of the directors and majority shareholders to dissolve a prosperous corporation against the protest of the minority shareholders. 2 MLR 527.

301.48 WINDING UP OUT OF COURT.

The duty of the liquidator was the "winding up of the affairs of the corporation by reducing its assets, paying its debts, and apportioning the profit or loss." Any use of the corporate assets, inconsistent with collection of assets, settlement of liabilities, and distribution of the residue to stockholders constitute a breach of the liquidator's duties. *Young v Blandin*, 215 M 117, 9 NW(2d) 313.

301.49 GROUNDS FOR INVOLUNTARY DISSOLUTION.

Suspension of state insolvency statute by the national bankruptcy act of 1898 as amended. 25 MLR 103.

301.50 WHO MAY INSTITUTE INVOLUNTARY PROCEEDINGS.

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.

301.51 APPOINTMENT OF RECEIVERS.

Cases relating to appointment of receiver: Receivership of Southwestern Minnesota Land Co. 162 M 83, 202 NW 69; Owens v Owens, 167 M 468, 210 NW 59; Miller v Ahneman, 183 M 12, 235 NW 622; Barrett v Smith, 183 M 431, 237 NW 15; McQuire v Kaysen, 184 M 553, 239 NW 616; Zwick v Security Bank, 186 M 308, 243 NW 140; State ex rel v District Court, 206 M 645, 287 NW 491.

301.52 DUTIES AND POWERS OF TRUSTEES AND RECEIVERS.

Order continuing hearing of receiver's petition to assess corporation's stockholders from August 31 to September 10, 1931, being 61 days, while not in exact conformance with the statute, in view of the large number to be served was proper notice. The order assessing stockholders for payment of the corporation's debts is conclusive only as to amount, propriety, and necessity of assessment, and all other defenses, including that of ultra vires, are available in suit to collect assessment. Christenson v Satterlee, 57 F(2d) 951.

Suit by or against insolvent corporation's receiver to collect corporation's assets or defend property rights is ancillary to main receivership suit, and hence may be cognizable in federal court regardless of citizenship or amount in controversy. Rockwood v Foshay, 66 F(2d) 625.

301.53 EFFECT OF DISSOLUTION PROCEEDINGS.

Disclosing the actual identity of related corporations for the purpose of ignoring the corporate fiction when one is insolvent. 4 MLR 219.

301.54 CLAIMS AGAINST CORPORATIONS IN DISSOLUTION SUBJECT TO COURT SUPERVISION.

Plaintiff was employed by a company which became insolvent and discontinued. Defendant's corporation, which had been discounting the paper of insolvent company and who stood to meet a large loss, employed plaintiff to continue to sell the contracts, agreed (1) to pay plaintiff what he had coming from the insolvent company, and (2) to divide profits on the new enterprise. The court held the two contracts to be separate one from the other, and the payment under agreement (1) did not depend on the success of the second enterprise. Smith v Minneapolis Securities, 211 M 534, 1 NW(2d) 841.

In corporate receivership, court may fix the time within which claims may be presented, order notice thereof by publication or otherwise, and provide that those failing to file claims within such time shall be barred from interest in property and proceeds; and an application to file a claim after expiration of period fixed for filing is addressed to the discretion of the court. Chgo. Joint Stock Land Bank v Minnesota Loan and Trust Co. 57 F(2d) 70.

301.55 COMPROMISE ARRANGEMENTS; REORGANIZATION; APPROVAL AND EFFECT.

Corporate reorganization. 17 MLR 237.

Federal corporate reorganization act. 19 MLR 34, 20 MLR 117.

Corporations eligible for relief under federal 77B. 21 MLR 144.

Corporate reorganization and a ministry of justice. 23 MLR 1.

301.57 ACTION TO TERMINATE CORPORATE EXISTENCE.

A corporation is not deemed dissolved or its corporate franchise annulled unless and until there has been a judicial determination that there is, in fact, valid cause for such forfeiture, and such action may be taken advantage of only by the state in a direct proceeding for that purpose. Trustees of Hamline v Peacock, 217 M 399, 14 NW(2d) 773.

MINNESOTA STATUTES 1947 ANNOTATIONS

733

MINNESOTA BUSINESS CORPORATIONS 301.62

301.59 RESERVATION OF RIGHT TO ALTER, AMEND OR REPEAL.

Cumulative voting. 21 MLR 355.

Merger and consolidation. 22 MLR 674.

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

See, *Polans v Oreck's*, 220 M 249, 19 NW(2d) 435, noted under section 301.40.

301.62 CORPORATIONS TO BE BOUND.

The resolution adopted by defendant corporation not to accept or be bound by L. 1933, c. 300, was adopted under express statutory authority and was not in excess of its corporate powers. *Muller v Hamm Brewery Co.* 197 M 608, 268 NW 204.

On the issue of liability for fraud in procuring plaintiff's corporate stocks in defendant bakery, the evidence sustains the verdict. Since the corporation becomes the property of defendant by virtue of fraud, defendant may not use it as a corporate veil to serve as a shield to avoid his or its liability. *Fewell v Tappan*, 223 M 483, 27 NW(2d) 649.